Mandatory State Bar Associations

Managing Keller

The following information regarding mandatory bars and how they manage Keller related activities was compiled by State Bar of Michigan between February 2014 and May 2014. This was a significant research initiative to support the Michigan Supreme Court Task Force on the Role of the State Bar of Michigan. As information was gathered, executive directors from several state bars expressed an interest in receiving this compilation of material. We are pleased to share this information with those who find it useful. Please note that the State Bar of Michigan does not update this compilation as policies and statutes change in various states. Users are encouraged to check with the state bars directly to learn of any relevant changes.

Return to main contents page
http://www.michbar.org/opinions/keller.cfm

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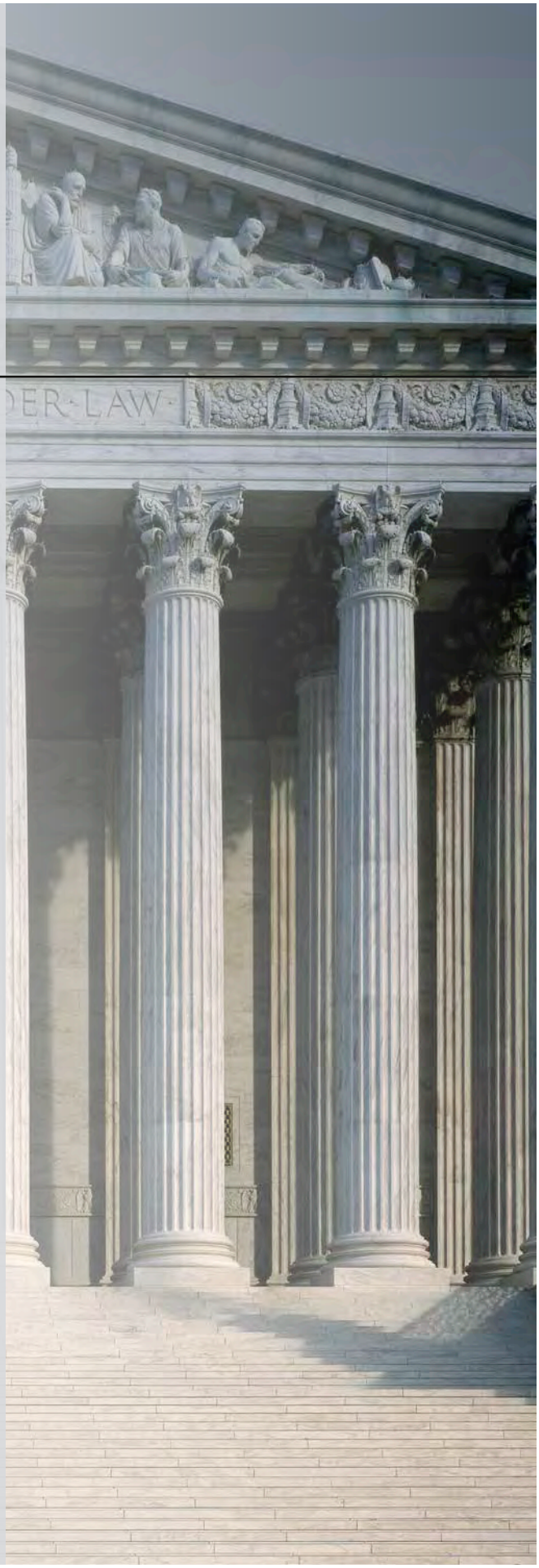
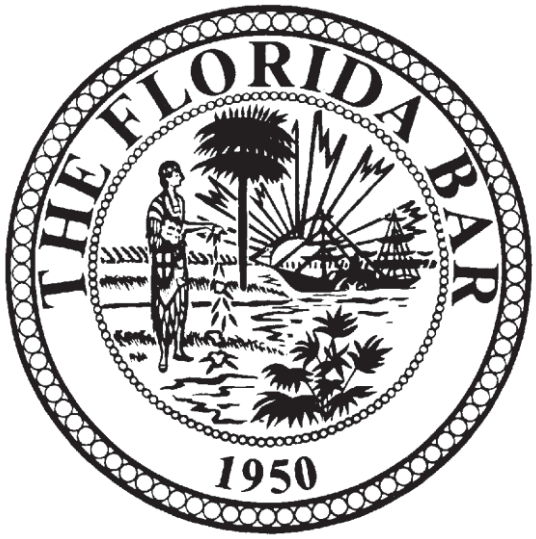
State Bar of Michigan



- Florida
    - Florida Bar Committee Handbook
    - Rules of Regulating the FL State Bar
    - Rules and Regulating the State Bar



2014-15 Florida Bar Legislation Committee Handbook

The Florida Bar

Gregory W. Coleman
President

John F. Harkness, Jr.
Executive Director

Ramón A. Abadin
President-Elect

MEMORANDUM

To: Legislative Committee Members
From: Michael G. Tanner, Chair BOG Legislative Committee
Date: July 1, 2014

Welcome to the Legislation Committee of the Board of Governors. For those who are returning to the committee - welcome back. This next year should prove to be interesting and challenging for the Bar in its legislative positions—particularly with the upcoming gubernatorial election—meaning we have plenty of work ahead.

The Legislation Committee is composed of 9 members, five of whom must be active, voting members of the Board of Governors. These 5 individuals serve 3-year staggered terms.

The Committee's primary function is to review and consider proposals for legislative or political action by The Florida Bar and sub-groups within the Bar. We determine whether proposed action is within the scope of the Bar's or a sub-group's authority and then we recommend to the full Board whether a position should be formally adopted, recognized or advocated. Responsibility also falls on our committee to monitor legislation in order to keep the sections, committees and others within The Florida Bar aware of proposals of interest or concern to them.

Our most important function is to ensure that proposed legislation or advocacy complies with Florida Bar rules, policies and applicable case law. The 900 series of the standing policies of the Board of Governors of The Florida Bar details and prescribes the procedures for the Legislation Committee.

We, as a committee, work closely with the Bar's Governmental Affairs Office under the very able leadership of Paul Hill, General Counsel, who has served the Bar well for decades. He is assisted, as is this committee, by several outside legislative advisors and their staff in all approved Bar lobbying efforts.

This year we will meet immediately prior to each of the Board of Governors' meetings, usually on Thursday afternoon. We will also convene a brief telephone conference on the Monday prior to each Board meeting to review agenda items and to determine what matters may need special consideration during the Board meeting.

I encourage each of you to visit The Florida Bar website to obtain more information about the purpose and mission of our committee.

Please feel free to call me on my direct line in the office at 904-446-2980, my cell phone 904-631-5058, or contact me by e-mail at *mtanner@tannerbishop.com*.

You may reach Paul Hill at 850-561-5661 and/or through e-mail at *phill@flabar.org*.

I look forward to working with each of you during this exciting year. Welcome aboard!

The Florida Bar

Gregory W. Coleman
President

John F. Harkness, Jr.
Executive Director

Ramón A. Abadin
President-Elect

MEMORANDUM

TO: 2014-15 Legislation Committee Members

FROM: Joni Wussler, Administrative Assistant

cc: Gregory Coleman, Ramón A. Abadin, John F. Harkness, Jr., Bar Legislative Consultants

The Legislation Committee ensures the continued success of our legislative program through careful evaluation of all proposals for legislative or political action by The Florida Bar and its sections, divisions and committees.

The Governmental Affairs Office of The Florida Bar administers the legislative program for the Bar. Our primary functions include: coordination of the legislative and political activities of The Florida Bar and its various sub-groups; staffing the Legislation Committee; advising elected leaders and outside consultants on various governmental issues; and serving as general information resources to all members of The Florida Bar on legislative and political matters.

This handbook is designed as a reference to assist you during your tenure on the Legislation Committee. The following is a brief description of the various materials which are categorized for your additional convenience.

INTRODUCTION
Rosters for the committee members, legislative advisors for The Florida Bar and various sections, plus Florida Bar staff resources.

THE FLORIDA BAR LEGISLATIVE PROGRAM
Materials that describe the Bar's legislative program and the influences on political and legislative activities of The Florida Bar, including judicial history.

CASE LAW
Informative court opinions relevant to legislative activities of The Florida Bar.

RULES REGULATING THE FLORIDA BAR
Selected portions of The Florida Bar's charter document that govern legislative and political activities of The Florida Bar.

STANDING BOARD POLICIES
The 900 Series of Standing Board Policies specify the Bar's legislative policy and prescribe the procedure for the adoption and advocacy of legislative positions at all levels within The Florida Bar. These policies also authorize the Legislation Committee and set forth procedures for retaining legislative consultants. Given the limitations on political and ideological advocacy by a unified bar, it is imperative that standing board policy be strictly followed when dealing with legislative and other political matters.

COMMITTEE PROCEDURES

These materials will familiarize you with how our internal procedures create legislative positions from ideas. The Legislation Committee is charged with reviewing and making recommendations on all requests for legislative positions. The committee generally convenes on the Thursday (usually from 3:00pm -5:00pm) preceding the Board of Governors meeting. In order to assure an efficient meeting and minimize unnecessary personal appearances, the committee will usually conduct a conference call in advance of the on-site meeting to confirm the placement of section-level requests on the BoG's consent calendar. The committee's on-site meeting at BoG sessions is generally devoted to consideration of Florida Bar-level position requests and other business requiring more in-depth discussion and deliberation. The extract agenda for the Legislation Committee reflects an entry titled "L" items - or items "below the line." Such items typically include committee minutes and any other materials for information of the committee only. Items "above the line" are legislative-related extracts from the Board's main agenda. Included in this section are a sample position request form; a sample committee agenda extract; and a "crib sheet" describing the criteria for evaluating requests for Bar positions and section positions.

TECHNICAL ASSISTANCE ISSUES

This section includes materials that describe procedures for technical assistance by Bar groups that were approved for general use on a pilot basis in 2007 and continue unless the 2014-15 Legislation Committee feels otherwise – notably, there have been no submissions under this policy since its implementation.

SESSION – "HOW IT ALL COMES TOGETHER"

The Governmental Affairs Office provides a variety of material to assist all Bar leaders in keeping abreast of the issues affecting the profession, as well as significant political developments that may impact the Bar. To facilitate bill tracking, the Bar subscribes to a commercial on-line legislative information service. The service includes a governmental directory, legislative committee information, statute tracking, daily agendas and legislative voting records. During session, each bill is reviewed for its potential interest to every section, division and committee within The Florida Bar. Synopses of those bills are marked as legislation of interest for each of these groups and regularly posted on the Bar's website. Legislative consultants and advisors are often retained to advocate official Florida Bar positions and other recognized topics of interest to sections or other groups. Included in this portion of your notebook is a representative copy of the Senate calendar, a sample bill summary and tracking chart, plus a copy of legislation of interest prepared for a Florida Bar section and as it would appear on the Bar website.

KEY CONTACT PROGRAM

Lawyers who have a personal relationship with state and federal officials are encouraged to participate in the Bar's Key Contact program. The Governmental Affairs Office calls upon its network of key contacts to present various issues on our legislative agenda to key decision makers. Our volunteers serve as an integral component of the Bar's advocacy plan, and their efforts often augment the success of our Tallahassee-based legislative resources.

INFORMATIONAL ITEMS

I hope the materials in this handbook will prove helpful to you during your service on the Legislation Committee. If you have any questions or need assistance, please do not hesitate to call upon the staff of the Governmental Affairs Office. We look forward to working with you!

Introduction

2014-2015 Florida Bar Leadership

Gregory W. Coleman – President

Ramón A. Abadin – President-Elect

John F. Harkness, Jr. – Executive Director

2014-2015 Legislation Committee

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2014-2015 Board of Governors Meetings Schedule

For most of the dates below, the committees of the board will meet on Thursday and the Board of Governors will meet on Friday)

2014

July 23-26	Palm Beach – The Breakers (Including Citizens Forum)
Oct. 22-25	Philadelphia – Four Seasons
Dec. 10-13	Amelia Island - Ritz-Carlton

2015

Jan. 28-31	Tallahassee - The Florida Bar / Hotel Duval (Including Citizens Forum)
Mar. 25-28	Saint Petersburg – Don Cesar Hotel
May 20-23	Key West - Westin

2014-2015 Florida Bar Legislative Advisors

(as of June 2014)

Stephen W. Metz, Chief Legislative Counsel

Warren Husband
Jim Daughton
Aimee Diaz-Lyon
Andrew Palmer
Gregory K. Black
Pamela Burch Fort
Matt Bryan
Jeff Hartley
Jim Naff
David Daniel
Andrea Becker Reilly

2014-2015 Section Legislative Advisors

(as of June 2014)

Business Law Section
Aimee Diaz-Lyon

Family Law Section
Edgar O. Castro
Nelson Diaz

Real Property, Probate & Trust Law Section
Pete Dunbar

Trial Lawyers Section
Bob Harris
Mark Herron
Brittney Burch

Workers' Compensation Section
Fausto Gomez

2014-2015 Florida Bar Staff Resources

John F. Harkness, Jr. – Executive Director

Paul F. Hill – General Counsel
Joni Wussler – Administrative Assistant

The Florida Bar Legislative Program

THE FLORIDA BAR'S LEGISLATIVE PROGRAM

The Governmental Affairs Office of The Florida Bar administers the legislative program for the Bar. The office is staffed by Paul Hill, General Counsel and Joni Wussler, his assistant. Their primary functions include: coordination of the legislative and political activities of The Florida Bar and various sub-groups; staffing the Legislation Committee; advising elected leaders and outside consultants on various governmental issues; and serving as general information resources to all members of The Florida Bar on legislative and political matters. In addition, legislative counsel and advisors are retained to advocate the official positions of The Florida Bar in the legislature.

Every proposal for a legislative position must be reviewed and considered by the Legislation Committee. The committee meets prior to Board of Governors meetings, usually on Thursday afternoons. In order for proposals to be placed on the committee's agenda, a Legislative Position Request Form must be submitted to the Governmental Affairs Office at least 21 days prior to the meeting of the committee.

Standing Board Policy 9.50(c) requires a section or committee to circulate its legislative proposals to other sections or committees that may have an interest in the matter prior to the presentation of the request to the Legislation Committee. In order to assure that all interested parties have an opportunity to comment on the proposal, the Legislative Position Request Form specifically requires a listing of the groups (both inside and outside the Bar) from whom your section or committee has solicited comments.

It is also suggested that a person who is familiar with the substance of a legislative position request be present and available for questions during consideration by the Legislation Committee (and by the Board of Governors, if the matter is controversial). If a knowledgeable representative does not appear before the Legislation Committee, the committee may defer the matter because of inadequate information.

Once a legislative position has been favorably acted upon by the Board of Governors, it is recorded on The Florida Bar's master list of positions, maintained by the Governmental Affairs Office. Legislative positions are considered active for the two-year period coinciding with the legislative biennium. The master list is revised after each new position is approved. A current version of that list may be accessed on The Florida Bar's website.

Consistent with the distinction between "big bar" and section lobbying, many sections of The Florida Bar have developed separate grassroots lobbying programs. Some sections retain their own outside advisors, who further assist volunteer members in advocating particular positions in the legislature or before other governmental bodies.

A key contact program is in place. Lawyers who have access to or a personal relationship with state and federal officials can volunteer to participate in the program. Those who volunteer are kept informed on various issues that comprise the Bar's

political agenda and are called upon to present the Bar's views as necessary. These lawyers serve as the localized components of an influential statewide network that often augments the efforts of the Bar's Tallahassee-based legislative resources. Such localized efforts by various attorneys and lay volunteers have been highly effective in defending the Florida Supreme Court's regulation of the legal profession, and in explaining selected aspects of the Bar's political platform.

The Governmental Affairs Office provides a variety of services to assist all Bar leaders in keeping abreast of the issues regarding the legal profession as well as significant political developments which may affect the Bar.

Throughout the legislative session, each bill is reviewed for its potential interest to every group within The Florida Bar. Within “Legislation of Interest to the Legal Profession,” separate bill reports – specific to each section, division and committee – can be found on the legislative pages of The Florida Bar website. These reports provide real-time updates on the progress of all legislation and allow members to access copies of any bill, amendment, or legislative analysis.

To facilitate the tracking of bills throughout regular and special sessions, the Bar utilizes a commercial on-line governmental information service. That bill tracking service includes a governmental directory, committee information, statute tracking, daily agendas and voting records.

Additionally, the official website of the Florida Legislature – “Online Sunshine” – provides a wealth of useful legislative information. The site also provides an alert service for intense bill tracking. The system supplies full text of bills, their complete parliamentary history, proposed amendments, up-to-date vote information, all state statutes, House and Senate rules, legislator information, House and Senate calendars, and lobbyist information.

All of this data is available free of charge through the Internet via http://www.leg.state.fl.us/. The Department of State posts new laws to its website one day after action by the Governor. Those postings can be found in the "Laws of Florida" section of the Department of State's website, accessed via http://laws.flrules.org/.

INFLUENCES ON FLORIDA BAR POLITICAL AND IDEOLOGICAL ACTIVITY

I. Introduction

Political and ideological activities of The Florida Bar are primarily influenced by the Rules Regulating The Florida Bar as promulgated by the Supreme Court of Florida, by operational policies of The Florida Bar Board of Governors, and by court decisions that have explored First Amendment rights of individual members of unified state bars or other mandatory membership organizations.

Within those confines, The Florida Bar works to advise and assist the courts and all other branches of government on a variety of law-related matters. Through its officers, volunteer members, professional staff and retained counsel, The Florida Bar presents a visible and respected presence within the political arena at both the state and federal levels.

II. Florida Bar Policy

The Rules Regulating The Florida Bar authorize the Board of Governors to establish, maintain and supervise "a program for providing information and advice to the courts and all other branches of government concerning current law and proposed or contemplated changes in the law." R. Regulating Fla. Bar 2-3.2(d)(4).

Bylaws to the Rules Regulating The Florida Bar specify that official legislative positions are effected by vote of the board, the executive committee, or singular act of the president. R. Regulating Fla. Bar 2-9.3(a). Standing Policies of the Board of Governors (the 900 Series) provide greater detail on this process and other procedural aspects of legislative and political activities of the Bar.

Proposed legislative action by The Florida Bar is usually first considered by the legislation committee, a nine-member group chaired by an incumbent board member and composed of at least five persons who were board members at the time of their appointment. The committee generally advises the leadership on all legislative or political matters affecting the Bar, its committees, and its sections.

The Florida Bar may only advocate legislative or political positions that are true to its chartered purposes "to improve the administration of justice" and "to advance the science of jurisprudence." R. Regulating Fla. Bar 1-2. Case law has further refined those general terms and has more specifically shaped the scope of the Bar's legislative authority.

Consideration of possible legislative or political activity by all of the Bar's various reviewing authorities involves a two-step analysis. Any potential position of The Florida Bar or an organic Bar committee must undergo a threshold analysis to verify whether the matter is within the scope and purposes of the Bar, followed by a second determination of the merits of the issue as proposed. For the Board of Governors to formalize a proposal as an official Bar position, a two-thirds margin on both these votes is required of those governors present at a regular meeting of the board.

The role of the Executive Committee in such matters is defined by board policy that acknowledges certain political issues may arise quickly, and can require action between meetings of the board of governors. A majority of the executive committee members acting on a matter must initially confirm that the requested action could not reasonably have been submitted to the board, or that there has been a significant material change in circumstances since the board's last meeting, to necessitate executive committee action on behalf of the Bar.

For the executive committee to formalize a proposal as an official bar position, two-thirds of the committee must vote that the issue is within the scope and purposes of the Bar. Any subsequent action on the merits of the measure similarly requires a two-thirds vote.

During a legislative session or other political emergency when it is not feasible to convene the executive

committee, the president may act upon proposed legislation or other pending issues. Board policies state that such emergency action should be in consultation with the president-elect and chair of the legislation committee if possible.

Once adopted, legislative positions of the Bar are published in The Florida Bar *News* for official notice to every member. Within 45 days of the date of publication, Bar members may file a written objection to a specific legislative position. Upon receipt of a timely objection, dues money allocated to the advocacy of any contested issue is immediately escrowed for possible rebate. The Board of Governors has an additional 45 days to decide whether to authorize a pro rata refund to the objecting member, or to refer the matter to arbitration.

Legislative positions of Bar sections evolve via a similar procedure, in that they are usually first considered by the legislation committee and then by the board. To accommodate Bar sections with active political agendas, board policies provide for an expedited review of section submissions upon request. Procedures reflect a "notice and estoppel" type philosophy, which acknowledges a section's basic authority to lobby a matter unless prohibited by the Bar within specific timelines, or affected by court action.

The Bar may prohibit a section from advocating a particular legislative or political position only if any of the following criteria are not met: (1) the issue is within a section's subject matter jurisdiction as reflected in its bylaws; (2) the issue is either beyond the scope of The Florida Bar to advocate, or is within the Bar's scope but not inconsistent with any existing Bar position; or (3) the issue does not present the potential of deep philosophical or emotional division among a substantial segment of the Bar's membership.

Legislative positions advocated in the name of The Florida Bar and underwritten by mandatory dues are distinct from those advanced and supported by volunteer section funds. Any presentation of a Bar section's position to governmental officials or others is required by Florida Bar policy to be clearly identified as a section position – and not a matter advocated by The Florida Bar – unless the board votes to make the issue a Bar position as well.

III. Judicial History

***In re Florida Bar Board of Governors' Action*, 217 So.2d 323 (Fla. 1969):** Political activity by the Board of Governors on behalf of The Florida Bar was first challenged in the Supreme Court of Florida in 1969. Although the court summarily denied a petition for review of the Bar's advocacy of a proposed revision of the state constitution – and a membership referendum on the measure – Justice Hopping issued a special concurrence.

After reciting the history of Florida's unified bar, Justice Hopping noted as to "political" advocacy:

> The test as to whether or not The Florida Bar should engage in a particular activity is not whether the activity is "political" in nature or directly connected with the administration of justice. The true test is whether the matter is of great public importance, and whether lawyers, because of their training and experience, are especially fitted to evaluate the same. If a matter vitally affects the public, and lawyers are peculiarly fitted to evaluate it, it is not only the right but the duty of the Bar as a professional organization to make such evaluation and advise the public of its conclusions.

Upon further describing the Bar's representative form of board governance and apportionment, Justice Hopping also noted:

> If the matter on which the Board of Governors speaks meets the tests heretofore set out, this Court should not second guess the position taken by the Board of Governors because to do so would substitute this Court's beliefs for that of the Board's. While there is no guarantee that the Court's views represent the views of the lawyers of this state, because

> the Board of Governors is the duly elected spokesman of the lawyer members of The Florida Bar, its view is at least representative.

***The Florida Bar*, 439 So.2d 213 (Fla. 1983):** The Florida Bar's "political activities" were again called into question in a 1983 proceeding wherein 25 members petitioned for Florida Supreme Court amendment of Bar rules, to read: "The Board of Governors shall not engage in any political activity on behalf of The Florida Bar nor expend money or employ personnel for such purpose."

The court initially determined that the improvement of the administration of justice and the advancement of the science of jurisprudence are compelling state interests sufficient to justify a constitutional intrusion into an individual's freedom of association.

After reviewing the Bar's history of advocacy among the various branches of state and federal government, the court held that The Florida Bar's political activities – particularly as limited by operational policies of its governing board – were germane to compelling state interests. The petition was therefore denied.

***Gibson v. The Florida Bar*, 798 F.2d 1564 (11th Cir. 1986):** In "*Gibson* " a member challenged The Florida Bar's opposition to a state constitutional proposition (eventually struck from the general election ballot) that would have created limits on governmental revenues. Gibson argued that his First Amendment rights of free speech and association were violated by such use of his compulsory dues to advocate political and ideological positions.

The court held that: (1) the Bar could use compulsory dues to finance its lobbying efforts only to the extent that its legislative positions were germane to the Bar's stated purposes; and (2) the Bar had the burden of proving that its lobbying expenditures were constitutionally justified, by showing that its past positions were sufficiently related to the Bar's purpose of improving the administration of justice.

In one footnote, the court opinion indicated that acceptable areas for Bar lobbying would include the following topics: (1) questions concerning the regulation of attorneys; (2) budget appropriations for the judiciary and legal aid; (3) proposed changes in litigation procedures; (4) regulation of attorneys' client trust accounts; and (5) law school and Bar admission standards.

Another footnote indicated that the difficult task of discerning proper lobbying positions could be avoided by either of two methods: a voluntary program allowing lawyers to contribute to the legislative program as they wished; or a refund procedure allowing dissenting lawyers to object to a Bar position and to then receive that portion of their dues allotted to lobbying.

***The Florida Bar re Schwarz*, 526 So.2d 56 (Fla. 1988):** In *"Schwarz I "* a member sought appointment of an ad hoc committee to study the legality, propriety, scope and procedure through which the Supreme Court of Florida should exercise its political power via delegation to its "official arm," The Florida Bar. The court declined to appoint a special committee, but referred the matter to the Judicial Council for comment and recommendations.

***The Florida Bar Re. Amend. to Rule 2-9.3*, 526 So.2d 688 (Fla. 1988)**: In view of the developing law in this area, the Bar sought amendments to its rules to set forth a procedure and potential remedy for members who would question the propriety of the use of their Bar dues to support legislative positions approved by the Board of Governors. The procedures, as adopted then, remain the heart of the Bar's current rule on member dissent and dues rebates. The court's opinion adopting the rule included this additional observation: "Although the pecuniary recovery may be limited, members of the Bar should still be able to bring injunctive actions seeking to prevent unauthorized Bar activities and expenditures."

Judicial Council of Florida, *Special Report to the Florida Supreme Court: Legislative Activities of The Florida Bar* (December 1988): In response to *Schwarz I*, the Judicial Council of Florida issued a special report in 1988 on the Bar's legislative activities. The Council recommended that the following

subject areas be recognized as clearly justifying legislative activities by the Bar: (1) questions concerning the regulation and discipline of attorneys; (2) matters relating to the improvement of the functioning of the courts, judicial efficacy and efficiency; (3) increasing the availability of legal services to society; (4) regulation of attorneys' client trust accounts; and (5) the education, ethics, competence, integrity and regulation as a body, of the legal profession.

The Judicial Council recommended that, when a matter appears to fall outside the five specifically identified areas, the following criteria be used to determine whether the Bar could become actively involved in its advocacy: (1) that the issue be recognized as being of great public interest; (2) that lawyers are especially suited by their training and experience to evaluate and explain the issue; and (3) the subject matter affects the rights of those likely to come into contact with the judicial system.

***The Florida Bar re Schwarz*, 552 So.2d 1094 (Fla. 1989), *cert. denied* 498 U.S. 951, (1990):** In "*Schwarz II*" the recommendations of the Judicial Council requested after *Schwarz I* were approved by the Supreme Court of Florida for determining the scope of permissible lobbying activities of The Florida Bar.

The court further observed "that the Board exercise caution in the selection of subjects upon which to take a legislative position so as to avoid, to the extent possible, those issues which carry the potential of deep philosophical or emotional division among the membership of the Bar." The court added: "In any event, we also wish to make clear that any member of The Florida Bar in good standing may question the propriety of any legislative position by the Board of Governors by filing a timely petition with this Court."

Finally, the court suggested two refinements of Rule 2-9.3, regarding burden of proof and the confidentiality of objecting Bar members' names. Both were later codified, along with other minor amendments to the rule.

***Keller v. State Bar of California,* 496 U.S. 1 (1990):** The most definitive U.S. Supreme Court pronouncement in this area came after members of the California State Bar challenged their bar's use of mandatory dues to finance a variety of so-called political activities. In extending the labor union analogy to unified bars, the High Court ruled that a compulsory state bar association may constitutionally fund with mandatory dues only those political or ideological activities "germane" to its purpose: namely, "regulating the legal profession or 'improving the quality of the legal service available to the people of the State'" The opinion further acknowledged that, with appropriate member notification and dissent procedures in place, an even broader range of political activities (if within the organization's basic authority) can be funded from mandatory dues of non-objecting members.

***Gibson v. The Florida Bar*, 906 F.2d 624 (11th Cir. 1990), *cert. dismissed*, 502 U.S. 104, (1991):** "*Gibson II*" continued one member's challenge of The Florida Bar's use of his compulsory dues to fund political lobbying. Gibson appealed the denial of his original claim in *Gibson I*, for declaratory and injunctive relief, after the district court judge reviewed the 1988 revisions to Rule 2-9.3 on member objections to legislative positions.

The Eleventh Circuit Court of Appeals held that, with the exception of one minor feature since corrected, the escrow/rebate procedures in Rule 2-9.3 were sufficient under U.S. Supreme Court guidelines. In so doing, the court rejected Gibson's claim that an advance dues deduction scheme was mandated for the portion of dues that the Bar knows it will use for political activity.

The court further noted that Rule 2-9.3's requirement of an objection to specific legislative issues does not dictate that individuals disclose their personal sentiment on any topic. And, the opinion observed that the mere fact the three-member arbitration panel called for in the rule is composed of Bar members would not taint any proceedings thereunder.

As to the amount of interest on any dues refunds paid, the court faulted Rule 2-9.3's plan for calculations "as of the date the written objection was received." The opinion observed that, in order to protect against the danger that a dissident's dues could be used to finance questioned advocacy, "the Bar would have to

calculate interest as of the date that payment of the members' dues was received." That concept is now incorporated into the current objection procedures.

***The Florida Bar re Frankel*, 581 So.2d 1294 (Fla. 1991):** After the U.S. Supreme Court's opinion in *Keller* a member challenged The Florida Bar's authority to lobby several "children's" issues, both under *Keller* and the Florida Supreme Court's *Schwarz II* holdings.

After failing to find the questioned issues within the five primary areas noted in *Schwarz II* as clearly justifying Bar advocacy, the court addressed another Frankel challenge by determining that the three additional criteria in *Schwarz II* were consistent with the *Keller* holding.

In its application of the three additional *Schwarz II* standards the court determined that, while the contested matters were of great public interest, they failed to satisfy the second *Schwarz II* criterion – that lawyers were especially suited by their training and experience to evaluate and explain the issues. The court did not consider the third criterion.

As to an appropriate remedy the court again noted that, if a lobbying position is outside the ambit of permissible Bar advocacy, a petitioner may enjoin the Bar from lobbying on that issue. The Bar was therefore ordered to refund Frankel a proportionate share of his dues applicable to the challenged matters, plus pertinent interest.

Taking its first opportunity to comment on the intervening Eleventh Circuit Court of Appeals ruling in *Gibson II*, the Florida Supreme Court agreed that The Florida Bar need not recognize generalized member objections to legislative matters, and that the Bar's codified objection procedures were not overly burdensome.

***The Florida Bar Re: Authority of a Voluntary Section to Engage in Legislative Action*, No. 79,321, Final Order (Fla. May 1, 1992):** This case ensued after the Board of Governors of The Florida Bar prohibited the Public Interest Law Section of The Florida Bar from advocating the repeal of Florida's prohibition against adoptions by homosexuals. The board's action was premised on a belief that the issue would be divisive within the Bar's membership at large.

The section petitioned the Supreme Court of Florida to verify whether the *Frankel* opinion authorized section lobbying essentially without any restraints by The Florida Bar. The *Frankel* case had included an observation that "volunteer sections" were the appropriate entities for advocating issues outside the guidelines for permissible lobbying activities of The Florida Bar as established in the *Schwarz II* opinion.

The section's petition was summarily denied after the Bar submitted pleadings that noted the issue of section lobbying was neither briefed nor argued in *Frankel*, and that lobbying by subunits of a mandatory membership organization – especially on topics that may be divisive within the general membership of the umbrella group – raised particularly unique freedom of association issues.

The Florida Bar's response also noted that sections "of" a unified bar – with no independent basis for existence and often funded with mandatory monies – seem quite distinctive from the financially autonomous and wholly separate "voluntary" groups discussed in the controlling federal court cases as acceptable alternatives to lobbying by a mandatory membership organization.

***The Florida Bar, Re: Harvey M. Alper, Joseph W. Little and Henry P. Trawick*, 666 So.2d 142 (Fla. 1995), *cert. denied* 515 U.S. 1145 (1995):** Petitioning Bar members sought a Florida Supreme Court order clarifying that The Florida Bar was without authority "to employ any funds, personnel, property, symbols or other evidences of Bar involvement in promoting or advocating any change in the means by which judges are selected in Florida," or "in promoting or publicizing the merit retention elections of incumbent justices and judges." Petitioners asserted that a legislative position of the Bar to eliminate the popular election of trial judges and the Bar's distribution of printed materials – allegedly favorable toward incumbent merit retention candidates – to the public media and local bar associations were divisive

political and ideological activities outside the limits of the Bar's authority clarified in *Schwarz* and *Frankel*. Petitioners asserted that these were matters on which lawyers have no claim to a superior position, and that such activities violated their First and Fourteenth Amendment rights under *Keller*.

The Florida Bar's response noted that both activities meet the *Schwarz* and *Frankel* criteria, and stressed the special value of its collective opinion regarding judicial selection, and reiterated that petitioners' argument confused the objective question of whether an issue is germane to the administration of justice with the subjective question of the desirability of any proposed change. Regarding its printed merit retention materials, the bar emphasized the complete neutrality of those documents – as separately determined by Florida's Department of State – and noted The Florida Bar's uninterrupted history of never endorsing individual judicial candidates. The Supreme Court of Florida summarily denied the petition.

Petitioners thereafter sought a writ of certiorari from the United States Supreme Court. Following the submission of briefs, the Court denied the petition without opinion.

***Liberty Counsel v. The Florida Bar Board of Governors*, 12 So.3d 183 (Fla. 2009):** Two Bar members and their non-profit public interest law firm petitioned the Florida Supreme Court for injunctive and other relief based on The Florida Bar's governing board allowing the Family Law Section to file an amicus curiae brief in support of a circuit judge's invalidation of a state statute that prohibited homosexuals from adopting. Petitioners claimed that such action violated their First Amendment rights under *Keller, Schwarz, Frankel,* was contrary to applicable Bar policies and was *ultra vires*, and created an unresolvable ethical conflict for judicial members of the Family Law Section and anyone who might appear before those judges with similar such legal issues. The filing sought to nullify the Board's action and to enjoin both the Family Law Section's filing and any future Florida Bar or section advocacy beyond proper parameters.

In a 5-2 opinion, the Florida Supreme Court concluded that the Bar's actions in permitting the Family Law Section to file an amicus brief did not violate the First Amendment rights of the petitioners because membership in the section is voluntary and any such advocacy by that group is not funded with compulsory Florida Bar dues. The court also rejected without detailed discussion petitioners' claim that the filing of an amicus brief by the section would cause judges who are members of the section to be in violation of the Code of Judicial Conduct. "Even assuming the filing of a legal brief discussing the relevant case law on a legal issue is analogous to a political or ideological position, a view with which we do not agree," the court said, "nothing in this court's case law or in the Code of Judicial Conduct prohibits judges from belonging to associations because the associations endorse a particular political or ideological position as a result of a decision in which the judge took no part. If that were the case, judges would be prohibited from being members of a variety of voluntary professional associations, including the American Bar Association and the National Bar Association, and from participating in the valuable nonpolitical activities of bar sections."

The court further emphasized that the standards and restrictions it has adopted subsequent to *Keller* address only the activities of The Florida Bar and not the activities of its voluntary sections. The court added that it will not interfere with or micromanage the activities of the Bar's sections, or the approval of such activities by the Bar, unless the Bar's actions regarding the scope of the activities of its voluntary sections are clearly outside the Bar's authority. Finally, the opinion noted that the Bar's approval of the section filing was not *ultra vires* because, in doing so, the Bar did not act contrary to any court rule or Bar policy, and implicit in the Board's unanimous vote on the matter was the notion that the Board waived by the necessary two-thirds vote the requirement that it determine the divisiveness of the issue. The dissenters argued that the Bar had failed to comply with or properly waive its policies, and that the court has a duty to supervise the Bar in such instances.

* * *

These court opinions merely delineate the legislative authority and political agenda of the organization known as The Florida Bar. They do not foreclose additional advocacy throughout the state's legal profession – whether by individual lawyer licensees of the Bar, or by separately funded voluntary groups of attorneys.

□

Case Law

Significant Court Opinions re
Unified */* Florida Bar Political and Ideological Activities
(Full Opinions Follow)

In re Florida Bar Board of Governors' Action, 217 So.2d 323 (Fla. 1969)

The Florida Bar in Re Amendment to Integration Rule, 439 So.2d 213 (Fla. 1983)

Gibson v. The Florida Bar, 798 F.2d 1564 (11th Cir. 1986)

The Florida Bar re Schwarz, 526 So.2d 56 (Fla. 1988)

The Florida Bar Re. Amend. to Rule 2-9.3, 526 So.2d 688 (Fla. 1988)

The Florida Bar re Schwarz, 552 So.2d 1094 (Fla. 1989), *cert. denied* 498 U.S. 951 (1990)

Keller v. State Bar of California, 496 U.S. 1 (1990)

Gibson v. The Florida Bar, 906 F.2d 624 (11th Cir. 1990), *cert. dismissed,* 502 U.S. 104 (1991)

The Florida Bar re Frankel, 581 So.2d 1294 (Fla. 1991)

The Florida Bar Re: Authority of a *Voluntary Section to Engage in Legislative Action,* No. 79,321, Final Order (Fla. May 1, 1992)

The Florida Bar, Re: Harvey M. Alper, Joseph W. Little and Henry P. Trawick, 666 So.2d 142 (Fla. 1995), *cert. denied* 515 U.S. 1145 (1995)

Liberty Counsel v. The Florida Bar Board of Governors, 12 So.3d 183 (Fla. 2009)

□

Supreme Court of Florida.
In the Matter of THE FLORIDA BAR BOARD OF GOVERNORS' ACTION ON ADOPTION OF PROPOSED NEW STATE CONSTITUTION.
No. 37980.

Jan. 6, 1969.

Case of original jurisdiction--Petition for Review.

Fred H. Kent, Jacksonville, for petitioners.

Marshall M. Criser, Palm Beach, President of The Florida Bar, and Marshall R. Cassedy, Tallahassee, Executive Director of The Florida Bar, respondents.

PER CURIAM.

Upon consideration of Petition for Review, it is ordered that said Petition be and the same is hereby denied.

CALDWELL, C.J., and ROBERTS, DREW, THORNAL and ERVIN, JJ., concur.

HOPPING, J. concurs specially with opinion.

HOPPING, Justice (concurring specially).

Petitioners, members of The Florida Bar, filed their "Petition for Review" seeking ***324** a determination by this Court of the propriety of the action of the Board of Governors of The Florida Bar in publicly advocating the adoption by the electorate of the proposed revised Constitution of Florida and the expending of funds derived from membership dues for said purpose without first obtaining the approval, by vote, of a majority of the members of The Florida Bar.

Petitioners base their right to review on Article VII of the Integration Rule of The Florida Bar, 32 F.S.A. Article VII cannot serve as a basis for the review sought herein for the reason that it applies only to the adoption, amendment, alteration or repeal of by-laws. Since the action of the Board of Governors complained of does not constitute the adoption, amendment, alteration or repeal of any such by-law the Petition for Review should be denied.

However, because of this Court's inherent power to supervise the activities of The Florida Bar to insure that it is complying with the provisions of the Integration Rule and its by-laws, it is appropriate that the fundamental questions concerning the activities and internal operation of The Florida Bar raised in this Petition should be answered for the edification of the membership of The Florida Bar and its Board of Governors.

In the preamble to the Integration Rule, this Court stated the purposes of The Florida Bar to be:

> "To inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence ***."

Lawyers, as members of an ancient and honorable profession, have a duty to utilize their training and experience in rendering service to the public. See Roscoe Pound, The Lawyer From Antiquity To Modern Man (1953).

Mr. Justice Terrell, speaking for this Court in the case which integrated The Florida Bar, stated:

> "It cannot be gainsaid that integration will be what the bar and the court make of it. It was never designed to sacrifice the freedom and initiative of the bar, its boldness and courage in challenging the cause of the downtrodden nor its inherent independence in taking up battle for the minority." Petition of Florida State Bar Ass'n, 40 So.2d 902 (Fla.1949). (Emphasis added.)

Since the inception of The Florida Bar, the Board of Governors has faced up to its professional responsibility of acting in the spirit of public service and has prepared and advocated adoption by the State Legislature of numerous enactments, including the Mechanics' Lien Law, the Uniform Commercial Code,

the Public Defenders' Act, the law providing for filing of administrative rules in the Office of the Secretary of State, and major reforms in the substantive law of this State. It has sponsored adoption by the Legislature and the electorate of Florida, several constitutional amendments including the amendment creating the District Courts of Appeal and the Judicial Qualifications Commission. It has consistently advocated in the Legislature various improvements in the judicial system. Some of these matters were directly related to the administration of justice, some were totally unrelated to the administration of justice, and others were "political" in nature, using the word "political" in its broad sense as pertaining to the organization or administration of government.

The test as to whether or not The Florida Bar should engage in a particular activity is not whether the activity is "political" in nature or directly connected with the administration of justice. The true test is whether the matter is of great public importance, and whether lawyers, because of their training and experience, are especially fitted to evaluate the same. If a matter ***325** vitally affects the public and lawyers are peculiarly fitted to evaluate it, it is not only the right but the duty of the Bar as a professional organization to make such evaluation and advise the public of its conclusions.

Article III, Section 1, of the Integration Rule of The Florida Bar provides "the Board of Governors shall be the governing body of The Florida Bar." Article III, Section 1 of the by-laws under the Integration Rule provides:

> "The Board of Governors, as the governing body of The Florida Bar elected by the active members, shall be vested with exclusive power and authority to formulate, fix, determine and adopt matters of policy concerning the activities, affairs or organization of The Florida Bar, subject only to any limitations imposed by the Integration Rule."

This grant of power is appropriate because the Board of Governors is the representative governing body elected by the active members of The Florida Bar, "under an apportionment formula that might well satisfy the federal courts." In Re The Florida Bar, 184 So.2d 649, 651 (Fla.1966) (concurring opinion). The Board of Governors is subject to re-election every two years. As the organized Bar's representative governing body, it should and does establish policy and speak for the membership of The Florida Bar.

One of the purposes of bar integration was, as Mr. Justice Terrell stated:

> "Bar integration grew from a felt necessity for an organization that could speak for the profession in esse. It is not a compulsory union but a necessary one to secure the composite judgment of the bar on questions involving its duty to the profession and the public." Petition of Florida State Bar Ass'n, supra, 40 So.2d at 908.

If the matter on which the Board of Governors speaks meets the tests heretofore set out, this Court should not second guess the position taken by the Board of Governors because to do so would substitute this Court's beliefs for that of the Board's. While there is no guarantee that this Court's views represent the views of the lawyers of this state, because the Board of Governors is the duly elected spokesman of the lawyer members of The Florida Bar, its view is at least representative.

To require a referendum of all of its members on all decisions of important matters would, in the language of Mr. Justice O'Connell, "destroy the effectiveness of The Florida Bar." In Re The Florida Bar, supra, 184 So.2d at 652.

Article III, Section 1, of the by-laws under the Integration Rule further provides:

> "The Board of Governors shall direct the manner in which all funds of The Florida Bar are disbursed and the purposes therefor ***."

Moreover, Article IX, Section 1, of the by-laws under the Integration Rule states that:

> "The Board of Governors shall be vested with exclusive power, authority and control over all funds, property and assets of The Florida Bar and the method and purpose of disbursement of all funds."

It is apparent that the Board of Governors of The Florida Bar has been granted the exclusive power to expend funds in behalf of projects designed to carry out the purposes of The Florida Bar as they are set forth and limited by the Integration Rule and the by-laws. Thus, if the matter for which the funds are to be expended is one designed to promote one of the purposes of The Florida Bar, as is the case herein, the Board of Governors may expend bar funds in support thereof.

For the reasons above stated I would deny the request for relief contained in the Petition for Review.

217 So.2d 323

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Supreme Court of Florida.
The FLORIDA BAR
In Re AMENDMENT TO INTEGRATION RULE OF THE FLORIDA BAR (Political Activities of the Bar).
No. **61424.**

Sept. 22, 1983.

Original Proceeding--The Florida Bar Integration Rule.

