No. 14-915

In The Supreme Court of the United States

REBECCA FRIEDRICHS; SCOTT WILFORD; JELENA FIGUEROA; GEORGE W. WHITE, JR.; KEVIN ROUGHTON; PEGGY SEARCY; JOSE MANSO; HARLAN ELRICH; KAREN CUEN; IRENE ZAVALA; and CHRISTIAN EDUCATORS ASSOCIATION INTERNATIONAL,

Petitioners,

v.

CALIFORNIA TEACHERS ASSOCIATION, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR GOLDWATER INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

CLINT BOLICK
JAMES M. MANLEY*
JARED BLANCHARD
**Counsel of Record*
GOLDWATER INSTITUTE
SCHARF-NORTON CENTER FOR CONSTITUTIONAL LITIGATION
500 E. Coronado Road
Phoenix, Arizona 85004
P: (602) 462-5000/F: (602) 256-7045
cbolick@goldwaterinstitute.org
jmanley@goldwaterinstitute.org
jblanchard@goldwaterinstitute.org
Counsel for Amicus Curiae

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

1. Whether *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977) should be overruled and Petitioners should no longer have to fund speech they oppose in order to earn a living in their chosen profession.

2. Whether it violates the First Amendment to presume that Petitioners consent to subsidizing non-chargeable speech by the group they are compelled to fund, rather than requiring that Petitioners affirmatively consent to subsidizing such speech.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

Page

IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

The Goldwater Institute was established in 1988 as a nonpartisan public policy and research foundation dedicated to advancing the principles of limited government, economic freedom, and individual responsibility through litigation, research papers, editorials, policy briefings, and forums. Through its Scharf-Norton Center for Constitutional Litigation, the Institute litigates and occasionally files *amicus* briefs when its or its clients' objectives are directly implicated.

The Goldwater Institute seeks to enforce the features of our state and federal constitutions that protect individual rights, including the rights to free speech and free association. To this end, the Institute is currently defending the constitutionally protected rights of an attorney who has found himself similarly situated to Petitioners here; namely, that he is compelled to fund speech he opposes in order to earn a living in his chosen profession. *See Fleck v. McDonald, et al.*, 1:15-cv-00013-DLH-CSM (D.N.D. filed Feb. 3, 2015).

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[1] Pursuant to Supreme Court Rule 37(6), counsel for *amici curiae* affirms that no counsel for any party authored this brief in whole or in part and that no person or entity, other than *amici*, their members, or counsel, made a monetary contribution to the preparation or submission of this brief. The parties have filed blanket consents with this Court.

The Goldwater Institute is a non-partisan, tax exempt educational foundation under Section 501(c)(3) of the Internal Revenue Code. It has no parent corporation. It has issued no stock. It certifies that it has no parents, trusts, subsidiaries and/or affiliates that have issued shares or debt securities to the public.

SUMMARY OF ARGUMENT

This case presents an important opportunity for the Court to vindicate the First Amendment rights of Petitioners by overruling *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977), ending the practice of forcing Petitioners to fund speech they oppose in order to earn a living in their chosen profession.

Despite inevitable warnings from Respondents and special interests that overturning *Abood* places *Keller v. State Bar of California*, 496 U.S. 1, 14 (1990) and mandatory bar associations on shaky ground, the Court should not hesitate to strike *Abood* down and allow Petitioners to no longer fund the public union's collective bargaining. Because the First Amendment prohibits requiring an individual to contribute to the support of an ideological cause she may oppose, *Abood* draws a constitutionally indefensible line between collective bargaining and the other political and ideological activities that public unions perform. *Keller* does not engage in *Abood*'s arbitrary and impermissible line drawing; rather, *Keller* narrowly authorizes mandatory bars to compel dues only for

the regulation of attorneys. *Keller*, 496 U.S. at 14. *Keller* is readily distinguished from *Abood* on these grounds. In reiterating that, this Court can avoid casting uncertainty on precedents not relevant to the case at hand and provide needed guidance to both mandatory bar associations and their coerced memberships.