Robert T. Westman, Cocoa, for Palmer W. Collins, William C. Potter, Lealand L. Lovering, James F. Russo, Jr., MarciaL. Ramsdell, George L. Clapham, Jere E. Lober, Joan H. Bickerstaff, Myron M. Stevens, Neil J. Buchalter, John Antoon, Bruce T. McKinley, Hale Baugh, Edward M. Jackson, George Ritchie, Lloyd Campbell, John Minot, Kendall T. Moran, Lewis R. Pearce, Lester Lintz, Joyous D. Parrish, Gregory A. Popp, Leonard Spielvogel and Leon Stromire, petitioners.

William O.E. Henry, President, Lakeland, Gerald F. Richman, President-elect, Miami, John F. Harkness, Jr., Executive Director, Tallahassee, of The Florida Bar; Frank Newman, Chairman, Legislative Committee, Miami, and Rayford H. Taylor, Legislative Counsel, Tallahassee, for respondent.

PER CURIAM.

A petition to amend the Integration Rule of The Florida Bar, by adding the following provision to section 1, article III:

> The Board of Governors shall not engage in any political activity on behalf of The Florida Bar nor expend money or employ personnel for such purpose.

was filed in this Court by twenty-five members of The Florida Bar. The *Florida Bar News* published the proposal and oral argument was set and held. All interested parties were given the opportunity to proffer comments. The Florida Bar filed a response to the petition. The petition and the response are the only record we have.

> "To inculcate in its members the principles of duty and service to the public, *to improve the administration of justice, and to advance the science of jurisprudence."*

The "political activities" of the Board of Governors on behalf of The Florida Bar were called into question once before, *In re Florida Bar Board of Governors' Action,* 217 So.2d 323 (Fla.1969). There, members of The Florida Bar petitioned this Court to determine the propriety of the Board of Governors publicly advocating the adoption of the 1968 Florida Constitution and expending funds for that purpose. This Court denied that request in a per curiam opinion. We likewise deny the instant petition.

It is true that freedom of association is a right protected under the first and fourteenth amendments. NAACP *v. Alabama ex rel. Patterson,* 357 U.S. 449,460, 78 S.Ct. 1163, 1170, 2 L.Ed.2d 1488 (1958). But, that right is not absolute. *Bucklev v. Valeo,* 424 U.S. I. 25,96 S.Ct. 612, 637, 46 L.Ed.2d 659 (1976); *United States Civil Service Commission v. National Association of Letter Carriers,* 413 U.S. 548,567,93 S.Ct. 2880,2891,37 L.Ed.2d 796 (1973); *Konigsberg v. State Bar of California,* 366 U.S. 36, 49, 81 S.Ct. 997, 1005, 6 L.Ed.2d 105 (l961). A state may justify a constitutional intrusion into an individual's freedom of association when there is a compelling state interest present. *Buckley v. Valeo; United States v. O'Brien,* 391 U.S. 367, 376-77, 88 S.Ct. 1673, 1678-79, 20 L.Ed.2d 672 (1968). To achieve that compelling interest, the means the state may employ are examined in terms of being "germane" to that interest. *Abood v. Detroit Board of Education,* 431 U.S. 209, 235, 97 S.Ct. 1782, 1799, 52 L.Ed.2d 261 0977). *See also Arrow v. Dow,* 544 F.Supp. 458 (D.N.M.1982); *Falk v. State Bar,* 411 Mich. 63,305 N.W.2d 201 (1981).

As stated in the Preamble of The Florida Bar Integration Rule, the purpose of The Bar is:

(emphasis supplied). Clearly, the improvement of the administration of justice and the advancement of the science of jurisprudence is a compelling state interest.

As noted by the United States Supreme Court,

> We recognize that the States have a compelling interest in the practice of professions ***214** within their boundaries .... The interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been "officers of the courts."

Goldfarb v. Virginia State Bar, 421 U.S. 773, 792, 95 S.Ct. 2004, 2016, 44 L.Ed.2d 572 (1975) (footnotes omitted). Since there is a compelling state interest, what remains to be determined is whether or not the political activities in dispute are indeed "germane" to that interest. We find that they are. Petitioners cite to us no specific activities by the Board of Governors with which they disagree nor any particular program or type of "political activity" to which they object. Nevertheless, we may take as representative the following activities of The Bar, noting that some are directed toward the Florida Legislature, some toward the citizens of the state and some toward the executive branch of the United States Government:

> (a) The Florida Bar actively assisted in efforts to revise the Florida Constitution in 1968, and thereafter, actively sought approval by the citizens of the State.
> (b) The Florida Bar actively supported in 1971 and 1972 the revision of Article V of the Florida Constitution before the Florida Legislature and the citizens of this State.
> (c) The Florida Bar recently actively supported before the Florida Legislature amendments to Article V of the Florida Constitution to restrict and adjust the jurisdiction of the Florida Supreme Court, and thereafter, encouraged the citizens of Florida to approve such amendment.
> (d) The Bar supported the establishment of the District Courts of Appeal, and thereafter, actively sought approval of the constitutional amendments by the citizens of this State.
> (e) The Florida Bar actively sought the amendment to the Florida Constitution providing for merit retention of appellate judges not only in the Legislature but with the citizens of the State.
> (f) The Florida Bar actively supported the creation of the Judicial Qualifications Commission to provide a mechanism for the review and discipline of members of the judiciary.
> (g) In 1980 and 1981, The Florida Bar was actively involved with the Internal Revenue Service and the Federal Reserve Board in seeking approval of the "Interest on Trust Accounts" program.
> (h) The Florida Bar also actively supported the creation of Florida Legal Services, Inc. before the Florida Legislature.

Response of The Florida Bar at 4-5. Are these activities on the part of the Board of Governors of The Florida Bar germane to the improvement of the administration of justice and to the advancement of the science of jurisdiction? We hold that they are. As this Court said in its opinion integrating The Florida Bar in 1949:

> "[The Bar] is not a compulsory union but a necessary one to secure the composite judgment of the bar on questions involving its duty to the profession and the public."

Petition of Florida State Bar Association, 40 So.2d 902, 908 (Fla.1949). All the above-enumerated political activities are closely related to lawyers' "duty to the profession and the public," synonyms, certainly, for the improvement of the administration of justice and the advancement of the science of jurisprudence.

We remind petitioners that the Board of Governors has adopted a comprehensive legislative policy and procedure, Standing Board Policy 900. The significance of this legislative policy to the instant petition is that "[n]either The Florida Bar nor any of its committees or sections may take a position on legislation either as a proponent or opponent unless it is determined by the Board of Governors that the legislation is related to the purposes of The Florida Bar as set forth in the Integration Rule." Standing Board

Policy 900 ' 9.10(a). As a further safeguard, the Board of Governors, the legislation committee, and the executive committee allow any interested person to ***215** appear before it in support of or in opposition to any legislative proposal being considered. *Id.* ' 9.11(b). Petitioners have made known to this Court no individual who has been refused the opportunity to present his argument to any of the groups. Indeed, in some instances arguments have been presented to all three.

Finally, petitioners are made cognizant of the fact that any attorney "is still free to voice his own views on any subject in any manner he wishes. He can do this even though such views be diametrically opposed to the position taken by the unified bar of his state." ***In re Unification of the New Hampshire Bar*, 109 N.H. 260, 266, 248 A.2d 709, 713 (1968)**. This may take the form of working within The Bar itself or its committees or it may be through external means. But he is never forced to adhere to or proclaim any political view or engage in any personally-repugnant political activity.

We therefore hold that, as limited by the standing board policy on legislation, the political activities of the Board of Governors of The Florida Bar, including the expending of money and employing of personnel, are germane to the compelling state interest in the improvement of the administration of justice and the advancement of the science of jurisprudence and hence constitutionally permissible. The instant petition to amend the Integration Rule to prohibit such activities is therefore denied.

It is so ordered.

ALDERMAN, C.J., and BOYD, OVERTON, McDONALD and EHRLICH, JJ., concur.

ADKINS, J., dissents.

439 So.2d 213

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United States Court of Appeals,
Eleventh Circuit.
Robert E. GIBSON, Plaintiff-Appellant,
v.
THE FLORIDA BAR and Members of the Board of Governors, Defendants-Appellees.
No. 85-3711.

Sept. 15, 1986.

Member of State Bar brought action for declaratory and injunctive relief, challenging lobbying activities of Bar on ground that his First Amendment rights of free speech and association were violated by Bar's spending compulsory Bar dues to espouse political and ideological positions, as result of Bar's opposing proposition seeking limitation of government revenue. The United States District Court for the Northern District of Florida, No. TCA 84-7109-11, Maurice Mitchell Paul, J., entered judgment in favor of Bar, finding that Bar's stated purpose of improving administration of justice served as sufficiently important governmental interest to justify intrusion upon Bar member's rights, and Bar member appealed. The Court of Appeals, Lynne, Senior District Judge, sitting by designation, held that: (1) Bar could use compulsory dues to finance its lobbying efforts only to extent that it assumed political or ideological position on matters that were germane to Bar's stated purposes, and (2) Bar had burden of proving that its lobbying expenditures were constitutionally justified by showing that past positions of Bar were sufficiently related to its purpose of improving administration of justice.

Reversed and remanded.

West Headnotes

[1] Attorney and Client 31
45k31 Most Cited Cases
State Bar could use compulsory dues to finance its legislative program lobbying efforts only to extent that it assumed political or ideological position on matters that were germane to Bar's stated purposes. West's F.S.A. Integration Rule, Arts. 2, 8; West's F.S.A. Const. Art. 5, ' 15; U.S.C.A. Const.Amend. 1.

[2] Constitutional Law 82(3)
92k82(3) Most Cited Cases
All First Amendment challenges are analyzed under two-part test that requires "compelling interest" and "least restrictive means" of achieving that interest. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 90.1(1.5)
92k90.1(1.5) Most Cited Cases

[3] Constitutional Law 91
92k91 Most Cited Cases
District court was required to determine whether past positions of State Bar, in connection with its legislative program lobbying efforts, were sufficiently related to its purpose of improving administration of justice to be constitutionally justified, in action challenging lobbying activities of Bar on ground that the spending of compulsory dues to espouse political and ideological positions violated Bar member's First Amendment rights of free speech and association. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law 90.1(1.5)
92k90.1(1.5) Most Cited Cases

[4] Constitutional Law 91
92k91 Most Cited Cases
State Bar had burden of proving that its expenditures for its legislative program lobbying efforts were constitutionally justified in action challenging expenditure of compulsory Bar dues to espouse political and ideological positions as violating Bar member's First Amendment rights of free speech and association. West's F.S.A. Integration Rule, Arts. 2, 8; West's F.S.A. Const. Art. 5, ' 15; U.S.C.A. Const.Amend. 1.

[5] Attorney and Client 31

State Bar purpose of "improving administration of

justice" should be construed as pertaining to role of lawyer in judicial system and in society, for purposes of determining extent to which Bar could use compulsory dues to finance its legislative program lobbying activities; lobbying activities that infringe upon individual rights should relate directly to collective expertise of lawyers grounded in their long-standing relationship with courts. West's F.S.A. Integration Rule, Arts. 2, 8; West's F.S.A. Const. Art. 5, ' 15; U.S.C.A. Const.Amend. 1.

***1565** Herbert R. Kraft, Tallahassee, Fla., for plaintiff-appellant.

Rayford Taylor, Barry Richard, Tallahassee, Fla., for defendants-appellees.

Appeal from the United States District Court for the Northern District of Florida.

Before HILL, Circuit Judge, HENDERSON, [FN*] Senior Circuit Judge, and LYNNE [FN**] , Senior District Judge.

FN* *See* Rule 3(b), Rules of the U.S. Court of Appeals for the Eleventh Circuit.

FN** Honorable Seybourn H. Lynne, Senior U.S. District Judge for the Northern District of Alabama, sitting by designation.

LYNNE, Senior District Judge:

I.

In this constitutional challenge to the lobbying activities of the Florida Bar, plaintiff Robert E. Gibson contends that the Bar violated his first amendment rights of free speech and association by spending compulsory bar dues to espouse political and ideological positions. The district court found that the Bar's stated purpose of improving the administration of justice served as a sufficiently important governmental interest to justify the intrusion upon Gibson's rights caused by the Bar's Legislative Program. We reverse, holding that certain positions taken by the Bar are not sufficiently germane to its administration-of-justice function to justify the expenditure of compulsory dues.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Florida Supreme Court, pursuant to Article V, Section 15 of the Florida Constitution, has exclusive jurisdiction to regulate the admission to practice and discipline of attorneys. The court has mandated that, in order to practice law in Florida, one must be a member in good standing of the Florida Bar, which in turn requires the payment of annual dues. *See Integration Rule of the Florida Bar,* Articles II, VIII. In the Integration Rule, the supreme court delineates the purposes of the Bar as threefold: "to inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence." *Id.*

The Bar engages in a Legislative Program in which it lobbys before the Florida Legislature and takes official positions on various public issues. [FN1] The Bar has adopted Standing Board Policy 900, which sets forth regulations and procedures by which the Bar takes positions on ballot questions and legislative matters. Under Policy 900, either the Bar's Legislation ***1566** Committee or Executive Committee considers an issue and determines whether its subject matter is within the scope of the Bar's authority as set forth in its Rules and By-Laws. If so, the committee then determines by majority vote what position the Bar should adopt with respect to that issue. The Bar Board of Governors then considers the recommendation of the committee and determines the official Bar position.

FN1. In addition to traditional legislative lobbying measures, the Bar promulgates its political and ideological positions through official Bar publications and speeches by Bar officials. The record demonstrates that the Bar has espoused the following positions: (1) opposed tort reform; (2) opposed limitation of damages in medical malpractice actions; (3)

opposed changes in the state sales tax; (4) opposed changes in the state's taxation and venue powers; and (5) advocated regulation of child care centers.

Appellant Robert E. Gibson is a member in good standing of the Florida Bar. Gibson actively and financially supported a campaign on behalf of "Proposition One," a ballot question seeking limitation of government revenue that eventually was stricken from the ballot. When the Bar publicly announced its opposition to Proposition One, Gibson filed this action for declaratory and injunctive relief, claiming that the Bar's use of compulsory dues constituted a violation of his first amendment rights of free speech and association. Gibson contended that the first amendment prohibited the use of compulsory dues to advocate any position on any matter other than direct advocacy to a judicial body. The case was tried before the district court, which entered a judgment in favor of the Bar. The district court held that the Bar's administration-of-justice function was "a 'sufficiently important' state interest to justify the degree of intrusion into plaintiff's rights occasioned by the Bar's legislative program." This appeal followed.

III. DISCUSSION

At the heart of this appeal is the appellant's contention that his rights of free speech and association have been infringed by the Bar's use of compulsory dues to espouse political and ideological positions with which the appellant does not agree. **[FN2]** The legal underpinnings necessary to resolve this question are derived from a series of United States Supreme Court cases, one of which upholds the constitutionality of the integrated state bar, and others which involve the closely analogous situation where union members are forced to financially support union lobbying measures through compelled membership dues or agency shop fees.

FN2. "Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs." ***Healy v. James*, 408 U.S. 169, 181, 92 S.Ct. 2338, 2346, 33 L.Ed.2d 266 (1972)**. "[F]reedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments." ***Kusper v. Pontikes*, 414 U.S. 51, 56- 57, 94 S.Ct. 303, 307, 38 L.Ed.2d 260 (1973)**.
A state may restrict the speech of a private person only when the restriction is a precisely drawn means of serving a compelling state interest. ***Consolidated Edison Co. v. Public Service Comm.*, 447 U.S. 530, 540, 100 S.Ct. 2326, 2334 (1980)**.

A. *Constitutionality of Compulsory Membership Dues*

In ***Lathrop v. Donahue*, 367 U.S. 820, 81 S.Ct. 1826, 6 L.Ed.2d 1191 (1961)**, the Court addressed the question of the constitutionality of the Wisconsin integrated bar. Six members of the Court agreed that, when its membership requirement was limited to the compulsory payment of reasonable annual dues, Wisconsin's integrated bar caused no "impingement upon protected rights of association." **367 U.S. at 843, 81 S.Ct. at 1838.** *Lathrop* stopped short, however, of a resolution of the very issue before this court: whether the use of dues money to support political activities of the state bar infringed upon constitutional rights of free speech. The plurality opinion of the Court concluded that the record in *Lathrop* provided no sound basis for deciding this additional constitutional challenge. **[FN3]**

FN3. In his concurring opinion, Justice Harlan strenuously contended that because it was not unconstitutional to require the payment of dues, it could not be unconstitutional for a state bar to use such funds to fulfill a basic purpose for which the bar was established. Assuming that there existed some valid distinction between free association and free speech rights in the context of an integrated bar, Justice Harlan stated that the integrated

> bar did not divest Wisconsin lawyers of the freedom of individual thoughts, speech, and association. (P. 881) The concurrence went on to state that the state interest in an integrated bar is "sufficiently important to justify whatever incursions on these individual freedoms may be thought to arise" from the compulsory dues requirement. (P. 861)

1567** Admittedly, *Lathrop v. Donahue* offers little, if any, specific guidance on the first amendment rights at issue in this appeal. *See* ***Abood v. Detroit Board of Education**, 431 U.S. at 233, n. 29, 97 S.Ct. at 1798 n. 29.** Unfortunately, *Lathrop* is the last Supreme Court decision squarely to address the first amendment rights of lawyers in an integrated bar. For additional illumination in this area, we must turn to the closely related situation where employees are required by law to contribute funds to labor unions, which in turn use some portion of those funds for political activities similar to the Florida Bar's legislative program. The close connection between these two groups was recognized in ***Railway Employes' Dept. v. Hanson*****, 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed. 1112 (1956)**, when the Court held that the first amendment did not excuse employees from government-sanctioned, compelled membership in a union as a condition of continued employment. *Hanson* recognized that compelled union dues do infringe upon first amendment rights, but held that Congress' desire to promote collective bargaining was a sufficiently compelling governmental interest to justify such an infringement. When explaining its justification of compulsory union dues, the Court alluded to the integrated bar as an *a fortiori* example of a type of required membership that passes constitutional muster. **351 U.S. at 238, 76 S.Ct. at 721**.

In ***International Machinists v. Street*****, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961)**, the Court considered a related issue also arising out of union membership required by the Railway Labor Act: whether compelled union dues could be used to finance election campaigns and lobbying activities. The Court avoided deciding this challenge on a constitutional basis, holding that the Act prohibited the use of compulsory dues for political purposes. **367 U.S. at 768, 81 S.Ct. at 1799**.

B. *Use of Compulsory Fees for Political Purposes*

In ***Abood v. Detroit Board of Education*****, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977)**, the Court faced a challenge to an agency shop agreement under which all teachers who failed to join the union were required to pay the union a service fee equal to the regular dues amount. *Abood* followed the rationale of *Hanson* and *Street, supra,* holding that the government's interest in promoting collective bargaining and discouraging "free riders," (employees who benefit from union representation without contributing financially), justified the agency shop agreement in question. The Court continued, however, to address the issue it chose to avoid in *Hanson, Lathrop,* and *Street:* whether fees compelled by law as a condition of continued employment could be used for political and ideological purposes.

Abood first observed that former Supreme Court decisions "established with unmistakable clarity that the freedom of an individual to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments. [citations omitted] ... [C]ontributing to an organization for the purpose of spreading a political message is protected by the First Amendment." **431 U.S. at 233, 97 S.Ct. at 1798.** The Court further held that any "limitations upon the freedom to contribute implicate fundamental First Amendment interests," (citing ***Buckley v. Valeo*****, 424 U.S. 1, 23, 96 S.Ct. 612, 636, 46 L.Ed.2d 659 (1976)**, and stated that compelled contributions caused no less an infringement upon constitutional rights than prohibited contributions. ***Id.*** **431 U.S. at 234, 97 S.Ct. at 1799.** The *Abood* court concluded that a union may not spend compelled fees for the advancement of political views or ideological causes that are not incidental to the union's role as bargaining unit. ***Id.*** **at 235, 97 S.Ct. at 1799.** Stated another way, "*Abood*

held that employees may not be ***1568** compelled to support a union's ideological activities unrelated to collective bargaining. The basis for the holding that associational rights were infringed was the compulsory collection of dues from dissenting employees." ***Minnesota Board for Community Colleges v. Knight*, 465 U.S. 271, 291, n. 13, 104 S.Ct. 1058, 1070 n. 13, 79 L.Ed.2d 299 (1984)**.

C. *Applying Abood to the Florida Bar*

[1] At the risk of oversimplification, *Abood* may be read to say that compulsory union or agency shop fees may not be spent on lobbying or ideological activities that are not germane to the purpose that brought the union together in the first place. *See* ***Ellis v. Railway Clerks*, 466 U.S. 435, 447, 104 S.Ct. 1883, 1891,** 80 L.Ed. 428, 447 (1985). As stated *supra*, the Supreme Court has referred to the similarity between union dues and bar dues, *see* ***Railway Employes' Dept. v. Hanson*, 351 U.S. at 238, 76 S.Ct. at 721; *Abood v. Detroit Board of Education*, 431 U.S. at 233, 97 S.Ct. at 1798,** and the two situations are very similar. Both the union employee and the integrated bar member are required by law to pay a fee. Both individuals' funds are then spent by an organization with an interest in altering the political process to its advantage. Both the union and integrated bar are occupationally homogeneous. Both groups elect representatives who are supposed to represent the entire group. Finally, both groups are comprised of members who often disagree on matters of public interest.

A distinction does arise, however, in the character of the entity to which the compelled funds must be paid. On one hand, Congress has recognized the importance of collective bargaining and the need for unions to avail themselves of the political process in the representation of their members. *See* ***Hanson*, *supra* at 238, 76 S.Ct. at 721.** In this respect, the union's need to undertake political activities is more of a necessary consequence of the collective bargaining system than an independent, compelling interest. On the other hand, the integrated Bar has been recognized by the State as possessing special training and experience with which to serve in an advisory function to the various branches of state government and to help "improve the administration of justice." While this advisory function is not the Bar's only function or even its most important function, the Bar's capacity and responsibility to advise and educate gives rise to a compelling governmental interest distinct from that of the labor union.

Justice Harlan, in his concurring opinion in *Lathrop v. Donahue*, *supra*, seized upon this distinction to support his contention that an integrated bar was conceptually no different than an appointed advisory board whose dissenting individual members would have no first amendment right to squelch such a board's majority recommendation. *See* ***Lathrop*, 367 U.S. at 861, 81 S.Ct. at 1847.** Because Florida has recognized the Bar as an arm of the judiciary, *see* ***In re Amendment to the Integration Rule of the Florida Bar*, 439 So.2d 213, 214 (Fla.1983)**, this argument has some appeal. Justice Powell's concurrence in *Abood*, however, provides a more persuasive distinction between compelled support of government and a private group:

> Compelled support of a private association is fundamentally different from compelled support of government....
>
> [T]he reason for permitting the government to compel the payment of taxes and to spend money on controversial projects is that the government is representative of the people. The same cannot be said of a union, which is representative only of one segment of the population, with certain common interests. The withholding of financial support is fully protected as speech in this context.

431 U.S. at 259, n. 13, 97 S.Ct. at 1811 n. 13. Under this analysis, the Bar's interests are closely aligned with those of a labor union, and its lobbying activities are more accurately viewed as partisan politics than the supposedly impartial recommendation of a governmental entity.

***1569** We conclude, therefore, that the difference between the union and the integrated bar is so small that

the rationale of the *Abood* case is very appropriate. *See Keller v. State Bar of California,* 181 Cal.App.3d 471, **226 Cal.Rptr. 448 (3d App.Dist.1986)**. The similarities between union dues and integrated bar dues are so substantial that we may safely transpose the *Abood* holding to the facts presented in this appeal as follows: the Florida Bar may use compulsory Bar dues to finance its Legislative Program only to the extent that it assumes a political or ideological position on matters that are germane to the Bar's stated purposes.

[2] Obviously, the recitation of this simplistic rule will be of little assistance when one of the purposes of the Bar is the amorphous "administration of justice." Transposition of the *Abood* rationale to the integrated bar works well conceptually, but the practical reality of applying that rationale is not so easy. All first amendment challenges are analyzed under a two-part test that requires a "compelling interest" and the "least restrictive means" of achieving that interest. *E.g., Chicago Teachers Union v. Hudson,* 475 U.S. ----, ----, **106 S.Ct. 1066, 89 L.Ed.2d 232, 245 (1986)**. *Abood* did nothing more than identify a proper "compelling interest" for the first step of this analysis. *Abood* did not vitiate the "least restrictive means" criterion; the Court merely defined one exceptional circumstance when compelled fees may be used to advocate views inimical to the beliefs of some union members. Wooden application of the *Abood* rule could arguably extend unlimited discretion to the Bar under its administration-of-justice function.

[3][4] Accordingly, it is apparent that too much weight was given at the trial level to the Bar's compelling interest argument and not enough attention was focused upon whether the Legislative Program was conducted in the least restrictive manner available to the Bar. The evidentiary record in this appeal does not enable us to make a definitive decision on whether certain positions taken by the Bar were sufficiently related to its basic function to justify the expenditure of compulsory dues. Nor does the opinion of the trial court adequately identify specific actions taken by the Bar's Legislative Program. Indeed, the decision below was based on a review of the Bar's Policy 900, rather than analysis of past Bar positions. In an action such as this, where specific actions are challenged as contrary to the first amendment, it is not sufficient to assess the rules and procedures by which those actions were taken. The proper focus in this action should be upon the actual results of the Bar's Legislative Program, *i.e.*, whether past positions of the Bar were sufficiently related to its purpose of improving the administration of justice. On this issue, the Bar bears the burden of proving that its expenditures were constitutionally justified. *See* ***Chicago Teachers Union, supra,*** **at ----, 106 S.Ct. at 1074, n. 11, 89 L.Ed.2d at 245, n. 11**.

[5] Although further findings of fact are necessary to resolve this dispute, some discussion of appropriate Bar lobbying issues is warranted. Uncertainty and disagreement over what is a proper issue for Bar lobbying are the reasons for this dispute and for our reversal of the trial court. In such a situation, some guidance is necessary to help draw the inevitably fine lines that will arise in these cases. The Bar should construe "improving the administration of justice" as pertaining to the role of the lawyer in the judicial system and in society. The collective expertise of lawyers is grounded in their long-standing relationship with the courts. Lobbying activities that infringe upon individual rights should relate directly to that expertise. **[FN4]**

> **FN4.** Acceptable areas for Bar lobbying would include the following topics: (1) questions concerning the regulation of attorneys; (2) budget appropriations for the judiciary and legal aid; (3) proposed changes in litigation procedures; (4) regulation of attorneys' client trust accounts; and (5) law school and Bar admission standards.

It should be stressed that this opinion addresses only the use of compelled fees by ***1570** the Bar. *Abood* specifically noted that the union was free to politicize on *any* issue of interest to that group. *See* **431 U.S. at 235, 97 S.Ct. at 1799.** Only the use of compelled

funds was prohibited for issues unrelated to collective bargaining. *Id.* Similarly, the Bar may speak as a group on any issue as long as it does so without using the compulsory dues of dissenting members. **[FN5]**

> **FN5.** Although the question of proper remedy is not before this court, this aspect of the *Abood* opinion suggests that the difficult task of discerning proper Bar position issues could be avoided by one of two methods: (1) a voluntary program in which lawyers would not be compelled to finance the Legislative Program, but could contribute towards that program as they wished; or (2) a refund procedure allowing dissenting lawyers to notify the Bar that they disagree with a Bar position, then receive that portion of their dues allotted to lobbying. [According to testimony at trial, each lawyer's share of the lobbying budget amounts to approximately $1.50]. Lawyers would only have to notify the Bar of a general disagreement, since the first amendment also protects an individual's right *not* to disclose his beliefs. *See* ***Abood, supra,* at 241, n. 42, 97 S.Ct. at 1802, n. 42**.

IV.

This action is therefore REVERSED and REMANDED to the district court for further proceedings consistent with this opinion.

798 F.2d 1564, 55 USLW 2193

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Supreme Court of Florida.
THE FLORIDA BAR re: Thomas R. SCHWARZ.
No. 70702.

June 2, 1988.

Attorney sought appointment of ad hoc commission to study and report on proposed amendment to bar rule concerning expenditures on political activity. The Supreme Court, McDonald, C.J., held that matter would be referred to Judicial Council for its comments and recommendations.

So ordered.

West Headnotes

Attorney and Client 32(2)
45k32(2) Most Cited Cases
Ad hoc commission would not be appointed to study proposed amendment to bar rule concerning expenditures on political activity, though matter would be referred to Judicial Council for its comments and recommendations. West's F.S.A. Bar Rule 2-3.2(c)(4).

***56** John F. Harkness, Jr., Executive Director and Paul F. Hill, General Counsel, Tallahassee, Ray Ferrero, Jr., President, Ft. Lauderdale, and Rutledge R. Liles, President-elect, Jacksonville, for The Florida Bar, respondent.

Thomas R. Schwarz, Lauderhill, in pro. per.

McDONALD, Chief Justice.

In this petition Thomas R. Schwarz, a member of The Florida Bar, seeks the appointment of an ad hoc commission to study and report "on the legality, propriety, scope, and procedures, if any, through which this Court may exercise political power considering Articles I, II, and V of the Florida Constitution, the Code of Judicial Conduct, and such other materials and ethical principles as it may deem appropriate." The request comes not because of direct action taken by members of this Court, but because of the legislative and lobbying activities of The Florida Bar.

Prior to filing this petition, Schwarz proposed to the bar an amendment to rule 2-3.2(c)(4), Rules Regulating The Florida Bar, reading as follows:

> a. provided however that no such program shall consider or concern itself with current proposed or contemplated changes in the law except those directly related to the organization, administration, funding, creation or supervision of the system of Courts or the licensing, ***57** admission to practice or disciplining of lawyers and further provided that such programs of information and advice shall be executed by formal written communication by the Board of Governors (showing members' dissent where applicable) to the officials of the courts or other branches of government. No funds shall be expended for lobbying or public relations activity in association with any program developed under this section nor contributed to any Political Action Committee.

When he filed the instant petition, Schwarz' proposal had neither been formally accepted nor rejected by the board of governors. Schwarz avers that this Court has failed to place limits on or define the scope of "its delegation of political activity to its official arm."

In *In Re Amendment to Integration Rule of The Florida Bar*, 439 So.2d 213, 213 (Fla.1983), we rejected the following proposal: "The Board of Governors shall not engage in any political activity on behalf of The Florida Bar nor expend money or employ personnel for such purpose." In doing so, we restated the purpose of the bar as being " '[t]o inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence.' " *Id.* (quoting Fla. Bar Integr. Rule, Preamble). [FN1] We stated: "Clearly the improvement of the administration of justice and the advancement of the science of jurisprudence is a compelling state interest." *Id.* Later in the opinion we cited acts of The Florida Bar that we felt were within the purpose of the Florida bar. [FN2] *Id.* at 214. Nevertheless, the definition of what activities are proper and what are improper continues to be a matter of

dispute. We have not said what clearly should be excluded; perhaps we should.

FN1. The same language is now included in rule 1-2, Rules Regulating the Florida Bar.

FN2. In approving the board of governors' engaging in political activities we relied on the existence of standing board policy 900, which provides that a position may not be taken on proposed legislation unless the board determines that the legislation is related to the purposes of the bar. The board's decision may not be determinative, however, because the proposed action may not be within the range of permissible activities. The final determination of what should or should not be done does not necessarily rest with the board of governors.

To practice law in the courts of Florida we require that all lawyers be members of The Florida Bar. Exception can be made for a particular case, but, for the day-by-day practice, there is no exception--membership in The Florida Bar is compelled. [FN3] This compelled membership should limit the activities of The Florida Bar to the stated purposes. Some of the most sensitive differences of opinion among members of the bar originate from a disagreement about whether or not courses of action taken by the bar's governing body fall within or without those stated purposes. Florida is not unique in this dialogue. [FN4]

FN3. Two courts have recently found compulsory bar membership unconstitutional. *Schneider v. Colegio de Abogados*, 682 F.Supp. 674 (D.Puerto Rico 1988) (failure to protect dissenters' rights makes compelled membership in bar association unconstitutional); *Levine v. Supreme Court*, 679 F.Supp. 1478 (W.D.Wis.1988) (mandatory bar membership is a constitutionally impermissible burden on an individual's rights of association and speech).

FN4. Several courts in addition to those listed in note 3, *supra*, have considered the impact of compulsory bar associations' activities on their members' rights. *Arrow v. Dow*, 544 F.Supp. 458 (D.N.M.1982) (bar may use dues to support only functions and duties which serve important governmental functions; lobbying at issue did not do so); *Virgin Islands Bar Ass'n v. Government of Virgin Islands*, 648 F.Supp. 170 (D.V.I.1986) (low-profile, nonpartisan bar association's limited legislative activity does not infringe on dissenters' rights); *Bridegroom v. State Bar*, 27 Ariz.App. 47, 550 P.2d 1089 (1976) (approved bar association's use of dues to advocate passage of a state constitutional amendment); *Keller v. State Bar*, 181 Cal.App.3d 471, *printed at* 190 Cal.App.3d 1196, 226 Cal.Rptr. 448 (state bar may not use compulsory dues to support ideological or political causes not germane to its statutory purposes), *review granted*, --- Cal.3d ----, 723 P.2d 1, 229 Cal.Rptr. 144 (1986); *Petition to Amend Rule 1 of Rules Governing the Bar*, 431 A.2d 521 (D.C.1981) (denied amendment limiting use of compulsory dues); *In re Florida Bar Board of Governors' Action*, 217 So.2d 323 (Fla.1969) (denied petition for review, but did not adopt Justice Hopping's view that bar had virtually unlimited power to expend moneys for lobbying); *Falk v. State Bar*, 418 Mich. 270, 342 N.W.2d 504 (1983) (bar's use of mandatory dues in connection with political activities is a substantial governmental interest which outweighs infringement of dissenter's negative first amendment interests); *Reynolds v. State Bar*, 660 P.2d 581 (Mont.1983) (state bar may not use compulsory dues for lobbying unless it makes refunds to dissenters); *Petition of Chapman*, 128 N.H. 24, 509 A.2d 753 (1986) (bar must carefully tailor its position on

> legislative activities to limited issues within its constitutional mandate in order to protect its members' individual rights); ***Petition to Review State Bar Bylaw Amendments*, 139 Wis.2d 686, 407 N.W.2d 923 (1987)** (approves procedure by which member may challenge dues' use for legislative activities). ***See also Falk v. State Bar*, 411 Mich. 63, 305 N.W.2d 201 (1981)**; Sorenson, *The Integrated Bar and the Freedom of Nonassociation-- Continuing Seige,* 63 Neb.L.Rev. 30 (1983); Annot., **40 A.L.R. 4th 672 (1985)**.

The Supreme Court of New Hampshire in ***58*In re Chapman*, 128 N.H. 24, 509 A.2d 753 (1986)**, recently wrestled with this problem. In that case, Chapman sought to have the court enjoin the New Hampshire Bar Association (an integrated bar similar to Florida's) from actively opposing so-called "tort reform" legislation. The court noted that the issue was whether or not the board's decision to oppose tort reform was inconsistent with the powers and authorities conferred upon the bar association. The New Hampshire Court commented that it "is obligated to interpret the limits on bar activities so as to preclude the first amendment infringement that would result if the Association were to take positions on issues outside the scope of those responsibilities that justify compelling lawyers to belong to it." ***Id.* at 31, 509 A.2d at 758.** It then stated:

> In view of the Association's special status as a unified bar, we conclude that concerns for first amendment liberties require a narrower view of its permitted legislative activities than the Association has taken. Hence, the Association should limit its activities before the General Court to those matters which are related directly to the efficient administration of the judicial system; the composition and operation of the courts; and the education, ethics, competence, integrity and regulation, as a body, of the legal profession. The Board's opposition to tort revision as a whole is not within the mandate of the Association's constitution....
>
> We believe that circumspection is the watchword to be observed by the Board. Where it can reasonably be argued that an issue is outside the scope of its authority, the Board should take no position on the matter. Where substantial unanimity does not exist or is not known to exist within the bar as a whole, particularly with regard to issues affecting members' economic self-interest, the Board should exercise caution. Positions taken by the Association and its Board should be tailored carefully and limited to issues clearly within the Association's constitutional mandate.

***Id.* at 32, 509 A.2d at 759**.

We make no decision today on whether any existing specific activity of The Florida Bar is improper. We suggest, however, that the board of governors review its policies and current positions concerning political activity in light of the decisions of other jurisdictions.

This area needs further study. We decline to appoint a special committee as requested by Schwarz, but refer this matter to the Judicial Council for its comments and recommendations. We ask for a report from that body prior to the end of this calendar year. Schwarz' petition is granted to the extent set out in this opinion; any requests not discussed herein are denied.

It is so ordered.

OVERTON, EHRLICH, SHAW, BARKETT, GRIMES and KOGAN, JJ., concur.

526 So.2d 56, 13 Fla. L. Weekly 373

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Editor's Note: Additions are indicated by
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deletions by <<-Text->>.

Supreme Court of Florida.
THE FLORIDA BAR RE AMENDMENT TO RULE 2-9.3 (LEGISLATIVE POLICIES).
No. 70990.

June 2, 1988.

***688** Original Proceeding--Rules Regulating the Florida Bar.

John F. Harkness, Jr., Executive Director, Tallahassee, Ray Ferrero, Jr., President, Fort Lauderdale, Rutledge R. Liles, President-elect, Jacksonville, Roger Staley, Chairman, Rules and Bylaws Committee, Fort Lauderdale, John A. Boggs, Director of Lawyer Regulation, Tallahassee, Paul F. Hill, Gen. Counsel, Tallahassee, and Barry Richard of Roberts, Baggett, LaFace & Richard, Tallahassee, for petitioner, The Florida Bar.

Walter M. Meginniss, Asst. Atty. Gen., Tallahassee, amicus curiae.

PER CURIAM.

The issue in this case is whether we should permit a proposed amendment to rule 2-9.3, legislative policies, Rules Regulating the Florida Bar, to become effective. This amendment sets forth a procedure and potential remedy for bar members who question the propriety of the use of bar dues to support legislative positions approved by the bar's board of governors. The proposal was made, in part at least, as the result of litigation brought by a member of The Florida Bar against the bar, in which he claimed that monies were impermissibly spent for certain lobbying activities. *See Gibson v. The Florida Bar*, 798 F.2d 1564 (11th Cir.1986).

We heartily approve rule 2-9.3(b) which requires The Florida Bar to publish legislative policies adopted by the board of governors. We construe this to mean that the membership will be advised of what legislative programs the bar will be spending money on in its lobbying activities.

Nor do we find objectionable the remainder of the amendment, with certain qualifications. ***689** The amendment seemingly limits actions against The Florida Bar for its lobbying expenditures to the remedies prescribed in the rule. Although the pecuniary recovery may be limited, members of the bar should still be able to bring injunctive actions seeking to prevent unauthorized bar activities and expenditures. The limited remedy of a partial dues refund is not adequate to bar access to the courts to challenge the appropriateness of the bar's lobbying activities. The only change we have made in the proposed amendment is to substitute "shall" for "may" in the last sentence of paragraph 2-9.3(e)(2).

With these qualifications we approve the amendment to rule 2-9.3 as attached hereto, effective immediately.

It is so ordered.

McDONALD, C.J., and OVERTON, EHRLICH, SHAW, BARKETT, GRIMES and KOGAN, JJ., concur.

2-9.3 Legislative policies.

<<+(a)+>> The board of governors shall adopt and may repeal or amend rules of procedure governing the legislative activities of The Florida Bar in the same manner as provided in rule 2-9.2; provided, however, that the adoption of any legislative position shall require the affirmative vote of two-thirds of those present at any regular meeting of the board of governors or two-thirds of the executive committee or by the president, as provided in the rules of procedure governing legislative activities.

<<+(b) Publication of legislative positions. The Florida Bar shall publish notice of adoption of legislative positions in The Florida Bar News, in the issue immediately following the board meeting at which the positions were adopted.+>>

<<+(c) Objection to legislative positions of The Florida Bar. Any active member of The Florida Bar may, within forty-five (45) days of the date of publication of notice of adoption of a legislative position, file with the executive director a written objection to a particular position on a legislative issue. Failure to object within this time period shall constitute a waiver of any right to object to the particular legislative issue.+>>

<<+(1) After a written objection has been received, the executive director shall promptly determine the pro rata amount of the objecting member's dues at issue and such amount shall be placed in escrow pending determination of the merits of the objection. The escrow figure shall be independently verified by a certified public accountant.+>>

<<+(2) Upon the deadline for receipt of written objections, the board of governors shall have forty-five (45) days in which to decide whether to give a pro rata refund to the objecting member(s) or to refer the action to arbitration.+>>

<<+(d) Composition of arbitration panel. Objections to legislative positions of The Florida Bar may be referred by the board of governors to an arbitration panel comprised of three (3) members of The Florida Bar, to be constituted as soon as practicable following the decision by the board of governors that a matter shall be referred to arbitration.+>>

<<+The objecting member(s) shall be allowed to choose one member of the arbitration panel, The Florida Bar shall appoint the second panel member, and those two (2) members shall choose a third member of the panel who shall serve as chairman. In the event the two (2) members of the panel are unable to agree on a third member, the chief judge of the Second Judicial Circuit of Florida shall appoint the third member of the panel.+>>

<<+(e) Procedures for arbitration panel. Upon a decision by the board of governors that the matter shall be referred to arbitration, The Florida Bar shall promptly prepare a written response to the objection and serve a copy on the objecting member(s). Such response and objection shall be forwarded to the arbitration panel as soon as the panel is properly constituted. The arbitration panel shall thereafter confer and decide whether the legislative matters at issue are constitutionally appropriate for funding from mandatory Florida Bar dues.+>>

<<+(1) The scope of the arbitration panel's review shall be to determine solely whether ***690** the legislative matters at issue are within those acceptable activities for which compulsory dues may be used under applicable constitutional law.+>>

<<+(2) The proceedings of the arbitration panel shall be informal in nature and shall not be bound by the rules of evidence. The decision of the arbitration panel shall be binding as to the objecting member(s) and The Florida Bar. If the arbitration panel concludes the legislative matters at issue are appropriately funded from mandatory dues, there shall be no refund and The Florida Bar shall be free to expend the objecting member's pro rata amount of dues held in escrow. If the arbitration panel determines the legislative matters at issue are inappropriately funded from mandatory dues, the panel shall order a refund of the pro rata amount of dues to the objecting member(s).+>>

<<+(3) The arbitration panel shall thereafter render a final written report to the objecting member(s) and the board of governors within forty-five (45) days of its constitution.+>>

<<+(4) In the event the arbitration panel orders a refund, The Florida Bar shall provide such refund within thirty (30) days of the date of the arbitration panel's report, together with interest calculated at the legal rate of interest as of the date the written objection was received by The Florida Bar.+>>

526 So.2d 688, 13 Fla. L. Weekly 360

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Supreme Court of Florida.
THE FLORIDA BAR
Re Thomas R. SCHWARZ.
No. 70702.

Oct. 26, 1989.
Rehearing Denied Dec. 19, 1989.

Attorney sought appointment of ad hoc commission to study and report on proposed amendment to bar rule concerning expenditures on political activity. The Supreme Court, 526 So.2d 56, held that matter would be referred to Judicial Council for its comments and recommendations. The Supreme Court, Grimes, J., then held that the state bar could constitutionally engage in activities directed towards administration of justice and advancement of science of jurisprudence.

Approved recommendations of Judicial Council.

McDonald, J., dissented and filed an opinion.

West Headnotes

[1] Attorney and Client 31
45k31 Most Cited Cases
State bar can constitutionally engage in activities directed towards administration of justice and advancement of science of jurisprudence including questions concerning regulation and discipline of attorneys; matters relating to improvement of courts; matters increasing availability of legal services to society; regulation of attorneys' client trust accounts; and the education, ethics, competence, integrity and regulation as a body, of the legal profession.