This Court has always required that chargeable expenditures related to improving the quality of legal services also be connected to regulating the legal profession. *Lathrop v. Donohue*, 367 U.S. 820, 843 (1961); *Keller*, 496 U.S. at 14; *United States v. United Foods, Inc.*, 533 U.S. 405, 414 (2001); *Harris v. Quinn*, 134 S. Ct. 2618, 2643 (2014). Mandatory bar associations and lower courts have mistakenly concluded that *Keller* identified two purposes that allow bar associations to compel membership: "improving the quality of legal services" and "regulation of lawyers." *See, e.g.*, *Kingstad v. State Bar of Wisconsin*, 622 F.3d 708 (7th Cir. 2010). Misconstruing *Keller* as permitting mandatory bars to compel dues for two broad and distinct purposes harms members' First Amendment rights and places *Keller* in the same dangerous territory as *Abood* by leading mandatory bars to routinely spend coerced dues on a broad range of political and ideological activities.

While the Court can overturn *Abood* without necessarily overturning *Keller* as a result, *Keller*'s own unique failings should lead this Court to one day strike it down. This Court has made it clear that mandating association is only tolerated when serving

a compelling state interest that cannot be achieved through means less restrictive of associational freedoms. *Knox v. Service Employees Int'l Union, Local 1000*, 132 S. Ct. 2277, 2289 (2012). Eighteen states continue to regulate attorneys without compelling them to join and fund mandatory bar associations, making it plainly evident that attorneys can be effectively regulated through means far less restrictive of associational freedoms than mandatory bar associations. Moreover, these 18 voluntary bar states demonstrate how attorneys would continue to be effectively regulated in a post-*Keller* world.

Overturning *Keller* would also result in less litigation. Violation of First Amendment rights is inherent in compelled association schemes and litigation is inevitable so long as such schemes are tolerated. Overturning *Keller* would not open up the floodgates to a mass of litigation, rather it would end the current flood, as demonstrated by the continued litigation resulting from mandatory bar associations' violation of their coerced members' First Amendment rights.

For these reasons and the reasons advanced by Petitioners, the Court should overrule *Abood* and reaffirm that *Keller* only acknowledges the states' authority to regulate attorneys.

ARGUMENT

I. OVERTURNING *ABOOD* DOES NOT OVERTURN *KELLER*.

A. Unlike *Abood*, *Keller* only permits mandatory bars to compel dues for the regulation of attorneys and does not authorize use of compelled dues for any political or ideological activities.

Petitioners, who merely wish to earn a living in their chosen profession without funding speech they oppose, convincingly argue that there is no meaningful distinction between collective bargaining and the other political and ideological activities that public unions perform. Pet. Br. 20-21. Indeed, *Abood* drew an indefensible line in finding that public-sector employees could be forced to fund political and ideological speech related to collective bargaining but could not be forced to fund any other political and ideological speech because the First Amendment prohibits requiring an individual "to contribute to the support of an ideological cause he may oppose." *Abood*, 431 U.S. at 235; Pet. Br. 20-21. This argument should prove fatal to *Abood* and the Court should overrule it.

Special interests, which currently receive the "remarkable boon" of compelled fees, *Knox v. Service Employees Int'l Union*, *Local 1000*, 132 S. Ct. at 2290-93, will inevitably attempt to discourage the Court from doing so, in part by warning that the fall of *Abood* inevitably leads to the fall of *Keller* and

mandatory bar associations. *See* Brief of Respondent SEIU Healthcare Illinois & Indiana, *Harris v. Quinn*, 134 S. Ct. 2618 (2014) (No. 11-681), at 28 ("By asking this Court to overrule *Abood*, petitioners necessarily ask this Court to overrule *Keller* [*v. State Bar of California*, 496 U.S. 1, 14 (1990)]."); *see also* Brief for Respondent, *Knox*, 132 S. Ct. 2277 (2012) (No. 10-1121), at 42 (Should petitioners succeed, "every state bar will have to revisit the procedures it implemented based on *Keller*'s holding. . . ."); Brief of 21 Past Presidents of the D.C. Bar as Amici Curiam Supporting Respondents, *Harris v. Quinn*, 134 S. Ct. 2618 (2014) (No. 11-681), at 2, 3 (speculating that overturning *Abood* would have a "profoundly destabilizing impact on bars all over the country" and "create uncertainty and instability injurious to the important work that mandatory bars do both for the legal profession and for the administration of justice."). However, these warnings are unfounded[2] and stem from a profound misunderstanding of *Keller* that construes it as permitting mandatory bars to expend compelled dues on an incredibly broad swath of activities, including political and ideological activity. *Keller* expressly disclaims any spending of a political or ideological nature and does not draw the same indefensible line between types of political speech drawn in *Abood*.

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[2] As discussed *infra*, these special interests should be more concerned with *Keller*'s own flaws, which are completely unrelated to *Abood*.