[2] Attorney and Client 31
45k31 Most Cited Cases
Criteria to be used in determining type of proposed legislative initiative state bar can become actively involved with are that issue be recognized as being of great public interest, that lawyers are especially suited by their training and experience to evaluate and explain the issue, and that subject matter affects rights of those likely to come into contact with judicial system.

[3] Attorney and Client 31
45k31 Most Cited Cases
A lawyer who objects to legislative positions taken by state bar can obtain a partial rebate of bar dues.

***1094** Thomas R. Schwarz, Lauderhill, in pro. per.

Joseph W. Little, Gainesville, Ben L. Bryan, Jr. of Fee, Bryan & Koblegard, P.A., Ft. Pierce, and Henry P. Trawick, Jr., Sarasota, responding to report.

Rutledge R. Liles, President, Jacksonville, Stephen N. Zack, President-elect, Miami, John F. Harkness, Jr., Executive Director, John A. Boggs, Director of Lawyer Regulation, and Paul F. Hill, Gen. Counsel, and Barry Richard of Roberts, Baggett, LaFace & Richard, Tallahassee, for The Florida Bar, respondent.

GRIMES, Justice.

This is a continuation of *The Florida Bar re Schwarz*, 526 So.2d 56 (Fla.1988), on the issue of what lobbying activities of The Florida Bar are permissible. As a creation of this Court, The Florida Bar is under our supervision and subject to our regulation.

[1][2] In the original *Schwarz* opinion, we referred this matter to the Judicial Council for its comments and recommendations. The Council conducted public hearings ***1095** on the subject. In its report, the Council first concluded that The Florida Bar could constitutionally engage in activities directed toward the administration of justice and the advancement of the science of jurisprudence. The report then stated:

> within areas pertaining to the administration of justice. These issues may frequently be technical and complex and have effects not otherwise contemplated by the legislation. It appears that the Bar has an obligation, grounded upon the mandate of

> the integration rule setting forth the Bar's very purpose for existence, to speak out on appropriate issues concerning the courts and the administration of justice and advise the legislative and executive branches of government of its collective wisdom with respect to these matters. To prohibit such communication would work a grave disservice to the people of this state and would infringe upon the free speech of the great majority of the state's attorneys. The Florida Bar has a reputation of pursuing improvements in the administration of justice and science of jurisprudence. The relative weight to be accorded these compelling interests appears to be of such great importance as to fully justify the relatively insignificant intrusion occasionally experienced by dissenting members of the Bar.

Judicial Council of Florida, Special Report to the Florida Supreme Court on Legislative Activities of The Florida Bar 6-7 (Dec.1988) (on file with the Florida Supreme Court) [hereinafter Special Report on Legislative Activities]. In seeking to define the administration of justice and the advancement of the science of jurisprudence, the Council recommended that the following subject areas be recognized as clearly justifying legislative activities by the Bar:

> (1) Questions concerning the regulation and discipline of attorneys;
> (2) matters relating to the improvement of the functioning of the courts, judicial efficacy and efficiency;
> (3) increasing the availability of legal services to society;
> (4) regulation of attorneys' client trust accounts; and
> (5) the education, ethics, competence, integrity and regulation as a body, of the legal profession.

Special Report on Legislative Activities, *supra,* at 9. The Council also recommended that the following additional criteria be used to determine "the type of proposed legislative initiatives the Bar may become actively involved with when the legislation appears to fall outside of the above specifically identified areas:"

> (1) That the issue be recognized as being of great public interest;
> (2) that lawyers are especially suited by their training and experience to evaluate and explain the issue; and
> (3) the subject matter affects the rights of those likely to come into contact with the judicial system.

Id. at 9-10.

Thereafter, we entertained comments in response to the report and heard oral argument on the subject. Upon consideration, we have concluded that the Council's recommendations are well taken.

The Florida Bar was integrated by this Court in *Petition of Florida State Bar Association*, 40 So.2d 902 (Fla.1949). Justice Terrell, writing for the majority, defined the integrated bar "as the process by which every member of the bar is given an opportunity to do his part in performing the public service expected of him, and by which each member is obliged to bear his portion of the responsibility." *Id.* at 904. He further stated that integration "provides a fair and equitable method by which every lawyer may participate in and help bear the burden of carrying on the activities of the bar instead of resting that duty on a voluntary association composed of a minority membership." *Id.*

As noted by Justice Terrell:

> ***1096** Bar integration grew from a felt necessity for an organization that could speak for the profession in esse. It is not a compulsory union but a necessary one to secure the *composite judgment of the bar* on questions involving its duty to the profession and the public....
> ... The assault on our institutions which the bar is expected to take the leading role in challenging also requires the full manpower of the bar. We do not think bar integration would be worth the candle as a specific for unethical conduct, but as a means of giving the bar a new and enlarged concept of its place in our social and economic pattern....

Id. at 908 (emphasis added).

In 1969 this Court denied a petition seeking to prevent the Board of Governors of The Florida Bar from lobbying for the adoption of the proposed revision of the Florida Constitution. ***In re Florida Bar Board of Governors Action*, 217 So.2d 323 (Fla.1969)**. In a concurring opinion, Justice Hopping succinctly observed:

> Since the inception of The Florida Bar, the Board of Governors has faced up to its professional responsibility of acting in the spirit of public service and has prepared and advocated adoption by the State Legislature of numerous enactments, including the Mechanics' Lien Law, the Uniform Commercial Code, the Public Defenders' Act, the law providing for filing of administrative rules in the Office of the Secretary of State, and major reforms in the substantive law of this State. It has sponsored adoption by the Legislature and the electorate of Florida, several constitutional amendments including the amendment creating the District Courts of Appeal and the Judicial Qualifications Commission. It has consistently advocated in the Legislature various improvements in the judicial system. Some of these matters were directly related to the administration of justice, some were totally unrelated to the administration of justice, and others were "political" in nature, using the word "political" in its broad sense as pertaining to the organization or administration of government.

***Id.* at 324** (Hopping, J., concurring).

In 1983 this Court denied a petition seeking to amend the integration rules to prevent the Board of Governors from engaging in any political activity on behalf of The Florida Bar. ***In re Amendment to Integration Rule of The Florida Bar*, 439 So.2d 213 (Fla.1983)**. In reaching our conclusion, we pointed out that:

> [P]etitioners are made cognizant of the fact that any attorney "is still free to voice his own views on any subject in any manner he wishes. He can do this even though such views be diametrically opposed to the position taken by the unified bar of his state." ***In re Unification of the New Hampshire Bar*, 109 N.H. 260, 266, 248 A.2d 709, 713 (1968)**. This may take the form of working within The Bar itself or its committees or it may be through external means. But he is never forced to adhere to or proclaim any political view or engage in any personally-repugnant political activity.

***Id.* at 215.**

The California Supreme Court recently passed on the lobbying authority of its state bar which levies membership dues without the possibility of partial rebate. Reasoning that the words "advancement of the science of jurisprudence" and "improvement of administration of justice" should be read broadly in the context of lobbying activities, the court held that the bar was authorized to comment generally upon proposed legislation. ***Keller v. The State Bar of California*, 47 Cal.3d 1152, 767 P.2d 1020, 255 Cal.Rptr. 542 (1989)**, *cert. granted*, **493 U.S. 806, 110 S.Ct. 46, 107 L.Ed.2d 15 (1989)**. While that decision was broader than the one we reach today, we find most pertinent the following observation of the California court:

> Laws are the business of lawyers. The drafting of a proposed law, the understanding of the relationship between that law and existing legislation, and the appreciation of the practical impact of the proposed legislation are matters which often require expert legal knowledge and ***1097** judgment. Whatever the subject of the proposed law, it is likely that among the members of the State Bar are some with the needed expertise, whose collective advice can lead to significant improvements in the legislative proposal. "The state has a valid interest in drawing upon [lawyers'] training and experience in order to promote improvements in the administration of justice and to advance jurisprudence. The better attuned the legal machinery is to the public's needs of health, safety, and welfare, the better the state will be able to perform its job of protecting and serving the public. The input and feedback on proposed legislation and court rules is invaluable to the state in fine-tuning its legislative and judicial systems."

***Id.* at 1169, 767 P.2d at 1030-31, 255 Cal.Rptr. at 552-53** (citation and footnote omitted).

Several portions of the Rules Regulating The Florida Bar also support our conclusion. Thus, rule 1-2 states:

> The purpose of The Florida Bar shall be to inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence.

Rule 2-3.2 of the Rules Regulating The Florida Bar further provides:

> Subject to the continued direction and supervision by the Supreme Court of Florida, the board of governors may, by amendment to this chapter, take all necessary action to:
> ....
> (c) Establish, maintain and supervise:
> ....
> (4) A program for providing information and advice to the courts and other branches of government concerning current law and proposed or contemplated changes in the law.

Most significantly, rule 2-9.3 of the Rules Regulating The Florida Bar specifies in part:

> RULE 2-9.3 LEGISLATIVE POLICIES
> (a) The board of governors shall adopt and may repeal or amend rules of procedure governing the legislative activities of The Florida Bar in the same manner as provided in rule 2-9.2; provided, however, that the adoption of any legislative position shall require the affirmative vote of two-thirds of those present at any regular meeting of the board of governors or two-thirds of the executive committee or by the president, as provided in the rules of procedure governing legislative activities.

This rule insures that The Florida Bar will take a legislative position only after first independently focusing on the question of whether the subject matter is one in which the organized bar should become actively involved. In reaching this determination, the Board of Governors should refer to the criteria set forth in this opinion. However, we also suggest that the Board exercise caution in the selection of subjects upon which to take a legislative position so as to avoid, to the extent possible, those issues which carry the potential of deep philosophical or emotional division among the membership of the Bar. In any event, we also wish to make clear that any member of The Florida Bar in good standing may question the propriety of any legislative position taken by the Board of Governors by filing a timely petition with this Court.

[3] In ***The Florida Bar re Amendment to Rule 2-9.3*, 526 So.2d 688 (Fla.1988)**, we approved an amendment to the Rules Regulating The Florida Bar to provide the mechanism for a lawyer who objects to legislative positions taken by The Florida Bar to obtain a partial rebate of bar dues. As part of the process, The Florida Bar is required to publish notice of adoption of legislative positions in The Florida Bar News in the issue immediately following the board meeting at which the positions are adopted. In this manner, lawyers are alerted to the legislative positions being taken by The Florida Bar and by registering their objections they may be relieved of paying for their share of the expense attributable to the advocacy of the legislative positions with which they disagree. Consistent with the response filed by The Florida Bar in this action, we ask the Board of ***1098** Governors to submit proposed amendments to this rule which will make clear that the Bar carries the burden of proof in such proceedings and providing that the names of objecting bar members, at their option, be kept private.

We approve the recommendations of the Judicial Council and adopt them as guidelines to be followed with respect to determining the scope of permissible lobbying activities of The Florida Bar.

It is so ordered.

EHRLICH, C.J., and OVERTON, SHAW, BARKETT and KOGAN, JJ., concur.

McDONALD, J., dissents with an opinion.

McDONALD, Justice, dissenting.

I would limit the lobbying activities of The Florida Bar to the five subject areas which the Judicial Council recognized as "clearly justifying legislative activities" by the bar.

While there is some question on portions of the five subjects that the council finds clearly justified, the overwhelming view is that it is appropriate for The Florida Bar to participate in legislative activities in these designated areas. Few disagree that these areas fall within the stated purpose of the mandated membership of The Florida Bar. On the other hand, though supported by the majority of the board of governors of The Florida Bar, the council's suggestion that the bar may lobby on issues of great public interest and in matters that lawyers are especially suited to and that affect the rights of those likely to come into contact with the judicial system has drawn serious comments and criticism. Some suggest that these criteria are so broad as to be a complete exception to any set of principles. I agree with this.

What distinguishes The Florida Bar from most other organizations is that all lawyers licensed in Florida must belong to it in order to practice their profession. It is this compulsory membership requirement that presents the strongest obstacle to the bar's discretionary lobbying under discussion. Many lawyers, because of their clients' interests or personal predilections, are in disagreement with positions of The Florida Bar on substantive issues and yet are compelled to be a member of an association espousing causes contrary to their beliefs. This presents some first amendment implications. Even without this concern, it appears to me that, except for matters directly attributable to the purpose of The Florida Bar, it is unwise and improper to compel membership and extract dues for causes or political goals antithetical to the beliefs or interests of individual members. In those matters falling outside the direct stated purpose of The Florida Bar it is better to leave lobbying activities to voluntary bar groups such as sections, political action committees, and the like. The lobbying activity of The Florida Bar should be restricted to the five "clearly justified" areas described in the council's report.

The majority does recognize that before taking legislative action it is incumbent on the board of governors first to find that the subject matter is one in which the organized bar should become actively involved. That decision should be determined on whether the proposed action comes within the definition of the stated purposes of The Florida Bar and as restricted by the five clearly defined areas.

I heartily approve of the concept that ready access to this Court be provided for a speedy resolution of issues questioning the propriety of the bar's lobbying decisions. I trust that the board will act with such circumspection that such challenges will be few and without merit. This will be true if lobbying activities not clearly within the stated purposes of The Florida Bar are left with individual sections, or special groups. No restrictions extend to individual members of the bar; restrictions do and should extend to activities by or in the name of The Florida Bar.

552 So.2d 1094, 14 Fla. L. Weekly 553

END OF DOCUMENT

Supreme Court of the United States
Eddie KELLER, et al., Petitioners
v.
STATE BAR OF CALIFORNIA et al.
No. 88-1905.

Argued Feb. 27, 1990.
Decided June 4, 1990.

Attorneys brought action challenging use of dues of State Bar of California to finance certain ideological or political activities. The Superior Court, Sacramento County, Cecchettini, J., granted summary judgment for Bar, and appeal was taken. The Court of Appeal, 226 Cal.Rptr. 448, reversed. Review was granted, superseding the opinion of the California Court of Appeal. The Supreme Court, 47 Cal.3d 1152, 255 Cal.Rptr. 542, 767 P.2d 1020, reversed and remanded. On certiorari review, the Supreme Court, Chief Justice Rehnquist, held that State Bar's use of compulsory dues to finance political and ideological activities with which members disagreed violated their First Amendment right of free speech when such expenditures were not necessarily or reasonably incurred for purpose of regulating legal profession or improving quality of legal services.

Reversed and remanded.

West Headnotes

[1] Federal Courts 511.1
170Bk511.1 Most Cited Cases
(Formerly 170Bk511)
State Supreme Court's determination of State Bar's status as government agency was not binding on United States Supreme Court insofar as determination was essential to federal question of whether Bar's use of mandatory dues violated members' constitutional rights. U.S.C.A. Const.Amend. 1.

[2] Attorney and Client 31
45k31 Most Cited Cases
Integrated State Bar was more analogous to labor union than to governmental agency, for purpose of determining permissible uses of its mandatory membership dues.

[3] Attorney and Client 31
45k31 Most Cited Cases
State bar may constitutionally use mandatory membership dues to fund activities germane to goals of regulating legal profession and improving quality of legal services; it may not, however, under the First Amendment, use dues to fund activities of ideological or political nature, such as endorsing gun control or nuclear freeze initiative, which fall outside of those areas of activity. U.S.C.A. Const.Amend. 1.

***1 **2229** *Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Respondent State Bar of California (State Bar) is an "integrated bar"-- *i.e.,* an association of attorneys in which membership and dues are required as a condition of practicing law--created under state law to regulate the State's legal profession. In fulfilling its broad statutory mission to "promote the improvement of the administration of justice," the Bar uses its membership dues for self-regulatory functions, such as formulating rules of professional conduct and disciplining members for misconduct. It also uses dues to lobby the legislature and other governmental agencies, file *amicus curiae* briefs in pending cases, hold an annual delegates conference for the debate of current issues and the approval of resolutions, and engage in educational programs. Petitioners, State Bar members, brought suit in state court claiming that through these latter activities the Bar expends mandatory dues payments to advance political and ideological causes to which they do not subscribe, in violation of their First and Fourteenth Amendment rights to freedom of speech and

association. They requested, *inter alia*, an injunction restraining the Bar from using mandatory dues or its name to advance political and ideological causes or beliefs. The court granted summary judgment to the Bar on the grounds that it is a governmental agency and therefore permitted under the First Amendment to engage in the challenged activities. The Court of Appeal reversed, holding that, while the Bar's regulatory activities were similar to those of a government agency, its "administration-of-justice" functions were more akin to the activities of a labor union. Relying on the analysis of ***2***Abood v. Detroit Bd. of Education*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261--which prohibits the agency-shop dues of dissenting nonunion employees from being used to support political and ideological union causes that are unrelated to collective-bargaining activities--the court held that the Bar's activities could be financed from mandatory dues only if a particular action served a state interest important enough to overcome the interference with dissenters' First Amendment rights. The State Supreme Court reversed, reasoning that the Bar was a "government agency" that could use its dues for any purpose within the scope of its statutory authority, and that subjecting the Bar's activities to First Amendment scrutiny would place an "extraordinary ****2230** burden" on its statutory mission. With the exception of certain election campaigning, the court found that all of the challenged activities fell within the Bar's statutory authority.

Held:

1. The State Bar's use of petitioners' compulsory dues to finance political and ideological activities with which petitioners disagree violates their First Amendment right of free speech when such expenditures are not necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services. Pp. 2233-2238.

(a) The State Supreme Court's determination that the State Bar is a "government agency" for the purposes of

(c) The guiding standard for determining permissible Bar expenditures relating to political or ideological activities is whether the challenged expenditures are

state law is not binding on this Court when such a determination is essential to the decision of a federal question. The State Bar is not a typical "government agency." The Bar's principal funding comes from dues levied on its members rather than from appropriations made by the legislature; its membership is composed solely of lawyers admitted to practice in the State; and its services by way of governance of the profession are essentially advisory in nature, since the ultimate responsibility of such governance is reserved by state law to the State Supreme Court. By contrast, there is a substantial analogy between the relationship of the Bar and its members and that of unions and their members. Just as it is appropriate that employees who receive the benefit of union negotiation with their employer pay their fair share of the cost of that process by paying agency-shop dues, it is entirely appropriate that lawyers who derive benefit from the status of being admitted to practice before the courts should be called upon to pay a fair share of the cost of the professional involvement in this effort. The State Bar was created, not to participate in the general government of the State, but to provide specialized professional advice to those with the ultimate responsibility of governing the legal profession. These differences between the State Bar and traditional government agencies render unavailing respondents' argument that it is not subject to the same constitutional rule with respect to the use of compulsory dues as are labor unions. Pp. 2234-2236.

***3** b) *Abood* cannot be distinguished on the ground that the compelled association in the context of labor unions serves only a private economic interest in collective bargaining while the Bar serves more substantial public interests. In fact, the legislative recognition that the agency-shop arrangements serve vital national interests in preserving industrial peace indicates that they serve a substantial public interest as well. It is not possible to determine that the Bar's interests outweigh these other interests sufficiently to produce a different result here. P. 2236.

necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services. Precisely where the line falls

between permissible and impermissible dues-financed activities will not always be easy to discern. But the extreme ends of the spectrum are clear: Compulsory dues may not be used to endorse or advance a gun control or nuclear weapons freeze initiative, but may be spent on activities connected with disciplining Bar members or proposing the profession's ethical codes. Pp. 2236-2237.

(d) Since the Bar is already required to submit detailed budgets to the state legislature before obtaining approval to set annual dues, the State Supreme Court's assumption that complying with *Abood* would create an extraordinary burden for the Bar is unpersuasive. Any burden that might result is insufficient to justify contravention of a constitutional mandate, and unions have operated successfully within the boundaries of *Abood* procedures for over a decade. An integrated bar could meet its *Abood* obligation by adopting the sort of procedures described in ****2231*Teachers v. Hudson*, 475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed.2d 232. Questions whether alternative procedures would also satisfy the obligation should be left for consideration upon a more fully developed record. Pp. 2237-2238.

2. Petitioners' freedom of association claim based on the State Bar's use of its name to advance political and ideological causes or beliefs will not be addressed by this Court in the first instance. P. 2238.

47 Cal.3d 1152, 255 Cal.Rptr. 542, 767 P.2d 1020 (1989), reversed and remanded.

REHNQUIST, C.J., delivered the opinion for a unanimous Court.

Anthony T. Caso argued the cause for petitioners. With him on the briefs were *Ronald A. Zumbrun* and *John H. Findley*.

Seth M. Hufstedler argued the cause for respondents. With him on the brief were *Robert S. Thompson*, ***4***Laurie D. Zelon*, *Judith R. Starr*, *Herbert M. Rosenthal*, and *Diane Yu*.*

* Briefs of *amici curiae* urging reversal were filed for the Ad Hoc Committee Opposing Lobbying and Certain Other Activities of a Mandatory Bar by *James J. Bierbower;* for the American Civil Liberties Union by *Steven R. Shapiro* and *John A. Powell;* for the National Right to Work Legal Defense Foundation by *Edwin Vieira;* for the Washington Legal Foundation et al. by *Daniel J. Popeo*, *Paul D. Kamenar*, and *John C. Scully;* for Robert E. Gibson by *Herbert R. Kraft;* for Trayton L. Lathrop, *pro se;* and for Joseph W. Little, *pro se.*

Briefs of *amici curiae* urging affirmance were filed for the American Bar Association by *L. Stanley Chauvin, Jr.*, *Carter G. Phillips*, and *Mark D. Hopson;* for the American Federation of Labor and Congress of Industrial Organizations by *Marsha S. Berzon* and *Laurence Gold;* for the Beverly Hills Bar Association et al. by *Ellis J. Horvitz* and *Peter Abrahams;* for the California Legislature by *Bion M. Gregory;* for the Lawyers' Committee for the Administration of Justice by *James J. Brosnahan;* for the State Bar of Michigan et al. by *Michael Franck* and *Michael J. Karwoski;* and for the State Bar of Wisconsin et al. by *John S. Skilton*, *Barry S. Richard*, and *Stephen L. Tober*.

Steven Levine, *pro se*, filed a brief of *amicus curiae.*

Chief Justice REHNQUIST delivered the opinion of the Court.

Petitioners, members of respondent State Bar of California, sued that body, claiming its use of their membership dues to finance certain ideological or political activities to which they were opposed violated their rights under the First Amendment of the United States Constitution. The Supreme Court of California rejected this challenge on the grounds that the State Bar is a state agency and, as such, may use the dues for any purpose within its broad statutory authority. We agree that lawyers admitted to practice in the State may be required to join and pay dues to the State Bar, but disagree as to the scope of permissible dues-financed activities in which the State Bar may engage.

The State Bar is an organization created under California law to regulate the State's legal profession.

[FN1] It is ***5** an entity commonly referred to as an "integrated bar"--an association of attorneys in which membership and dues are required as a condition of practicing law in a State. Respondent's broad statutory mission is to "promote 'the improvement of the administration of justice.' " **47 Cal.3d 1152, 1156, 255 Cal.Rptr. 542, 543, 767 P.2d 1020, 1021 (1989)** (quoting Cal.Bus. & Prof.Code Ann. ' 6031(a) (West Supp.1990)). The association performs a variety of functions such as "examining applicants for admission, formulating rules of professional conduct, disciplining members for misconduct, preventing unlawful practice of the law, and engaging in study and recommendation of changes in procedural law and improvement of the administration of justice." **47 Cal.3d, at 1159, 255 Cal.Rptr., at 545-546, 767 P.2d, at 1023-1024** (internal quotation marks omitted). Respondent also engages in a number of other activities which are the subject of the dispute in this case. "[T]he State Bar for many years has lobbied the Legislature and other governmental agencies, filed amicus curiae briefs in pending cases, held an annual conference of delegates at which issues of current interest are debated and resolutions approved, and engaged in a variety of education programs." ***Id.*, at 1156, 255 Cal.Rptr., at 543-544, 767 P.2d, at 1021-1022.** These activities are financed principally through the use of membership dues.

> **FN1.** The State Bar's Board of Governors is also a respondent in this action. Accordingly, the terms "respondent" or "State Bar" will refer either to the organization itself, or the organization and its governing board, as the context warrants.

Petitioners, 21 members of the State Bar, sued in state court claiming that through these activities respondent expends mandatory dues payments to advance political and ideological causes to which they do not subscribe. [FN2] Asserting ***6** that their compelled ****2232** financial support of such activities violates their First and Fourteenth Amendment rights to freedom of speech and association, petitioners requested, *inter alia*, an injunction restraining respondent from using mandatory bar dues or the name of the State Bar to advance political and ideological causes or beliefs. The trial court granted summary judgment to respondent on the grounds that it is a governmental agency and therefore permitted under the First Amendment to engage in the challenged activities. The California Court of Appeal reversed, holding that while respondent's regulatory activities were similar to those of a government agency, its "administration-of-justice" functions were more akin to the activities of a labor union. The court held that under our opinion in ***Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977)**, such activities "could be financed from mandatory dues only if the particular action in question served a state interest important enough to overcome the interference with dissenters' First Amendment rights." **47 Cal.3d, at 1159, 255 Cal.Rptr, at 545, 767 P.2d, at 1023**.

> **FN2.** Some of the particular activities challenged by petitioners were described in the complaint as follows:
> (1) Lobbying for or against state legislation prohibiting state and local agency employers from requiring employees to take polygraph tests; prohibiting possession of armor-piercing handgun ammunition; creating an unlimited right of action to sue anybody causing air pollution; creating criminal sanctions for violation of laws pertaining to the display for sale of drug paraphernalia to minors; limiting the right to individualized education programs for students in need of special education; creating an unlimited exclusion from gift tax for gifts to pay for education tuition and medical care; providing that laws providing for the punishment of life imprisonment without parole shall apply to minors tried as adults and convicted of murder with a special circumstance; deleting the requirement that local government secure approval of the voters prior to constructing low-rent housing projects; requesting Congress to refrain from enacting a guest-worker program or from permitting the importation of workers from other countries;
> (2) Filing *amicus curiae* briefs in cases

involving the constitutionality of a victim's bill of rights; the power of a workers' compensation board to discipline attorneys; a requirement that attorney-public officials disclose names of clients; the disqualification of a law firm; and

(3) The adoption of resolutions by the Conference of Delegates endorsing a gun control initiative; disapproving the statements of a United States senatorial candidate regarding court review of a victim's bill of rights; endorsing a nuclear weapons freeze initiative; opposing federal legislation limiting federal-court jurisdiction over abortions, public school prayer, and busing. App. 9-13.

The Supreme Court of California reversed the Court of Appeal by a divided vote. The court reasoned that respondent's ***7** status as a public corporation, as well as certain of its other characteristics, made it a "government agency." It also expressed its belief that subjecting respondent's activities to First Amendment scrutiny would place an "extraordinary burden" on its mission to promote the administration of justice. ***Id.*, at 1161-1166, 255 Cal.Rptr., at 547-550, 767 P.2d, at 1025- 1028.** The court distinguished other cases subjecting the expenditures of state bar associations to First Amendment scrutiny, see, *e.g.*, ***Gibson v. The Florida Bar*, 798 F.2d 1564 (CA11 1986)**, on the grounds that none of the associations involved in those cases rested "upon a constitutional and statutory structure comparable to that of the California State Bar. None involves an extensive degree of legislative involvement and regulation." **47 Cal.3d, at 1167, 255 Cal.Rptr., at 551, 767 P.2d, at 1029.** The court concluded that "the State Bar, considered as a government agency, may use dues for any purpose within the scope of its statutory authority." ***Id.*, at 1168, 255 Cal.Rptr., at 552, 767 P.2d, at 1030.** With the exception of certain election campaigning conducted by respondent and its president, the court found that all of respondent's challenged activities fell within its statutory authority. ***Id.*, at 1168-1173, 255 Cal.Rptr., at 552-555, 767 P.2d, at 1030- 1033.** We granted certiorari, **493 U.S. 806, 110 S.Ct. 46, 107 L.Ed.2d 15 (1989)**, to consider petitioners' First Amendment claims. We now reverse and remand for further proceedings.

In ***Lathrop v. Donohue*, 367 U.S. 820, 81 S.Ct. 1826, 6 L.Ed.2d 1191 (1961)**, a Wisconsin lawyer claimed 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. Six Members of this Court, relying on ***Railway Employes v. Hanson*, 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed. 1112 (1956)**, rejected this claim.

****2233** "In our view the case presents a claim of impingement upon freedom of association no different from that which we decided in [*Hanson*]. We there held that ' 2, Eleventh of the Railway Labor Act ... did not on its face ***8** abridge protected rights of association in authorizing union-shop agreements between interstate railroads and unions of their employees conditioning the employees' continued employment on payment of union dues, initiation fees and assessments.... In rejecting Hanson's claim of abridgment of his rights of freedom of association, we said, 'On the present record, there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar.' **351 U.S., at 238 [76 S.Ct., at 721].** Both in purport and in practice the bulk of State Bar activities serve the function, or at least so Wisconsin might reasonably believe, of elevating the educational and ethical standards of the Bar to the end of improving the quality of the legal service available to the people of the State, without any reference to the political process. It cannot be denied that this is a legitimate end of state policy. We think that the Supreme Court of Wisconsin, in order to further the State's legitimate interests in raising the quality of professional services, may constitutionally require that the costs of improving the profession in this fashion 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. Given the character of the integrated bar shown on this record,

> in the light of the limitation of the membership requirement to the compulsory payment of reasonable annual dues, we are unable to find any impingement upon protected rights of association." ***Lathrop*, 367 U.S., at 842-843, 81 S.Ct., at 1837-1838** (plurality opinion) (footnote omitted).

Justice Harlan, joined by Justice Frankfurter, similarly concluded that "[t]he *Hanson* case ... decided by a unanimous Court, surely lays at rest all doubt that a State may constitutionally condition the right to practice law upon membership in an integrated bar association, a condition fully as justified ***9** by state needs as the union shop is by federal needs." *Id.*, at 849, **81 S.Ct., at 1841** (opinion concurring in judgment).

The *Lathrop* plurality emphasized, however, the limited scope of the question it was deciding: "[Lathrop's] compulsory enrollment imposes only the duty to pay dues.... We therefore are confronted, as we were in [*Hanson*], only with a question of compelled financial support of group activities, not with involuntary membership in any other aspect." ***Id.*, at 827-828, 81 S.Ct., at 1830** (footnote omitted). Indeed, the plurality expressly reserved judgment on Lathrop's additional claim that his free speech rights were violated by the Wisconsin Bar's use of his mandatory dues to support objectionable political activities, believing that the record was not sufficiently developed to address this particular claim. **[FN3]** Petitioners here present this very claim for decision, contending that the use of their compulsory dues to finance political and ideological activities of the State Bar with which they disagree violates their rights of free speech guaranteed by the First Amendment.

> **FN3.** Justice Harlan would have reached this claim and decided that it lacked merit. See ***Lathrop v. Donohue*, 367 U.S., at 848-865, 81 S.Ct., at 1840-1850**.

In ***Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977)**, the Court confronted the issue whether, consistent with the First Amendment, agency-shop dues of nonunion public employees could be used to support political and ideological causes of the union which were unrelated to collective-bargaining activities. We held that while the Constitution did not prohibit a union from spending "funds for the expression of political views ... or toward ****2234** the advancement of other ideological causes not germane to its duties as collective-bargaining representative," the Constitution did require that such expenditures be "financed from charges, dues, or assessments paid by employees who [did] not object to advancing those ideas and who [were] not coerced into doing so against their will by the threat of loss of governmental employment." ***Id.*, at 235-236, 97 S.Ct., at 1799- 1800.** The Court noted that just as ***10** prohibitions on making contributions to organizations for political purposes implicate fundamental First Amendment concerns, see ***Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976)**, "compelled ... contributions for political purposes works no less an infringement of ... constitutional rights." ***Abood, supra*, at 234, 97 S.Ct., at 1799.** The Court acknowledged Thomas Jefferson's view that " 'to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical.' " **431 U.S., at 234-235, n. 31, 97 S.Ct., at 1799-1800, n. 31** (quoting I. Brant, James Madison: The Nationalist 354 (1948)). While the decision in *Abood* was also predicated on the grounds that a public employee could not be compelled to relinquish First Amendment rights as a condition of public employment, see **431 U.S., at 234-236, 97 S.Ct., at 1799-1800,** in the later case of ***Ellis v. Railway Clerks*, 466 U.S. 435, 104 S.Ct. 1883, 80 L.Ed.2d 428 (1984)**, the Court made it clear that the principles of *Abood* apply equally to employees in the private sector. **See 466 U.S., at 455-457, 104 S.Ct., at 1895-1897**.

Although several federal and state courts have applied the *Abood* analysis in the context of First Amendment challenges to integrated bar associations, see **47 Cal.3d, at 1166, 255 Cal.Rptr., at 550, 767 P.2d, at 1028** (collecting cases), the California Supreme Court in this case held that respondent's status as a regulated state agency exempted it from any constitutional constraints on the use of its dues. "If the bar is considered a governmental agency, then the distinction between revenue derived from mandatory dues and revenue from other sources is immaterial. A governmental agency

may use unrestricted revenue, whether derived from taxes, dues, fees, tolls, tuition, donation, or other sources, for any purposes within its authority." ***Id.*, at 1167, 255 Cal.Rptr., at 551, 767 P.2d, at 1029.** Respondent also urges this position, invoking the so-called "government speech" doctrine: "The government must take substantive positions and decide disputed issues to govern.... So long as it bases its actions on legitimate goals, government may speak despite citizen disagreement with the content of its message, for government is not required to be content-neutral." Brief for ***11** Respondents 16. See also ***Abood, supra*, 431 U.S., at 259, n. 13, 97 S.Ct., at 1811, n. 13** (Powell, J., concurring in judgment) ("[T]he reason for permitting the government to compel the payment of taxes and to spend money on controversial projects is that the government is representative of the people").

[1] Of course the Supreme Court of California is the final authority on the "governmental" status of the State Bar of California for purposes of state law. But its determination that respondent is a "government agency," and therefore entitled to the treatment accorded a governor, a mayor, or a state tax commission, for instance, is not binding on us when such a determination is essential to the decision of a federal question. The State Bar of California is a good deal different from most other entities that would be regarded in common parlance as "governmental agencies." Its principal funding comes, not from appropriations made to it by the legislature, but from dues levied on its members by the board of governors. **[FN4]** Only lawyers ****2235** admitted to practice in the State of California are members of the State Bar, and all 122,000 lawyers admitted to practice in the State must be members. Respondent undoubtedly performs important and valuable services for the State by way of governance of the profession, but those services are essentially advisory in nature. The State Bar does not admit anyone to the practice of law, it does not finally disbar or suspend anyone, and it does not ultimately establish ethical codes of conduct. All of those functions are reserved by California law to the State Supreme Court. See Cal.Bus. & Prof.Code Ann. ' 6064 (West 1974) (admissions); ' 6076 (rules of professional conduct); Cal.Bus. ***12** & Prof.Code Ann. ' 6100 (West Supp.1990) (disbarment or suspension).

> **FN4.** In 1982, the year the complaint in this action was filed, approximately 85% of the State Bar's general funding came from membership dues with the balance made up of fees charged for various bar activities. The State Bar's general funds support the bulk of its activities with the exception of the State Bar's applicant admission functions and other miscellaneous activity. The State Bar's admission functions are not funded from general revenues but rather from fees charged to applicants taking the bar examination. App. 76-77.

[2] There is, by contrast, a substantial analogy between the relationship of the State Bar and its members, on the one hand, and the relationship of employee unions and their members, on the other. The reason behind the legislative enactment of "agency-shop" laws is to prevent "free riders"--those who receive the benefit of union negotiation with their employers, but who do not choose to join the union and pay dues--from avoiding their fair share of the cost of a process from which they benefit. The members of the State Bar concededly do not benefit as directly from its activities as do employees from union negotiations with management, but the position of the organized bars has generally been that they prefer a large measure of self-regulation to regulation conducted by a government body which has little or no connection with the profession. The plan established by California for the regulation of the profession is for recommendations as to admission to practice, the disciplining of lawyers, codes of conduct, and the like to be made to the courts or the legislature by the organized bar. It is entirely appropriate that all of the lawyers who derive benefit from the unique status of being among those admitted to practice before the courts should be called upon to pay a fair share of the cost of the professional involvement in this effort.

But the very specialized characteristics of the State Bar of California discussed above served to distinguish it from the role of the typical government official or

agency. Government officials are expected as a part of the democratic process to represent and to espouse the views of a majority of their constituents. With countless advocates outside of the government seeking to influence its policy, it would be ironic if those charged with making governmental decisions were not free to speak for themselves in the process. If every citizen were to have a right to insist that no one paid by public funds express a view with which he disagreed, debate over ***13** issues of great concern to the public would be limited to those in the private sector, and the process of government as we know it radically transformed. Cf. ***United States v. Lee*, 455 U.S. 252, 260, 102 S.Ct. 1051, 1056, 71 L.Ed.2d 127 (1982)** ("The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief").

The State Bar of California was created, not to participate in the general government of the State, but to provide specialized professional advice to those with the ultimate responsibility of governing the legal profession. Its members and officers are such not because they are citizens or voters, but because they are lawyers. We think that these differences between the State Bar, on the one hand, and traditional government agencies and officials, on the other hand, render unavailing respondent's argument that it is not subject to the same constitutional rule with respect to the use of compulsory dues as are labor unions representing public and private employees.

****2236** Respondent would further distinguish the two situations on the grounds that the compelled association in the context of labor unions serves only a private economic interest in collective bargaining, while the State Bar serves more substantial public interests. But legislative recognition that the agency-shop arrangements serve vital national interests in preserving industrial peace, see ***Ellis*, 466 U.S., at 455-456, 104 S.Ct., at 1895-1896,** indicates that such arrangements serve substantial public interests as well. We are not possessed of any scales which would enable us to determine that the one outweighs the other sufficiently to produce a different result here.

[3] *Abood* held that a union could not expend a dissenting individual's dues for ideological activities not "germane" to the purpose for which compelled association was justified: collective bargaining. Here the compelled association and integrated bar are justified by the State's interest in regulating the legal profession and improving the quality of legal services. ***14** The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity. The difficult question, of course, is to define the latter class of activities.

Construing the Railway Labor Act in *Ellis*, *supra*, we held:

> "[W]hen employees such as petitioners object to being burdened with particular union expenditures, the test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues. Under this standard, objecting employees may be compelled to pay their fair share of not only the direct costs of negotiating and administering a collective-bargaining contract and of settling grievances and disputes, but also the expenses of activities or undertakings normally or reasonably employed to implement or effectuate the duties of the union as exclusive representative of the employees in the bargaining unit." ***Id.*, at 448, 104 S.Ct., at 1892**.

We think these principles are useful guidelines for determining permissible expenditures in the present context as well. Thus, the guiding standard must be 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." ***Lathrop*, 367 U.S., at 843, 81 S.Ct., at 1838** (plurality opinion).

The Supreme Court of California decided that most of the activities complained of by petitioners were within the scope of the State Bar's statutory authority and were

therefore not only permissible but could be supported by the compulsory dues of objecting members. The Supreme Court of California quoted the language of the relevant statute to the effect ***15** that the State Bar was authorized to " 'aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice.' " **47 Cal.3d, at 1169, 255 Cal.Rptr., at 552, 767 P.2d, at 1030.** Simply putting this language alongside our previous discussion of the extent to which the activities of the State Bar may be financed from compulsory dues might suggest that there is little difference between the two. But there is a difference, and that difference is illustrated by the allegations in petitioners' complaint as to the kinds of State Bar activities which the Supreme Court of California has now decided may be funded with compulsory dues.

Petitioners assert that the State Bar has engaged in, *inter alia*, lobbying for or against state legislation (1) prohibiting state and local agency employers from requiring employees to take polygraph tests; (2) prohibiting possession of armor-piercing handgun ammunition; (3) creating an unlimited right of action to sue anybody causing ****2237** air pollution; and (4) requesting Congress to refrain from enacting a guest-worker program or from permitting the importation of workers from other countries. Petitioners' complaint also alleges that the conference of delegates funded and sponsored by the State Bar endorsed a gun control initiative, disapproved statements of a United States senatorial candidate regarding court review of a victim's bill of rights, endorsed a nuclear weapons freeze initiative, and opposed federal legislation limiting federal-court jurisdiction over abortions, public school prayer, and busing. See n. 2, *supra*.

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. But the extreme ends of the spectrum are clear: ***16** Compulsory dues may not be expended to endorse or advance a gun control or nuclear weapons freeze initiative; at the other end of the spectrum petitioners have no valid constitutional objection to their compulsory dues being spent for activities connected with disciplining members of the Bar or proposing ethical codes for the profession.

In declining to apply our *Abood* decision to the activities of the State Bar, the Supreme Court of California noted that it would entail "an extraordinary burden.... The bar has neither time nor money to undertake a bill-by-bill, case-by-case *Ellis* analysis, nor can it accept the risk of litigation every time it decides to lobby a bill or brief a case." **47 Cal.3d, at 1165-1166, 255 Cal.Rptr., at 550, 767 P.2d, at 1028.** In this respect we agree with the assessment of Justice Kaufman in his concurring and dissenting opinions in that court:

> "[C]ontrary to the majority's assumption, the State Bar would not have to perform the three-step *Ellis* analysis prior to each instance in which it seeks to advise the Legislature or the courts of its views on a matter. Instead, according to [***Teachers* v.] *Hudson*, [475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986)**] 'the constitutional requirements for the [association's] collection of ... fees include an adequate 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 310 [106 S.Ct., at 1077]).** Since the bar already is statutorily required to submit detailed budgets to the Legislature prior to obtaining approval for setting members' annual dues (**Bus. and Prof. Code ' 6140.1)**, the argument that the constitutionally mandated procedure would create 'an extraordinary burden' for the bar is unpersuasive.
>
> "While such a procedure would likely result in some additional administrative burden to the bar and perhaps prove at times to be somewhat inconvenient, such additional burden or inconvenience is hardly sufficient to justifycontravention ***17** of the constitutional mandate. It is noteworthy that unions

representing government employees have developed, and have operated successfully within the parameters of *Abood* procedures for over a decade." ***Id.*, at 1192, 255 Cal.Rptr., at 568, 767 P.2d, at 1046** (citations and footnote omitted).

In ***Teachers v. Hudson*, 475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986)**, where we outlined a minimum set of procedures by which a union in an agency-shop relationship could meet its requirement under *Abood*, we had a developed record regarding different methods fashioned by unions to deal with the "free rider" problem in the organized labor setting. We do not have any similar record here. We believe an integrated bar could certainly meet its *Abood* obligation by adopting the sort of procedures described in *Hudson*. Questions whether one or more alternative ****2238** procedures would likewise satisfy that obligation are better left for consideration upon a more fully developed record.

In addition to their claim for relief based on respondent's use of their mandatory dues, petitioners' complaint also requested an injunction prohibiting the State Bar from using its name to advance political and ideological causes or beliefs. See *supra*, at 2232. This request for relief appears to implicate a much broader freedom of association claim than was at issue in *Lathrop*. Petitioners challenge not only their "compelled financial support of group activities," see *supra*, at 2233, but urge that they cannot 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*. The California courts did not address this claim, and we decline to do so in the first instance. The state courts remain free, of course, to consider this issue on remand.

The judgment of the Supreme Court of California is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1, 58 USLW 4661

Briefs and Other Related Documents (Back to top)

$ 1990 WL 10013066 (Appellate Brief) Petitioners' Reply Brief (Jan. 12, 1990)

$ 1990 WL 505849 (Appellate Brief) PETITIONERS' REPLY BRIEF (Jan. 12, 1990)

$ 1989 WL 1127387 (Appellate Brief) Brief Amicus Curiae of the Lawyers' Committee for the Administration of Justice in Support of Respondents (Dec. 18, 1989)

$ 1989 WL 1127389 (Appellate Brief) Brief of Amicus Curiae Beverly Hills Bar Association in Support of Respondents (Dec. 18, 1989)

$ 1989 WL 1127393 (Appellate Brief) Brief of California Legislature as Amicus Curiae in Support of Respondents (Dec. 18, 1989)

$ 1989 WL 1127396 (Appellate Brief) Respondents' Brief on the Merits (Dec. 18, 1989)

$ 1989 WL 1127399 (Appellate Brief) Brief of the State Bar of Wisconsin as Amicus Curiae in Support of Respondents, Joined by the Florida Bar, the New Hampshire Bar Association, the State Bar of Montana, the Oklahoma Bar Association, the Washington State Bar Association, and the Wyomin g State Bar (Dec. 18, 1989)

$ 1989 WL 429015 (Appellate Petition, Motion and Filing) RESPONDENTS' BRIEF ON THE MERITS (Dec. 18, 1989)

$ 1989 WL 1127378 (Appellate Brief) Amicus Curiae Brief of the State Bar of Michigan and the South Carolina Bar in Support of Respondents (Dec. 15, 1989)

$ 1989 WL 1127382 (Appellate Brief) Brief for the American Federation of Labor and Congress of Industrial Organizations as Amicus Curiae in Support

of Respondents (Dec. 1989)

$ 1989 WL 1127367 (Appellate Brief) Brief of Amicus Curiae, Gibson, in Support of Petitioner (Nov. 16, 1989)

$ 1989 WL 1127369 (Appellate Brief) Motion for Leave to File Brief Amici Curiae and Brief Amici Curiae of the Washington Legal Foundation and the Attorney General of New Mexico in Support of Petitioners (Nov. 16, 1989)

$ 1989 WL 1127371 (Appellate Brief) Motion for Leave to File Brief Amicus Curiae of the National Right to Work Legal Defense Foundation, in Support of Petitioners and Brief Amicus Curiae (Nov. 16, 1989)

$ 1989 WL 1127373 (Appellate Brief) Motion for Leave to File a Brief Amicus Curiae and Brief for the Ad Hoc Committee Opposing Lobbying and Certain other Activities of a Mandatory Bar as Amicus Curiae in Support of Petitioners (Nov. 16, 1989)

$ 1989 WL 1127359 (Appellate Brief) Petitioners' Opening Brief (Nov. 15, 1989)

$ 1989 WL 1127363 (Appellate Brief) Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae of the American Civil Liberties Union in Support of Petitioners (Nov. 15, 1989)

$ 1989 WL 429014 (Appellate Brief) PETITIONERS' OPENING BRIEF (Nov. 15, 1989)

$ 1989 WL 1127351 (Appellate Brief) Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae of Trayton L. Lathrop in Support of Petitioners (Oct. Term 1989)

$ 1989 WL 1127376 (Appellate Brief) Motion For Leave To File Amicus Curiae Brief And Brief of Amicus Curiae (Oct. Term 1989)

$ 1989 WL 1127384 (Appellate Brief) Brief of the American Bar Association as Amicus Curiae in Support of Respondents (Oct. Term 1989)

$ 1988 WL 1026061 (Appellate Brief) Brief of Steven Levine as Amicus Curiae in Support of Petitioner (Oct. Term 1988)

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United States Court of Appeals,
Eleventh Circuit.
Robert E. GIBSON, Plaintiff-Appellant,
v.
THE FLORIDA BAR and Members of the Board of Governors, Defendants-Appellees.
No. 89-3388.

July 23, 1990.

Member of Florida Bar brought action for declaratory and injunctive relief, challenging a bar rule allowing use of compulsory bar dues to fund political lobbying. A judgment in favor of bar was reversed and remanded, 798 F.2d 1564. The United States District Court for the Northern District of Florida, No. TCA 84-7109-MMP, Maurice Mitchell Paul, J., held that amended rule, which provided procedure for refund of objecting members' dues, was constitutional, and thus, denied member's request for injunctive relief and dismissed case. Member appealed. The Court of Appeals, Tjoflat, Chief Judge, held that: (1) the bar was not required to provide advance deduction for the proportion of dues that the bar knew would be used for political activity; (2) the bar was required to calculate interest as of date that payment of members' bar dues was received; and (3) fact that arbitration panel which hears objectors' claims is composed of bar members does not taint arbitration proceeding.

Affirmed in part and reversed in part.

Clark, Circuit Judge, dissented and filed an opinion.

West Headnotes

[1] Attorney and Client 31
45k31 Most Cited Cases
When using compulsory bar dues to fund its political lobbying, Florida Bar is not required to provide advance deduction for members who object to particular position on legislative issue; rather, interest-bearing escrow account, along with otherwise satisfactory procedure, is sufficient. West's F.S.A. Bar Rule 2-9.3.

[2] Attorney and Client 31
45k31 Most Cited Cases
Portion of Florida Bar rule which provides calculation of interest on refunds made on pro rata basis for compulsory bar dues used to fund political lobbying to which member objects, only "as of the date the written objection was received" was not sufficient to avoid risk that objecting members' funds would be used, even temporarily, to finance ideological activities; bar must calculate interest as of date that payment of members' bar dues was received. West's F.S.A. Bar Rule 2-9.3(e)(4).

[3] Attorney and Client 31
45k31 Most Cited Cases
Requirement that member of Florida Bar must object on issue-by-issue basis to political lobbying funded by bar from compulsory bar dues in order for member to obtain refund of pro rata portion of his or her dues used to fund lobbying on that issue does not impermissibly require objectors to disclose their position regarding that issue; dissenter has burden of raising objection, and affirmative objection requirement in question was within scope of that obligation. West's F.S.A. Bar Rule 2-9.3.

[4] Arbitration 64.3
33k64.3 Most Cited Cases
In regard to Florida Bar rule providing for three-member arbitration panel to arbitrate bar members' claims for refunds of pro rata portion of compulsory bar dues used to fund political lobbying to which members object, fact that arbitration panel is composed of bar members is insufficient to taint arbitration proceeding; although bar appoints one panel member, objector picks another, and third is chosen by first two members of panel. West's F.S.A. Bar Rule 2-9.3.

***625** Herbert R. Kraft, Tallahassee, Fla., for plaintiff-appellant.

Joseph W. Little, Gainesville, Fla., for amicus curiae Joseph W. Little.

Paul Hill, The Florida Bar, Barry Scott Richard, Roberts, Baggett, LaFace & Richard, Tallahassee, Fla., for the Florida Bar.

Appeal from the United States District Court for the Northern District of Florida.

Before TJOFLAT, Chief Judge, ANDERSON and CLARK, Circuit Judges.

TJOFLAT, Chief Judge:

In this case, the plaintiff, a member of the Florida Bar, appeals the district court's dismissal of his suit challenging the Florida Bar's procedures for handling objections to the Florida Bar's use of compulsory bar dues to fund its political lobbying. The district court held that the procedures satisfied the constitutional requirements articulated by the Supreme Court in *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986). We affirm in part and reverse in part.

I.

On March 27, 1984, the plaintiff, Robert E. Gibson, filed a complaint against the Florida Bar and the members of its board of governors (the Bar) seeking a declaratory judgment and injunctive relief. Gibson claimed that the Bar was violating his first and fourteenth amendment rights [FN1] by using a portion of his compulsory dues to fund political lobbying. Specifically, Gibson challenged the Bar's use of compulsory dues to fund its campaign in opposition to a constitutional initiative known as "proposition one." [FN2] He also generally challenged ***626** the Bar's use of compulsory dues to fund political lobbying. Gibson immediately moved for a preliminary injunction to prevent the Bar from further advocating its position against proposition one.

FN1. The first amendment, which the fourteenth amendment makes applicable to the States, *see Stromberg v. California*, 283 U.S. 359, 368, 51 S.Ct. 532, 535, 75 L.Ed. 1117 (1931), provides in pertinent part: "Congress shall make no law ... abridging the freedom of speech ...; or the right of the people peaceably to assemble...." U.S. Const. amend. 1. For convenience, we label Gibson's claim a first amendment claim.

FN2. Proposition one, modeled after California's proposition thirteen, proposed an amendment to the Florida Constitution that would limit the amount of revenue that the State could collect through taxes.

On that same day, the Florida Supreme Court issued an order removing proposition one from the general election ballot on the ground that it failed to comply with the single-subject requirement of Fla. Const. art. XI, ' 3. *See Fine v. Firestone*, 448 So.2d 984 (Fla.1984). Accordingly, on March 28th, the district court denied Gibson's request for a preliminary injunction. The case then proceeded to trial, and in August 1985, the court issued a final judgment upholding the validity of the challenged activity and denying Gibson's request for a permanent injunction.

In its judgment, the court first held that the Florida Supreme Court's decision in *Fine* did not moot Gibson's suit because Gibson still challenged the Bar's general practice of funding political advocacy with compulsory bar dues. The court then held that under *Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1976), the Bar's general practice was constitutionally permissible. The court reasoned that "the State may intrude upon plaintiff's First Amendment rights where the intrusion is justified by a sufficiently important state interest, and so long as the intrusion is 'closely drawn.' " In the court's view, the Bar's purposes as articulated in the Integration Rule of The Florida Bar [FN3] constituted a "sufficiently important state interest." Moreover, the Bar's policy on political advocacy was sufficient to ensure that the Bar's political positions [FN4] would be closely enough related to these important state interests.

FN3. The Preamble to the Integration Rule provides, in pertinent part:
To inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence, the following principles are expressly adopted by the Court: (a) The Florida Bar, a body created by and existing under the authority of this Court, is charged with the maintenance of the highest standards and obligations of the profession of law....

FN4. Standing Board Policy 900 provided, in pertinent part:
a) The purposes of The Florida Bar are set forth in the Integration Rule. Neither The Florida Bar nor any of its committees or sections may take a position on legislation either as a proponent or opponent unless it is determined by the Board of Governors that the legislation is related to the purposes of The Florida Bar as set forth in the Integration Rule.
b) The Bylaws of The Florida Bar set forth the restrictions on establishing a legislative policy. Article VI, Section 2 of the Bylaws provides that:
No legislative matter shall be recommended, approved, disapproved or endorsed by The Florida Bar unless such action is initiated by a written report and recommendation of a committee and approved by a majority vote of the active members present at the [annual] meeting; or, legislative matters may be recommended, approved, disapproved, or endorsed on behalf of The Florida Bar at any time by two-thirds vote of the members of the Board of Governors present at the meeting, and during the time when the Legislature is in session the Executive Committee may act upon pending or proposed legislation.

Gibson appealed this judgment. In ***Gibson v. Florida Bar*, 798 F.2d 1564 (11th Cir.1986)** [hereinafter *Gibson I*], a panel of this court reversed the district court and remanded the case for further proceedings. After a review of Supreme Court cases on the constitutionality of compulsory membership dues and of the use of those dues to support political activities, *e.g.*, ***Lathrop v. Donohue*, 367 U.S. 820, 81 S.Ct. 1826, 6 L.Ed.2d 1191 (1961)**; ***Railway Employees' Dep't v. Hanson*, 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed. 1112 (1956)**; ***International Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961)**; ***Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977)**; ***Ellis v. Railway Clerks*, 466 U.S. 435, 104 S.Ct. 1883, 80 L.Ed.2d 428 (1985)**, **[FN5]** the panel concluded ***627** that the Bar's use of compulsory dues to support political activity would be constitutional if a "compelling interest" supported the Bar's activity and if the Bar had used the "least restrictive means" of achieving that interest. ***Gibson I*, 798 F.2d at 1569**. Applying this analysis, the panel held that the district court had not adequately evaluated whether "certain positions taken by the Bar were sufficiently related to its basic function to justify the expenditure of compulsory dues" and therefore remanded the case to the district court for further findings on this issue. *Id.*

FN5. The panel held that these cases, almost all of which involved unions rather than bar associations, also controlled in cases involving bar associations. *See* ***Gibson I*, 798 F.2d at 1568-69**. The Supreme Court has also expressly adopted this position in ***Keller v. State Bar*, 496 U.S. 1, ----, 110 S.Ct. 2228, 2235-37, 110 L.Ed.2d 1 (1990)**. I discuss that case in more detail below. *See infra* note 12.

At the conclusion of its opinion, the panel "stressed" that it had addressed "only the use of compelled fees by the Bar." As the panel noted,
> the union was free to politicize on *any* issue of interest to that group.... Only the use of compelled

> funds was prohibited for issues unrelated to collective bargaining.... Similarly, the Bar may speak as a group on any issue as long as it does so without using the compulsory dues of dissenting members.

Id. at 1570 (citations omitted). In a footnote, the panel further explained that

> the difficult task of discerning proper Bar position issues could be avoided by one of two methods: (1) a voluntary program in which lawyers would not be compelled to finance the Legislative Program, but could contribute towards that program as they wished; or (2) a refund procedure allowing dissenting lawyers to notify the Bar that they disagree with a Bar position, then receive that portion of their dues allotted to lobbying.

Id. at 1570 n. 5. At the time of the panel's disposition, however, the Bar had no such program or procedure, and the panel therefore remanded the case to the district court for findings on the propriety of the Bar's political activity.

In November 1986, the Bar amended Standing Policy 900 to include a set of refund procedures. The Bar then moved the district court for a "judgment on the mandate" on the grounds that these procedures complied with the requirements announced in ***Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986)**. **[FN6]** The Bar's motion in effect requested leave of court to amend its answer to Gibson's complaint and to file a counterclaim. The amended answer would assert that the controversy described in Gibson's complaint was moot, and the counterclaim would request a declaration that the Bar's new procedures passed constitutional muster. The court implicitly gave the Bar leave to proceed in this fashion **[FN7]** and, in March 1987, issued an order holding the case in abeyance for seventy days to allow for possible action by the Florida Supreme Court on the Bar's amendments to Standing Policy 900. The Bar subsequently undertook to amend its bylaws--a process requiring approval by the Florida Supreme Court--in order to incorporate the new procedure. The district court therefore extended the abeyance until the Florida Supreme Court acted. On June 2, 1988, the Florida Supreme Court issued an opinion approving rule 2-9.3, the amended bylaw. **[FN8]** *See* ***628*Florida Bar Re Amendment to Rule 2-9.3 (Legislative Policies), 526 So.2d 688 (Fla.1988)**.

In April 1989, Gibson moved the district court to enjoin the application of the rule. After a hearing on the motion, the district court issued a final order in the case. Holding that rule 2-9.3 "meets the safeguards and requirements necessary for protection of members' first amendment rights, as set out in both the case of *Chicago Teachers Union v. Hudson* ... and ... *Gibson [I]*," the district court denied Gibson's request for injunctive relief and dismissed the case. Gibson appeals, challenging the constitutionality of rule 2-9.3.

FN6. *See infra* at 629-30 (discussing *Chicago Teachers*).

FN7. The parties submitted no revised pleadings; rather, the amendment process took place through the parties' memoranda to the court and hearings before the court.

FN8. 2-9.3 Legislative Policies.
(a) The board of governors shall adopt and may repeal or amend rules of procedure governing the legislative activities of The Florida Bar in the same manner as provided in rule 2-9.2; provided, however, that the adoption of any legislative position shall require the affirmative vote of two-thirds of those present at any regular meeting of the board of governors or two-thirds of the executive committee or by the president, as provided in the rules of procedure governing legislative activities.
(b) Publication of legislative positions. The Florida Bar shall publish notice of adoption of legislative positions in The Florida Bar News, in the issue immediately following the board meeting at which the positions were adopted.
(c) Objections to legislative positions of The Florida Bar. Any active member of The Florida Bar may, within forty-five (45) days of

the date of publication of notice of adoption of a legislative position, file with the executive director a written objection to a particular position on a legislative issue. Failure to object within this time period shall constitute a waiver of any right to object to the particular legislative issue.

(1) After a written objection has been received, the executive director shall promptly determine the pro rata amount of the objecting member's dues at issue and such amount shall be placed in escrow pending determination of the merits of the objection. The escrow figure shall be independently verified by a certified public accountant.

(2) Upon the deadline for receipt of written objections, the board of governors shall have forty-five (45) days in which to decide whether to give a pro rata refund to the objecting member(s) or to refer the action to arbitration.

(d) Composition of arbitration panel. Objections to legislative positions of The Florida Bar may be referred by the board of governors to an arbitration panel comprised of three (3) members of The Florida Bar, to be constituted as soon as practicable following the decision by the board of governors that a matter shall be referred to arbitration.

The objecting member(s) shall be allowed to choose one member of the arbitration panel, The Florida Bar shall appoint the second panel member, and those two (2) members shall choose a third member of the panel who shall serve as chairman. In the event the two (2) members of the panel are unable to agree on a third member, the chief judge of the Second Judicial Circuit of Florida shall appoint the third member of the panel.

(e) Procedures for arbitration panel. Upon a decision by the board of governors that the matter shall be referred to arbitration, The Florida Bar shall promptly prepare a written response to the objection and serve a copy on the objecting member(s). Such response and objection shall be forwarded to the arbitration panel as soon as the panel is properly constituted. The arbitration panel shall thereafter confer and decide whether the legislative matters at issue are constitutionally appropriate for funding from mandatory Florida Bar dues.

(1) The scope of the arbitration panel's review shall be to determine solely whether the legislative matters at issue are within those acceptable activities for which compulsory dues may be used under applicable constitutional law.

(2) The proceedings of the arbitration panel shall be informal in nature and shall not be bound by the rules of evidence. The decision of the arbitration panel shall be binding as to the objecting member(s) and The Florida Bar.

If the arbitration panel concludes the legislative matters at issue are appropriately funded from mandatory dues, there shall be no refund and The Florida Bar shall be free to expend the objecting member's pro rata amount of dues held in escrow. If the arbitration panel determines the legislative matters at issue are inappropriately funded from mandatory dues, the panel shall order a refund of the pro rata amount of dues to the objecting member(s).

(3) The arbitration panel shall thereafter render a final written report to the objecting member(s) and the board of governors within forty-five (45) days of its constitution.

(4) In the event the arbitration panel orders a refund, The Florida Bar shall provide such refund within thirty (30) days of the date of the arbitration panel's report, together with interest calculated at the legal rate of interest as of the date the written objection was received by The Florida Bar.

II.

A. *The Bar's Procedures.*

As amended, rule 2-9.3 allows the Bar to adopt legislative positions pursuant to the procedures governing legislative activities in the Standing Board Policy 900, *see supra* note 4. If the Bar adopts a legislative position, the rule requires it to publish a notice of adoption in the next issue of The Florida Bar News, which is published twice monthly and mailed to all Bar members. [FN9] The rule also provides a procedure for handling objections to the Bar's legislative positions. Within forty-five days of publication of the notice of adoption, any member of the Bar may "file with the executive director a written objection to a particular position on a legislative issue." Rule 2-9.3(c). If a member fails to object within that time period, he waives his right to object. Once the director receives the objection, he must determine the pro rata amount of the member's dues that is being ***629** used to fund the Bar's political activity and must place that amount in escrow pending determination of the objection's merits. The rule gives the Bar forty-five days either to refund the member's pro rata share [FN10] or to refer the matter to arbitration.

> FN9. We take judicial notice of these facts, thereby granting a motion by the Bar that was carried with the case.

> FN10. The rule does not state whether this refund includes interest. The Bar, however, has indicated throughout this case that its refund procedures do include interest. Presumably, the Bar calculates interest on refunds paid within forty-five days after receipt of the written objection just as it calculates interest on refunds paid pursuant to an arbitration panel's order: "at the legal rate of interest as of the date the written objection was received by The Florida Bar." Rule 2-9.3(e)(4). We discuss the sufficiency of this provision below. *See infra* notes 13-14 & accompanying text.

If the Bar chooses to refer the matter to arbitration, it must prepare a written response to the member's objection, serve a copy of the response on the member, and forward a copy to the arbitration panel. The arbitration panel consists of three individuals, one chosen by the objecting member, another chosen by the Bar, and the third chosen by the first two individuals. The panel decides whether the political activity at issue can constitutionally be funded from compulsory bar dues, and its decision is binding on both the objecting member and the Bar. If the panel orders the Bar to refund the member, then within thirty days, the Bar must refund the member's pro rata share with interest, which is calculated at the legal rate from the date the Bar received the member's written objection. *See supra* note 9; *infra* at 628.

B. *Gibson's Contentions.*

Gibson challenges these procedures on several grounds. His primary contention is that the Supreme Court cases in this area require an advance deduction rather than a refund. He also contends that the Bar's scheme unconstitutionally requires the dissenter to object on an issue-by-issue basis, thus unconstitutionally forcing the dissenter to identify his own position, and that the arbitration panel is impermissibly composed of other Bar members who necessarily have a monetary interest in the dispute. Gibson further claims that even if the refund scheme is permissible, the Bar improperly calculates interest only as of the date the Bar receives the member's written objection. [FN11] After reviewing the Supreme Court's pronouncements in *Chicago Teachers*, we address these contentions in turn.

> FN11. Gibson also requests an award of retroactive damages in the form of a refund for the proportion of his compulsory dues that the Bar has used to fund its political lobbying in the past. Gibson, however, now makes this request for the first time. He made no request for a refund or for monetary damages in his complaint; nor did he present any evidence on this issue at trial or on remand. We, therefore, do not reach this question.

C. *Analysis.*

In ***Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986)**, the Supreme Court considered whether the grievance procedure established by a teachers union to process objections by non-union members concerning the use of their dues was constitutionally sufficient. The union in that case acted as the exclusive collective-bargaining representative of approximately ninety-seven percent of Chicago's public school teachers. Nonmembers received the benefits of union representation without paying dues. In 1982, the union entered into an agreement with the Chicago Board of Education, whereby the Board would deduct "proportionate share payments" from nonmembers' salaries.

The union also established procedures for handling nonmembers' objections about the deductions. Pursuant to these procedures, once the deduction had been made, the nonmember could object within thirty days in writing to the union president. If both the union's executive committee and its executive board decided against the objector, then the union president would select a single arbitrator from a list maintained by the Illinois Board of Education. If the arbitrator ruled in favor of the objector, then the union would give the objector ***630** a rebate and reduce the amount of future deductions for all nonmembers.

When the first paycheck deduction was taken in 1982, several nonmembers objected, contending that the union was using a proportion of their dues for activity unrelated to collective bargaining. The union sent brief responses to the nonmembers, explaining how the proportionate deduction had been calculated and describing the objection procedures. The objecting nonmembers then brought suit in federal court challenging the objection procedures.

The Supreme Court began its evaluation of the procedures with a review of ***Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977)**. As the Court stated, *Abood* stands for the proposition that, although a public employer may constitutionally designate a union to be an exclusive collective bargaining representative and require its nonmember employees to pay a fair share of the costs relating to the union's collective-bargaining, the nonmembers cannot constitutionally be required to support political activity by the union that is unrelated to the union's collective-bargaining duties. ***Chicago Teachers*, 475 U.S. at 301-02, 106 S.Ct. at 1073** (citing ***Abood*, 431 U.S. at 234, 97 S.Ct. at 1799).** Thus, "[t]he objective" of the procedures for handling objections "must be to devise a way of preventing compulsory subsidization of ideological activity by employees who object thereto without restricting the Union's ability to require every employee to contribute to the cost of collective-bargaining activities." *Id.* at 302, **106 S.Ct. at 1074** (quoting ***Abood*, 431 U.S. at 237, 97 S.Ct. at 1800).**

Applying this standard, the Court determined that the union's procedure was defective in three respects. First, the possibility of a rebate did not adequately ensure against the risk that the objectors' funds would be used even temporarily for an improper purpose. *Id.* at 305, **106 S.Ct. at 1075**. Second, the union's advance reduction of nonmembers' dues was inadequate because the union failed to provide information on how the proportionate share had been determined. *Id.* at 306, **106 S.Ct. at 1075**. Third, because the union "entirely controlled" the arbitration procedure "from start to finish," the procedure did not provide for a "reasonably prompt decision by an impartial decisionmaker." *Id.* at 308, 307, **106 S.Ct. at 1076-77, 1076**.

The Court also considered whether a 100% escrow of the nonmembers' dues would eliminate the procedure's defects. The court held that the escrow would eliminate the procedure's first flaw--the risk that nonmembers' contributions would be temporarily used for impermissible purposes. Indeed, the court expressly stated that a 100% escrow was not necessary; an escrow of the proportion at issue would be sufficient. Even a 100% escrow, however, did not eliminate the procedure's second and third defects. *Id.* at 309-10, 106 S.Ct. 1077-78. The Court therefore

held the procedure unconstitutional, concluding as follows:

> We hold today that the constitutional requirements for the Union's collection of agency fees include an adequate 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 310, **106 S.Ct. at 1078**.

We apply the *Chicago Teachers* holding to the present case in order to determine whether, in light of Gibson's challenge, the objection procedures established by the Bar in rule 2-9.3 accomplish the required "objective ... of preventing compulsory subsidization of ideological activity by [Bar members] who object thereto without restricting the [Bar's] ability to require every [member] to contribute to the cost of [permissible] activities." *Id.* at 302, **106 S.Ct. at 1074** (quoting ***Abood*, 431 U.S. at 237, 97 S.Ct. at 1800).** **[FN12]** We consider Gibson's contentions in turn.

> **FN12.** This application of *Chicago Teachers* is consistent with the Supreme Court's recent decision in ***Keller v. State Bar*, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990)**. In *Keller*, members of the California State Bar challenged the Bar's use of mandatory dues to finance political activities. The Supreme Court applied the rule in *Abood* that unions, and by implication bar associations, cannot fund political activities from the mandatory dues of employees or bar members who *object* to such expenditures. *See id.* at ----, **110 S.Ct. at 2233-35**. Of course, as the Court noted in *Keller*, political activities can still be funded from mandatory dues of *non-objecting* employees or bar members. *See id.* The Court pointed to *Chicago Teachers* as the case in which the Court "outlined a minimum set of procedures by which a union ... could meet its requirement under *Abood*," *id.* at ----, **110 S.Ct. at 2237,** that is, by which the union or bar could ensure that objecting members' dues were not used to finance the political activity at issue.
>
> Unlike the Florida Bar in the present case, however, the California Bar provided no procedures for handling bar members' objections to such expenditures. The Court in *Keller* thus addressed the California Bar's broader argument that *Abood* did not apply to its use of compulsory dues to finance political activities because the Bar was a state agency and therefore could use the dues for any purpose within its broad statutory authority. *See* ***id.* 496 U.S. at ----, 110 S.Ct. at 2228**. The Supreme Court rejected this argument and held that the Bar was subject "to the same constitutional rule [under *Abood*] with respect to the use of compulsory dues as are labor unions representing public and private employees." *Id.* at ----, **110 S.Ct. at 2235**. The Court then suggested what kinds of expenditures, at "the extreme end[ ] of the spectrum," *id.*, would implicate that rule and remanded the case for further proceedings consistent with the opinion.
>
> The Court in *Keller* thus reaffirmed the holdings of *Abood* and *Chicago Teachers* and expressly applied those holdings to state bar associations as well. Because the case before it lacked a developed record regarding possible procedures to satisfy this requirement, however, the Court declined to conduct any analysis of what procedures would satisfy the mandate of *Chicago Teachers* under the circumstances in ***Keller*. *See id.* at ----, 110 S.Ct. at 2237-38**. The present case, in contrast, involves exactly such an issue concerning the Florida Bar's objection procedures. We therefore undertake to analyze those procedures under *Chicago Teachers*--an undertaking that is entirely consistent with the Supreme Court's recent pronouncements in *Keller*.

***631** 1.

[1] Gibson first argues that the Supreme Court cases require the Bar to provide an advance deduction for the proportion of dues that the Bar knows will be used for political activity. In response, the Bar contends that the cases clearly approve an interest-bearing escrow account as an alternative. In addition, the Bar claims that an advance deduction would not be feasible. It argues that when Bar dues are assessed on July 1, the Bar does not yet know what political activity it will undertake in the coming year. Moreover, it does not spend a fixed amount on political activity from year to year.

We reject Gibson's reading of the caselaw on this point. In ***Ellis v. Railway Clerks*, 466 U.S. 435, 443-44, 104 S.Ct. 1883, 1889-90, 80 L.Ed.2d 428 (1984)**, the Supreme Court invalidated a "pure rebate approach" but noted the existence of "readily available alternatives, such as advance reduction of dues *and/or interest-bearing escrow accounts.*" (Emphasis added.) The Court restated this proposition in ***Chicago Teachers*, 475 U.S. at 303-04, 106 S.Ct. at 1074** (quoting *Ellis*), and stated that "an escrow for the amounts reasonably in dispute," along with an adequate explanation of the fee and an opportunity to challenge the amount, would satisfy the constitutional requirements for an objection procedure, *id.* at 310, **106 S.Ct. at 1078**. These statements provide indisputable authority that an interest-bearing escrow account (along with an otherwise satisfactory procedure) is sufficient. Gibson would have us believe that these statements are merely dicta and thus not controlling. He suggests that every objection procedure approved by the Supreme Court has involved an advance deduction. In light of the Court's express approval of a proportionate escrow in *Chicago Teachers*, we reject Gibson's argument.

[2] Gibson also challenges rule 2-9.3(e)(4), which provides for the calculation of interest on refunds after arbitration only "as of the date the written objection was received." **[FN13]** We hold that this formula for ***632** calculating interest is not sufficient to "avoid the risk that [the objecting members'] funds will be used, even temporarily, to finance ideological activities," ***Abood*, 431 U.S. at 244, 97 S.Ct. at 1804** (Stevens, J., concurring). By calculating interest only "as of the date the written objection was received," the Bar can use the interest generated by the members' dues from the time of payment in July until the time of the objection. As the Bar has argued, it may not begin its lobbying until later in the year. Even if a member objects promptly after receiving notice of the Bar's position in the Florida Bar News, the Bar can still make use of the interest generated from the member's proportionate share until that time. We therefore find Gibson's attack on this point to be persuasive. **[FN14]** In order to protect against the danger that the objecting members' funds will be used in this way to finance the Bar's political activity, the Bar would have to calculate interest as of the date that payment of the members' bar dues was received.

> **FN13.** As we note above, *supra* note 10, rule 2-9.3 does not specify whether refunds issued without arbitration (within forty-five days after the Bar receives a written objection, pursuant to section (c)(2)) include interest. At oral argument, the Bar asserted that its refund procedures included interest payments. Based on this representation, we assume that refunds pursuant to section (c)(2) include interest, which is calculated in the same fashion as interest on refunds pursuant to section (e)(4).

> **FN14.** Our holding applies as well to the calculation of interest on refunds issued pursuant to section (c)(2).

2.

[3] Gibson next contends that the Bar's procedures impermissibly require dissenting members to object on an issue-by-issue basis, thus forcing them to identify their own political positions. The Bar responds that members need only make a generalized objection that a given issue is not closely enough related to the Bar's purposes to justify an expenditure of compulsory dues.

The Bar claims that such an objection does not impermissibly require objectors to disclose their own position regarding the issue. We agree.

As the Supreme Court has stated, the dissenter "has the burden of raising an objection." ***Chicago Teachers*, 475 U.S. at 306, 106 S.Ct. at 1075** (citing ***Abood*, 431 U.S. at 239-40 & n. 40, 97 S.Ct. at 1801-02 & n. 40).** This burden "is simply the obligation to make his objection known." *Id.* at 306 n. 16, **106 S.Ct. at 1075 n. 16**. The affirmative objection requirement here is within the scope of this obligation. It merely requires the objector to inform the Bar that he objects to the Bar's use of compulsory dues to support a given legislative policy. Beyond that, the objector need not provide any further information concerning the motivation for his objection or his own position concerning the legislative policy at issue. We therefore reject Gibson's challenge on this point.

3.

[4] Finally, Gibson challenges the composition of the arbitration panel under rule 2-9.3. He claims that the panel is impermissibly composed of Bar members, who necessarily have an interest in the arbitration's outcome. The Bar responds that an arbitrator's mere membership in the Bar is insufficient to taint the arbitration proceeding. We agree with the Bar.

In *Chicago Teachers* the Court held that the arbitration procedure was objectionable because it was "from start to finish ... entirely controlled by the **union." 475 U.S. at 308, 106 S.Ct. at 1076-77**. Under the procedures in that case, the union itself selected a single arbitrator. The procedures here are clearly distinguishable. Rule 2-9.3 provides for a tripartite arbitration panel, and although the Bar picks one panel member, the objector picks another, and the third is chosen by the first two members of the panel. Thus, the Bar has nowhere near the degree of control over the arbitration process that the union had in *Chicago Teachers.* Given the nature of arbitration panels in this case--composed of arbitrators representing the competing parties' interests--whatever interest the arbitrators might have in the outcome as members of the Bar has no significance whatsoever. We therefore reject Gibson's challenge on this basis as well.

III.

For the foregoing reasons, we hold that the Bar's procedures for handling objections ***633** to its political lobbying are sufficient except for the formula for calculating interest on refund payments. The district court's decision is therefore AFFIRMED in part and REVERSED in part.

IT IS SO ORDERED.

CLARK, Circuit Judge, dissenting:

I dissent. I agree with appellant Gibson. His position is stated by the majority (at 629): "[Gibson's] primary contention is that the Supreme Court cases in this area require an advance deduction rather than a refund." In affirming the district court on this point, the majority fails to follow the precedent of *Gibson I* **[FN1]**, which held:

> **FN1. *Gibson v. The Florida Bar*, 798 F.2d 1564 (11th Cir.1986)**.

> The *Abood* court concluded that a union may not spend compelled fees for the advancement of political views or ideological causes that are not incidental to the union's role as bargaining unit.... Stated another way, "*Abood* held that employees may not be compelled to support a union's ideological activities unrelated to collective bargaining. The basis for the holding that associational rights were infringed was the compulsory collection of dues from dissenting employees."
>
> * * * * * *
>
> The similarities between union dues and integrated bar dues are so substantial that we may safely transpose the *Abood* holding to the facts presented in this appeal as follows: the Florida Bar may use compulsory Bar dues to finance its Legislative

> Program *only* to the extent that it assumes a political or ideological position on matters *that are germane to the Bar's stated purposes.* (Emphasis added.)
>
> * * * * * *
>
> The proper focus in this action should be upon the actual results of the Bar's Legislative Program, *i.e.*, whether past positions of the Bar were sufficiently related to its purpose of improving the administration of justice. On this issue, *the Bar bears the burden of proving that its expenditures were constitutionally justified.* (Emphasis added.)

***Gibson I*, 798 F.2d at 1567-69** (citations omitted). There is no dispute about the fact that the Bar has never established that "its expenditures were constitutionally justified."

The majority simply misreads *Chicago Teachers Union v. Hudson.* **[FN2]** The panel says, "The union also established procedures for handling nonmembers' objections about the deductions." (at 629). The panel compares the procedure there to the procedure in the Florida Bar rule. The panel overlooks that the nonmembers in *Chicago Teachers* were only paying 95% of the union dues as a consequence of the union making advance deductions for activities not germane to pure union objectives. As described in ***Chicago Teachers*, 475 U.S. at 295, 106 S.Ct. at 1070,** the union identified expenditures unrelated to collective bargaining and contract administration for the past year and found them to be approximately 5%.

> **FN2. 475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986)**.

The union in *Chicago Teachers* did exactly what appellant Gibson is asking our court to require the Bar to do in this case. It deducted in advance that portion of the dues allocable to those expenditures it acknowledged to be unrelated to collective bargaining and contract administration. The union then went on to establish a procedure where nonmembers could object to expenditures by the union of payments from any part of the 95% used toward legislative and political activities which were nevertheless still anathema to those nonmembers. The panel adopts this latter procedure without requiring the Bar to deduct in advance that part of Gibson's dues which can be approximated from experience to be allocable to non-administration of justice lobbying activities. **[FN3]**

> **FN3.** The majority accepts the Bar's argument "that advance deductions would not be feasible" because the Bar claims it "does not yet know what political activity it will undertake in the coming year." This is rebutted in the Court's recent opinion in ***Keller v. State Bar of California*, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990)**. The Court specifically states it is in agreement with Justice Kaufman's dissent in the California Supreme Court case where he said:
> Since the bar already is statutorily required to submit detailed budgets to the Legislature prior to obtaining approval for setting members' annual dues (**Bus. and Prof.Code ' 6140.1)**, the argument that the constitutionally mandated procedures would create 'an extraordinary burden' for the bar is unpersuasive. 'While such a procedure would likely result in some additional administrative burden to the bar and perhaps prove at times to be somewhat inconvenient, such additional burden or inconvenience is hardly sufficient to justify contravention of the constitutional mandate. It is noteworthy that unions representing government employees have developed, *and have operated successfully within the parameters of Abood procedures for over a decade.*' [**47 Cal.3d 1152, 255 Cal.Rptr. 542, 568] 767 P.2d 1020, 1046**. (Emphasis added.)

***634** Such "non-administration of justice" lobbying was identified in note 1 of *Gibson I* as positions that had been taken by the Florida Bar in the past: "(1) opposed tort reform; (2) opposed limitation of damages in medical malpractice actions; (3) opposed changes in

the state sales tax; (4) opposed changes in the state's taxation and venue powers; and (5) advocated regulation of child care centers." *Id.* at 1565 n. 1.

The panel in note 4 of *Gibson I* identified as acceptable areas for Bar lobbying to be: "(1) questions concerning the regulation of attorneys; (2) budget appropriations for the judiciary and legal aid; (3) proposed changes in litigation procedures; (4) regulation of attorneys' client trust accounts; and (5) law school and Bar admission standards." *Id.* at 1569 n. 4. It is the law of the case that the Bar has in the past expended members' dues for lobbying activities unrelated to the administration of justice. Gibson won his case before the first panel and loses here by not being afforded a remedy. He is entitled to the same relief allowed to the plaintiffs in *Abood, Chicago Teachers,* and *Ellis.*

In *Chicago Teachers,* the Supreme Court opens with this quotation:

> In ***Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977)**, "we found no constitutional barrier to an agency shop agreement between a municipality and a teacher's union insofar as the agreement required every employee in the unit to pay a service fee to defray the costs of collective bargaining, contract administration, and grievance adjustment. The union, however, could not, consistently with the Constitution, *collect from dissenting employees any sums for the support of ideological causes not germane to its duties* as collective-bargaining agent." ***Ellis v. Railway Clerks*, 466 U.S. 435, 447, 104 S.Ct. 1883, 1892, 80 L.Ed.2d 428 (1984)**. (Emphasis added.)

475 U.S. at 294, 106 S.Ct. at 1069, 89 L.Ed.2d at 239. By permitting the Florida Bar to *collect* dues from the dissenter Gibson and then requiring him to notify the Bar of those individual lobbying activities to which he objects, **[FN4]** the majority pays little or no attention to Supreme Court authority and our prior panel opinion.

FN4. The majority rejects Gibson's First Amendment claim that he should not be required to identify on an issue-by-issue basis those political positions to which he objects. Again the majority ignores *Abood* which holds:

> But in holding that as a prerequisite to any relief each appellant must indicate to the Union the *specific* expenditures to which he objects, the Court of Appeals ignored the clear holding of [***Railway Clerks v.*] *Allen*** **[373 U.S. 113, 83 S.Ct. 1158, 10 L.Ed.2d 235 (1963)**]. As in *Allen,* the employees here indicated in their pleadings that they opposed ideological expenditures of *any* sort that are unrelated to collective bargaining. To require greater specificity would confront an individual employee with the dilemma of relinquishing either his right to withhold his support of ideological causes to which he objects or his freedom to maintain his own beliefs without public disclosure. It would also place on each employee the considerable burden of monitoring all of the numerous and shifting expenditures made by the Union that are unrelated to its duties as exclusive bargaining representative.
>
> **97 S.Ct. at 1802-03** (emphasis in original; footnote omitted).

The majority also misapplies ***Ellis v. Railway Clerks*, 466 U.S. 435, 104 S.Ct. 1883, 80 L.Ed.2d 428 (1984)**. The majority quotes the Supreme Court as invalidating a "pure rebate approach" but noted the existence of "readily available alternatives, such as advance reduction of dues *and/or interest-*****635*** *bearing escrow accounts.*" (at 631). But the Court went on to say, "Given the existence of acceptable alternatives, the union cannot be allowed to commit dissenters' funds to improper uses even temporarily." ***Ellis*, 466 U.S. at 444, 104 S.Ct. at 1890, 80 L.Ed.2d at 439**. The Bar plan is a pure rebate plan which places the burden of proving the impropriety of the Bar's expenditure upon the member and uses Gibson's dues until he complains. These features of the Bar's plan have been declared

unconstitutional in several Supreme Court cases.

For the foregoing reasons, I dissent.

FN* See **Rule 34-2(b), Rules of the U.S. Court of Appeals for the Eleventh Circuit**.

FN** Honorable Ruggero J. Aldisert, Senior U.S. Circuit Judge for the Third Circuit Court of Appeals, sitting by designation.

906 F.2d 624, 59 USLW 2073

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Supreme Court of Florida.
THE FLORIDA BAR Re David P. FRANKEL.
No. 76853.

June 13, 1991.

Member of state bar petitioned to enjoin state bar from engaging in certain allegedly impermissible legislative lobbying activities and requested pro rata refund of portion of mandatory dues applicable to impermissible activities. The Supreme Court held that: (1) lobbying positions were beyond scope of permissible bar lobbying activities; (2) dissenting bar member was entitled to enjoin state bar from engaging in impermissible bar lobbying activities; and (3) dissenting bar member was entitled to refund of portion of bar dues spent on contested lobbying activities plus interest at statutory rate.

So ordered.

McDonald, J., concurred specially with opinion.

Barkett, J., concurred specially with opinion in which Shaw, C.J., and Kogan, J., concurred.

West Headnotes

[1] Attorney and Client 31
45k31 Most Cited Cases
State bar's lobbying positions involving expansion of women, infants and children program, extension of Medicaid coverage for pregnant women, full immunization of children, establishing children's service councils, family life and sex education/teen pregnancy prevention, increasing aid to families with dependent children, enhanced child-care funding and standards, and creation of children's needs consensus estimating conference were beyond scope of permissible bar lobbying activity; lawyers were not especially suited by their training and experience to evaluate and explain issues. U.S.C.A. Const.Amends. 1, 14; West's F.S.A. Bar Rule 2-9.3.
Dissenting bar member was entitled to enjoin state bar from lobbying on positions involving children's issues

[2] Attorney and Client 31
45k31 Most Cited Cases
State bar's objection procedure with respect to lobbying activities, which required objections by members on issue by issue basis, did not force dissenters to reveal their own beliefs and political positions in violation of United States Supreme Court *Abood* opinion; dissenters were required only to object on basis that bar's announced lobbying position was outside scope of its permissible lobbying activities and were not required to reveal their own ideological positions.

[3] Attorney and Client 31
45k31 Most Cited Cases
State bar's objection procedure with respect to lobbying activities was not overly burdensome on dissenting bar members, where board of governors was required to publish its lobbying positions in issue of State Bar News immediately following meeting at which it adopted those positions and bar members were required only to read lobbying positions and submit written objection if they believed that positions were outside guidelines of state Supreme Court *Schwarz* opinion. West's F.S.A. Bar Rules 2-9.3, 2- 9.3(b).

[4] Attorney and Client 31
45k31 Most Cited Cases
Dissenting member of state bar was entitled to refund of his bar dues amounting to proportionate share of amount spent on impermissible lobbying activities plus interest at statutory rate. West's F.S.A. Bar Rules 2-9.3, 2- 9.3(b).

[5] Attorney and Client 31
45k31 Most Cited Cases
Dissenting state bar member was not entitled to injunction pendente lite against state bar to prevent its continued lobbying on children's issues which dissenting bar member contested.

[6] Attorney and Client 31
45k31 Most Cited Cases

which neither fell under five areas which clearly justified bar lobbying activities nor satisfied three additional criteria by which to determine permissible lobbying activities.

[7] Attorney and Client 31
45k31 Most Cited Cases
If lobbying position of state bar does not fall within guidelines set forth in *Schwarz*, position is outside ambit of permissible bar lobbying activities, and thus, dissenting bar member may enjoin bar from lobbying on that position.

***1295** David P. Frankel, Washington, D.C., and Joseph W. Little, Gainesville, for petitioners.

James Fox Miller, President, Hollywood, Benjamin H. Hill, III, President-elect, Tampa, William F. Blews, Chairman, Legislation Committee of The Florida Bar, St. Petersburg, John F. Harkness, Jr., Executive Director and Paul F. Hill, General Counsel, Tallahassee, and Barry S. Richard of Roberts, Baggett, LaFace & Richard, Tallahassee, for respondent, The Florida Bar.

PER CURIAM.