Under *Keller*, mandatory bar associations can only compel dues for the narrow purpose of improving the practice of law through the regulation of attorneys. *Keller*, 496 U.S. at 14; *Lathrop v. Donohue*, 367 U.S. at 843. A mandatory bar may only compel member dues for "activities connected with disciplining [b]ar members or proposing the profession's ethical codes." *Keller*, 496 U.S. at 3, 14. Compelled expenditures must be limited to regulation of attorneys because *Keller* rejected the view that attorneys could be compelled to fund expenditures related to "all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice." *Id*. at 15. Instead, *Keller* hewed to *Lathrop*'s limit on compelled expenses: "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." *Lathrop*, 367 U.S. at 843; *see Keller* at 14 (*quoting Lathrop*). This Court again reiterated in *Harris v. Quinn* that *Keller* held bar members "could not be required to pay the portion of bar dues used for political or ideological purposes but that they could be required to pay the portion of the dues used for activities connected with proposing ethical codes and disciplining bar members." 134 S. Ct. 2618, 2643 (2014) (*citing Keller*, 496 U.S. at 14); *see also United States v. United Foods, Inc.*, 533 U.S. at 414 ("The central holding in *Keller*, moreover, was that the objecting members were not required to give speech subsidies for matters not germane to the larger regulatory purpose which justified the required association."). In light of this, it is clear

that *Keller* authorized mandatory bars to compel dues for one narrow purpose related to regulating attorneys to ensure they adhere to ethical practices.

Some bar associations and courts have misconstrued *Keller* to conclude that there are two purposes that allow bar associations to compel member dues, detaching *Keller*'s and *Lathrop*'s requirement that compelled expenditures related to improving the quality of legal services also be connected to regulating the legal profession. *See, e.g.*, *Gardner v. State Bar of Nevada*, 284 F.3d 1040, 1042 (9th Cir. 2002); *Kingstad v. State Bar of Wisconsin*, 622 F.3d at 718-21, 723-25. However, this view is contrary to this Court's decisions, as explained above. Bar associations and courts that have ignored *Keller*'s and *Lathrop*'s requirement that compelled expenditures must improve the quality of legal services through regulating the legal profession have created a lack of any meaningful distinction between the identified compelling government interest of regulating attorneys and all other political and ideological activity.

By misconstruing *Keller* to authorize a broad array of activities, many of which are expressly ideological and political in nature, mandatory bar associations' interpretation of *Keller* creates the same murky issue that abounds in *Abood* and is complained of by the respondents. By strongly reiterating that *Keller* only permits mandatory bar associations to compel dues for the regulation of attorneys, this Court can demonstrate that *Keller* is readily distinguished from *Abood* and provide needed guidance to

both mandatory bar associations and their coerced memberships.

B. Confusion over the compelling government interest of mandatory bars identified in *Keller* harms bar members and encourages litigation.

Not only does misconstruing *Keller* as permitting mandatory bars to compel dues for two broad purposes place *Keller* in the same dangerous territory as *Abood*, it inevitably leads mandatory bars into mischief as they find the elasticity of "improving the quality of legal services" to greenlight a stunning array of activities attorneys can be compelled to fund. Widespread misconception of *Keller* has placed mandatory bars – and the members compelled to foot the bill – in a fog of uncertainty as to what is permissible under *Keller* and what is not, leading to needless rights violations and litigation.

An ongoing Goldwater Institute lawsuit illustrates how incorrectly reading *Keller* as having two broad purposes leads "improving the quality of legal services" to be the exception that swallows the rule (and bar members' First Amendment rights). As a North Dakota attorney, Goldwater client Arnold Fleck is compelled to pay dues to the State Bar Association of North Dakota ("SBAND"). Complaint at 3, *Fleck v. McDonald, et al.*, 1:15-cv-00013-DLH-CSM (D.N.D. filed February 3, 2015) (ECF #1). He strongly supported North Dakota Initiated Statutory Measure