David P. Frankel (Frankel), a member in good standing of The Florida Bar, petitions this Court to enjoin The Florida Bar, both pendente lite and thereafter, from engaging in certain allegedly impermissible legislative lobbying positions taken by the board of governors. In addition, Frankel requests a pro rata refund of that portion of his mandatory dues applicable to the impermissible lobbying positions. As a creation of this Court, The Florida Bar is under our ***1296** supervision and subject to our regulation. [FN1] We grant Frankel's requested injunction, although not pendente lite, and his requested dues refund.

FN1. Any member of The Florida Bar in good standing may question the propriety of any legislative lobbying position taken by the board of governors by filing a timely petition with this Court. *The Florida Bar re Schwarz*, 552 So.2d 1094 (Fla.1989), *cert. denied*, 498 U.S. 951, 111 S.Ct. 371, 112 L.Ed.2d 333 (1990).

[1] The board of governors adopted the following lobbying positions and published them in The Florida Bar News:

6. Supports the recommendations of The Florida Bar Commission for Children relating to:
a. Expansion of the women, infants and children (WIC) program.
b. Extension of Medicaid coverage for pregnant women.
c. Full immunization of children.
d. Establishing children's services councils.
e. Family life and sex education/teen pregnancy prevention.
f. Increasing Aid to Families with Dependent Children.
g. Enhanced child-care funding and standards.
h. Creation of children's needs consensus estimating conference.
i. Establish family court divisions in each circuit.
j. Termination of parental rights/revision of Chapter 39, F.S.; cocaine-exposed infants.
k. Guardians Ad Litem-dissolution and custody.
l. Establish foster care review boards.
m. Eliminate select public disclosure exemptions in child abuse cases.
n. Development of juvenile offender rehabilitation and treatment programs.

The Florida Bar News, Oct. 15, 1990, at 4, col. 2. In his petition, Frankel challenges lobbying positions 6.a. through 6 h. as being beyond the scope of permissible bar lobbying activities. He makes no claim as to the propriety of the other positions.

To determine the propriety of the contested bar lobbying positions, we turn to *The Florida Bar re Schwarz*, 552 So.2d 1094 (Fla.1989), *cert. denied*, 498 U.S. 951, 111 S.Ct. 371, 112 L.Ed.2d 333 (1990). There, we adopted the Judicial Council of Florida's [FN2] recommendation that the following areas clearly justify bar lobbying activities:

FN2. In *The Florida Bar re Schwarz*, 526 So.2d 56 (Fla.1988), our first *Schwarz* decision, we declined to decide whether any existing specific lobbying activity of The Florida Bar was improper. Rather, we referred the matter to the Judicial Council of Florida for its comments and recommendations. We adopted the council's recommendations as guidelines for determining permissible bar lobbying activity in our second *Schwarz* decision. ***Schwarz*, 552 So.2d at 1095**.

(1) Questions concerning the regulation and discipline of attorneys;
(2) matters relating to the improvement of the functioning of the courts, judicial effficacy and efficiency;
(3) increasing the availability of legal services to society;
(4) regulation of attorneys' client trust accounts; and
(5) the education, ethics, competence, integrity and regulation as a body, of the legal profession.

552 So.2d at 1095. We also adopted the council's recommendation that the following additional criteria be used to determine permissible bar lobbying activities when the legislation falls outside of the above specifically identified areas:

(1) That the issue be recognized as being of great public interest;
(2) that lawyers are especially suited by their training and experience to evaluate and explain the issue; and
(3) the subject matter affects the rights of those likely to come into contact with the judicial system.

Id.

The Florida Bar carries the burden of proof in establishing the propriety of its lobbying activities. *Schwarz; **Gibson v. The Florida Bar*, 798 F.2d 1564 (11th Cir.1986)**; *see* R. Regulating Fla. Bar 2-9.3. ***1297** We fail to see how the contested lobbying positions fall within the five areas which clearly justify bar lobbying activities. The bar contends that its involvement in children's matters clearly justifies advocacy of the contested positions due to their relationship to the ethics and integrity of the legal profession. Any such interpretation of the fifth guideline, however, is strained at best, and we reject the bar's analysis. Thus, we must examine the propriety of the contested lobbying positions under the three additional criteria set forth in *Schwarz.*

Before analyzing the propriety of the contested bar lobbying positions under the three additional criteria of *Schwarz*, we must first address Frankel's claim that, in light of ***Keller v. State Bar of California*, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990)**, the additional criteria violate the first and fourteenth amendment rights of dissenting bar members to be free from compelled speech and association. Because we find the additional criteria set forth in *Schwarz* to be consistent with the pronouncement of the Court in *Keller*, we reject Frankel's argument.

Relying on ***Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977)**, and ***Ellis v. Brotherhood of Railway, Airline, & Steamship Clerks*, 466 U.S. 435, 104 S.Ct. 1883, 80 L.Ed.2d 428 (1984)**, *Keller* held that a compulsory state bar association may constitutionally fund with mandatory dues only those activities "germane" to its purpose, i.e., activities necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services. This Court in *Schwarz* adopted guidelines to define those activities "germane" to the purpose of The Florida Bar, but, in contrast to *Keller*, delineated that purpose as to improve the administration of justice and advance the science of jurisprudence. *See **In re Amendment to Integration Rule*, 439 So.2d 213 (Fla.1983)**. We recognize that *Keller* reversed the California Supreme Court's decision in ***Keller v. State Bar of California*, 47 Cal.3d 1152, 767 P.2d 1020, 255 Cal.Rptr. 542 (1989)**, wherein it held that the state bar association could permissibly lobby on activities "germane" to the identical purpose defined in *Schwarz.* Upon first glance that decision

may appear to have an impact on *Schwarz.* We find the California Supreme Court's decision, however, distinguishable from *Schwarz.*

To begin with, the California Supreme Court analogized its state bar association to a governmental agency and concluded that the first amendment restraints placed on the expenditure of compulsory union dues, as set forth in *Abood,* were inapplicable. In *Keller* the United States Supreme Court rejected this analogy and based its decision in part upon *Abood.* This Court likewise has adopted *Abood* 's rationale and applied it in determining permissible lobbying activities of The Florida Bar. *See In re Amendment to Integration Rule; Schwarz.* We adopted the guidelines in *Schwarz,* to define the bar's purpose of improving the administration of justice and advancing the science of jurisprudence, in keeping with *Abood.*

In addition, we do not find a measurable difference between allowing bar lobbying activities for the purpose of regulating the legal profession or improving the quality of legal services and allowing lobbying activities for the purpose of improving the administration of justice or advancing the science of jurisprudence as defined in *Schwarz.* This conclusion is consistent with the United States Supreme Court. ***Keller*, 110 S.Ct. at 2236** ("Simply putting this language alongside our previous discussion of the extent to which the activities of the State Bar may be financed from compulsory dues might suggest that there is little difference between the two."). *Keller* only found fault with the California Supreme Court's broad definition of the latter terms as evidenced by the activities which it found to be permissible lobbying activities, essentially all proposed legislation. On the other hand, in *Schwarz* we expressly stated that our definition of those purposes was not as broad as that given by the California Supreme Court and adopted guidelines to limit bar lobbying activities accordingly. ***1298*Schwarz*, 552 So.2d at 1096**. Thus, after a careful analysis of *Keller,* we conclude that it does not require us to revisit the adoption of the additional criteria in *Schwarz,* as they are consistent with *Keller* 's holding.

We now return to our analysis of the propriety of the contested lobbying positions under the three additional criteria of *Schwarz.* With regard to the first criterion, neither party disputes that children's issues are of great public interest, and we agree. Whether the contested lobbying positions satisfy the second criterion, i.e., that lawyers are especially suited by their training and experience to evaluate and explain the issue, is more problematical. The bar argues that its involvement in children's issues-- evidenced by a special issue of The Florida Bar Journal solely devoted to children's topics; The Florida Bar Commission for Children (composed of lawyers, physicians, community leaders, legislators, and business executives) which for two years examined children's issues, societal problems, and the role of lawyers in contributing to the solution of these problems and recommended advocacy of the legislative positions at issue in the instant case; and the bar's moral obligation to Florida's children--verifies the suitability by training and experience within the legal profession to evaluate and explain the contested lobbying positions.

Although we commend The Florida Bar for its involvement with children's issues and find the positions certainly laudable, the bar has failed to prove that advocacy of the contested lobbying positions satisfy the second criterion. The merit of the position or the unanimity in its support is not the standard by which to determine the propriety of bar lobbying activities on that position. **[FN3]** The bar has no specialized expertise regarding the subjects of expansion of the women, infants, and children program; extension of Medicaid coverage for pregnant women; full immunization for children; establishing children's services councils; family life and sex education/teen pregnancy; increasing aid to families with dependent children; enhanced child-care funding and standards; or creation of a children's needs consensus estimating conference. Nor has the bar obtained such expertise through publication of a special Journal issue or by establishing committees to study the area. Because the

bar's lobbying positions 6.a. through 6 h. do not fall within the *Schwarz* guidelines, we find them to be outside the scope of permissible bar lobbying activities. [FN4]

> FN3. The Florida Bar, in its response to Frankel's petition, points out that only nine of 45,156 bar members objected to the specific lobbying positions at issue in the case at bar.
>
> FN4. Because The Florida Bar's lobbying positions fail to satisfy the second additional criterion of *Schwarz*, we need not address whether its positions satisfy the third additional criterion.

[2] We next address Frankel's claim that The Florida Bar must recognize its members' general objections to the use of their compulsory dues to fund legislative lobbying activities. Frankel claims that the bar's objection procedure, which requires objections on an issue-by-issue basis, forces dissenters to reveal their own beliefs and political positions in violation of *Abood*. We disagree.

Initially, we note that Frankel's general objection, which he claims is sufficient under *Abood*, merely states that "I hereby demand that no portion of my compulsory dues be used directly or indirectly to fund or support any legislative lobbying or amicus filings by or on behalf of The Florida Bar." Such an objection is insufficient under *Abood* because it is directed against all lobbying activities instead of only those activities which fall beyond the scope of permissible bar lobbying activities.

Moreover, the bar's objection procedure has been upheld in *Gibson v. The Florida Bar*, 906 F.2d 624, 632 (11th Cir.1990), *cert. granted*, 499 U.S. 918, 111 S.Ct. 1305, 113 L.Ed.2d 240 (1991), which addressed this issue and stated:

> As the Supreme Court has stated, the dissenter "has the burden of raising an objection." *Chicago Teachers [Union v. Hudson]*, 475 U.S. [292] at 306, 106 S.Ct. [1066] at 1075 [89 L.Ed.2d 232] [(1986)] (citing *Abood*, 431 U.S. at 239-40 & n. 40, 97 S.Ct. at 1801-02 & n. 40). This burden "***1299** is simply the obligation to make his objection known." *Id.* at 306 n. 16, 106 S.Ct. at 1075 n. 16. The affirmative objection requirement here is within the scope of this obligation. It merely requires the objector to inform the Bar that he objects to the Bar's use of compulsory dues to support a given legislative policy. Beyond that, the objector need not provide any further information concerning the motivation for his objection or his own position concerning the legislative policy at issue.

We agree with the rationale of *Gibson*. Dissenters only need to object on the basis that the bar's announced lobbying position is outside the scope of its permissible lobbying activities. The procedure does not require them to reveal their own ideological positions.

[3] Nor is The Florida Bar's objection procedure overly burdensome on the dissenting bar member, another concern expressed in *Abood*. The board of governors is required to publish its lobbying positions in the issue of The Florida Bar News immediately following the meeting at which it adopts those positions. R. Regulating Fla. Bar 2-9.3(b). Bar members need only read the lobbying positions adopted by the board of governors in The Florida Bar News and, if they believe that the positions are outside the *Schwarz* guidelines, submit a written objection.

[4][5][6] Lastly, there remains the question of determining the appropriate remedy under the circumstances of this case. Certainly, Frankel is entitled to a refund of his bar dues amounting to a proportionate share of the amount spent on the contested lobbying activities plus interest at the statutory rate. *See* *Gibson*, 906 F.2d 624; R. Regulating Fla. Bar 2- 9.3. However, Frankel additionally petitions this Court to enjoin the bar, both pendente lite and thereafter, from lobbying on these issues. We grant the injunction but not pendente lite. [FN5]

> **FN5.** Pendente lite is defined as "[p]ending the lawsuit; during the actual progress of a suit; during litigation. Matters 'pendente lite' are contingent on the outcome of litigation." *Blacks' Law Dictionary* 1134 (6th ed. 1990). Because The Florida Bar indicated its intent to continue to lobby on the children's issues Frankel contested, Frankel seeks to enjoin the bar from lobbying on those positions during the pendency of these proceedings. We find that Frankel has failed to make the requisite showing to obtain the injunction pendente lite.

This Court has yet to address whether a dissenting bar member may enjoin the bar from lobbying on positions outside the guidelines set forth in *Schwarz.* And the Supreme Court expressly refused to consider whether a dissenting bar member could enjoin the bar from lobbying on activities not germane to the bar's purpose in *Keller*. **[FN6]** *Keller*, however, analogized a mandatory state bar association to a compulsory union in reaching its decision. Within the context of a union-shop agreement, the Court previously has held that an injunction prohibiting a union from expending mandatory dues for political purposes would be inappropriate because nondissenting union members have an interest in stating their views "without being silenced by the dissenters." ***International Association of Machinists v. Street*, 367 U.S. 740, 773, 81 S.Ct. 1784, 1802, 6 L.Ed.2d 1141 (1961)**; *see Abood.*

> **FN6.** ***Keller v. State Bar of California*, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990)**, refused to consider the issue of whether injunctive relief would be an appropriate remedy because the California Supreme Court had not addressed the issue.

We find that the concern expressed in *Street* is inapplicable with regard to The Florida Bar. An injunction prohibiting the bar from lobbying on a particular issue would not silence the voices of nondissenting members. The bar has many volunteer sections and political action committees through which bar members may assert their views. *See In re Amendment to Integration Rule; Schwarz,* (McDonald, J. dissenting). Indeed, these volunteer sections and committees are the appropriate vehicles for lobbying on issues that do not fall within the *Schwarz* guidelines.

[7] Furthermore, The Florida Bar is a creation of this Court and subject to its supervision. In *Schwarz* we delineated guidelines by which to determine permissible ***1300** bar lobbying activities. If a lobbying position does not fall within the guidelines set forth in *Schwarz,* it is outside the ambit of permissible bar lobbying activities. Thus, a petitioner may enjoin the bar from lobbying on that position. Under the circumstances of this case, where lobbying positions 6.a. through 6 h. neither fall under the five areas which clearly justify bar lobbying activities nor satisfy the three additional criteria by which to determine permissible lobbying activities, we enjoin The Florida Bar from lobbying on those positions henceforth from the date this opinion is final.

We therefore order that The Florida Bar refund Frankel a proportionate share of his bar dues applicable to the impermissible lobbying activities plus interest at the statutory rate from the date he paid those dues and enjoin the bar from the above-mentioned lobbying activities.

It is so ordered.

SHAW, C.J., and OVERTON, GRIMES, **KOGAN** and **HARDING**, JJ., concur.

McDONALD, J., concurs specially with an opinion.

BARKETT, J., concurs specially with an opinion, in which **SHAW**, C.J., and **KOGAN**, J., concur.

McDONALD, Justice, specially concurring.

I concur in the result reached by the majority opinion. I disagree only in the delineation of the scope of permissible lobbying activities of The Florida Bar. As

I stated in my dissent in *The* ***Florida Bar re Schwarz*****, 552 So.2d 1094, 1098 (Fla.1989)**, *cert. denied*, **498 U.S. 951, 111 S.Ct. 371, 112 L.Ed.2d 333 (1990)**, lobbying activities of The Florida Bar cannot extend beyond the following five designated areas:

(1) Questions concerning the regulation and discipline of attorneys;
(2) matters relating to the improvement of the functioning of the courts, judicial efficacy and efficiency;
(3) increasing the availability of legal services to society;
(4) regulation of attorneys' client trust accounts; and
(5) the education, ethics, competence, integrity and regulation as a body, of the legal profession.

Id. at 1095. Contrary to the majority opinion, I believe the decision of the United States Supreme Court in ***Keller v. State Bar of California*****, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990)**, not only buttresses, but indeed mandates, such a conclusion.

In all other aspects, I concur with the majority opinion.

BARKETT, Justice, specially concurring.

I am compelled to agree that The Florida Bar's lobbying efforts in this instance will not fit within the criteria of *The* ***Florida Bar re Schwarz*****, 552 So.2d 1094 (Fla.1989)**, *cert. denied*, **498 U.S. 951, 111 S.Ct. 371, 112 L.Ed.2d 333 (1990)**, though I confess, like Cinderella's sisters, I have tried mightily to force the foot into the glass slipper. I am hopeful that the voluntary bar associations and the various sections of the Bar will take up the slack. Children, the poor, and especially poor children, have no constituency. It is only through the efforts of those who are already empowered that they can hope to compete with the interests able to represent themselves.

I would also encourage the Bar to reinitiate its lobbying efforts if it can more narrowly tailor those efforts within the *Schwarz* guidelines.

SHAW, C.J., and **KOGAN**, J., concur.

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Supreme Court of Florida

FRIDAY, MAY 1, 1992

THE FLORIDA BAR Re: AUTHORITY OF A VOLUNTARY SECTION TO ENGAGE IN LEGISLATIVE ACTION	*	CASE NO. 79,321

The Public Interest Law Section of The Florida Bar's Petition to Clarifiy Authority of a Voluntary Section of The Flroida Bar to Engage in Legislative Action filed in the above cause is hereby denied.

SHAW, C.J., OVERTON, McDONALD, BARKETT, GRIMES, KOGAN and HARDING, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

By: _____
Chief Deputy

TC
cc: Allan H. Terl, Esquire
Stephen F. Hanlon, Esquire
Hon. John F. Harkness, Jr.
Barry Richard, Esquire
Chesterfield Smith, Esquire
John W. Robinson, IV, Esquire
Benjamin Hill, Esquire
John Ratliff, Esquire
Edward F. Koren, Esquire

666 So.2d 142 (Table)
(Cite as: 666 So.2d 142 (Table))

C(The decision of the Supreme Court of Florida is referenced in the Southern Reporter in a table captioned 'Florida Decisions Without Published Opinions.')

Supreme Court of Florida.
Harvey M. Alper
v.
The Florida Bar
NO. 86,873

Nov 29, 1995

Disposition: Injunction den.

Fla. 1995.
Alper v. The Florida Bar
666 So.2d 142 (Table)

END OF DOCUMENT

771 So.2d 523, 25 Fla. L. Weekly S907
(Cite as: 771 So.2d 523)

C

Supreme Court of Florida.
Harvey M. ALPER, et al., Petitioners,
v.
THE FLORIDA BAR, et al., Respondents.
No. SC00-2004.

Oct. 19, 2000.

Members of State Bar petitioned to enjoin State Bar from using Bar's money, resources, and reputation in a campaign that advocated voter approval of two ballot measures concerning a merit selection and retention system for county and circuit judges. The Supreme Court held that Bar's activities were permissible.

Petition denied.

Lewis, J., concurred and filed opinion in which Pariente, J., concurred.

Shaw and Anstead, JJ., concurred in result only.

West Headnotes

[1] Attorney and Client 45 ⚿31

45 Attorney and Client
45I The Office of Attorney
45I(B) Privileges, Disabilities, and Liabilities
45k31 k. Bar Associations. Most Cited Cases
State Bar could use Bar's money, resources, and reputation in a campaign that advocated voter approval of two ballot measures concerning a merit selection and retention system for county and circuit judges, despite objection of due-paying Bar members, where Bar's position and activity was related to improvement of functioning of courts, judicial efficacy, and efficiency, and also dealt with issue of great public interest, as to which lawyers were specially trained to evaluate and explain how that issue could affect rights of those likely to come into contact with judicial system.

[2] Attorney and Client 45 ⚿31

45 Attorney and Client
45I The Office of Attorney
45I(B) Privileges, Disabilities, and Liabilities
45k31 k. Bar Associations. Most Cited Cases

Constitutional Law 92 ⚿4273(1)

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)12 Trade or Business
92k4266 Particular Subjects and Regulations
92k4273 Attorneys
92k4273(1) k. In General. Most Cited Cases
(Formerly 92k287.2(5))
State Bar's use of compulsory membership dues to fund activities seeking voter approval of two ballot measures concerning a merit selection and retention system for county and circuit judges did not violate due process rights of Bar members who disagreed with Bar's position, where Bar had procedure, under rules regulating Bar, for allowing dissenting members to seek a refund of relevant percentage of their fees used to fund campaigns with which those members disagreed. U.S.C.A. Const.Amend. 14; West's F.S.A. Const. Art. 1, § 9; West's F.S.A. Bar Rule 2-9.3.
***523** Joseph W. Little, Gainesville, Florida, for Petitioners Joseph W. Little and Harvey M. Alper.

Will Murphy of Murphy's Law Firm, P.A., North Miami Beach, Florida, pro se, Petitioner.

Barry Richard of Greenberg Traurig, P.A., Tallahassee, Florida, for Respondents.

PER CURIAM.

Harvey M. Alper, Joseph W. Little, and Will Murphy ("Petitioners"), as members of The Florida Bar, have filed with this Court a petition seeking to enjoin the Board of Governors of The Florida Bar and its agents and representatives ("Bar") from using the Bar's money, resources, and reputation in a campaign that

771 So.2d 523, 25 Fla. L. Weekly S907
(Cite as: 771 So.2d 523)

advocates voter approval of two measures on the November 2000 ballot concerning the selection and retention of county and circuit judges in Florida. The ballot measures provide voters in each county and each judicial circuit in Florida the option of having judges chosen through the merit selection and retention process. Petitioners allege that this activity of announcing an official position on the ballot issues violates their rights under the First and Fourteenth Amendments of the United States Constitution, as well as under Article I of the Florida Constitution. Petitioners aver that one way in which the Bar is engaged in impermissible conduct in actively endorsing the merit selection and retention proposals is through the Bar's ***524** production and circulation of a uni-fold pamphlet, the front cover of which is emblazoned with the words, "Vote YES for Qualified Judges, Not Politicians."

We have previously denied a petition to enjoin The Florida Bar from engaging in activity very similar to that which is at issue in the instant case. In *Florida Bar re Alper,* No. 84,615 (Fla. Jan. 30, 1995) (unpublished order) petitioners argued that the Bar's use of compulsory membership dues to fund its campaign that sought to place the issue of merit selection and retention before the state's voters violated their rights to freedom of expression and association under the First and Fourteenth Amendments of the United States Constitution. Just as Petitioners do in the instant case, the petitioners in the 1995 *Alper* case relied primarily on this Court's opinions in *Florida Bar re Schwarz,* 552 So.2d 1094 (Fla.1989), and *Florida Bar re Frankel,* 581 So.2d 1294 (Fla.1991), as support for their request for injunctive relief. We found the argument based on those two cases lacking in merit five years ago and do the same today, with a brief explanation.

In *Schwarz* we attempted to more clearly define the boundaries within which the Bar may properly operate to engage in informational and issue-directed campaigns. We considered recommendations and comments provided by the Judicial Council, and specifically adopted the recommendation that the Bar be permitted to engage in those activities "relating to the improvement of the functioning of the courts, judicial efficacy and efficiency." *Schwarz,* 552 So.2d at 1095.[FN1] We also adopted the Judicial Council's recommendation that the Bar be allowed to become actively involved in supporting positions on issues when the following alternative criteria are satisfied:

> FN1. In *Schwarz* we also adopted the Judicial Council's recommendations regarding four other areas in which the Bar could use compulsory membership dues to fund lobbying activities: questions concerning the regulation and discipline of attorneys; increasing the availability of legal services to society; regulation of attorneys' client trust accounts; and the education, ethics, competence, integrity, and regulation as a body, of the legal profession. *See Schwarz,* 552 So.2d at 1095.

> (1) That the issue be recognized as being of great public interest;
>
> (2) that lawyers are especially suited by their training and experience to evaluate and explain the issue; and
>
> (3) the subject matter affects the rights of those likely to come into contact with the judicial system.
>
> *Id.* at 1095.

[1] The Bar argues that its position and activity seeking voter approval of a merit selection and retention system for county and circuit judges meet both the criterion of being "relat[ed] to the improvement of the functioning of the courts, judicial efficacy and efficiency," and also the alternative criteria dealing with an issue of great public interest, as to which lawyers are specially trained to evaluate and explain how that issue can affect the rights of those likely to come into contact with the judicial system. We agree that the Bar's activity is related to the issue regarding the improvement of the court system. We also agree that it falls within the boundaries of the alternative criteria as well. First, the manner in which county and circuit judges are chosen can be an issue of great interest to the citizens of Florida. Second, lawyers have the training and experience to put forth a view on how judicial decision makers should be chosen. Third, the manner of selection for county and circuit judges could certainly affect the rights of the citizens of Florida who appear before those judges regarding matters within the legal system.

We also note that in *Schwarz* we made specific reference to *In re Amendment to Integration Rule of the Florida Bar*, 439 So.2d 213, 214 (Fla.1983). In that case, in the context of considering a petition to amend the Integration Rule of the Bar to ***525** prohibit the Bar's Board of Governors from "engag[ing] in any political activity on behalf of The Florida Bar [or] expend[ing] any money or employ[ing] personnel for such purpose," we recognized that previously the Bar had "actively sought the amendment to the Florida Constitution providing for merit retention of appellate judges not only in the Legislature but with the citizens of the State," and we specifically said that such activity by the Bar was well within the parameters of appropriate activity. *In re Amendment to Integration Rule* provides additional support for the denial of the petition in the instant case, because Petitioners have placed at issue essentially the same activity by the Bar that we have previously found to be appropriate. Moreover, *In re Amendment to Integration Rule* addressed the general issue of whether the Bar's use of compulsory membership dues to support issues that were recognized as being within the Bar's purview nevertheless violated dissenting Bar members' rights to freedom of expression and association. We held that such activity does not violate such rights, because each dissenting Bar member

> "is still free to voice his own views on any subject in any manner he wishes. He can do this even though such views be diametrically opposed to the position taken by the unified bar of his state." *In re Unification of the New Hampshire Bar*, 109 N.H. 260, 266, 248 A.2d 709, 713 (1968). This may take the form of working within The Bar itself or its committees or it may be through external means. But he is never forced to adhere to or proclaim any political view or engage in any personally-repugnant political activity.

In re Amendment to Integration Rule, 439 So.2d at 215.

Petitioners also argue that the Bar's use of compulsory membership dues to fund a campaign seeking support for merit selection and retention of county and circuit judges is contrary to our holding in *Florida Bar re Frankel*, 581 So.2d 1294 (Fla.1991). We disagree. In *Frankel*, we did enjoin the Bar from lobbying on child welfare and family wellness matters, issues that clearly did not fall within the boundaries we had outlined in *Schwarz*. However, because the Bar's activity and efforts in the instant case fall squarely within the *Schwarz* boundaries, we find *Frankel* to be easily distinguishable and petitioners' reliance on it to be misplaced.

In *Frankel* we also looked at the impact of *Keller v. State Bar of California*, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990), on the permissible activities of the Bar. The main import of *Keller* is in its holding that when membership in a state's bar association is compulsory, requiring every lawyer desiring to practice law in that state to become a member of the bar association and pay mandatory fees, the bar association may use those mandatory fees for lobbying efforts only if they are "germane" to the purposes of regulating the legal profession or of improving the quality of the legal profession. *See Keller*, 496 U.S. at 13-14, 110 S.Ct. 2228. *Frankel* determined that there was no appreciable difference between the standard used in *Schwarz* to approve the permissible boundaries within which the Bar could lobby i.e., improving the administration of justice or advancing the science of jurisprudence-and the "germaneness" standard applied in *Keller*. Thus, we conclude that petitioners' secondary argument that the Bar violated the *Keller* standard is also unavailing.

[2] Finally, Petitioners claim that the Bar's use of their compulsory membership dues to fund activities which support issues with which they disagree violates their due process rights. In disposing of this claim we note that decisions rendered by this Court and by others have scrupulously considered the due process ramifications of the Bar's use of compulsory membership fees in issue-directed campaigns with which some Bar members disagree. Those decisions have approved the ***526** Bar's procedure, under Rule 2-9.3 of the Rules Regulating the Florida Bar, for allowing dissenting members to seek a refund of the relevant percentage of their fees used to fund campaigns with which those members disagree, and have found that it comports with the essential tenets of due process in giving fair notice and affording an opportunity to be heard before an impartial decision maker. *See, e.g., Schwarz*, 552 So.2d at 1097-98 (noting with approval that rule 2-9.3 gives notice and an opportunity to be heard to dissenting bar members regarding the Bar's lobbying positions); *Frankel*, 581 So.2d at 1298-99 (noting how rule 2-9.3 comports with due process); *Gibson v. Florida Bar*, 906 F.2d 624 (11th Cir.1990) (holding

that rule 2-9.3 properly considers and protects dissenting bar members' constitutional rights), *cert. dismissed*, 502 U.S. 104, 112 S.Ct. 633, 116 L.Ed.2d 432 (1991).

Therefore, because we hold that the Bar's activities, as alleged in the petition before us, are clearly within the parameters previously approved by this Court, we hereby deny the petition on the basis that it is facially insufficient for the granting of relief.

It is so ordered.

WELLS, C.J., and HARDING, PARIENTE and QUINCE, JJ., concur.
LEWIS, J., concurs with an opinion, in which PARIENTE, J., concurs.
SHAW and ANSTEAD, JJ., concur in result only.LEWIS, J., concurring.
While I agree with the majority's decision that the petition seeking injunctive relief should be denied, I also believe that Petitioners' allegations, that the Bar made false statements in the pamphlet it circulated to encourage voter approval of the ballot measures regarding merit selection and retention for county and circuit judges, should be considered in the proper forum. This Court is not the proper forum for testing, examining, or cross-examining the veracity of statements made by the Bar. The proper forum is one that affords proper examination and cross-examination of witnesses and the development of a complete record, which is beyond the capacity of this Court. Because the Rules Regulating the Florida Bar allow referees to be appointed, essentially, only in Bar disciplinary matters, *see, e.g.*, rule 3-7.6 ("The chief justice shall have the power to appoint referees to try *disciplinary* cases." (emphasis added)), it is incumbent upon this Court to explore the idea of amending the rules to permit, when the necessity arises, the appointment of an impartial fact finder who can operate in a forum within which factual allegations may be tested and a record fully developed. Matters such as some of those asserted in the instant case concerning veracity, in which the Bar's activities in a non-disciplinary matter have been called into question, demonstrate the need for a mechanism in which a referee or other impartial fact finder can be appointed when the need arises.

Petitioners' allegations of false statements in the Bar's campaign pamphlet must be taken seriously because the Bar is an arm of this Court, and this Court cannot condone, even implicitly, statements that are lacking in veracity. Therefore, I encourage exploration of the idea of amending the rules to provide flexibility so that activities of the Bar in non-disciplinary settings which involve allegations of false statements may be scrutinized by an impartial fact finder.

PARIENTE, J., concurs.
Fla.,2000.
Alper v. The Florida Bar
771 So.2d 523, 25 Fla. L. Weekly S907

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12 So.3d 183, 34 Fla. L. Weekly S347
(Cite as: 12 So.3d 183)

C

Supreme Court of Florida.
LIBERTY COUNSEL, et al., Petitioners,
v.
The **FLORIDA BAR** BOARD OF GOVERNORS, et al., Respondents.
No. SC09-363.

June 4, 2009.

Background: Non-profit public interest law firm petitioned to enjoin Board of Governors of State Bar Association from permitting bar's family law section from filing an amicus brief in pending litigation in support of a trial court ruling unconstitutional a law that prohibited homosexuals from adopting children.

Holdings: The Supreme Court, Pariente, J., held, as an issue of first impression, that:
(1) bar association's approval of section's filing of amicus brief did not violate firm's First Amendment rights, and
(2) bar association's approval was not an ultra vires act.

So ordered.

Polston, J., dissented with opinion, in which Canady, J., concurred.

West Headnotes

[1] Injunction 212 ⚿138.1

212 Injunction
212IV Preliminary and Interlocutory Injunctions
212IV(A) Grounds and Proceedings to Procure
212IV(A)2 Grounds and Objections
212k138.1 k. In General. Most Cited Cases
To obtain a temporary injunction, the petitioner must satisfy a four-part test: a substantial likelihood of success on the merits; lack of an adequate remedy at law; irreparable harm absent the entry of an injunction; and that injunctive relief will serve the public interest.

[2] Injunction 212 ⚿9

212 Injunction
212I Nature and Grounds in General
212I(B) Grounds of Relief
212k9 k. Nature and Existence of Right Requiring Protection. Most Cited Cases
To obtain a permanent injunction, the petitioner must establish a clear legal right, an inadequate remedy at law and that irreparable harm will arise absent injunctive relief.

[3] Constitutional Law 92 ⚿2040

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(S) Attorneys, Regulation of
92k2040 k. In General. Most Cited Cases

Injunction 212 ⚿75

212 Injunction
212II Subjects of Protection and Relief
212II(E) Public Officers and Entities
212k75 k. State or National Boards and Officers. Most Cited Cases
Decision by Board of Governors of State Bar Association to authorize its family law section to file an amicus brief in pending litigation, in support of a trial court ruling, that held unconstitutional a law prohibiting homosexuals from adopting children, did not involve compulsory dues to fund impermissible bar lobbying activities and, thus, did not implicate First Amendment rights of non-profit public interest law firm, requiring Supreme Court to intervene by issuance of injunction against the Bar; membership in and payment of dues to section was voluntary and any such advocacy by section was not funded with compulsory dues. U.S.C.A. Const.Amend. 1; West's

F.S.A. § 63.042(3).

[4] Injunction 212 ⚿75

212 Injunction
212II Subjects of Protection and Relief
212II(E) Public Officers and Entities
212k75 k. State or National Boards and Officers. Most Cited Cases
Approval of Board of Governors of State Bar Association of the filing of an amicus brief by its family law section in pending litigation, in support of a trial court ruling that held unconstitutional a law that prohibited homosexuals from adopting children, was not an ultra vires act, requiring Supreme Court to intervene by issuance of injunction, as bar association did not act contrary to any of its rules or policies, or rules promulgated by the supreme court; implicit in board's vote to approve filing of the amicus brief was the notion that the board waived requirement that it determine divisiveness of the issue. West's F.S.A. § 63.042(3); West's F.S.A. Bar Rule 2-9.2.
Mathew Duane Staver, Maitland, Florida, and Mary E. McAlister, Lynchburg, Virginia, for Petitioner.

Barry Scott Richard of Greenberg Traurig, P.A., Tallahassee, Florida, for Respondent.

PARIENTE, J.

The narrow issue before us is whether the Court in the exercise of its supervisory authority over The Florida Bar under article V, section 15, of the Florida Constitution,[FN1] should enjoin The Florida Bar from permitting a voluntary section of the Bar to file an amicus brief in pending litigation in a district court of appeal.[FN2] Specifically, the petitioners, Liberty Counsel, a nonprofit public interest law firm based in Maitland, Florida, and two members of The Florida Bar,[FN3] seek to enjoin The Florida Bar from permitting the Family Law Section to file an amicus brief in the Third District Court of Appeal in support of a trial court ruling that held unconstitutional a law that prohibits homosexuals from adopting children. [FN4]

The Family Law Section is a voluntary section of the Bar established pursuant to the authority vested in the Bar by Rule 1-4.5 of the Rules Regulating The Florida Bar.[FN5] After a vote by its Executive Council, the Family Law Section sought approval from the Board of Governors of the Bar to file the amicus brief. The Board of Governors held a meeting at which it unanimously voted to permit the filing of the amicus brief.

The petitioners make three arguments in support of their claim: (1) the Bar violated their First Amendment rights by allowing the Family Law Section to file an amicus brief; (2) the Bar's approval of the filing of the amicus brief constituted an ultra vires act in violation of the Bar's own policies; and (3) the Bar's approval of the filing of the amicus brief places judges who are members of the Family Law Section in the position of violating the canons of judicial ethics.

[1][2] We conclude that the Bar's actions in permitting the Family Law Section to file an amicus brief do not violate the First Amendment rights of the petitioners because membership in the Family Law Section is voluntary and any such advocacy by a section is not funded with compulsory dues. We further conclude that the actions of the Bar do not constitute an ultra vires act requiring this Court, in the exercise of its supervisory authority over the Bar, to grant an injunction.[FN6] Accordingly, because we conclude that Liberty Counsel has not met the requirement for injunctive relief that there be a violation of a "clear legal right" to relief, we deny the petition.[FN7]

At the outset, we explain that this case does not concern the merits of the underlying case, that is, whether section 63.042(3), Florida Statutes (2008), is constitutional. The merits of that controversy are pending in the Third District. This case is also not about whether this Court should grant permission for the Family Law Section to file an amicus brief. Liberty Counsel itself has announced that it is seeking to file an amicus brief in support of the ban against adoptions by homosexuals, and of course nothing prevents other voluntary associations from seeking to file amicus briefs. Pursuant to the applicable Rule of Appellate Procedure, 9.370, an amicus brief may be filed only with "leave of court." [FN8] In this case, because the case is pending in the Third District, the decision as to whether to grant leave of court to file an amicus brief will be made by that court.[FN9]

12 So.3d 183, 34 Fla. L. Weekly S347
(Cite as: 12 So.3d 183)

The narrow issue we are asked to decide in this case is one of first impression for this Court because we have never been asked to rule on the authority of voluntary sections of the Bar to seek to file amicus briefs in pending cases, whether there should be limits on that authority, and, if so, whether this Court should act to constrain that authority. In order to answer this issue, we first address Liberty Counsel's First Amendment argument and then address its ultra vires argument.

ANALYSIS

First Amendment

As to Liberty Counsel's claim that the Bar's actions violated its First Amendment rights, we begin with the seminal case of *Keller v. State Bar of California*, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990). In *Keller*, the United States Supreme Court held that the First Amendment prohibits a state bar in which membership is a mandatory requirement for the practice of law to use its compulsory dues to fund activities that are not germane to the regulation of the legal profession and the quality of legal services for the people of the State. As to the scope of permissible dues-financed activities in which the State Bar could engage, the Supreme Court concluded:

> [T]he guiding standard must be 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."
>
> ....
>
> 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. But the extreme ends of the spectrum are clear: Compulsory dues may not be expended to endorse or advance a gun control or nuclear weapons freeze initiative; at the other end of the spectrum petitioners have no valid constitutional objection to their compulsory dues being spent for activities connected with disciplining members of the Bar or proposing ethical codes for the profession.

Id. at 14-16, 110 S.Ct. 2228.

Following *Keller*, this Court established standards for expenditures by The Florida Bar on ideological or political activity as well as approved limitations on permissible areas for lobbying by the Bar. In *Florida Bar re Schwarz*, 552 So.2d 1094 (Fla.1989), the Court adopted the Judicial Council of Florida's recommendation that the following areas clearly justify bar lobbying activities:

(1) Questions concerning the regulation and discipline of attorneys;

(2) matters relating to the improvement of the functioning of the courts, judicial efficacy and efficiency;

(3) increasing the availability of legal services to society;

(4) regulation of attorneys' client trust accounts; and

(5) the education, ethics, competence, integrity and regulation as a body, of the legal profession.

Id. at 1095 (quoting Judicial Council of Florida, *Special Report to the Supreme Court of Florida on Legislative Activities of The Florida Bar* 9 (1988)). The Court also adopted the Council's recommendation that the following additional criteria be used to determine permissible bar lobbying activities when the legislation falls outside of the above specifically identified areas:

(1) That the issue be recognized as being of great public interest;

(2) that lawyers are especially suited by their training and experience to evaluate and explain the issue; and

(3) the subject matter affects the rights of those likely to come into contact with the judicial system.

Id. (quoting Judicial Council of Florida, *supra*, at 9-10). The Court went on to state: "[W]e also suggest that the Board exercise caution in the selection of subjects upon which to take a legislative position so as to avoid, to the extent possible, those issues which carry the potential of deep philosophical or emotional division among the membership of the Bar." *Id.* at 1097. However, the Court did not incorporate that cautionary note into the guidelines we adopted.

Following *Schwarz*, this Court has entertained challenges to the scope of the Bar's activities in the exercise of its supervisory authority over the Bar itself as opposed to voluntary sections. Specifically, in *Florida Bar re Frankel*, 581 So.2d 1294 (Fla.1991), the Court considered a challenge to the Board of Governors' adoption of the lobbying positions of the Bar's Commission for Children.[FN10] In that case, the Bar claimed that its involvement in children's matters clearly justified advocacy of the contested positions due to their relationship to the ethics and integrity of the legal profession. *Id.* at 1296. The Bar also stated that its moral obligation to Florida's children verified the suitability by training and experience within the legal profession to evaluate and explain the contested lobbying positions. *Id.* at 1298. This Court noted that the Bar carries the burden of proof in establishing the propriety of its lobbying activities and rejected the Bar's position. *Id.* at 1296. The Court concluded that the Board of Governors' adoption of the lobbying positions of the Bar's Commission for Children was impermissible under *Schwarz* and *Keller*. *Id.* at 1298. In response to the Bar's argument that only nine of its members objected to the issues, this Court stated that the "merit of the position or the unanimity in its support is not the standard by which to determine the propriety of bar lobbying activities on that position." *Id.*

Because the Bar's lobbying positions did not fall within the *Schwarz* guidelines, they were deemed outside the scope of permissible lobbying activities. *Id.* By contrast, the Court has concluded that the Bar's lobbying activities in support of ballot measures related to judicial selection and retention did fall within the *Schwarz* guidelines. *See Alper v. Fla. Bar*, 771 So.2d 523, 526 (Fla.2000). Unlike the positions taken on child welfare and family health in *Frankel*, the Bar's positions on judicial selection and retention in *Alper* met the criterion of being related to the improvement of the functioning of the courts, judicial efficacy and efficiency, and the alternative criteria of dealing with an issue of great public interest, which lawyers are specially trained to evaluate and which can affect the rights of those likely to come into contact with the judicial system. *Id.* at 524.

[3] Liberty Counsel's First Amendment argument under *Keller* focuses on the use of compulsory dues in approving the filing of and in the filing of the amicus brief by the Family Law Section. However, we conclude that the filing of the amicus brief by the Family Law Section does not implicate Liberty Counsel's First Amendment rights as defined in *Keller* because membership in and payment of dues to a section is voluntary and any such advocacy by a section is not funded with compulsory dues.[FN11]

Liberty Counsel also counters the Bar's argument that section membership and dues are voluntary by arguing that the sections are nevertheless creations of the Bar. We agree that under rule 1-4.5, sections are "an integral part of The Florida Bar" and have the duty to "work in cooperation with the board of governors and under its supervision toward accomplishment of the aims and purposes of The Florida Bar and of that section or division." R. Regulating Fla. Bar 2-7.2. Nevertheless, the standards and restrictions adopted by this Court subsequent to *Keller* address only the activities of the Bar and not the activities of the voluntary sections of the Bar.

In fact, this Court has previously concluded that voluntary sections are not bound by the *Keller* and *Schwarz* requirements. In *Frankel*, this Court discussed how *Keller* analogized a mandatory state bar association to a compulsory union in reaching its decision and explained:

Within the context of a union-shop agreement, the Court previously has held that an injunction prohibiting a union from expending mandatory dues for political purposes would be inappropriate because nondissenting union members have an interest in

> stating their views "without being silenced by the dissenters." *International Association of Machinists v. Street*, 367 U.S. 740, 773, 81 S.Ct. 1784, 1802, 6 L.Ed.2d 1141 (1961); see *Abood [v. Detroit Bd. of Educ.*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977)].
>
> We find that the concern expressed in *Street* is inapplicable with regard to The Florida Bar. An injunction prohibiting the bar from lobbying on a particular issue would not silence the voices of nondissenting members. The bar has many volunteer sections and political action committees through which bar members may assert their views. *See In re Amendment to Integration Rule; Schwarz*, (McDonald, J. dissenting). *Indeed, these volunteer sections and committees are the appropriate vehicles for lobbying on issues that do not fall within the Schwarz guidelines.*

Frankel, 581 So.2d at 1299 (emphasis supplied). As Justice Barkett stated in her specially concurring opinion in *Frankel:*

> I am compelled to agree that The Florida Bar's lobbying efforts in this instance will not fit within the criteria of *The Florida Bar re Schwarz*, 552 So.2d 1094 (Fla.1989), *cert. denied* 498 U.S. 951, 111 S.Ct. 371, 112 L.Ed.2d 333 (1990), though I confess, like Cinderella's sisters, I have tried mightily to force the foot into the glass slipper. *I am hopeful that the voluntary bar associations and the various sections of the Bar will take up the slack.*

Frankel, 581 So.2d at 1300 (Barkett, J., specially concurring) (emphasis supplied).

Accordingly, we conclude that the decision by the Bar to authorize the Family Law Section to file an amicus brief does not violate the First Amendment rights of the petitioners, who disagree with the legal position taken.

Ultra Vires Action

Liberty Counsel further contends that the Bar committed an ultra vires act in approving the filing of the amicus brief because it violated its own standing board policies in doing so. It does not otherwise argue that the Bar lacks the authority to allow a voluntary section leave to file an amicus brief.

The Bar adopts standing board policies, which are not subject to this Court's approval, that govern its internal administration and operation. As explained in bylaw 2-9.2 of the Rules Regulating the Florida Bar:

> The board of governors shall adopt standing board policies governing the internal administration and operation of The Florida Bar and the board of governors. The board of governors may adopt, amend, or rescind standing board policies by a majority vote of the membership of the board of governors provided any amendment to any standing board policy shall not be effective until 30 days after adoption. Such standing board policies may be adopted, rescinded, or amended by a majority vote of those present at any regular meeting of the board of governors provided advance written notice is given to the members of the board of governors of the proposed adoption, repeal, or amendment of any standing board policy. The provision of any standing board policy may be waived by a two-thirds vote of those present at any regular meeting of the board of governors.

[4] Standing Board Policy 8.10 governs amicus curiae filings by sections of the Bar. Sections 8.10(a)(1) and (a)(3) provide:

> (1) A section of The Florida Bar may adopt a position and submit an amicus curiae brief in pending litigation only when the issue is beyond the scope of permissible legislative or ideological activity of The Florida Bar, or the issue is within the permissible legislative or ideological activity of the bar and the proposed brief does not take a position that is inconsistent with an official position of the bar and the requirements of subdivision (3) are met.
>
> (3) Divisions, sections and committees may not adopt a position or submit an amicus curiae brief in pending litigation unless the issue involved is within the area of subject matter interest of the division, section or committee as described in its bylaws or official charge, and the issue is not one that carries the potential of deep philosophical or emotional division among a substantial segment of the member-

ship of the bar.

Specifically, Liberty Counsel argues that the Bar violated section (a)(3). Liberty Counsel asserts that by determining that the issue of adoption by homosexuals is "not one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar," the Bar violated section 8.10(a)(3)-the violation of which constitutes an ultra vires act.[FN12]

In deciding that the actions of the Bar do not constitute an ultra vires act such that the Liberty Counsel has established a clear legal right, we make the following observations. First, we reiterate that our prior case law has imposed restrictions on the activities of the Bar, but none of our prior cases have involved restrictions on the activities of the voluntary sections of the Bar. Although we suggested in *Schwarz*, "that the Board exercise caution in the selection of subjects upon which to take a legislative position so as to avoid, to the extent possible, those issues which carry the potential of deep philosophical or emotional division among the membership of the Bar," 552 So.2d at 1097, we envisioned in *Frankel* that it would be the sections that would be "the appropriate vehicles for lobbying on issues that do not fall within the *Schwarz* guidelines." *Frankel*, 581 So.2d at 1299. In fact, Standing Board Policy 8.10(a)(1) recognizes this balance between the role of the Bar and the role of the sections regarding both the scope of lobbying positions and the subject of the amicus briefs. Specifically, section 8.10(a)(1) authorizes a section of the Bar to "submit an amicus brief in pending litigation *only* when the issue is beyond the scope of permissible legislative or ideological activity of the Florida Bar." (emphasis added).

Second, as explained previously, the decision whether to allow an entity to file an amicus brief is ordinarily a decision made by the court in which permission is sought rather than a decision for this Court, in the exercise of our supervisory authority over the Bar. Third, we are presented with the Bar's standing policy related to amicus briefs, which is a standing policy that we have never approved or disapproved, which requires that the amicus brief not be submitted on an issue which "carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar." [FN13]

With these three observations in mind, we consider the Bar's argument that we should deny injunctive relief in this case on the ground that the "Board of Governors, which is comprised of the elected representatives of the entire membership, is in the best position to determine whether a particular issue is highly divisive within the membership as a whole." We agree that the Board's decision regarding whether a voluntary section should be able to file an amicus brief is entitled to deference. We also conclude that the Court will not interfere with or micromanage the activities of the Bar's sections, or the approval of those activities by the Bar, unless the Bar's actions regarding the scope of the activities of its voluntary sections are clearly outside the Bar's authority.

Black's Law Dictionary defines an "ultra vires" act as one that is "unauthorized; beyond the scope of power allowed or granted by a corporate charter or by law." *See Black's Law Dictionary* 1559 (8th ed.2004). Although there is no case from this Court discussing the concept of "ultra vires" actions from the standpoint of the activities of the Bar or its sections, a 1940 case from this Court discussed the concept in terms of a corporation:

> Thompson on Corporations states that an act of a corporation is ultra vires "when it is outside the objects for which the corporation was created as defined by the laws of its organization and limited by the statutes authorizing its existence. In other words, it is an unauthorized act. In its primary sense, an act is 'ultra vires' the powers of a corporation when it is wholly outside of the scope of the purposes for which the corporation was formed or has its being, and which it has no authority to perform under any circumstances or in any mode."

Knowles v. Magic City Grocery, 144 Fla. 78, 197 So. 843, 844 (1940). Further, Florida courts have held that a municipality, county, or town engages in an "ultra vires" act when it lacks the authority to take the action under statute or its own governing laws. *See, e.g., Lykes Bros., Inc. v. City of Plant City*, 354 So.2d 878, 880 (Fla.1978) ("As to whether a city's tax exoneration contract is valid, our decisions uniformly hold that municipal contracts promising not

to impose taxes, or granting tax exemptions, are ultra vires and void in the absence of specific legislative authority."); *Town of Lauderdale-by-the-Sea v. Meretsky*, 773 So.2d 1245, 1249 (Fla. 4th DCA 2000) ("[T]he Town Commission authorized an act contrary to its own ordinances and, therefore, its approval was ultra vires and void.").

The Bar's approval of the filing of an amicus brief by the Family Law Section in the Third District was not an ultra vires act because in doing so, the Bar did not act contrary to any of its rules or policies, or rules promulgated by this Court. With regard to whether noncompliance with one of the Bar's own standing policies can constitute an ultra vires act requiring this Court to intervene by issuance of an injunction, we reject the argument that the approval of the filing of an amicus brief by a voluntary section is ultra vires.

Our support for this view is buttressed by the fact that the Bar can waive any of its standing policies by a vote of two-thirds of the Board of Governors. *See* R. Regulating Fla. Bar 2-9.2 ("The provision of any standing board policy may be waived by a two-thirds vote of those present at any regular meeting of the board of governors."). Implicit in the Board's unanimous vote to approve the filing of the amicus brief is the notion that the Board waived by a two-thirds vote the requirement that it determine the divisiveness of the issue.

Because the requirements of the standing board policies regarding the filing of amicus briefs by sections can be waived by the Board, the unanimous approval by the Board did not constitute an ultra vires action. And because there are no other legal or constitutional prohibitions against the actions of the Family Law Section, we cannot conclude that the actions of the Bar were unauthorized. We thus decline to reach a decision whether, under these circumstances, the Board reached the correct or incorrect conclusion on the divisiveness of the subject matter of the amicus brief supporting the trial court's decision on the constitutionality of the legislative prohibition against adoption by homosexuals.

For all of the above reasons, we conclude that Liberty Counsel has not established a violation of a clear legal right and therefore deny Liberty Counsel's request for injunctive relief.

It is so ordered.

QUINCE, C.J., and LEWIS, LABARGA, and PERRY, JJ., concur.
POLSTON, J., dissents with an opinion, in which CANADY, J., concurs.
POLSTON, J., dissenting.
The Bar failed to comply with its policies, or waive them in the manner prescribed by its bylaws, when it approved the Family Law Section's request to file an amicus brief on homosexual adoption. Should The Florida Bar follow its own rules? The majority concludes that this decision is up to the Bar. *See* majority op. at ----. Because I agree with Liberty Counsel that this Court should require the Bar to comply with its own rules, I respectfully dissent. [FN14]

I. Failure to Properly Approve Amicus Brief on Divisive Issue

The Florida Bar's Standing Board Policy 8.10(a)(3) provides that sections of the Bar may not submit an amicus brief in pending litigation if the issue involved "carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar." The issue of homosexual adoption is undeniably divisive. The Florida Bar does not argue otherwise. The majority opinion does not hold otherwise.

The Bar has consistently recognized the divisive nature of homosexual adoption in the past. In 2004, the Bar rejected the Family Law Section's request to lobby for the repeal of Florida's law specifically because it determined that the issue of homosexual adoption had the potential of creating a deep philosophical and emotional divide among members of the Florida Bar. *See* Alan B. Bookman, *Our Legislative Role*, Fla. B.J., Feb. 2006, at 8. Then, in 2005, the Bar again recognized the divisiveness of the issue when it denied the Family Law Section's request to lobby that some homosexual parents be permitted to adopt. *See* Jan Pudlow, *Family Law Section to File Gay Adoption Case Amicus*, The Florida Bar News, Feb. 15, 2009.

In this case, based upon the meeting minutes from January 30, 2009, it is not at all clear that The Florida Bar made any determination regarding divisiveness or even that it recognized that Standing Board Policy 8.10(a)(3) required it to do so. The meeting minutes simply state:

> The board voted to not disallow the Family Law Section filing an amicus brief with the Third District Court of Appeal in the case, *In the Matter of the Adoption of John Doe and James Doe,* supporting the ruling of the trial court judge in that case. The judge ruled F.S. § 63.042(3) unconstitutional and allowed homosexual foster parents to adopt two brothers they had raised for four years. The Board of Governors' action does not constitute The Florida Bar's formal endorsement of the section's position. It acknowledges the subject matter is within the purview of the section's area of expertise and permits the section-composed of and funded entirely by voluntary members-to go forward. No Bar membership fees will be expended to advocate the brief put forth by the section and the amicus will be written by a volunteer. Board member Larry Ringers recused himself from the vote.

The Florida Bar Board of Governors, Regular Minutes (Jan. 30, 2009), at 5-6. These meeting minutes do not mention whether the Bar determined the divisiveness of homosexual adoption as its policy required.

The only indication of any discussion by the Board of Governors comes from a *Florida Bar News* article cited by Liberty Counsel. *See* Pudlow, *supra.* The article indicates that some members of the Board of Governors considered the merits of homosexual adoption, not the divisiveness of the issue. For instance, one board member is reported as having been moved by the Holocaust and the movie, *Judgment at Nuremburg,* where the leaders did not do the right thing. *Id.* at 1. This board member is quoted as saying, "[W]e are the leaders of the Bar" and "I think we should send a message to Floridians that we are here to uphold the law, and we are here to do the right thing." *Id.* Another board member is quoted as saying, "To consider children are being prohibited from having the right to be adopted by appropriate and very caring individuals is completely wrong, and we should not let that go forth." *Id.* These comments, indicating support for the merits of the proposed amicus position, do not address the divisiveness issue at all and are contrary to the Board's minutes indicating there was no endorsement.

Even though the issue is divisive, the Board of Governors could have voted to waive the application of its Standing Board Policy 8.10(a)(3) with a two-thirds vote, pursuant to its bylaws.[FN15] Yet it did not do so. Specifically, Bylaw 2-9.2 provides:

> The board of governors shall adopt standing board policies governing the internal administration and operation of The Florida Bar and the board of governors. The board of governors may adopt, amend, or rescind standing board policies by a majority vote of the membership of the board of governors provided any amendment to any standing board policy shall not be effective until 30 days after adoption. Such standing board policies may be adopted, rescinded, or amended by a majority vote of those present at any regular meeting of the board of governors provided advance written notice is given to the members of the board of governors of the proposed adoption, repeal, or amendment of any standing board policy. *The provision of any standing board policy may be waived by a two-thirds vote of those present at any regular meeting of the board of governors.*

R. Regulating Fla. Bar, Bylaw 2-9.2 (emphasis added).

Voting to waive the standing board policy is the only method by which the Bar may take contrary action, as approved by this Court. *See Fla. Bar re Rules Regulating the Fla. Bar,* 494 So.2d 977, 992-93 (Fla.1986) (adopting Bylaw 2-9.2); *see also* R. Regulating Fla. Bar 1-11.2, 1-11.3 (explaining that this Court reviews objections to proposed bylaws and may amend bylaws adopted by the Bar at any time). This Court is not micromanaging the affairs of the Bar by requiring it to comply with the bylaws approved by this Court.

There are no provisions for an implicit waiver in any applicable standing board policy provisions or bylaws of the Bar. However, the majority holds that the

unanimous vote by the Board implicitly waived the Bar's standing board policy. *See* majority op. at ---- - ----. Contrary to the majority's holding, Bylaw 2-9.2 expressly requires a two-thirds vote to waive such policies. And because Bylaw 2-9.2 expressly requires a waiver by a two-thirds vote, a two-thirds vote is the only possible method of waiving standing board policies. *See* Bush v. Holmes, 919 So.2d 392, 407 (Fla.2006) (defining the principle of construction "expressio unius est exclusio alterius," or "the expression of one thing implies the exclusion of another," by explaining that when the manner of doing an act is prescribed, "the manner prescribed is exclusive"). Therefore, the Board's unanimous approval of the Family Law Section's amicus brief does not constitute a legally recognizable waiver of Standing Board Policy 8.10(a)(3).

Significantly, the Bar must comply with *Robert's Rules of Order* when conducting its meetings, which do not permit an implicit waiver. *See* R. Regulating Fla. Bar, Bylaw 2-9.6 ("The current edition of Robert's Rules of Order shall be the rules that govern the conduct of all meetings of The Florida Bar, its board of governors, its sections, divisions, and committees."). *Robert's Rules* states that rules contained in an organization's bylaws "cannot be suspended-no matter how large the vote in favor of doing so or how inconvenient the rule in question may be-unless the particular rule specifically provides for its own suspension, or unless the rule properly is in the nature of a rule of order." Henry M. Robert III et al., *Robert's Rules of Order Newly Revised* § 25, at 254 (10th ed.2000). The Bar's Bylaw 2-9.2, which provides for the waiver of standing board policies by a two-thirds vote, does not specifically provide for the suspension of Bylaw 2-9.2 itself and is not a rule of order. As a result, the particular manner for waiving standing board policies prescribed by Bylaw 2-9.2 cannot be suspended "no matter how large the vote in favor of doing so or how inconvenient the rule in question may be." *Id; see also id.* § 25, at 257-58 (explaining that suspending a rule by unanimous consent, rather than by making a formal motion to suspend the rules, is accomplished prospectively by asking for unanimous consent and then asking if anyone objects).

Therefore, under *Robert's Rules of Order,* a unanimous vote does not retroactively cure the Bar's failure to comply with Standing Board Policy 8.10(a)(3) or waive the policy in the manner prescribed by Bylaw 2-9.2. The majority's holding that there was an implicit waiver of Standing Board Policy 8.10(a)(3) is contrary to the Bar's specific bylaws regarding how a waiver may be obtained.

II. This Court Has a Duty to Supervise The Florida Bar

The Florida Bar is "an official arm of the court." R. Regulating Fla. Bar, ch. 1, Intro. Indeed, the Board's actions are "subject always to the direction and supervision of the Supreme Court of Florida." R. Regulating Fla. Bar 1-4.2(a). Therefore, as the administrative head of the Bar, this Court not only has the authority, but the duty, to require the Bar to follow its own bylaws and policies.

Every day, the Bar holds attorneys accountable for their actions in compliance with the rules of The Florida Bar. *See generally* R. Regulating Fla. Bar 3-3.1 (designating the Bar as an agency of this Court for the purpose of enforcing the rules of conduct for attorneys). When these rules are not complied with, there are disciplinary consequences to the lawyers. *See* R. Regulating Fla. Bar 3-5.1 (listing the disciplinary consequences to lawyers who are found guilty of violating the rules). It is not too much to ask for the Bar to comply with its own requirements when we expect lawyers to comply with the requirements of the Bar. *See* R. Regulating Fla. Bar 1-11.1 (explaining that the Bar's bylaws "govern the method and manner by which the requirements" of the Bar's rules are met).

The majority concludes that this Court should not require the Bar to comply with its own policies and bylaws because the Bar has the authority to act in regards to sections and, therefore, its actions are not ultra vires. *See* majority op. ---- - ----. I do not agree with this conclusion or the particular use of the terms "authority" and "ultra vires" that the majority employs to arrive at its conclusion.

"Authority" is defined as "[t]he power to command, enforce laws, exact obedience, determine, or judge." *American Heritage Dictionary* 142 (2d coll. ed.1991). And, as the majority notes, "ultra vires" is

defined as "unauthorized; beyond the scope of power allowed or granted by a corporate charter or by law." Majority op. at ---- (quoting *Black's Law Dictionary* 1559 (8th ed.2004)). However, the majority's use of these terms does not acknowledge that certain requirements, such as compliance with rules, must be met for the exercise of authority to be legal and proper. For instance, a police officer has the authority to conduct searches but not before fulfilling the procedural requirement of obtaining a valid warrant. *See generally* *Ybarra v. Illinois*, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979); *see also* *Word of Life Ministry, Inc. v. Miller*, 778 So.2d 360, 363 & n. 3 (Fla. 1st DCA 2001) ("Even if those voting on May 24, 1978, had been authorized to elect directors, the elections were void for failure to observe restrictions imposed by the articles of incorporation which required directors to be members of the corporation;" electing individuals as directors did not confer membership because of specific bylaw procedural requirements for membership). Therefore, unlike the majority, I conclude that the Bar only has the authority to approve a section's amicus brief when, in doing so, the Board complies with all applicable bylaws and standing board policies.[FN16]

In particular, I respectfully disagree with the majority's statement that "the Court will not interfere with or micromanage the activities of the Bar's sections, or the approval of those activities by the Bar, unless the Bar's actions regarding the scope of the activities of its voluntary sections are clearly outside the Bar's authority." Majority op. at ----. This statement is overly broad because there is nothing outside the Bar's authority, as the majority uses the term "authority," when it comes to the activities of the sections. Sections are created or abolished by the Bar's Board "as deemed necessary or desirable." R. Regulating Fla. Bar, Bylaw 2-7.3. The sections' bylaws, which define the scope and purpose of the sections, are approved by the Board. R. Regulating Fla. Bar, Bylaw 2-7.1. And the sections, which are integral parts of the Florida Bar, must work under the Board's supervision to accomplish their goals and purposes. R. Regulating Fla. Bar, Bylaw 2-7.2. But the majority's statement indicates that this Court will never act to supervise the Bar in its actions relating to sections.

As the administrative head of the Florida Bar, we simply cannot abdicate our duty to supervise the Bar. *See* art. V, § 15, Fla. Const. ("The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted."); *Askew v. Cross Key Waterways*, 372 So.2d 913, 920-21 (1979) (explaining that the nondelegation doctrine prohibits the delegation of constitutional functions to others).

III. Conclusion

Because the Bar failed to comply with or waive its Standing Board Policy 8.10(a)(3), and this Court has the duty to supervise the Bar, I would grant Liberty Counsel's request for injunctive relief without prejudice to the requisite vote on whether to waive the standing board policy. Accordingly, I respectfully dissent.

CANADY, J., concurs.

FN1. Article V, section 15, provides that "[t]he supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted."

FN2. Although the parties refer to the actions of the Bar as granting permission to the voluntary section to file an amicus brief, as explained more fully herein, the decision whether to allow the filing of the amicus brief is one within the discretion of the appellate court hearing the appeal-in this case the Third District Court of Appeal. *See* Fla. R.App. P. 9.370.

FN3. These members are Anita Staver, President of Liberty Counsel and a member in good standing of The Florida Bar, and Scott Dixon, an affiliate attorney with Liberty Counsel and a member in good standing of The Florida Bar. Petitioners are collectively referred to as "Liberty Counsel."

FN4. The petition specifically seeks permanent or temporary injunctive relief or other extraordinary relief against respondents, The

Florida Bar Board of Governors, the President of The Florida Bar, John White, III, and the Executive Director of The Florida Bar, John Harkness, Jr. (collectively referred to as "the Bar").

FN5. Rule 1-4.5, titled "Sections," provides:

> The board of governors may create and abolish sections as it may consider necessary or desirable to accomplish the purposes and serve the interests of The Florida Bar and of the sections and shall prescribe the powers and duties of such sections. The bylaws of any section shall be subject to approval of the board of governors.

FN6. We reject, without detailed discussion, petitioners' claim that the filing of an amicus brief by the Family Law Section will cause judges who are members of the section to be in violation of the Code of Judicial Conduct because the filing of the brief will express a political or ideological view. Even assuming the filing of a legal brief discussing the relevant case law on a legal issue is analogous to a political or ideological position, a view with which we do not agree, nothing in this Court's case law or in the Code of Judicial Conduct prohibits judges from belonging to associations because the associations endorse a particular political or ideological position as a result of a decision in which the judge took no part. If that were the case, judges would be prohibited from being members of a variety of voluntary professional associations, including the American Bar Association and the National Bar Association, and from participating in the valuable nonpolitical activities of bar sections.

FN7. To obtain a temporary injunction, the petitioner must satisfy a four-part test under Florida law: "a substantial likelihood of success on the merits; lack of an adequate remedy at law; irreparable harm absent the entry of an injunction; and that injunctive relief will serve the public interest." *Reform Party of Fla. v. Black*, 885 So.2d 303, 305 (Fla.2004) (citing *Dania Jai Alai Int'l, Inc. v. Murua*, 375 So.2d 57, 58 (Fla. 4th DCA 1979)). To obtain a permanent injunction, the petitioner must "establish a clear legal right, an inadequate remedy at law and that irreparable harm will arise absent injunctive relief." *K.W. Brown & Co. v. McCutchen*, 819 So.2d 977, 979 (Fla. 4th DCA 2002) (citing *Murua*, 375 So.2d at 58).

FN8. Pursuant to rule 9.370(a), a "motion for leave to file must state the movant's interest, the particular issue to be addressed" and "how the movant can *assist the court* in the disposition of the case." Fla. R.App. P. 9.370(a) (emphasis added).

FN9. In an article titled *Amicus Briefs: Friend or Foe of Florida Courts?*, Sylvia H. Walbolt and Joseph H. Lang, Jr., explained: "Amicus briefs are supposed to assist the court in resolving cases of general public interest or aid in resolving difficult issues that have an impact beyond the parties to the litigation. They 'should not be used to simply give one side more exposure than the rules contemplate.' " Sylvia H. Walbolt & Joseph H. Lang, Jr., *Amicus Briefs: Friend or Foe of Florida Courts?*, 32 Stetson L.Rev. 269, 296-97 (2003) (footnote omitted) (quoting *Ciba-Geigy Ltd. v. Fish Peddler, Inc.*, 683 So.2d 522, 523 (Fla. 4th DCA 1996)).

FN10. The lobbying positions concerned the following: expansion of the program for women, infants, and children; extension of Medicaid coverage for pregnant women; full immunization for children; establishing children's services councils; family life and sex education/teen pregnancy; increasing aid to families with dependent children; enhanced child-care funding and standards; and creation of a children's needs consensus estimating conference.

FN11. Liberty Counsel argues that the Bar "uses dues to pay for support staff for the sections." However, the Board of Governors

maintains that "the Bar does provide some administrative services to the sections, for which the sections compensate the Bar in an amount sufficient to cover any services related to activities that would be beyond the bounds of permissible Bar activity." This assertion is supported by Standing Board Policy 5.63, titled "Administrative Support Policy," which shows that the sections are charged an administrative support cost per section member annually to reimburse the Bar for administrative expenses. The Family Law Section has informed the Bar that the brief at issue will be written by non-Bar counsel on a pro bono basis, so it would appear that any expenditure of Bar funds would be de minimis and not amount to the sort of dues-financed activity that raised the First Amendment concerns set forth in *Keller.*

FN12. Liberty Counsel does not challenge the Bar's determination concerning the requirements of Standing Board Policy 8.10(a)(1) and (a)(3) that the issue be "beyond the scope of permissible legislative or ideological activity of the Florida Bar," that the brief "not take a position that is inconsistent with an official position of the bar," and that the area is "within the "subject matter interest" of the section. The requirements of Standing Board Policy 9.50(a), which applies to general political and legislative activity by sections, mirror those of Standing Board Policy 8.10(a).

FN13. We do not address in this opinion the potential inconsistency between this internal limitation on the activities of voluntary sections through the Bar's standing policies and the recognition in both *Schwarz* and *Frankel* that the voluntary sections should take on issues, within the area of their expertise, which the Bar itself cannot address.

FN14. I agree with the majority that Liberty Counsel has not met the requirements for injunctive relief regarding its First Amendment and Code of Judicial Conduct claims.

FN15. In footnote 13, the majority notes a potential inconsistency between the Bar's standing board policies regarding voluntary sections and this Court's decisions. *See* majority op. at ----, n. 13. I do not see an inconsistency. The Bar's policies do not include an absolute prohibition against sections performing activities on divisive issues, but the procedural requirement for a waiver must be followed. *See* R. Regulating Fla. Bar, Bylaw 2-9.2 (authorizing a waiver of standing board policies by a two-thirds vote). There are very good reasons why the Bar may wish to retain its current policies, but I agree with the majority that this issue is not before us.

FN16. Additionally, it appears the majority misconstrues Liberty Counsel's argument when the majority states that "the decision whether to allow an entity to file an amicus brief is ordinarily a decision made by the court in which permission is sought rather than a decision for this Court, in the exercise of our supervisory authority over the Bar." Majority op. at ----. Liberty Counsel does not argue that this Court should decide whether the Third District Court of Appeal should grant the Family Law Section's motion to file an amicus brief. Instead, Liberty Counsel argues that this Court should not allow the Bar to approve the Family Law Section's filing of an amicus brief in the Third District without first complying with its own bylaws and standing board policies.

Fla.,2009.
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12 So.3d 183, 34 Fla. L. Weekly S347

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Rules Regulating The Florida Bar

SELECTED RULES REGULATING THE FLORIDA BAR RELATING TO POLITICAL ADVOCACY

CHAPTER 1. GENERAL

INTRODUCTION

The Supreme Court of Florida by these rules establishes the authority and responsibilities of The Florida Bar, an official arm of the court.

1-1. NAME

The name of the body regulated by these rules shall be THE FLORIDA BAR.

1-2. PURPOSE

The purpose of The Florida Bar shall be to inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence.

CHAPTER 2. BYLAWS OF THE FLORIDA BAR

2-3. BOARD OF GOVERNORS

Bylaw 2-3.2 Powers

(d) Programs. The board of governors may establish, maintain, and supervise:

(4) a program for providing information and advice to the courts and all other branches of government concerning current law and proposed or contemplated changes in the law;

2-7. SECTIONS

Bylaw 2-7.5 Legislative Action of Sections and Divisions

(a) Limits of Legislative Involvement. Sections and divisions may be involved in legislation that is significant to the judiciary, the administration of justice, or the fundamental legal rights of the public or interests of the section or division or its programs and functions.

(b) Procedure to Determine Legislative Policy. Sections and divisions shall be required to adopt and follow a reasonable procedure, approved by the board of governors, for determination of legislative policy on any legislation.

(c) Notice to Executive Director. Sections and divisions shall notify the executive director immediately of determination of any section or division action regarding legislation.

(d) Identification of Action. Any legislative action taken by a section or division shall be clearly identified as the action of the section or division and not that of The Florida Bar.

2-9. POLICIES AND RULES

Bylaw 2-9.3 Legislative Policies

(a) Adoption of Rules of Procedure and Legislative Positions. The board of governors shall adopt and may repeal or amend rules of procedure governing the legislative activities of The Florida Bar in the same manner as provided in bylaw 2-9.2; provided, however, that the adoption of any legislative position shall require the affirmative vote of two-thirds of those present at any regular meeting of the board of governors or two-thirds of the executive committee or by the president, as provided in the rules of procedure governing legislative activities.

(b) Publication of Legislative Positions. The Florida Bar shall publish notice of adoption of legislative positions in The Florida Bar News, in the issue immediately following the board meeting at which the positions were adopted.

(c) Objection to Legislative Positions of The Florida Bar.

(1) Any member in good standing of The Florida Bar may, within 45 days of the date of publication of notice of adoption of a legislative position, file with the executive director a written objection to a particular position on a legislative issue. The identity of an objecting member shall be confidential unless made public by The Florida Bar or any arbitration panel constituted under these rules upon specific request or waiver of the objecting member. Failure to object within this time period shall constitute a waiver of any right to object to the particular legislative issue.

(2) After a written objection has been received, the executive director shall promptly determine the pro rata amount of the objecting member's membership fees at issue and such amount shall be placed in escrow pending determination of the merits of the objection. The escrow figure shall be independently verified by a certified public accountant.

(3) Upon the deadline for receipt of written objections, the board of governors shall have 45

days in which to decide whether to give a pro rata refund to the

(4) In the event the board of governors orders a refund, the objecting member's right to the refund shall immediately vest although the pro rata amount of the objecting member's membership fees at issue shall remain in escrow for the duration of the fiscal year and until the conclusion of The Florida Bar's annual audit as provided in bylaw 2-6.16, which shall include final independent verification of the appropriate refund payable. The Florida Bar shall thereafter pay the refund within 30 days of independent verification of the amount of refund, together with interest calculated at the statutory rate of interest on judgments as of the date the objecting member's membership fees at issue were received by The Florida Bar, for the period commencing with such date of receipt of the membership fees and ending on the date of payment of the refund by The Florida Bar.

(d) Composition of Arbitration Panel. Objections to legislative positions of The Florida Bar may be referred by the board of governors to an arbitration panel comprised of 3 members of The Florida Bar, to be constituted as soon as practicable following the decision by the board of governors that a matter shall be referred to arbitration.

The objecting member shall be allowed to choose 1 member of the arbitration panel, The Florida Bar shall appoint the second panel member, and those 2 members shall choose a third member of the panel who shall serve as chair. In the event the 2 members of the panel are unable to agree on a third member, the chief judge of the Second Judicial Circuit of Florida shall appoint the third member of the panel.

objecting member(s) or to refer the action to arbitration.

(e) Procedures for Arbitration Panel.

(1) Upon a decision by the board of governors that the matter shall be referred to arbitration, The Florida Bar shall promptly prepare a written response to the objection and serve a copy on the objecting member. Such response and objection shall be forwarded to the arbitration panel as soon as the panel is properly constituted. Venue for any arbitration proceedings conducted pursuant to this rule shall be in Leon County, Florida; however, for the convenience of the parties or witnesses or in the interest of justice, the proceedings may be transferred upon a majority vote of the arbitration panel. The chair of the arbitration panel shall determine the time, date, and place of any proceeding and shall provide notice thereof to all parties. The arbitration panel shall thereafter confer and decide whether The Florida Bar proved by the greater weight of evidence that the legislative matters at issue are constitutionally appropriate for funding from mandatory Florida Bar membership fees.

(2) The scope of the arbitration panel's review shall be to determine solely whether the legislative matters at issue are within those acceptable activities for which compulsory membership fees may be used under applicable constitutional law.

(3) The proceedings of the arbitration panel shall be informal in nature and shall not be bound by the rules of evidence. If requested by an objecting member who is a party to the proceedings, that party and counsel, and any witnesses, may participate telephonically, the expense of which shall be advanced by the requesting party. The decision of the arbitration panel shall be binding as to the objecting member and The Florida Bar. If the arbitration panel concludes the legislative matters at issue are appropriately funded from mandatory membership fees, there shall be no refund and The Florida Bar shall be free to expend the objecting member's pro rata amount of membership fees held in escrow. If the arbitration panel determines the legislative matters at issue are inappropriately funded from mandatory membership fees, the panel shall order a refund of the pro rata amount of membership fees to the objecting member.

(4) The arbitration panel shall thereafter render a final written report to the objecting member and the board of governors within 45 days of its constitution.

(5) In the event the arbitration panel orders a refund, the objecting member's right to the refund shall immediately vest although the pro rata amount of the objecting member's membership fees at issue shall remain in escrow until paid. Within 30 days of independent verification of the amount of refund, The Florida Bar shall provide such refund together with interest calculated at the statutory rate of interest on judgments as of the date the objecting member's membership fees at issue were received by The Florida Bar, for the period commencing with such date of receipt of the membership fees and ending on the date of payment of the refund by The Florida Bar.

(6) Each arbitrator shall be compensated at an hourly rate equal to that of a circuit court

judge based on services performed as an arbitrator pursuant to this rule.

(7) The arbitration panel shall tax all legal costs and charges of any arbitration proceeding conducted pursuant to this rule, to include arbitrator expenses and compensation, in favor of the prevailing party and against the nonprevailing party. When there is more than one party on one or both sides of an action, the arbitration panel shall tax such costs and charges against nonprevailing parties as it may deem equitable and fair.

(8) Payment by The Florida Bar of the costs of any arbitration proceeding conducted pursuant to this bylaw, net of costs taxed and collected, shall not be considered to be an expense for legislative activities, in calculating the amount of membership fees refunded pursuant to this bylaw.

Standing Board Policies

PERTINENT LEGISLATIVE POLICIES & PROCEDURES FROM STANDING BOARD POLICIES

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900 LEGISLATIVE POLICIES AND PROCEDURES

9.10 Generally

9.20 Action by Board of Governors

9.21 Action by Executive Committee or President

9.30 Legislation Committee

9.40 Procedure for Hiring Advisor and Consultants

9.50 Legislative and Political Activities of Sections

9.51 Procedure for Hiring Section Advisors

9.60 Legislative and Political Activities of Divisions and Committees

9.70 Advice and Consultation with Governmental Officials or Others by Florida Bar Members

9.10 Generally.

(a) Applicability. These policies and procedures, combined with the amicus curiae policy and procedures set forth elsewhere herein, are in furtherance of the board of governors' powers to establish, maintain, and supervise a program of The Florida Bar for providing information and advice to the courts and all other branches of government concerning current law and proposed or contemplated changes in the law.

(b) Authority. The Florida Bar shall not advocate a legislative or political issue unless it is determined by the board of governors that the matter is related to the purposes of The Florida Bar as set forth in the Rules Regulating The Florida Bar and is otherwise consistent with applicable court decisions. Those authorities and these policies shall further govern the limits of and procedures regarding legislative or political involvement by bar committees, sections and divisions.

9.20 Action by Board of Governors.

(a) Procedure for Requesting Board Action.

(1) A request that the board of governors take action on a legislative or political issue shall be submitted to the executive director in the form and with the information specified in subdivision (c) of this policy at least 20 days before the beginning of any regular meeting of the board of governors.

(2) The executive director shall circulate copies of all requests for board action on a legislative or political issue to all members of the board of governors and to the legislation committee for review and action in accordance with these policies.

(3) A request for board action on a legislative or political issue that is not submitted by the deadline will not be considered until the next succeeding meeting of the board of governors unless:

(A) the request is presented in writing to the legislation committee at its meeting preceding the board of governors' meeting; and

(B) sufficient copies of the request for each member of the board of governors are delivered to the executive director prior to the commencement of the board meeting; and

(C) the board of governors by majority vote agrees to agenda the request.

(4) The board of governors may be called upon to act on a request for action on a legislative or political issue either by:

(A) a recommendation of the legislation committee made in the form of a motion by its chair or 1 of its members; or

(B) motion of a member of the board of governors addressed to matters previously considered by the legislation committee.

(5) Consideration of any request for action on a legislative or political issue by the board of governors shall be consistent with the Rules Regulating The Florida Bar and otherwise proceed in the following order:

(A) an affirmative vote by a 2/3 majority of those present that the proposed legislative or political action is within the scope of the authority of The Florida Bar under the Rules Regulating The Florida Bar and applicable court decisions;

(B) if the vote is affirmative, a second affirmative vote by 2/3 of those present that the specific legislative or political position is adopted.

(b) Appearances Before Board or Committees. The legislation committee, the board of governors, or the executive committee may allow any interested person to appear before it in support of or in opposition to any legislative or political action being considered, subject to reasonable limitations on available time.

(c) Requests for Bar Position. Requests that The Florida Bar take a position on a legislative or political issue shall be accompanied in all cases by a copy of the pertinent legislation or a detailed presentation of the political issue, together with the following information:

(1) identification of, reference to, or copies of similar legislation or presentation being considered by the legislature or other body;

(2) a statement concerning the known principal proponents and opponents of the legislative or political issue including, if possible, a brief statement of the reasons for opposition or support by the other interests;

(3) a statement of the known position on the legislative or political issue taken by any division, section, or committee of The Florida Bar that has considered the matter including the principal reasons for support of or opposition to the issue;

(4) confirmation that notice of the proposed legislative or political action has been circulated to all divisions, sections, and committees that may be interested in the issue, together with a statement identifying all such groups to which the notice has been submitted for comment, and reciting the comments received.

(d) Duration of Bar Positions; Notice to Board. A position with regard to a legislative or political issue, once adopted or recognized by the board of governors, shall remain a bar position for the full biennial legislative session during which the board adopted or recognized the position, unless reversed or rescinded. At its July meeting, the board shall be notified by the executive director of the bar's legislative and political positions.

(e) Form of Position. If formalized, a position on legislative or political issue shall indicate support of, opposition to, or a neutral position on the issue or shall reflect that nonpartisan technical assistance on the issue may be provided.

(f) Categories of Legislative Activity. The board of governors or the executive committee may provide for different categories designating the extent of The Florida Bar's activity in support of or in opposition to a legislative or political issue. Such categories may include the following:

(1) active support or opposition, which means The Florida Bar, through its agents, will actively support or oppose a legislative or political issue in appropriate public and governmental forums.

(2) approved or disapproved, which means The Florida Bar either approves or disapproves a legislative or political issue.

(g) Effect of Board Consideration. The fact that requested legislative or political action is not considered by the board of governors, or that legislation or a political issue did not receive the required 2/3 vote shall not be considered "action" by the board of governors. Failure to receive a necessary 2/3 vote to support legislation or a political issue shall not be considered as the adoption of a position to oppose the matter.

(h) Review of Past or Current Positions. Review of a past position may be requested by any member of the board of governors or the executive committee, and required upon a majority vote of those present. A current position on a legislative or political issue may be altered, amended or withdrawn by a 2/3 vote of the board of governors present at the meeting.

(i) Publication of Legislative and Political Positions. The Rules Regulating The Florida Bar shall govern the official notice and publication of positions on legislative and political issues adopted on behalf of The Florida Bar.

(j) Objection to Legislative and Political Positions. The Rules Regulating The Florida Bar and applicable case law shall govern the procedures for member objections to legislative and political positions adopted on behalf of The Florida Bar.

9.21 Action by Executive Committee or President.

(a) Action by Executive Committee. The executive committee shall take no action on a legislative or political issue unless the executive committee shall determine by majority vote of those voting that:

(1) the requested legislative or political action could not reasonably have been submitted for consideration by the board of governors in accordance with existing policies, or,

(2) there has been a significant material change in circumstances since the last meeting of the board of governors making it necessary that legislative or political action be taken by The Florida Bar.

(b) Review of Matters Previously Considered by Board. When reconsidering a legislative or political issue previously acted upon by the board of governors, the executive committee shall take no action inconsistent with previous action of the board on the same issue unless there has been a significant material change in circumstances since the last meeting of the board of governors.

(c) Required Votes. In making recommendations or in acting on a legislative or political issue, the executive committee shall:

(1) affirmatively establish by 2/3 majority vote of the committee that the proposed legislative or political action is within the scope of the authority of The Florida Bar as set forth in the Rules Regulating The Florida Bar and applicable court decisions;

(2) if the vote is affirmative, a second affirmative vote by 2/3 of those present that the specific legislative or political position is adopted.

(d) Action by President. During the time when the legislature is in session or if an emergency exists, and it is not feasible for the executive committee to act, then the president, upon consultation with the president-elect and the chair of the legislation committee (if possible under the circumstances), may act upon a pending request for action on legislative or political issue.

(e) Report to Board. Any legislative or political action taken by the executive committee or president shall be reported to the board of governors at its next meeting.

9.30 Legislation Committee.

(a) Structure. The legislation committee shall be composed of 9 members, at least 5 of whom shall be members of the board of governors at the time of appointment. The chair shall be a member of the board of governors.

(b) Appointment; Terms. The president-elect shall appoint 3 members and shall name a chair-elect. The chair-elect shall become chair when the president-elect becomes president. Terms of all members shall be 3 years.

(c) Meetings. The legislation committee will meet for the purpose of developing its recommendations for the board of governors with regard to requests that the board adopt or recognize a legislative or political position submitted in accordance with applicable board policy.

(d) Report to Board. In each case involving proposed legislative or political action, the legislation committee shall make a recommendation to the board whether the proposed action is within the scope of the authority of The Florida Bar under the Rules Regulating The Florida Bar and applicable court decisions, and whether any legislative or political position should be formally adopted or recognized by the board.

(e) Authority to Draft Legislative or Political Concepts. In addition to the above, the legislation committee shall also have the authority to draft and submit to the board of governors legislative

or political concepts which may or should be the subject of legislation or other advocacy, and recommend positions with respect thereto.

9.40 Procedure for Hiring Advisor and Consultants.

(a) Counsel or Advisor. An advisor may be hired by The Florida Bar on a part-time as needed basis to advise the Bar on legislative or political matters and to represent the Bar in communicating the Bar's position to the committees and individual members of the legislature or to other governmental officials. The person employed may or may not be an attorney. If the person employed is an attorney, the person will be known as "legislative counsel."

(b) Term of Employment. The person employed will be employed for a 2-year period to coincide with the 2-year legislative session. The term shall commence July 1st and end June 30th 2 years later.

(c) Review of Performance. After the election of the president-elect designate, a committee will review the performance of the legislative counsel or advisor and, when appropriate, review the terms and conditions of a contract and also consider any applicants for the position. The committee will be composed of the following:

(1) the president (for the year following election of president-elect designate), who shall be the chair;

(2) the president-elect (for the year following election of president-elect designate);

(3) the executive director; and

(4) the legislation committee.

(d) Recommendation of Employment. An affirmative vote of 6 of the above described committee must be received to recommend employment of a legislative advisor.

(e) Time of Recommendation. The committee shall make its recommendation to the board of governors not later than the September board meeting. The legislative counsel or advisor should be retained by The Florida Bar in time to attend and participate in the Florida legislature's organizational meetings held in November.

(f) Retention of Other Consultants and Experts. Consultants and expert witnesses may be retained for legislative and political matters upon recommendation of the legislation committee and approval of the board of governors. If the board of governors is unable to timely act on such recommendation, the executive committee may approve such retainers, provided that the cost thereof is within the previously approved budget for legislative and other political activities.

9.50 Legislative and Political Activities of Sections.

(a) Authority. A section may be recognized by the board of governors as taking action on or advocating a position on a legislative or political issue only when all of the following criteria are met:

(1) the issue involved is within the section's subject matter jurisdiction as described in the section's bylaws;

(2) the issue is beyond the scope of permissible legislative or political activity of The Florida Bar, or the issue is within the permissible scope of legislative or political activity of The Florida Bar but the proposed section position is not inconsistent with an official position of the bar on that issue;

(3) the issue is not one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar.

(b) Notice of Bar Positions. The executive director shall give periodic notice to the sections of their recognized positions or activity and the official positions of The Florida Bar on legislative or other political issues.

(c) Notice of Section Proposals. Sections shall advise The Florida Bar of proposed legislative or political activity by providing written notification to the executive director. The proposal shall be circulated to all divisions, sections and committees that may be interested in the issue, and such written notification shall identify all such groups to which the proposal has been submitted for comment, and reciting the comments received. When a decision is needed within 60 days, the notice shall include an explanation of the need for an expedited decision, and shall request a specific deadline for a decision by the bar as to the criteria in subdivision (a).