No. 6 ("Measure 6"), which appeared on the North Dakota ballot on November 4, 2014. *Id*. at 3-4. Measure 6 proposed to "amend section 14-09-06.2 of the North Dakota Century Code to create a presumption that each parent is a fit parent and entitled to be awarded equal parental rights and responsibilities by a court unless there is clear and convincing evidence to the contrary." Official Ballot Language for Measures Appearing on the Election Ballot, North Dakota Secretary of State (available at https://vip.sos.nd.gov/pdfs/measures%20Info/2014%20General/Official_Ballot_Language_2014_General.pdf) (last accessed on Sept. 1, 2015). Mr. Fleck not only contributed $1,000 to a ballot measure committee in support of Measure 6, he participated in the campaign – even appearing on television and radio to debate the merits of the measure. Complaint at 8-9, *Fleck v. McDonald, et al.*, 1:15-cv-00013-DLH-CSM (D.N.D. filed Feb. 3, 2015) (ECF #1). Meanwhile, SBAND threw its weight behind the *opposition* to the Measure and expended member dues in the process, giving $50,000 to a committee that opposed Measure 6. *Id*. This is despite Measure 6 having absolutely nothing to do with the regulation of attorneys, placing it far outside the bounds of a reasonable compelled expenditure. Measure 6 ultimately failed at the polls. *Id*. at 3. Because SBAND failed to provide Mr. Fleck with any of the *Keller* safeguards, *Id.* at 11-12, Mr. Fleck was left with no alternative but to file suit against SBAND.

Strikingly, SBAND has attempted to defend itself in part by arguing that Measure 6 *was* a proper

compelled expenditure because the measure theoretically could have placed a greater burden on the judicial system and threatened the "perception" of the quality of legal services in North Dakota. Defendants Jack McDonald, Aubrey Fiebelkorn-Zuger, and Tony Weiler's Memorandum of Law in Opposition to Plaintiff's Motion for Preliminary Injunction at 7-9, *Fleck v. McDonald, et al.*, 1:15-cv-00013-DLH-CSM (D.N.D. filed Feb. 3, 2015) (ECF #25). By expending mandatory dues to advocate against the passage of Measure 6, SBAND was purportedly "improving the quality of legal services." *Id*. Clearly, there is scarcely a law that does not burden the judicial system, including laws that the Supreme Court called out as non-chargeable, such as gun control. *Keller*, 496 U.S. at 3 ("Compulsory dues may not be used to endorse or advance a gun control . . . but may be spent on activities connected with disciplining Bar members or proposing the profession's ethical codes."). Yet such a broad reading of *Keller* is not the exception but rather the predominant rule among mandatory bar associations.[3]

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[3] *See, e.g.*, Idaho Bar Commission Rules, Idaho State Bar, at Rule 906, Rule 1106 (https://isb.idaho.gov/pdf/rules/ibcr.pdf) (last accessed on Sept. 2, 2015) (Permitting the State Bar to engage in legislative and political activity on, inter alia, "[a]ll matters relating to or affecting the statutes or laws of the State of Idaho. . . ."); The Political Process: Roles and Responsibilities, Oregon State Bar (available at http://osbpublicaffairs.homestead.com/files/Political_Process.pdf) (last accessed on Sept. 2, 2015) (Stating that *Keller* "did not establish a particularly clear standard on what constitutes permissible or impermissible dues-financed

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Wrongly reading *Keller* as permitting the expenditure of mandatory dues to improve the quality of legal services even if the expenditure is unrelated to the regulation of attorneys is dangerous as it creates an inevitably vague and subjective standard to determine the chargeability of a mandatory bar's activities. It places both a mandatory bar and its compelled members in a situation of uncertainty. The bar may be uncertain as to what it can compel bar members to fund and a bar member, while opposed to an activity she is forced to fund, may be unsure whether to object to the activity or if it could conceivably be related to "improving the quality of legal services."

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activities. . . . We believe the broad middle area of law improvement is appropriate if it is germane to the bar's role in improving the quality of legal services to the people of the State of Oregon or relates to the regulation of the legal profession."); V.T.C.A., Government Code 81.034 (Texas) (Permitting the Texas Bar to influence the passage or defeat of any legislative measure that relates "to the regulation of the legal profession, improving the quality of legal services, or the administration of justice and the amount of the expenditure is reasonable."); An Executive Summary of Keller and Related Case Law, the State Bar of Arizona (available at http://www.azbar.org/media/159949/kellerexecsummary.pdf) (last accessed on Sept. 3, 2015); An Executive Summary of Keller and Related Case Law, the State Bar of Nevada (available at https://www.nvbar.org/sites/default/files/Approved%20bylaws%2012%20%202008%20amended%2008%202013.pdf) (last accessed on Sept. 2, 2015); The Political Process: Roles and Responsibilities, Oregon State Bar (available at http://osbpublicaffairs.homestead.com/files/Political_Process.pdf) (last accessed on Sept. 2, 2015).