(d) Deadline for Bar Response. When an expedited decision is not requested, review of a section's proposed legislative or political activity shall be by the legislation committee and the board of governors. Unless said review is completed and a written notice of decision is received by the section within 60 days of the executive director's receipt of the section's notice pursuant to subdivision (c), the section may advocate a position or take any proposed action unless advised otherwise by a court of competent jurisdiction. When an expedited decision is requested, review may be by the executive committee. When the legislature is in session or an emergency exists, and the executive committee is unable to act, review may be by the president in consultation with the president-elect and the chair of the legislation committee, if possible.

(e) Prohibition from Advancing Section Position. Upon review of a section's proposed legislative or political activity, the bar may prohibit the section from acting or advancing a position only when it finds that the position fails to meet the criteria of subdivision (a).

(f) Prompt Notice Required. Whenever the review of a section's proposed legislative or political activity pursuant to subdivision (d) is completed in less than 60 days, the bar shall immediately give written notice to the section of the decision.

(g) Review of Executive Committee or President's Action. When a decision that a section's proposed legislative or political activity does not meet the criteria of subdivision (a) is made by other than the board of governors pursuant to subdivision (d), the section shall have the right to have the decision reviewed by the board of governors at the meeting immediately following the date of the notice to the section required in subdivision (f).

(h) Procedures Required. Sections engaging in legislative or political activities must adopt a procedure for determining legislative and political positions, submit the procedure to the board of governors and receive the board's approval. Section legislative procedures must include but are not limited to:

(1) establishment of a legislation committee composed of not less than 3, with such members appointed for staggered terms;

(2) a 2/3 vote of the members of the section's executive council present, finding the proposed legislative or political activity to be within the scope of subdivision (a), and a majority vote of those members present approving the position.

(i) Coordination with Florida Bar. In furtherance of a section's obligation to clearly distinguish its legislative and political activity from that of The Florida Bar, sections have a continuing duty to coordinate their legislative and political activity with the bar and to advise of any section representatives who might make direct personal contact with governmental officials in furtherance of any section position or activity on a legislative or political issue.

9.51 Procedure for Hiring Section Advisors.

(a) Bar Approval Required. No section of The Florida Bar may retain a legislative or political advisor without the consent of the board of governors.

(b) Request for Approval; Contents. A section desiring to retain a legislative or political advisor shall submit to the board of governors a request for approval containing the following information:

(1) the name and address of the proposed advisor;

(2) the proposed contractual terms for the advisor's contract;

(3) statement of showing the need for hiring the advisor;

(4) a list of the clients, the advisor, and members of the advisor's firm represent as legislative advisors at the time the board of governors considers the proposed contract;

(5) an agreement that subsequent legislative or political clients will be disclosed to The Florida Bar at least 5 days prior to the advisor or any member of the advisor's firm beginning representation of the subsequent client and that any subsequent conflicts will be disclosed immediately;

(6) a provision that the contract may be terminated by The Florida Bar if it decides that the section advisor or a member of the advisor's firm does not act within the best interests of The Florida Bar; and

(7) an agreement that the advisor will work on Florida Bar legislative or political matters if the executive director believes such participation is necessary and in the best interests of the membership of The Florida Bar. If this action occurs, the cost of the advisor's time will be assessed against the section, unless this use creates a shortage or hardship upon the

section. In that event The Florida Bar may reimburse the section for the appropriate amount of such expense.

(c) Review of Requests and Report to Board. The legislation committee and the executive director shall review proposed contracts for a section's legislative or political advisor and make recommendations to the board of governors with respect thereto.

(d) Notice to Executive Director. A section's advisor shall agree to communicate all significant legislative or political developments to the executive director of The Florida Bar.

(e) Budget Limit on Section Legislative or Political Activity. No section shall budget or expend for legislative activities more than the amount budgeted or received as voluntary dues from section members.

9.60 Legislative and Political Activities of Divisions and Committees. Divisions and committees of The Florida Bar may advance a legislative or political position only if the issue is within the scope of permissible activity of The Florida Bar, is within the area of subject matter interest of the division or committee, and is authorized by the board of governors.

9.70 Advice and Consultation with Governmental Officials or Others by Florida Bar Members. Nothing herein shall preclude lawyers from presenting their individual personal views to the Florida Legislature, the United States Congress, or any other person or body on any legislative or political matter.

□

Committee Procedures

AGENDA
Legislation Committee
Thursday, December 12, 2013
The Ritz-Carlton, Ft. Lauderdale
3:00 – 5:00 PM
Beechwood Room, 3rd Floor

5. Consent Calendar
   Legislation Committee
   i) Florida Bar Legislative Consultant Contracts
   ii) Section & Division Legislative Position Requests
      1) Public Interest Law Section
   * (a) Nonresident Cost Bond F.S. §57.011
      2) Real Property, Probate & Trust Law
   ~ (b) Powers of Attorney/Florida Real Estate F.S. §709.2106
   ~ (c) Ad Litem Appointments F.S. §49.021
   ~ (d) MRTA Glitch Fix/Notice of Preservation F.S. §712.05
   iii) Section Legislative Consultant Contracts
   iv) Other Business

21. Legislation Committee Report – Chair Jay Cohen
   a. Florida Bar Legislative Position Requests
   b. Section & Division Legislative Position Requests
   c. Committee Legislative Position Request
      i) Legal Needs of Children
   * a) Direct Filing of Children to Adult Court
   d. Notice of Technical Assistance
      i) Tax Section
         a) Proposed Regulations re IRC §§66 & 6015
   e. Other Business
   f. Informational Items
      i) Attorneys in the Legislature
      ii) Key Contact Program
      iii) Guidelines for Legislative Action by The Florida Bar & Other Subgroups
      v) 2012-14 Master List of Bar Legislative Positions

L-1 Approval of Action Minutes (9/30/13 Conference Call)
L-2 Correspondence regarding Congressman Theodore E. Deutch - National Center for the Right to Counsel Act (H.R. 3407)
L-3 Judicial Conference Lobbyist Contracts
- TFB/DCA Judges Conference/Lobbyist Frank Tsamoutales
- TFB/Circuit Judges Conference/Lobbyist Pete Dunbar
- TFB/County Judges Conference/ Lobbyist Stephen Shiver

* denotes supplemental mailing
~ denotes hand carry

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By (List name of the section, division, committee, bar group or individual)

_____

Address (List street address and phone number)

_____

Position Level (Florida Bar or Section / Division / Committee -- or both, if requested)

_____

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. Every request should e accompanied by a copy of any existing or proposed legislation, or a detailed presentation of the matter at issue. Contact the Governmental Affairs office with questions.

If Applicable, List The Following:

(Bill or PCB #) (Sponsor)

_____ _____

_____ _____

Indicate Position: ☐ Support ☐ Oppose ☐ Technical or Other Non-Partisan Assistance

Proposed Wording of Position for Official Publication:

Reasons For Proposed Advocacy:

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section/divisions/committee positions on this issue, to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position

(Bar / Section / Division / Committee)	(Support or Oppose)	(Date)
_____	_____	_____

Others (Attach list if more than one)

(Bar / Section / Division / Committee)	(Support or Oppose)	(Date)
_____	_____	_____

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

A request for action on a legislative position must be circulated to all divisions, sections and committees that might be interested in the issue. The Legislation Committee and Board of Governors may delay final action on a request in the absence for any responses from such groups. Please include all responses with this request form.

Referrals

1.	(Name of Group or Organization)	(Support, Oppose or No Position)
	_____	_____
2.	(Name of Group or Organization)	(Support, Oppose or No Position)
	_____	_____
3.	(Name of Group or Organization)	(Support, Oppose or No Position)
	_____	_____

CONTACTS

Board & Legislation Committee Appearance
(List name, address and phone number)

Appearances before Legislators
(List name and phone number of those having direct contact before House/Senate Committees)

Meetings with Legislators/staff
(List name and phone number of those having direct contact with Legislators)

Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request -- which may involve a separate appearance before the Legislation Committee unless otherwise advised.

For information or assistance, please contact the Governmental Affairs Office of The Florida Bar at 850-561-5662 or Toll-Free 800-342-8060, extension 5662.

GUIDELINES FOR LEGISLATIVE ACTION BY THE FLORIDA BAR, BAR COMMITTEES & BAR SECTIONS

THE FLORIDA BAR

- **The Florida Bar re Schwarz**, 552 So.2d 1094 (Fla. 1989), *cert. denied* 498 U.S. 951, (1990) -- reconfirmed in **The Florida Bar re Frankel**, 581 So.2d 1294 (Fla. 1991)

  The following subject areas clearly justify legislative activity by The Florida Bar:

  1. questions concerning the regulation and discipline of attorneys;
  2. matters relating to the improvement of the functioning of the courts, judicial efficacy and efficiency;
  3. increasing the availability of legal services to society;
  4. regulation of attorneys' client trust accounts; and
  5. the education, ethics, competence, integrity and regulation as a body, of the legal profession.

  Additionally, the following criteria are to be used to determine the type of legislative matters that The Florida Bar may become actively involved with when an issue appears to fall outside of the specifically identified areas listed above:

  1. that the issue be recognized as being of great public interest;
  2. that lawyers are especially suited by their training and experience to evaluate and explain the issue; and
  3. the subject matter affects the rights of those likely to come into contact with the judicial system.

  The Supreme Court of Florida has further suggested that the Board of Governors of The Florida Bar "exercise caution in the selection of subjects upon which to take a legislative position so as to avoid, to the extent possible, those issues which carry the potential of deep philosophical or emotional division among the membership of the Bar."

- **Keller v. State Bar of California**, 496 U.S. 1 (1990)

  The compelled association within a unified bar is justified by the state's interest in regulating the legal profession and improving the quality of legal services. "The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory fees of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity."

  * * *

  The guiding standard must be 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."

BAR COMMITTEES

- **Standing Board Policies**

  9.60 Legislative and Political Activities of Divisions and Committees.

  Divisions and committees of The Florida Bar may advance a legislative or political position only if the issue is within the scope of permissible activity of The Florida Bar, is within the area of subject matter interest of the division or committee, and is authorized by the board of governors.

BAR SECTIONS

- **Standing Board Policies**

9.50 **Legislative and Political Activities of Sections.**

(a) **Authority.** A section may be recognized by the board of governors as taking action on or advocating a position on a legislative or political issue only when all of the following criteria are met:

(1) the issue involved is within the section's subject matter jurisdiction as described in the section's bylaws;

(2) the issue is beyond the scope of permissible legislative or political activity of The Florida Bar, or the issue is within the permissible scope of legislative or political activity of The Florida Bar but the proposed section position is not inconsistent with an official position of the bar on that issue;

(3) the issue is not one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar.

* * *

(e) **Prohibition from Advancing Section Position.** Upon review of a section's proposed legislative or political activity, the bar may prohibit the section from acting or advancing a position only when it finds that the position fails to meet the criteria of subdivision (a).

□

Section & Committee Lobbying – Technical Assistance Issues

The Florida Bar

Gwynne A. Young
President

John F. Harkness, Jr.
Executive Director

Eugene K. Pettis
President-Elect

March 20, 2007

MEMORANDUM

To: Legislation Committee

From: Paul F. Hill

Re: Proposed Policy re Technical Assistance to the Florida Legislature – Consumer Protection Law Committee

cc: Board of Governors, John F. Harkness, Jr., Montina Ruffin, Dana Watson, Stephen W. Metz

Attached is a proposed policy developed by the Bar's Consumer Protection Law Committee to govern matters relating to so-called "technical assistance" to the Florida Legislature.

Technical assistance is somewhat of a term of art in the political world but – as opposed to lobbying a particular issue or point of view – it essentially means non-partisan guidance to lawmakers and decision makers, typically involving topics of a specialized or technical nature. As you might appreciate, in many instances, technical assistance is desired from Bar groups much more often than lobbying…

Matters of technical assistance for Bar sections have been guided by a longstanding "resolution of understanding," originally developed by the Council of Sections. Those procedures have worked smoothly since the mid-1990's – so smoothly, in fact, that this resolution is no longer passed on an annual basis by the Council to assure its observance within the Bar's legislative processes. You may otherwise recall that these "T.A." issues are typically shown as informational items "below the line" in your Legislation Committee materials, and are usually reflected by letters or memoranda from Section representatives to Congressional or Legislative entities.

However, when the Bar's Consumer Protection Law Committee approached me in January 2007 with separate interest in providing technical assistance of its own during this legislative session, I realized that some process other than that used for Bar sections might be necessary. The proposed policy that follows is the product of my coordination with leaders of that group, further influenced by the proven process for dealing with technical assistance by Bar sections.

I commend the Consumer Protection Law Committee and its desire to showcase the expertise and talents of it members in this regard. Few of the legislative bills that come within the interests of this committee have any likely advocate within other sub-groups of this bar. Nevertheless, this committee seems willing – on occasion – to carefully speak on selected matters, otherwise respecting the limits placed on them by our governing rules because they are funded by mandatory membership fees. Other Bar committees may have similar interests in sharing their special knowledge elsewhere within government.

I recommend the Legislation Committee's approval of use of this procedure by the Consumer Protection Law Committee – and any other Bar committee – for the duration of this Legislative Session. My hope is that this pilot might be further tested by other groups, and that the Bar might thereafter consider moving forward with more permanent codified policies governing technical assistance by sections and committees within all branches of government.

P.F.H.

Attachments

Consumer Protection Law Committee

Procedure for Issuance of a Technical Assistance Memorandum:

(1) Upon a request by any member of the Consumer Protection Law Committee that the committee issue a comment on a current or anticipated legislative issue, a brief summary of the request and the issue will be submitted to the committee chair for determination of whether the committee will begin to prepare a comment on such legislative issue through a technical assistance memorandum in accordance with these procedures.

(2) The chair or any designee will circulate copies of all requests for committee comment on a legislative issue to all members of the committee for review and action in accordance with these procedures.

(3) The chair may direct preparation of a technical assistance memorandum with or without a vote of the committee at the chair's discretion, to account for time sensitivity and other factors the chair deems relevant.

(4) Upon preparing a proposed technical assistance memorandum, the proposal will be circulated to all committee members for review and approval. Presentation of the technical assistance memorandum will not be partisan.

(5) Approval for committee issuance of a technical assistance memorandum is obtained by:

a. Affirmative vote of a majority of the voting committee members; and

b. Affirmative vote of a two-thirds majority of the Executive Council of the committee, consisting of the chair and the two vice chairs (unless otherwise designated by the committee), provided that the Executive Council's approval is subject to its prior or contemporaneous determination that the proposed technical assistance memorandum is within the committee's scope, has a reasonable basis, is not divisive and is not contrary to any Florida Bar position.

(6) Before issuing a technical assistance memorandum, The Florida Bar and all other potentially interested Bar sections, committees or other groups will be notified of the committee's intention to issue a technical assistance memorandum.

(7) A technical assistance memorandum will include:

a. A statement that the technical assistance memorandum is not a formal statement of The Florida Bar and is not binding on The Florida Bar or any division, section or committee of The Florida Bar; and

b. A statement that the technical assistance memorandum reflects the sentiment of a majority of voting members within the full membership of the committee, with specific disclosure provided as to the numbers comprising the majority, voting members and the full committee membership.

□

Session: How It All Comes Together

Agenda Calendar for Monday Apr 21, 2014

Monday Apr 21, 2014

8:00AM **Event** **Location**

J 50th Day Rule **8:00AM-N/A**

50th day - last day for regularly scheduled committee meetings (Rule 2.9(2))

M Florida Brewer's Guild displays **Courtyard** **8:00AM-5:00PM**

Florida Brewer's Guild/Senator Aaron Bean - To highlight the economic impact of the beer industry in Florida. The displays will highlight the brewing process, jobs in brewing and other innovations.
Contact: James Kotas (850) 487-5004

M LobbyTools Live Support Desk at the Capitol **3rd Floor Rotunda** **8:00AM-N/A**

During the final two weeks of Session, the LobbyTools Support Team will be stationed on the 3rd Floor Rotunda of the Capitol building to provide technical assistance.

Stop by the LobbyTools table on the 3rd Floor starting Monday, April 21, through Sine Die on Friday, May 2, 2014. Our team will be standing by ready to answer any questions you may have, or offer insights on how to best utilize LobbyTools during the final push.

8:30AM **Event** **Location**

H Appropriations Committee **212 K** **8:30AM-10:30AM**

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

CCL CRM GPS GVL PIL TRL CP wcc wcp wcr wgp wgl wpi ALL wtl	**HB 0227**	**Victims of Wrongful Incarceration**	**Kerner**
BU* CCL ELU GPS GVL PIL RPT TX TRL CP wbz wcc wcp wev wgp wgl wpi wrp wtl ALL wtl	**HB 0587**	**Charitable Exemption from Ad Valorem Taxation**	**Metz**
BU* CCL CP ED* FA* GPS GVL PIL ALL wbz wcc wcp wed wfl wgp wgl wpi AD* CRM *HE JAE LNC TRL WAD wcr whl wje win wtl	**HB 7169**	**Child Protection and Child Welfare Services**	**Healthy Families Subcommittee**

9:00AM **Event** **Location**

F AHCA Governor's Panel on Excellence in Long-Term Care **Conference Call** **9:00AM-N/A**

General subject matter to be considered: The Governor's Panel on Excellence in Long-Term Care will be meeting to review applications received for consideration for the Gold Seal Award designation. Other business as needed may also be discussed.

Place: 1(888)670-3525, conference code: 8050334011

For more information, contact: Ms. Jacquie Williams, Long-Term Care Services Unit, Agency for Health Care Administration, 2727 Mahan Drive, Mail Stop #33, Tallahassee, Florida 32327, (850)412-4437, jacqueline.williams@ahca.myflorida.com

Meetings are subject to change or cancellation; please call to confirm the meeting date and time.

Source: Florida Administrative Register Issue Vol. 40/No. 66 Section VI - Notices of Meetings, Workshops and Public Hearings - Issue Date: April 4, 2014.

M	**DHSMV Florida driver licenses services**	**Plaza Level Rotund...**	**9:00AM-4:00PM**

Monday-Friday, April 21-25, 9:00 a.m. - 4:00 p.m.
Florida Department of Highway Safety and Motor Vehicles - Florida driver licenses services, renewals, duplicates and address changes and tag services.
Contact: Joyce Norton (850) 617-2628

M	**Donate Life Florida**	**Plaza Level Rotund...**	**9:00AM-4:00PM**

Monday-Friday, April 21-25, 9:00 a.m. - 4:00 p.m.
Donate Life Florida - Partnering with Highway Safety and Motor Vehicles, Donate Life is available to provide information and answer questions about becoming an organ donor.
Contact: Betsy Edwards (813) 426-5284

F	**State Board of Administration**	**Tallahassee**	**9:00AM-10:00AM**

General subject matter to be considered: The purpose of this special meeting is to discuss and approve the Office of Internal Audi budget for fiscal year 2014-15

Place: Hermitage Room, First Floor, The Hermitage Centre, 1801 Hermitage Blvd, Tallahassee, Florida 32308

For more information, contact: Elizabeth Scott, (850)413-1248, email: Elizabeth.Scott@sbafla.com

Meetings are subject to change or cancellation; please call to confirm the meeting date and time.

Source: Florida Administrative Register Issue Vol. 40/No. 67 Section VI - Notices of Meetings, Workshops and Public Hearings - Issue Date: April 7, 2014.

F	**Tampa Bay Water - A Regional Water Supply Authority**	**Clearwater**	**9:00AM-N/A**

General subject matter to be considered: A Board Workshop concerning the proposed 2015 Fiscal Year Budget will be followed by a Regular Board Meeting of the Tampa Bay Water Board of Directors

Place: Tampa Bay Water Administrative Offices, 2575 Enterprise Road, Clearwater, FL 33763

For more information, contact: Records Department, (727)796-2355

Meetings are subject to change or cancellation; please call to confirm the meeting date and time.

Source: Florida Administrative Register Issue Vol. 40/No. 61 Section VI - Notices of Meetings, Workshops and Public Hearings - Issue Date: March 28, 2014

9:30AM	**Event**	**Location**	
F	**Pasco-Pinellas Area Agency on Aging**	**New Port Richey**	**9:30AM-N/A**

General subject matter to be considered: Items related to Area Agency on Aging of Pasco-Pinellas business and Board of Director oversight.

Place: Elfer's Senior Center, 4136 Barker Drive, New Port Richey, FL 34652

For more information, contact: Brenda Black at (727)570-9696, ext. 233

Meetings are subject to change or cancellation; please call to confirm the meeting date and time.

Source: Florida Administrative Register Issue Vol. 40/No. 71 Section VI - Notices of Meetings, Workshops and Public Hearings - Issue Date: April 11, 2014.

10:00AM	**Event**	**Location**	
F	**DOS Art Selection Committee**	**Conference Call**	**10:00AM-N/A**

General subject matter to be considered: The Art Selection Committee for the new Miami-Dade County Health Department in

Liberty City is meeting to determine potential artwork sites and media.

Place: 1(805)309-0014, conference code: 892-346-269

For more information, contact: Lee Modica at (850)294-5445 or lee.modica@dos.myflorida.com

Meetings are subject to change or cancellation; please call to confirm the meeting date and time.

Source: Florida Administrative Register Issue Vol. 40/No. 72 Section VI - Notices of Meetings, Workshops and Public Hearings - Issue Date: April 14, 2014.

[E] Tuition and College Affordability round table discussion with Gov. Rick Scott — **Jacksonville** — **10:00AM-N/A**

Monday, April 21, Governor Rick Scott will discuss tuition and college affordability with students and parents at theDuval County Public Schools District Office.

Duval County Public Schools District Office
6th Floor Conference Room (Room 613)
1701 Prudential Drive
Jacksonville, FL 32207

10:45AM	Event	Location	
	[H] Judiciary Committee	**404 H**	**10:45AM-12:45PM**

Consideration of the following proposed committee substitute:
PCS for H 0843 - Cannabis, by Reps. Gaetz & Edwards

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

BU* CCL CRM GPS GVL *HE PIL TX TRL CP wbz wcc wcp wcr wgp wgl whl wpi wtl ALL wtl	**HB 0843**	**Cannabis**	**Gaetz (M)**

	[H] State Affairs Committee	**17 H**	**10:45AM-1:45PM**

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

BU* CCL CRM FA* GPS GVL PIL TRL JAE CP WTC wbz wcc wcp wcr wfl wgp wgl wje wpi ALL wtl wwh	**SB 0846**	**Governmental Ethics**	**Latvala**
BU* CCL CP ED* EAS GPS GVL MCL PIL TRL ALL wbz wcc wcp wed wea wgp wgl wmc wpi wtl	**HB 1153**	**Citizen Support and Direct-Support Organizations**	**Hager**
CCL GVL PIL wcc wgl wpi CRM JAE EMP wwh wcr wje wle	**SAC6**	**Public Retirement Plans**	**State Affairs Committee**

12:00PM	Event	Location	
	[F] Department of Environmental Protection	**Orlando**	**12:00PM-5:00PM**

62-761.800 Out-of-Service and Closure Requirements

General subject matter to be considered: Discussion of the "Storage Tank System Closure Assessment Requirements" for incorporation into Rule 62-761.800, F.A.C., and Rule 62-762.801, F.A.C.

Place: DEP Central District Office, 3319 Maguire Blvd, Orlando FL Conference Room A/B/C

For more information, contact: William E. Burns, Jr., Department of Environmental Protection, 2600 Blair Stone Rd., Tallahassee, FL 32399, bill.burns@dep.state.fl.us or (850)245-8842

Meetings are subject to change or cancellation; please call to confirm the meeting date and time.

Source: Florida Administrative Register Issue Vol. 40/No. 66 Section VI - Notices of Meetings, Workshops and Public Hearings - Issue Date: April 4, 2014.

F South Florida Water Management District — Jupiter — 12:00PM-N/A

General subject matter to be considered: Rod Braun, South Florida Water Management District, Office of Everglades Policy and Coordination, 3301 Gun Club Road, West Palm Beach, FL 33406; (561)682-2925, rbraun@sfwmd.gov

Place: Jupiter Emergency Operations Center, 3133 Washington Street, Jupiter, FL 33458

For more information, contact: Rod Braun, South Florida Water Management District, Office of Everglades Policy and Coordination, 3301 Gun Club Road, West Palm Beach, FL 33406; (561)682-2925, rbraun@sfwmd.gov

Meetings are subject to change or cancellation; please call to confirm the meeting date and time.

Source: Florida Administrative Register Issue Vol. 40/No. 67 Section VI - Notices of Meetings, Workshops and Public Hearings - Issue Date: April 7, 2014.

1:00PM **Event** **Location**

F APD Forensics Housing and Service Delivery workgroup — Conference Call — 1:00PM-5:00PM

General subject matter to be considered:
1:00pm - 3:00pm - Project action plans for the Forensics Housing and Service Delivery workgroup will be discussed.

3:00pm - 5:00pm - Project action plans for the Forensics Housing and Service Delivery workgroup will be discussed.

Place: This is a Lync Meeting. However, participants who prefer/need to meet in person can participate at the following address: Agency for Persons with Disabilities, 4030 Esplanade Way, Room 350A, Tallahassee, FL 32399
CALL-IN INFORMATION: 1(888)670-3525, passcode: 372.131.0769
This meeting will involve Microsoft Lync for sharing presentations over the internet. If you already have access to Microsoft Lync, please use to the following link to join the meeting and then choose "Don't join audio":
Join Lync Meeting
If you do not already have Microsoft Lync installed, please follow the hotlink below and choose "Meeting Readiness":
http://office.microsoft.com/client/helppreview.aspx?AssetId=HA102621125&lcid=1033&NS=OCO14&Version=14
You will be presented with two options; 1) install Active X or 2) download and install Microsoft Attendee. We recommend you install Microsoft Attendee.

For more information, contact: http://apdcares.org/publications/legal, Tracey Tolbert, (850)488-4358, Tracey.Tolbert@apdcares.org

Meetings are subject to change or cancellation; please call to confirm the meeting date and time.

Source: Florida Administrative Register Issue Vol. 40/No. 72 Section VI - Notices of Meetings, Workshops and Public Hearings - Issue Date: April 14, 2014.

S Sen. Bullard Press Conference re: Anti-Religious Bill — Senate Chamber Doo... — 1:00PM-1:30PM

Senator Dwight Bullard (D-39) will speak alongside concerned parents, students and citizens across Florida join together is opposition of SB 864 Instructional Materials for K-12 Public Education Bill. The bill would give school districts the opportunity to decide what instructional materials can be allowed within a classroom. Currently the state governs which instructional materials can be allowed within a classroom. Critics of SB 864 say the measure has the potential to jeopardize the entire Sunshine State school system with an unnecessary law for a problem that does not exist.

S Rules — 110 S — 1:00PM-4:00PM

Other Related Meeting Documents

The amendment deadline for this meeting, including proposed committee substitutes and delete everything amendments, is Friday, April 18, 2014 at 1:00 p.m. All amendments must be in final form and barcoded when filed.

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

BU* CCL CP ELD GPS GVL *HE MCL PIL TRL ALL wbz wcc wcp wel wgp wgl whl wmc wpi wtl	SB 1700	Public Records/Personal Identifying Information/Compassiona...	Bean
AD* BU* CCL ELU GPS GVL PIL RPT TRL WAD ALL wbz wcc wev wgp wgl wpi wrp wtl	SB 1748	Establishing Minimum Water Flows and Levels for Water Bodie...	Environmental Preservation and Conservation
AD* BU* CCL CRM FA* GPS GVL *HE PIL TRL CP LNC WAD wbz wcc wcp wcr wfl wgp wgl whl wln wpi ALL wtl	SB 0918	Termination of Pregnancies	Flores
BU* CCL CP ELU GPS GVL PIL RPT TRL ALL wbz wcc wcp wev wgp wgl wpi wrp wtl	SB 1274	Citizens Property Insurance Corporation	Hays
BU* CCL GPS GVL PIL TRL WC CP wbz wcc wcp wgp wgl wpi ALL wtl wwc	SB 0952	Workers' Compensation	Simpson
BU* CCL CRM D&I FA* GPS GVL PIL TRL CRE JAE CP LNC wbz wcc wre wcp wcr weq wfl wgp wgl wje wln wpi ALL wtl	SB 0104	Family Law	Soto
BU* CCL GPS GVL PIL ED* MCL CP wbz wcc wcp wed wgp wgl wmc wpi ALL	SB 0318	Public Meetings/University Direct-support Organization	Stargel
WTC CCL GPS GVL PIL wwh ALL wcc wgp wgl wpi	SB 1008	Article V Constitutional Conventions	Stargel
BU* CCL EAS GPS GVL PIL TX ALL wbz wcc wea wgp wgl wpi wtl	SB 1714	Malt Beverages	Regulated Industries
APP CCL CRM GPS GVL PIL TRL CP wac wcc wcp wcr wgp wgl wpi ALL wtl	SB 0326	Victims of Wrongful Incarceration	Thompson
BU* CCL ELU GPS GVL PIL RPT wbz wcc wev wgp wgl wpi wrp ALL	SB 0372	Developments of Regional Impact	Galvano
WTC BU* CCL CP GPS GVL MCL PIL TRL wwh ALL wbz	SB 1046	Public Records/Motor Vehicle Crash Reports	Galvano

wcc wcp wgp wgl wmc wpi wtl			
APP CCL GPS GVL PIL TRL MCL CRE JCR TCR CP CRP CVP JAR WTC wap wcc wcv wre wcp wcp wgp wgl wja wjc wmc wpi wsc ALL wtc wtl wwa FLR FPR wwh	**SB 0834**	**Legal Notices**	**Latvala**
BU* CCL CP FA* GPS GVL PIL RPT TRL ALL wbz wcc wcp wfl wgp wgl wpi wrp wtl AD* JAE MCL OSP WAD wje wmc wos	**SB 1320**	**Public Records/Office of Financial Regulation**	**Richter**
BU* CCL CP ELU GPS GVL PIL RPT ALL wbz wcc wcp wev wgp wgl wpi wrp	**SB 1672**	**Property Insurance**	**Banking and Insurance**
APP BU* CCL GPS GVL PIL TRL CP wap wbz wcc wcp wgp wgl whl wpi ALL wtl	**SB 0870**	**Insurance**	**Smith (C)**
BU* CCL ELU GPS GVL PIL RPT TRL ED* AVI CP EDC wav wbz wcc wcp wed wem wev wgp wgl wpi wrp ALL wtl	**SB 1172**	**Conveyance of Property Taken by Eminent Domain**	**Sobel**
BU* CCL ELU GPS GVL *HE PIL CP wbz wcc wcp wev wgp wgl whl wpi ALL	**HB 0281**	**Keystone XL Pipeline**	**Hill**
AD* CCL GPS GVL *HE PIL WAD ALL wcc wgp wgl whl wpi	**HB 7145**	**Ratification of Rules/Department of Health**	**Rulemaking, Oversight & Repeal Subcommittee**
AD* CCL FA* GPS GVL JCR LNC MCL PIL WAD ALL wcc wfl wgp wgl wjc wln wmc wpi	**HB 7163**	**Ratification of Rules/Department of Juvenile Justice**	**Rulemaking, Oversight & Repeal Subcommittee**

2:00PM	**Event**	**Location**
	H SESSION	**2:00PM-5:35PM**

Main Amendment Filing Deadline: Friday, April 18, 2014 2:00 PM

Adhering Amendment Filing Deadline: Friday, April 18, 2014 5:00 PM

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

Special Orders

BU* CCL GPS GVL PIL TX wbz wcc wgp wgl wpi wtl ALL	HB 0381	Article V Convention of the States	Metz
BU* CCL GPS GVL PIL TX CP WTC wbz wcc wcp wgp wgl wpi wtl ALL wwh	SB 0476	Amendments to the Constitution of the United States	Hays
BU* CCL GPS GVL PIL ALL wbz wcc wgp wgl wpi	HB 0625	Balanced Federal Budget	Wood
BU* CCL GPS GVL PIL ALL wbz wcc wgp wgl wpi	SB 0658	Balanced Federal Budget	Stargel
AD* CCL CP ED* FA* GPS GVL LNC PIL TRL WAD ALL wcc wcp wed wfl wgp wgl wln wpi wtl BU* ELU RPT wbz wev wrp	HB 7069	Early Learning and Child Care Regulation	Education Committee
BU* CCL CP FA* GPS GVL EMP LNC PIL TRL ALL wbz wcc wcp wel wfl wgp wgl wle wln wpi wtl ED* wed	HB 7083	School Choice	Choice & Innovation Subcommittee
BU* CCL FA* GPS GVL PIL ED* MCL CP LNC wbz wcc wcp wed wfl wgp wgl wln wmc wpi ALL	HB 0355	Postsecondary Education Textbook and Instructional Material...	Porter
BU* CCL CP GPS GVL *HE EMP PIL TRL ALL wbz wcc wcp wgp wgl whl wle wpi wtl	HB 1275	Physician Assistants	Ahern
BU* CCL EAS GPS GVL PIL TRL CP wbz wcc wcp wea wgp wgl wpi ALL wtl	HB 0255	Discriminatory Insurance Practices	Gaetz (M)
BU* CCL EAS GPS GVL PIL TRL CP wbz wcc wcp wea wgp wgl wpi ALL wtl	SB 0424	Discriminatory Insurance Practices	Lee (T)
CCL GPS GVL *HE PIL CP wcc wcp wgp wgl whl wpi ALL	HB 0437	Diabetes Advisory Council	Trujillo
BU* CCL GPS GVL PIL TRL WC CP wbz wcc wcp wgp wgl wpi ALL wtl wwc	HB 0785	Workers' Compensation	Albritton
BU* CCL GPS GVL PIL RPT TRL CP wbz wcc	HB 0953	State Contracting	Peters

wcp wgp wgl wpi wrp ALL wtl			
APP CCL GPS GVL PIL TRL MCL CRE JCR TCR CP CRP CVP JAR WTC wap wcc wcv wre wcp wcp wgp wgl wja wjc wmc wpi wsc ALL wtc wtl wwa FLR FPR wwh	**HB 0781**	**Legal Notices**	**Powell**
APP BU* CCL CRM GPS GVL PIL TRL JAE CP wap wbz wcc wcp wcr wgp wgl wje wpi ALL wtl	**HB 0171**	**Public Assistance Fraud**	**Diaz (J)**
CCL CRM GPS GVL PIL TRL JAE CP wcc wcp wcr wgp wgl wje wpi ALL wtl	**SB 0308**	**Public Assistance Fraud**	**Brandes**
APP BU* CCL GPS GVL PIL TRL JAE CP LNC wap wbz wcc wcp wgp wgl wje wln wpi ALL wtl	**HB 0151**	**Security of a Protected Consumer's Information**	**Fitzenhagen**
APP BU* CCL GPS GVL PIL TRL JAE CP wap wbz wcc wcp wgp wgl wje wpi ALL wtl	**SB 0242**	**Security of a Protected Consumer's Information**	**Detert**
BU* CCL CP GPS GVL PIL TX TRL ALL wbz wcc wcp wgp wgl wpi wtl wtl	**HB 0629**	**Charities**	**Boyd**
BU* CCL GPS GVL *HE PIL CP wbz wcc wcp wgp wgl whl wpi ALL	**HB 0535**	**Transactions in Fresh Produce Markets**	**Fullwood**
BU* CCL GPS GVL PIL RPT CP wbz wcc wcp wgp wgl wpi wrp ALL	**HB 0805**	**Title Insurer Reserves**	**Moraitis**
BU* CCL GPS GVL *HE PIL RPT TRL CP wbz wcc wcp wgp wgl whl wpi wrp ALL wtl	**HB 0531**	**Public Health Trusts**	**Richardson**
APP BU* CCL CP CRM GPS GVL PIL TRL ALL wap wbz wcc wcp wcr wgp wgl wpi wtl	**HB 0623**	**Money Services Businesses**	**Roberson**
APP BU* CCL CRM GPS GVL PIL TRL CP wap wbz wcc wcp wcr wgp wgl wpi ALL	**SB 0590**	**Money Services Businesses**	**Richter**

wtl

AD* BU* CCL CP CRM GPS GVL *HE OSP PIL TRL WAD ALL wbz wcc wcp wcr wgp wgl whl wos wpi wtl

HB 7077 **Nonresident Sterile Compounding Permits** **Health Quality Subcommittee**

F **DBPR Board of Professional Engineers Authorized Representative Committee** **Tallahassee** **2:00PM-N/A**

General subject matter to be considered: General business of the committee.

Place: Florida Board of Professional Engineers, 2639 North Monroe St., Building B-112, Tallahassee, FL 32303

For more information, contact: Rebecca Sammons, rsammons@fbpe.org

Meetings are subject to change or cancellation; please call to confirm the meeting date and time.

Source: Florida Administrative Register Issue Vol. 40/No. 72 Section VI - Notices of Meetings, Workshops and Public Hearings - Issue Date: April 14, 2014.

F **DFS Division of State Fire Marshal** **Conference Call** **2:00PM-N/A**

General subject matter to be considered: Regular Meeting of the Firefighters Employment, Standards & Training Council

2:00 p.m. - Fire & Emergency Incident Information System Technical Advisory Panel

10 minutes after the adjournment - Firefighters Employment, Standards & Training Council regular meeting

Place: Tallahassee/Atrium Bldg., 3rd Floor/conference call, (850)413-1558, ID: 131694

For more information, contact: MaryAnn.Benson@myfloridacfo.com

Meetings are subject to change or cancellation; please call to confirm the meeting date and time.

Source: Florida Administrative Register Issue Vol. 40/No. 63 Section VI - Notices of Meetings, Workshops and Public Hearings - Issue Date: April 1, 2014

F **Enterprise Florida, Inc., Finance and Compensation Committee** **Orlando** **2:00PM-N/A**

General subject matter to be considered: This meeting will discuss ongoing issues, developing issues and other matters.

Place: Enterprise Florida, Inc., 800 N. Magnolia Avenue, Suite 1100, Orlando, FL 32803

For more information, contact: Pamela Murphy, (407)956-5644

Meetings are subject to change or cancellation; please call to confirm the meeting date and time.

Source: Florida Administrative Register Issue Vol. 40/No. 64 Section VI - Notices of Meetings, Workshops and Public Hearings - Issue Date: April 2, 2014.

F **Florida Workers' Compensation Joint Underwriting Association, Inc.** **Conference Call** **2:00PM-N/A**

General subject matter to be considered: FWCJUA Safety Committee - The agenda topic will be the safety program

Place: Contact Kathy Coyne at (941)378-7408 to participate in the teleconference meeting

For more information, contact: Kathy Coyne or www.fwcjua.com

Meetings are subject to change or cancellation; please call to confirm the meeting date and time.

Source: Florida Administrative Register Issue Vol. 40/No. 63 Section VI - Notices of Meetings, Workshops and Public Hearings - Issue Date: April 1, 2014

3:00PM **Event** **Location**

F **West Florida Regional Planning Council** **Crestview** **3:00PM-N/A**

General subject matter to be considered: General business of the West Florida Regional Planning Council.
3:00 p.m. Executive Committee
3:30 p.m. regular business

Place: Crestview City Hall, 198 N. Wilson St., Crestview, FL 32526

For more information, contact: terry.joseph@wfrpc.org, 1(800)226-8914, ext. 201

Meetings are subject to change or cancellation; please call to confirm the meeting date and time.

Source: Florida Administrative Register Issue Vol. 40/No. 64 Section VI - Notices of Meetings, Workshops and Public Hearings - Issue Date: April 2, 2014.

4:30PM	Event	Location	
	[S] Ethics and Elections	412 K	4:30PM-6:00PM

Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.

OFFICE
APPOINTMENT (HOME CITY) FOR TERM ENDING
(click on the event for full listing)

SENATE CONFIRMATION HEARING:
Greater Orlando Aviation Authority TED: 04/16/18
Kruppenbacher, Frank (if received)

Executive Suspension - Update on Remedial Action Agreement
EO 13-299 William Gladden Jr.

Executive Suspension - Recommend for Removal
EO 14-56 Robert Flores
EO 14-79 Tammy Scarborough

Other Related Meeting Documents

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

5:15PM	Event	Location	
	[H] Rules & Calendar Committee	404 H	5:15PM-5:45PM

15 minutes upon adjournment of Session - 30 minutes upon convening

Set Special Order Calendar

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

5:30PM	Event	Location	
	[C] Maverick PAC Tallahassee Reception with Attorney General Pam Bondi	Tallahassee	5:30PM-N/A

Florida Realtors
200 South Monroe Street
Tallahassee, FL 32301

Chick-Fil-A and Beer will be provided

$5 per person under 30 years old
$25 per person over 30 years old

RSVP at https://maverickpac-federal.ichooseapex.com/maverickpac-federal/ or email Kevin Curran at Kevin@MaverickPAC.com.

5:45PM	Event	Location

	[S] Special Order Calendar Group	401 S	5:45PM-N/A

15 min. after completion of Session

To set the Special Order Calendar

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

6:00PM	Event	Location	
	[J] Budget Conferees & Leadership General Meeting	212 K	6:00PM-N/A

Today at 6:00 PM in Webster Hall of the Knott Building, House Speaker Will Weatherford, Senate President Don Gaetz along with House and Senate Conferees will hold a brief meeting to start the 2014 - 2015 Budget Conference.

Pursuant to House Rule 7.22, conference committees are authorized to begin noticed meetings at 6:30 PM on Monday, April 21, 2014, until close of business on Wednesday, April 23, 2014, at which point any unresolved conference issues will be bumped to the budget chairs.

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

6:30PM	Event	Location	
	[F] Florida Fish and Wildlife Conservation Commission	Lake City	6:30PM-8:30PM

General subject matter to be considered: This is one of a series of regional meetings. The purpose of these public meetings is to review the Commissions plans for establishing Deer Management Units (DMUs). The focus of these meetings will be the proposed DMUs for Zones B and C of north and central Florida. The meeting will begin with a presentation by Commission staff to share information about the unique challenges of managing deer in Florida and to explain the purposes of establishing DMUs. The remainder of the meeting will allow attendees to share their questions and comments about deer management preferences for Zones B and C. Comments will be considered and utilized to refine the plans for deer management in Florida.

Place: Holiday Inn Lake City, 213 SW Commerce Drive, Lake City, FL 32025

For more information, contact: Cory Morea at 620 S. Meridian, Tallahassee, FL 32399, (850)617-9487

Meetings are subject to change or cancellation; please call to confirm the meeting date and time.

Source: Florida Administrative Register Issue Vol. 40/No. 51 Section VI - Notices of Meetings, Workshops and Public Hearings - Issue Date: March 14, 2014

7:00PM	Event	Location	
	[J] Budget Conference - Governmental Operations/General Government	404 H	7:00PM-N/A

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

	[J] Budget Conference - Justice/Criminal and Civil Justice	102 H	7:00PM-N/A

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

	[J] Budget Conference - Transportation & Economic Development/Transportation, Tourism, and Economic Development	306 H	7:00PM-N/A

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

7:30PM	Event	Location	
	[J] Budget Conference - Agriculture & Natural Resources/General Government	404 H	7:30PM-N/A

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

5:00PM	Event	Location	
	[M] Lauren's Kids: Walk in My Shoes 2014	Front Steps of His...	5:00PM-N/A

Lauren's Kids: Walk in My Shoes 2014 - Lighting of Historic Capitol to bring awareness to child abuse.
Contact: Anna Fawley (305) 995-1999

	[J] Budget Conference - Education/Education	17 H	5:00PM-N/A

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

	[J] Budget Conference - Health Care/Health and Human Services	212 K	5:00PM-N/A

This event is available live on the WFSU-TV - The FLORIDA Channel webcast.

Monday Apr 21, 2014

Note: This Report Does **Not** Include *Bills on Second Reading*

[A]=Sponsored Event [H]=House [S]=Senate [J]=Joint [M]=Miscellaneous [C]=Campaigns [E]=Executive [F]=Florida Administrative Register [P]=Personal =Live video from The FLORIDA Channel

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SB 1496 - Relating to Unlicensed Practice of Law - 2014

Sponsor(s)

by Evers

Summary

General Unlicensed Practice of Law; Creating exceptions to the prohibition of unlicensed practice of law, etc. Effective Date: 7/1/2014

Committees of Reference

» [S] Judiciary
[S] Governmental Oversight and Accountability
[S] Rules

Actions

Date	Chamber	Action
02/28/14	SENATE	Filed
03/05/14	SENATE	Referred to Judiciary; Governmental Oversight and Accountability; Rules
03/20/14	SENATE	On Committee agenda - Judiciary, 03/25/14, 9:00 am, 110 S
03/25/14	SENATE	Temporarily Postponed by Judiciary (with Amendment Adopted)
03/27/14	SENATE	On Committee agenda - Judiciary, 04/01/14, 9:00 am, 110 S
04/01/14	SENATE	Not Considered by Judiciary
05/02/14	SENATE	Died in Judiciary

Similar Bills

HB 7039 - Relating to Unlicensed Practice of Law by Civil Justice Subcommittee
05/02/14 HOUSE Died in Judiciary Committee

Bill Text and Filed Amendments

S 1496			Filed on 02/28/14	
└ Amendment 379872		Soto	Filed on 03/24/14	Withdrawn
└ Amendment 405152		Soto	Filed on 03/24/14	Withdrawn
└ Amendment 877792	DE	Latvala	Filed on 03/24/14	Replaced by CS
└ Amendment 434964	AA	Soto	Filed on 03/24/14	Withdrawn
└ Amendment 952212	AA	Soto	Filed on 03/24/14	Withdrawn

LF = Late Filed, AA = Amendment to Amendment, SA = Substitute Amendment, ASA = Amendment to Substitute Amendment, SAA = Substitute to Amendment to Amendment, DE = Strike All or Delete Everything Amendment, PCS = Proposed Committee Schedule

Staff Analysis

S 1496	Judiciary Filed on 03/24/14
S 1496A	Judiciary Filed on 04/01/14

Vote History

SENATE	Judiciary	04/01/14	[PDF]

Related Documents

No related documents.

Statute Citations
454.23

Bill Comments

Folder Codes and Comments

Business Law	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
City County & Local Govt Law	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
Consumer Protection	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
General Practice Solo & Small Firm	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
Government Lawyer	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
Public Interest Law	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
Real Property, Probate & Trust Law	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
Trial Lawyers	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
Unlicensed Practice of Law	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
zWeb - All Bills	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
zWeb - Business Law	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
zWeb - City County & Local Government Law	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
zWeb - Consumer Protection Law	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
zWeb - General Practice Solo &	**Priority/Importance/Position**	**[Edit Comments]**

Small Firm		
	Not top priority / Importance not specified / Position not specified	
zWeb - Government Lawyer	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
zWeb - Public Interest Law	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
zWeb - Real Property, Probate & Trust Law	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
zWeb - Traffic Court Rules	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
zWeb - Trial Lawyers	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
A The Florida Bar	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
zWeb - A The Florida Bar	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	
zWeb - Unlicensed Practice of Law	**Priority/Importance/Position**	**[Edit Comments]**
	Not top priority / Importance not specified / Position not specified	

Analyst Comments

You have no analyst comments to this bill.

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2014 Aviation Folder

Sorted by Bill Number

SB 0320	**Relating to Commercial and Recreational Water Activities**	Sachs

Commercial and Recreational Water Activities; Citing this act as the "White-Miskell Act"; prohibiting certain commercial and recreational water activities within certain areas; requiring the operator of a vessel engaged in commercial parasailing to ensure that specified requirements are met; requiring the owner of a vessel engaged in commercial parasailing to obtain and maintain an insurance policy; requiring the operator to have a current and valid license issued by the United States Coast Guard; prohibiting commercial parasailing unless certain equipment is present on the vessel and certain weather conditions are met; requiring that a weather log be maintained and made available for inspection, etc. Effective Date: 10/1/2014

HB 0347	**Relating to Commercial and Recreational Water Activities**	Clarke-Reed

Commercial and Recreational Water Activities: Designates act as "White-Miskell Act"; provides requirements and prohibitions for parasailing, kite boarding, kite surfing, and moored ballooning. Effective Date: October 1, 2014

HB 0821	**Relating to Tax on Sales, Use, and Other Transactions**	Mayfield

Tax on Sales, Use, and Other Transactions; Exempts all aircraft sales or leases from sales & use tax. Effective Date: 7/1/2014

SB 1172	**Relating to Conveyance of Property Taken by Eminent Domain**	Sobel

Conveyance of Property Taken by Eminent Domain; Authorizing a condemning authority to convey, without restriction, lands condemned for specific noise mitigation or noise compatibility programs at certain large hub airports to a person or private entity, etc. Effective Date: 7/1/2014

HB 1311	**Relating to Conveyance of Property Bought for Airport Noise Purposes**	Gibbons

Conveyance of Property Bought for Airport Noise Purposes: Authorizes condemning authority to convey lands by lease or otherwise if those lands are condemned for specific noise mitigation or noise compatibility programs at certain large hub airports. Effective Date: July 1, 2014

HB 1399	**Relating to Hillsborough County Aviation Authority, Hillsborough County**	Raulerson

Hillsborough County Aviation Authority, Hillsborough County: Increases threshold for award of contracts by governing body of Hillsborough County Aviation Authority which are exempt from certain competitive procurement requirements. Effective Date: May 12, 2014

SB 1712	**Relating to Aviation Pioneer Bessie "Queen Bess" Coleman**	Thompson

Aviation Pioneer Bessie "Queen Bess" Coleman; Recognizing pioneering aviatrix Bessie "Queen Bess" Coleman as we celebrate the centennial of the world's first scheduled commercial airline, the St. Petersburg-Tampa Airboat Line, etc.

SB 7012	**Relating to Department of Transportation**	Transportation

Department of Transportation; Repealing provisions relating to load limits for certain towed vehicles; authorizing the department to fund strategic airport investments; prohibiting the department from entering into a lease-purchase agreement with certain transportation authorities; revising the uses of fees generated from Alligator Alley tolls to include the cost of design and construction of a fire station that may be used by certain local governments and certain related operating costs; requiring the Department of Transportation to include funding for environmental mitigation for projects in its work program, etc. Effective Date: 7/1/2014

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Key Contact Program

THE FLORIDA BAR
KEY CONTACT PROGRAM

A lawyer's influence with a state or federal lawmaker may be of great significance to the legislative mission of The Florida Bar. Our membership, nearly 100,000 strong, can play an effective role to ensure the success of the various matters on our legislative agenda.

Our ability to responsibly shape public policy on Bar-related issues is only as strong as our members' commitment to become actively involved in the political process. In order for Florida's legal profession to be truly influential in legislative matters, it is essential we have significant grassroots involvement from our membership.

For The Florida Bar to achieve its legislative goals, we need the assistance of lawyers who are politically active and knowledgeable about the varied issues on our agenda, lawyers who are personally acquainted with lawmakers at the state and federal levels and lawyers who would be willing to present the views of the Bar when called upon to do so.

Your participation in this activity will not make you a lobbyist under the law or implicate any other rules on that subject. However, by assisting the legal profession in maintaining strong relationships with our state and federal lawmakers, you will be a valuable part of our legislative program.

If there are any legislators with whom you or someone you know has a personal relationship, please complete the attached form and return it to the Governmental Affairs Office of The Florida Bar. We will contact all potential volunteers to confirm their participation.

Legislative Key Contact Program

In the space below, please fill out the information requested.

_____ _____
Name Attorney Number

_____ _____
Business Name Phone Number

_____ _____
Street Address Fax Number Email Address

_____ _____ _____ _____ _____ _____
City State Zip Code Senate District Number House District Number Circuit Number

Please indicate your association with the following, if any.

_____ Board of Governors

_____ Young Lawyers Board of Governors

_____ Section/Division, Group Name_____

_____ Committee, Group Name_____

_____ Voluntary Bar, Bar Name_____

_____ Other_____
(Please Indicate)

Please list the State Senator(s) and Representative(s) you know and rate the strength of your relationship with each one. Strongest (5) to Weakest (1).

	Strength		**Strength**
Senator_____	_____	Representative_____	_____
Senator_____	_____	Representative_____	_____
Senator_____	_____	Representative_____	_____

Please list the name(s) of any members of the United States Congress with whom you have a personal relationship and would be willing to contact on behalf of the Bar if called upon to do so.

_____ _____ _____

_____ _____ _____

Additional Comments: _____

_____

Please mail or fax to: The Florida Bar, Governmental Affairs Office, 651 Jefferson St., Tallahassee, Florida 32399-2300. Fax: 850 / 561-9406. If you have any questions, contact the Governmental Affairs Office at 850 / 561-5662.

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Florida

SELECTED RULES REGULATING THE FLORIDA BAR RELATING TO POLITICAL ADVOCACY

CHAPTER 1. GENERAL

INTRODUCTION

The Supreme Court of Florida by these rules establishes the authority and responsibilities of The Florida Bar, an official arm of the court.

1-1. NAME

The name of the body regulated by these rules shall be THE FLORIDA BAR.

1-2. PURPOSE

The purpose of The Florida Bar shall be to inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence.

CHAPTER 2. BYLAWS OF THE FLORIDA BAR

2-3. BOARD OF GOVERNORS

Bylaw 2-3.2 Powers

(d) Programs. The board of governors may establish, maintain, and supervise:

(4) a program for providing information and advice to the courts and all other branches of government concerning current law and proposed or contemplated changes in the law;

2-7. SECTIONS

Bylaw 2-7.5 Legislative Action of Sections and Divisions

(a) Limits of Legislative Involvement. Sections and divisions may be involved in legislation that is significant to the judiciary, the administration of justice, or the fundamental legal rights of the public or interests of the section or division or its programs and functions.

(b) Procedure to Determine Legislative Policy. Sections and divisions shall be required to adopt and follow a reasonable procedure, approved by the board of governors, for determination of legislative policy on any legislation.

(c) Notice to Executive Director. Sections and divisions shall notify the executive director immediately of determination of any section or division action regarding legislation.

(d) Identification of Action. Any legislative action taken by a section or division shall be clearly identified as the action of the section or division and not that of The Florida Bar.

2-9. POLICIES AND RULES

Bylaw 2-9.3 Legislative Policies

(a) Adoption of Rules of Procedure and Legislative Positions. The board of governors shall adopt and may repeal or amend rules of procedure governing the legislative activities of The Florida Bar in the same manner as provided in bylaw 2-9.2; provided, however, that the adoption of any legislative position shall require the affirmative vote of two-thirds of those present at any regular meeting of the board of governors or two-thirds of the executive committee or by the president, as provided in the rules of procedure governing legislative activities.

(b) Publication of Legislative Positions. The Florida Bar shall publish notice of adoption of legislative positions in The Florida Bar News, in the issue immediately following the board meeting at which the positions were adopted.

(c) Objection to Legislative Positions of The Florida Bar.

(1) Any member in good standing of The Florida Bar may, within 45 days of the date of publication of notice of adoption of a legislative position, file with the executive director a written objection to a particular position on a legislative issue. The identity of an objecting member shall be confidential unless made public by The Florida Bar or any arbitration panel constituted under these rules upon specific request or waiver of the objecting member. Failure to object within this time period shall constitute a waiver of any right to object to the particular legislative issue.

(2) After a written objection has been received, the executive director shall promptly determine the pro rata amount of the objecting member's membership fees at issue and such amount shall be placed in escrow pending determination of the merits of the objection. The escrow figure shall be independently verified by a certified public accountant.

(3) Upon the deadline for receipt of written objections, the board of governors shall have 45

days in which to decide whether to give a pro rata refund to the

(4) In the event the board of governors orders a refund, the objecting member's right to the refund shall immediately vest although the pro rata amount of the objecting member's membership fees at issue shall remain in escrow for the duration of the fiscal year and until the conclusion of The Florida Bar's annual audit as provided in bylaw 2-6.16, which shall include final independent verification of the appropriate refund payable. The Florida Bar shall thereafter pay the refund within 30 days of independent verification of the amount of refund, together with interest calculated at the statutory rate of interest on judgments as of the date the objecting member's membership fees at issue were received by The Florida Bar, for the period commencing with such date of receipt of the membership fees and ending on the date of payment of the refund by The Florida Bar.

(d) Composition of Arbitration Panel. Objections to legislative positions of The Florida Bar may be referred by the board of governors to an arbitration panel comprised of 3 members of The Florida Bar, to be constituted as soon as practicable following the decision by the board of governors that a matter shall be referred to arbitration.

The objecting member shall be allowed to choose 1 member of the arbitration panel, The Florida Bar shall appoint the second panel member, and those 2 members shall choose a third member of the panel who shall serve as chair. In the event the 2 members of the panel are unable to agree on a third member, the chief judge of the Second Judicial Circuit of Florida shall appoint the third member of the panel.

objecting member(s) or to refer the action to arbitration.

(e) Procedures for Arbitration Panel.

(1) Upon a decision by the board of governors that the matter shall be referred to arbitration, The Florida Bar shall promptly prepare a written response to the objection and serve a copy on the objecting member. Such response and objection shall be forwarded to the arbitration panel as soon as the panel is properly constituted. Venue for any arbitration proceedings conducted pursuant to this rule shall be in Leon County, Florida; however, for the convenience of the parties or witnesses or in the interest of justice, the proceedings may be transferred upon a majority vote of the arbitration panel. The chair of the arbitration panel shall determine the time, date, and place of any proceeding and shall provide notice thereof to all parties. The arbitration panel shall thereafter confer and decide whether The Florida Bar proved by the greater weight of evidence that the legislative matters at issue are constitutionally appropriate for funding from mandatory Florida Bar membership fees.

(2) The scope of the arbitration panel's review shall be to determine solely whether the legislative matters at issue are within those acceptable activities for which compulsory membership fees may be used under applicable constitutional law.

(3) The proceedings of the arbitration panel shall be informal in nature and shall not be bound by the rules of evidence. If requested by an objecting member who is a party to the proceedings, that party and counsel, and any witnesses, may participate telephonically, the expense of which shall be advanced by the requesting party. The decision of the arbitration panel shall be binding as to the objecting member and The Florida Bar. If the arbitration panel concludes the legislative matters at issue are appropriately funded from mandatory membership fees, there shall be no refund and The Florida Bar shall be free to expend the objecting member's pro rata amount of membership fees held in escrow. If the arbitration panel determines the legislative matters at issue are inappropriately funded from mandatory membership fees, the panel shall order a refund of the pro rata amount of membership fees to the objecting member.

(4) The arbitration panel shall thereafter render a final written report to the objecting member and the board of governors within 45 days of its constitution.

(5) In the event the arbitration panel orders a refund, the objecting member's right to the refund shall immediately vest although the pro rata amount of the objecting member's membership fees at issue shall remain in escrow until paid. Within 30 days of independent verification of the amount of refund, The Florida Bar shall provide such refund together with interest calculated at the statutory rate of interest on judgments as of the date the objecting member's membership fees at issue were received by The Florida Bar, for the period commencing with such date of receipt of the membership fees and ending on the date of payment of the refund by The Florida Bar.

(6) Each arbitrator shall be compensated at an hourly rate equal to that of a circuit court

judge based on services performed as an arbitrator pursuant to this rule.

(7) The arbitration panel shall tax all legal costs and charges of any arbitration proceeding conducted pursuant to this rule, to include arbitrator expenses and compensation, in favor of the prevailing party and against the nonprevailing party. When there is more than one party on one or both sides of an action, the arbitration panel shall tax such costs and charges against nonprevailing parties as it may deem equitable and fair.

(8) Payment by The Florida Bar of the costs of any arbitration proceeding conducted pursuant to this bylaw, net of costs taxed and collected, shall not be considered to be an expense for legislative activities, in calculating the amount of membership fees refunded pursuant to this bylaw.

The Florida Bar
Proposed Budget – Assumptions and Notes
2013-2014

1. The revenue and direct expenses for each program of the Bar are estimated by the department responsible for the program based on consideration of past history as well as known trends and expected changes in the program. Where possible, quotes are obtained from vendors and consultants for expected purchases to assist in budget preparation.

2. The budgetary control of administrative and support service functions (such as Human Resources, Accounting, Mailing services, Copying services, Facilities Management, and Information Technology) rests with the departmental unit that initially reports and controls the direct expenses for that administrative department. The direct costs are estimated as described under 1. above. The Administrative and Internal Service functions (other than Board and Officer expenses, Executive Director, General Counsel, and Research, Planning and Evaluation units) are then allocated out to the ultimate user departments based on best estimates at the time the budget is prepared of time and usage. These allocations may be redistributed during the budget year by the Executive Director as actual time and usage vary from the estimates. In total, the costs allocated will not change as a result of this redistribution.

3. Included in the budget is an amount for raises and the respective fringe benefits on those raise dollars to be administered by the Executive Director during the year. The Executive Director is authorized to redistribute these funds to the services or programs in accordance with the raises given.

4. The budget committee has restored the restrictions on beginning fund balances for the operating reserve and new program reserve at $350,000 and $100,000, respectively, beginning on July 1, 2013. Additionally, the Young Lawyers Division Fund Balance will continue to be capped at $250,000.

5. The Budget Committee has set the rates and general policies for non-lawyer Board of Governors members' reimbursement of travel at those governing staff travel, except meals to be reimbursed at actual cost.

THE FLORIDA BAR
PROPOSED GENERAL FUND BUDGET
2013-14

	Actual 2010-11	Actual 2011-12	Budget 2012-13	YTD as of 2/28/2013	Budget 2013-14
GENERAL FUND SUMMARY					
SOURCE OF FUNDS					
BEGINNING FUND BALANCE	$ 24,512,636	$ 29,135,290	$ 29,878,761	$ 29,878,761	$ 29,475,600
ANNUAL FEES	22,931,679	23,589,154	24,270,633	24,273,676	24,875,385
OTHER REGULATORY FEES	3,290,510	3,338,850	3,557,866	2,621,557	3,427,561
OTHER FEES	1,303,070	1,167,570	1,241,792	1,138,889	1,298,057
MEMBER SERVICE REVENUE	5,535,870	5,127,434	5,144,486	3,277,843	5,166,985
ADVERTISING	1,730,691	1,599,039	1,692,215	1,145,832	1,532,474
INVESTMENT INCOME-CASH	2,708,827	1,004,964	1,000,000	1,419,634	1,021,429
INVESTMENTS -MARKET VAL ADJ	1,699,114	(1,497,690)	400,000	567,853	548,571
YOUNG LAWYERS DIVISION	903,972	874,708	784,136	558,224	894,867
OTHER REVENUES	992,216	899,236	700,359	520,967	768,731
TOTAL FUNDS AVAILABLE	65,608,585	65,238,555	68,670,248	65,403,236	69,009,660
USE OF FUNDS					
REGULATION OF THE PRACTICE OF LAW **(1)**	15,984,235	15,889,793	17,560,894	11,664,260	17,866,246
COST OF MEMBER SERVICES **(2)**	6,357,346	6,297,690	6,936,686	3,987,174	6,945,935
UNAUTHORIZED PRACTICE OF LAW	1,503,827	1,582,953	1,722,931	1,236,774	1,800,129
PUBLIC SERVICE PROGRAMS	616,678	630,615	590,300	428,288	602,538
COMMUNICATIONS WITH MEMBERS AND PUBLIC **(3)**	3,721,839	3,976,127	4,504,041	2,898,774	4,206,202
ADMINISTRATION	2,844,567	2,554,609	3,278,833	2,120,961	3,721,111
LEGISLATION	626,717	455,136	482,609	391,465	492,271
CSF CONTRIBUTION	2,167,075	2,220,528	2,280,900	1,710,675	2,302,825
OTHER PROGRAMS	779,539	891,284	1,001,800	891,086	1,123,437
YOUNG LAWYERS DIVISION	871,472	861,059	835,654	457,787	865,811
TRANSFER TO RESERVE FUNDS	1,000,000	-	-	-	-
ENDING FUND BALANCE	29,135,290	29,878,761	29,475,600	39,615,992	29,083,155
TOTAL USE OF FUNDS	$ 65,608,585	$ 65,238,555	$ 68,670,248	$ 65,403,236	$ 69,009,660

(1) Includes Lawyer Regulation, ACAP, Ethics, Lawyer Advertising, Membership Records, Professionalism, Rules Regulating The Florida Bar, etc.

(2) Includes book sales, CLE, LOMAS, Meetings, etc.

(3) Includes Public Information , "Journal", and "News".

Political Activities of The Florida Bar

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II. Florida Bar Policy
III. Judicial History
IV. The Legislative Program
V. Conclusion

I. Introduction

Political and ideological activities of The Florida Bar are primarily influenced by the Rules Regulating The Florida Bar as promulgated by the Supreme Court of Florida, by operational policies of The Florida Bar Board of Governors, and by court decisions that have explored First Amendment rights of individual members of unified state bars or other mandatory membership organizations.

Within those confines, The Florida Bar works to advise and assist the courts and all other branches of government on a variety of law-related matters. Through its officers, volunteer members, professional staff and retained counsel, The Florida Bar presents a visible and respected presence within the political arena at both the state and federal levels.

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II. Florida Bar Policy

The Rules Regulating The Florida Bar authorize the Board of Governors to establish, maintain and supervise "a program for providing information and advice to the courts and all other branches of government concerning current law and proposed or contemplated changes in the law." R. Regulating Fla. Bar 2-3.2(d)(4).

Bylaws to the Rules Regulating The Florida Bar specify that official legislative positions are effected by vote of the board, the executive committee, or singular act of the president. R. Regulating Fla. Bar 2-9.3(a). Standing Policies of the Board of Governors (the 900 Series) provide greater detail on this process and other procedural aspects of legislative and political activities of the Bar.

Proposed legislative action by The Florida Bar is usually first considered by the legislation committee, a nine-member group chaired by an incumbent board member and composed of at least five persons who were board members at the time of their appointment. The committee generally advises the leadership on all legislative or political matters affecting the Bar, its committees, and its sections.

The Florida Bar may only advocate legislative or political positions that are true to its chartered purposes "to improve the administration of justice" and "to advance the science of jurisprudence." R. Regulating Fla. Bar 1-2. Case law has further refined those general terms and has more specifically shaped the scope of the Bar's legislative authority.

Consideration of possible legislative or political activity by all of the Bar's various reviewing authorities involves a two-step analysis. Any potential position of The Florida Bar or an organic Bar committee must undergo a threshold analysis to verify whether the matter is within the scope and purposes of the Bar, followed by a second determination of the merits of the issue as proposed. For the Board of Governors to formalize a proposal as an official Bar position, a two-thirds margin on both these votes is required of those governors present at a regular meeting of the board.

The role of the Executive Committee in such matters is defined by board policy that acknowledges certain political issues may arise quickly, and can require action between meetings of the board of governors. A majority of the executive committee members acting on a matter must initially confirm that the requested action could not reasonably have been submitted to the board, or that there has been a significant material change in circumstances since the board's last meeting, to necessitate executive committee action on behalf of the Bar.

For the executive committee to formalize a proposal as an official bar position, two-thirds of the committee must vote that the issue is within the scope and purposes of the Bar. Any subsequent action on the merits of the measure similarly requires a two-thirds vote.

During a legislative session or other political emergency when it is not feasible to convene the executive committee, the president may act upon proposed legislation or other pending issues. Board policies state that such emergency action should be in consultation with the president-elect and chair of the legislation committee if possible.

Once adopted, legislative positions of the Bar are published in The Florida Bar *News* for official notice to every member. Within 45 days of the date of publication, Bar members may file a written objection to a specific legislative position. Upon receipt of a timely objection, dues money allocated to the advocacy of any contested issue is immediately escrowed for possible rebate. The Board of Governors has an additional 45 days to decide whether to authorize a pro rata refund to the objecting member, or to refer the matter to arbitration.

Legislative positions of Bar sections evolve via a similar procedure, in that they are usually first considered by the legislation committee and then by the board. To accommodate Bar sections with active political agendas, board policies provide for an expedited review of section submissions upon request. Procedures reflect a "notice and estoppel" type philosophy, which acknowledges a section's basic authority to lobby a matter unless prohibited by the Bar within specific timelines, or affected by court action.

The Bar may prohibit a section from advocating a particular legislative or political position only if any of the following criteria are not met: (1) the issue is within a section's subject matter jurisdiction as reflected in its bylaws; (2) the issue is either beyond the scope of The Florida Bar to advocate, or is within the Bar's scope but not inconsistent with any existing Bar position; or (3) the issue does not present the potential of deep philosophical or emotional division among a substantial segment of the Bar's membership.

Legislative positions advocated in the name of The Florida Bar and underwritten by mandatory dues are distinct from those advanced and supported by volunteer section funds. Any presentation of a Bar section's position to governmental officials or others is required by Florida Bar policy to be clearly identified as a section position – and not a matter advocated by The Florida Bar – unless the board votes to make the issue a Bar position as well.

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III. Judicial History

***In re Florida Bar Board of Governors' Action*, 217 So.2d 323 (Fla. 1969):** Political activity by the Board of Governors on behalf of The Florida Bar was first challenged in the Supreme Court of Florida in 1969. Although the court summarily denied a petition for review of the Bar's advocacy of a proposed revision of the state constitution – and a membership referendum on the measure – Justice Hopping issued a special concurrence.

After reciting the history of Florida's unified bar, Justice Hopping noted as to "political" advocacy:

The test as to whether or not The Florida Bar should engage in a particular activity is not whether the activity is "political" in nature or directly connected with the administration of justice. The true test is whether the matter is of great public importance, and whether lawyers, because of their training and experience, are especially fitted to evaluate the same. If a matter vitally affects the public, and lawyers are peculiarly fitted to evaluate it, it is not only the right but the duty of the Bar as a professional organization to make such evaluation and advise the public of its conclusions.

Upon further describing the Bar's representative form of board governance and apportionment, Justice Hopping also noted:

If the matter on which the Board of Governors speaks meets the tests heretofore set out, this Court should not second guess the position taken by the Board of Governors because to do so would substitute this Court's beliefs for that of the Board's. While there is no guarantee that the Court's views represent the views of the lawyers of this state, because the Board of Governors is the duly elected spokesman of the lawyer members of The Florida Bar, its view is at least representative.

***The Florida Bar*, 439 So.2d 213 (Fla. 1983):** The Florida Bar's "political activities" were again called into question in a 1983 proceeding wherein 25 members petitioned for Florida Supreme Court amendment of Bar rules, to read: "The Board of Governors shall not engage in any political activity on behalf of The Florida Bar nor expend money or employ personnel for such purpose."

The court initially determined that the improvement of the administration of justice and the advancement of the science of jurisprudence are compelling state interests sufficient to justify a constitutional intrusion into an individual's freedom of association.

After reviewing the Bar's history of advocacy among the various branches of state and federal government, the court held that The Florida Bar's political activities – particularly as limited by operational policies of its governing board – were germane to compelling state interests. The petition was therefore denied.

***Gibson v. The Florida Bar*, 798 F.2d 1564 (11th Cir. 1986):** In "*Gibson* " a member challenged The Florida Bar's opposition to a state constitutional proposition (eventually struck from the general election ballot) that would have created limits on governmental revenues. Gibson argued that his First Amendment rights of free speech and association were violated by such use of his compulsory dues to advocate political and ideological positions.

The court held that: (1) the Bar could use compulsory dues to finance its lobbying efforts only to the extent that its legislative positions were germane to the Bar's stated purposes; and (2) the Bar had the burden of proving that its lobbying expenditures were constitutionally justified, by showing that its past positions were sufficiently related to the Bar's purpose of improving the administration of justice.

In one footnote, the court opinion indicated that acceptable areas for Bar lobbying would include the following topics: (1) questions concerning the regulation of attorneys; (2) budget appropriations for the judiciary and legal aid; (3) proposed changes in litigation procedures; (4) regulation of attorneys' client trust accounts; and (5) law school and Bar admission standards.

Another footnote indicated that the difficult task of discerning proper lobbying positions could be avoided by either of two methods: a voluntary program allowing lawyers to contribute to the legislative program as they wished; or a refund procedure allowing dissenting lawyers to object to a Bar position and to then receive that portion of their dues allotted to lobbying.

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***The Florida Bar re Schwarz*, 526 So.2d 56 (Fla. 1988):** In *"Schwarz I "* a member sought appointment of an ad hoc committee to study the legality, propriety, scope and procedure through which the Supreme Court of Florida should exercise its political power via delegation to its "official arm," The Florida Bar. The court declined to appoint a special committee, but referred the matter to the Judicial Council for comment and recommendations.

***The Florida Bar Re. Amend. to Rule 2-9.3*, 526 So.2d 688 (Fla. 1988)**: In view of the developing law in this area, the Bar sought amendments to its rules to set forth a procedure and potential remedy for members who would question the propriety of the use of their Bar dues to support legislative positions approved by the Board of Governors. The procedures, as adopted then, remain the heart of the Bar's current rule on member dissent and dues rebates. The court's opinion adopting the rule included this additional observation: "Although the pecuniary recovery may be limited, members of the Bar should still be able to bring injunctive actions seeking to prevent unauthorized Bar activities and expenditures."

Judicial Council of Florida, *Special Report to the Florida Supreme Court: Legislative Activities of The Florida Bar* (December 1988): In response to *Schwarz I*, the Judicial Council of Florida issued a special report in 1988 on the Bar's legislative activities. The Council recommended that the following subject areas be recognized as clearly justifying legislative activities by the Bar: (1) questions concerning the regulation and discipline of attorneys; (2) matters relating to the improvement of the functioning of the courts, judicial efficacy and efficiency; (3) increasing the availability of legal services to society; (4) regulation of attorneys' client trust accounts; and (5) the education, ethics, competence, integrity and regulation as a body, of the legal profession.

The Judicial Council recommended that, when a matter appears to fall outside the five specifically identified areas, the following criteria be used to determine whether the Bar could become actively involved in its advocacy: (1) that the issue be recognized as being of great public interest; (2) that lawyers are especially suited by their training and experience to evaluate and explain the issue; and (3) the subject matter affects the rights of those likely to come into contact with the judicial system.

***The Florida Bar re Schwarz*, 552 So.2d 1094 (Fla. 1989), *cert. denied* 498 U.S. 951, (1990):** In "*Schwarz II*" the recommendations of the Judicial Council requested after *Schwarz I* were approved by the Supreme Court of Florida for determining the scope of permissible lobbying activities of The Florida Bar.

The court further observed "that the Board exercise caution in the selection of subjects upon which to take a legislative position so as to avoid, to the extent possible, those issues which carry the potential of deep philosophical or emotional division among the membership of the Bar." The court added: "In any event, we also wish to make clear that any member of The Florida Bar in good standing may question the propriety of any legislative position by the Board of Governors by filing a timely petition with this Court."

Finally, the court suggested two refinements of Rule 2-9.3, regarding burden of proof and the confidentiality of objecting Bar members' names. Both were later codified, along with other minor amendments to the rule.

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***Keller v. State Bar of California,* 496 U.S. 1 (1990):** The most definitive U.S. Supreme Court pronouncement in this area came after members of the California State Bar challenged their bar's use of mandatory dues to finance a variety of so-called political activities. In extending the labor union analogy to unified bars, the High Court ruled that a compulsory state bar association may constitutionally fund with mandatory dues only those political or ideological activities "germane" to its purpose: namely, "regulating the legal profession or 'improving the quality of the legal service available to the people of the State'" The opinion further acknowledged that, with appropriate member notification and dissent procedures in place, an even broader range of political activities (if within the organization's basic authority) can be funded from mandatory dues of non-objecting members.

***Gibson v. The Florida Bar*, 906 F.2d 624 (11th Cir. 1990), *cert. dismissed*, 502 U.S. 104, (1991):** "*Gibson II*" continued one member's challenge of The Florida Bar's use of his compulsory dues to fund political lobbying. Gibson appealed the denial of his original claim in *Gibson I*, for declaratory and injunctive relief, after the district court judge reviewed the 1988 revisions to Rule 2-9.3 on member objections to legislative positions.

The Eleventh Circuit Court of Appeals held that, with the exception of one minor feature since corrected, the escrow/rebate procedures in Rule 2-9.3 were sufficient under U.S. Supreme Court guidelines. In so doing, the court rejected Gibson's claim that an advance dues deduction scheme was mandated for the portion of dues that the Bar knows it will use for political activity.

The court further noted that Rule 2-9.3's requirement of an objection to specific legislative issues does not dictate that individuals disclose their personal sentiment on any topic. And, the opinion observed that the mere fact the three-member arbitration panel called

for in the rule is composed of Bar members would not taint any proceedings thereunder.

As to the amount of interest on any dues refunds paid, the court faulted Rule 2-9.3's plan for calculations "as of the date the written objection was received." The opinion observed that, in order to protect against the danger that a dissident's dues could be used to finance questioned advocacy, "the Bar would have to calculate interest as of the date that payment of the members' dues was received." That concept is now incorporated into the current objection procedures.

***The Florida Bar re Frankel*, 581 So.2d 1294 (Fla. 1991):** After the U.S. Supreme Court's opinion in *Keller* a member challenged The Florida Bar's authority to lobby several "children's" issues, both under *Keller* and the Florida Supreme Court's *Schwarz II* holdings.

After failing to find the questioned issues within the five primary areas noted in *Schwarz II* as clearly justifying Bar advocacy, the court addressed another Frankel challenge by determining that the three additional criteria in *Schwarz II* were consistent with the *Keller* holding.

In its application of the three additional *Schwarz II* standards the court determined that, while the contested matters were of great public interest, they failed to satisfy the second *Schwarz II* criterion – that lawyers were especially suited by their training and experience to evaluate and explain the issues. The court did not consider the third criterion.

As to an appropriate remedy the court again noted that, if a lobbying position is outside the ambit of permissible Bar advocacy, a petitioner may enjoin the Bar from lobbying on that issue. The Bar was therefore ordered to refund Frankel a proportionate share of his dues applicable to the challenged matters, plus pertinent interest.

Taking its first opportunity to comment on the intervening Eleventh Circuit Court of Appeals ruling in *Gibson II*, the Florida Supreme Court agreed that The Florida Bar need not recognize generalized member objections to legislative matters, and that the Bar's codified objection procedures were not overly burdensome.

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***The Florida Bar Re: Authority of a Voluntary Section to Engage in Legislative Action*, No. 79,321, Final Order (Fla. May 1, 1992):** This case ensued after the Board of Governors of The Florida Bar prohibited the Public Interest Law Section of The Florida Bar from advocating the repeal of Florida's prohibition against adoptions by homosexuals. The board's action was premised on a belief that the issue would be divisive within the Bar's membership at large.

The section petitioned the Supreme Court of Florida to verify whether the *Frankel* opinion authorized section lobbying essentially without any restraints by The Florida Bar. The *Frankel* case had included an observation that "volunteer sections" were the appropriate entities for advocating issues outside the guidelines for permissible lobbying activities of The Florida Bar as established in the *Schwarz II* opinion.

The section's petition was summarily denied after the Bar submitted pleadings that noted the issue of section lobbying was neither briefed nor argued in *Frankel*, and that lobbying by subunits of a mandatory membership organization – especially on topics that may be divisive within the general membership of the umbrella group – raised particularly unique freedom of association issues.

The Florida Bar's response also noted that sections "of" a unified bar – with no independent basis for existence and often funded with mandatory monies – seem quite distinctive from the financially autonomous and wholly separate "voluntary" groups discussed in the controlling federal court cases as acceptable alternatives to lobbying by a mandatory membership organization.

***The Florida Bar, Re: Harvey M. Alper, Joseph W. Little and Henry P. Trawick*, 666 So.2d 142 (Fla. 1995), *cert. denied* 515 U.S. 1145 (1995):** Petitioning Bar members sought a Florida Supreme Court order clarifying that The Florida Bar was without authority "to employ any funds, personnel, property, symbols or other evidences of Bar involvement in promoting or advocating any change in the means by which judges are selected in Florida," or "in promoting or publicizing the merit retention elections of incumbent justices and judges." Petitioners asserted that a legislative position of the Bar to eliminate the popular election of trial judges and the Bar's distribution of printed materials – allegedly favorable toward incumbent merit retention candidates – to the public media and local bar associations were divisive political and ideological activities outside the limits of the Bar's authority clarified in *Schwarz* and *Frankel*. Petitioners asserted that these were matters on which lawyers have no claim to a superior position, and that such activities violated their First and Fourteenth Amendment rights under *Keller*.

The Florida Bar's response noted that both activities meet the *Schwarz* and *Frankel* criteria, and stressed the special value of its collective opinion regarding judicial selection, and reiterated that petitioners' argument confused the objective question of whether an issue is germane to the administration of justice with the subjective question of the desirability of any proposed change. Regarding its printed merit retention materials, the bar emphasized the complete neutrality of those documents – as separately determined by Florida's Department of State – and noted The Florida Bar's uninterrupted history of never endorsing individual judicial candidates. The Supreme Court of Florida summarily denied the petition.

Petitioners thereafter sought a writ of certiorari from the United States Supreme Court. Following the submission of briefs, the Court denied the petition without opinion.

***Liberty Counsel v. The Florida Bar Board of Governors*, 12 So.3d 183 (Fla. 2009):** Two Bar members and their non-profit public

interest law firm petitioned the Florida Supreme Court for injunctive and other relief based on The Florida Bar's governing board allowing the Family Law Section to file an amicus curiae brief in support of a circuit judge's invalidation of a state statute that prohibited homosexuals from adopting. Petitioners claimed that such action violated their First Amendment rights under *Keller, Schwarz, Frankel,* was contrary to applicable Bar policies and was *ultra vires*, and created an unresolvable ethical conflict for judicial members of the Family Law Section and anyone who might appear before those judges with similar such legal issues. The filing sought to nullify the Board's action and to enjoin both the Family Law Section's filing and any future Florida Bar or section advocacy beyond proper parameters.

In a 5-2 opinion, the Florida Supreme Court concluded that the Bar's actions in permitting the Family Law Section to file an amicus brief did not violate the First Amendment rights of the petitioners because membership in the section is voluntary and any such advocacy by that group is not funded with compulsory Florida Bar dues. The court also rejected without detailed discussion petitioners' claim that the filing of an amicus brief by the section would cause judges who are members of the section to be in violation of the Code of Judicial Conduct. "Even assuming the filing of a legal brief discussing the relevant case law on a legal issue is analogous to a political or ideological position, a view with which we do not agree," the court said, "nothing in this court's case law or in the Code of Judicial Conduct prohibits judges from belonging to associations because the associations endorse a particular political or ideological position as a result of a decision in which the judge took no part. If that were the case, judges would be prohibited from being members of a variety of voluntary professional associations, including the American Bar Association and the National Bar Association, and from participating in the valuable nonpolitical activities of bar sections."

The court further emphasized that the standards and restrictions it has adopted subsequent to *Keller* address only the activities of The Florida Bar and not the activities of its voluntary sections. The court added that it will not interfere with or micromanage the activities of the Bar's sections, or the approval of such activities by the Bar, unless the Bar's actions regarding the scope of the activities of its voluntary sections are clearly outside the Bar's authority. Finally, the opinion noted that the Bar's approval of the section filing was not *ultra vires* because, in doing so, the Bar did not act contrary to any court rule or Bar policy, and implicit in the Board's unanimous vote on the matter was the notion that the Board waived by the necessary two-thirds vote the requirement that it determine the divisiveness of the issue. The dissenters argued that the Bar had failed to comply with or properly waive its policies, and that the court has a duty to supervise the Bar in such instances.

These court opinions merely delineate the legislative authority and political agenda of the organization known as The Florida Bar. They do not foreclose additional advocacy throughout the state's legal profession – whether by individual lawyer licensees of the Bar, or by separately funded voluntary groups of attorneys.

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IV. The Legislative Program

The Governmental Affairs Office of The Florida Bar administers the legislative program for the Bar. The office is staffed by Paul Hill, General Counsel and Joni Wussler, his assistant. Their primary functions include: coordination of the legislative and political activities of The Florida Bar and various sub-groups; staffing the Legislation Committee; advising elected leaders and outside consultants on various governmental issues; and serving as general information resources to all members of The Florida Bar on legislative and political matters. In addition, legislative counsel and advisors are retained to advocate the official positions of The Florida Bar in the legislature.

Every proposal for a legislative position must be reviewed and considered by the Legislation Committee. The committee meets prior to Board of Governors meetings, usually on Thursday afternoons. In order for proposals to be placed on the committee's agenda, a Legislative Position Request Form must be submitted to the Governmental Affairs Office at least 21 days prior to the meeting of the committee.

Standing Board Policy 9.50(c) requires a section or committee to circulate its legislative proposals to other sections or committees that may have an interest in the matter prior to the presentation of the request to the Legislation Committee. In order to assure that all interested parties have an opportunity to comment on the proposal, the Legislative Position Request Form specifically requires a listing of the groups (both inside and outside the Bar) from whom your section or committee has solicited comments.

It is also suggested that a person who is familiar with the substance of a legislative position request be present and available for questions during consideration by the Legislation Committee (and by the Board of Governors, if the matter is controversial). If a knowledgeable representative does not appear before the Legislation Committee, the committee may defer the matter because of inadequate information.

Once a legislative position has been favorably acted upon by the Board of Governors, it is recorded on The Florida Bar's master list of positions, maintained by the Governmental Affairs Office. Legislative positions are considered active for the two-year period coinciding with the legislative biennium. The master list is revised after each new position is approved. A current version of that list may be accessed on The Florida Bar's website.

Consistent with the distinction between "big bar" and section lobbying, many sections of The Florida Bar have developed separate grassroots lobbying programs. Some sections retain their own outside advisors, who further assist volunteer members in advocating particular positions in the legislature or before other governmental bodies.

A key contact program is in place. Lawyers who have access to or a personal relationship with state and federal officials can volunteer to

participate in the program. Those who volunteer are kept informed on various issues that comprise the Bar's political agenda and are called upon to present the Bar's views as necessary. These lawyers serve as the localized components of an influential statewide network that often augments the efforts of the Bar's Tallahassee-based legislative resources. Such localized efforts by various attorneys and lay volunteers have been highly effective in defending the Florida Supreme Court's regulation of the legal profession, and in explaining selected aspects of the Bar's political platform.

The Governmental Affairs Office provides a variety of services to assist all Bar leaders in keeping abreast of the issues regarding the legal profession as well as significant political developments which may affect the Bar.

Throughout the legislative session, each bill is reviewed for its potential interest to every group within The Florida Bar. Within "Legislation of Interest to the Legal Profession," separate bill reports – specific to each section, division and committee – can be found on the legislative pages of The Florida Bar website. These reports provide real-time updates on the progress of all legislation and allow members to access copies of any bill, amendment, or legislative analysis.

To facilitate the tracking of bills throughout regular and special sessions, the Bar utilizes a commercial on-line governmental information service. That bill tracking service includes a governmental directory, committee information, statute tracking, daily agendas and voting records.

Additionally, the official website of the Florida Legislature – "Online Sunshine" – provides a wealth of useful legislative information. The site also provides an alert service for intense bill tracking. The system supplies full text of bills, their complete parliamentary history, proposed amendments, up-to-date vote information, all state statutes, House and Senate rules, legislator information, House and Senate calendars, and lobbyist information.

All of this data is available free of charge through the Internet via http://www.leg.state.fl.us/. The Department of State posts new laws to its website one day after action by the Governor. Those postings can be found in the "Laws of Florida" section of the Department of State's website, accessed via http://laws.flrules.org/.

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V. Conclusion

Many political challenges face Florida's lawyers. There are declining numbers of attorneys serving in the Legislature. The legal profession is often viewed as unpopular with the public, and this attitude is reflected by their elected representatives. The legal system has been identified by certain interest groups as the root of various social problems.

There is too little understanding of the role of the judiciary, the rule of law, or the significance of attorneys within our democratic society. Some of the bar's legislative positions have been directed at topical matters.

The Florida Bar has nevertheless served, in the heat of political debate, to represent the profession's unique perspective to preserve and enhance the rule of law and the independence of the judiciary.

Prepared by The Florida Bar Department of Public Information and Bar Services with assistance from the Governmental Affairs Office.

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