Indeed, *Kingstad v. State Bar of Wisconsin* illustrates this issue well: even three esteemed jurists sitting on the Court of Appeals for the Seventh Circuit could not agree whether a State Bar of Wisconsin advertising campaign designed to bolster the image of Wisconsin attorneys was germane to "improving the quality of legal services," because the panel mistakenly interpreted *Keller* as endorsing dual purposes. 622 F.3d at 718-21, 723-25 (Sykes, J., dissenting). After correctly holding that the *Keller* limitations applied to all uses of compelled dues and not just those related to political or ideological activities, *id*. at 714-18, the majority then employed such a broad interpretation of "improving the quality of legal services" that it rendered the correct portion of its ruling "meaningless." *Id*. at 725 (Sykes, J., dissenting). Employing a deferential standard for reviewing a mandatory bar association's use of compelled dues, the majority found that the advertising campaign was reasonably related to "improving the quality of legal services" in part because it could hypothetically encourage clients' trust in lawyers, making a client follow legal advice and "[w]hen people follow competent legal advice, the system itself is improved." *Id*. at 719.

Judge Sykes dissented, arguing that "[t]o be germane to improving the quality of legal services, an expenditure of compulsory bar dues should as a factual matter have at least *some* connection to the law, legal advising, legal education, legal ethics, or the practice of law." *Id*. at 723 (Sykes, J., dissenting) (emphasis in the original) (quotations omitted). The

result of *Kingstad* is that attorneys compelled to fund bar associations in the Seventh Circuit have been left with such a broad interpretation of what expenditures are germane to "improving the quality of legal services" that it is unclear if there is any expenditure that they cannot be compelled to fund. Had "improving the quality of legal services" been properly connected to regulating attorneys as *Keller* demands, the risk a court could apply *Keller* in such a way as to "drain[ ] it of any real meaning," *id*. at 722 (Sykes, J., dissenting), would disappear and attorneys' First Amendment rights would be better protected. Instead, mandatory bar associations are further emboldened to needlessly tread in the murky waters of political and ideological activities inherently allowed under *Abood* but forbidden under *Keller*.

As many mandatory bars continue to interpret *Keller* as providing them with two broad purposes to compel mandatory dues, it is clear that further guidance is needed. This Court should provide such guidance by distinguishing *Keller* from *Abood* on the grounds that *Keller* only permits mandatory bar associations to compel dues for the regulation of attorneys.

II. MANDATORY BAR MEMBERSHIP IS NOT NARROWLY TAILORED TO A COMPELLING INTEREST.

While *Keller*'s focus on attorney regulation distinguishes it from *Abood* and this case, *Keller* should one day be overturned due to its own infirmities. This

Court recently reiterated in *Knox v. Serv. Employees Int'l Union, Local 1000* that "mandatory associations are permissible only when they serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." 132 S. Ct. at 2289, *quoting Roberts v. United States Jaycees*, 468 U.S. 609, 623, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984) (internal quotations and grammar omitted). As such, a mandatory bar association may only compel dues to the extent mandatory dues are necessary to further the compelling state interest of improving the quality of legal services through the regulation of attorneys. *Keller*, 496 U.S. at 14; *Lathrop v. Donohue*, 367 U.S. at 843. Yet 18 states – Arkansas, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Ohio, Pennsylvania, Tennessee, and Vermont – have already found ways of regulating attorneys without compelling bar association membership at all. With less restrictive means readily available, compelling attorneys to join and fund mandatory bar associations in order to practice law cannot survive "exacting First Amendment scrutiny." *Knox*, 132 S. Ct. at 2289. *Keller* should therefore be overturned.

But overturning *Keller* would not be calamitous for the very reason it should be overturned: we know what the outcome would look like thanks to the continued success of the 18 states that already regulate attorneys without conditioning the practice of law on bar association membership. *See In re Petition for a*

Rule Change to Create a Voluntary State Bar of Nebraska, 286 Neb. 1018, 1022 (2013); *see also* ABA Division for Bar Services, *2011 State and Local Bar Membership, Administration and Finance Survey* (2012); Ralph H. Brock, "*An Aliquot Portion of Their Dues:" A Survey of Unified Bar Compliance with* Hudson *and* Keller, 1 Tex. Tech. J. Tex. Admin. L. 23 (2000). Like attorneys in mandatory bar association states, attorneys in voluntary states still have to be licensed to practice law, they still must adhere to ethical standards, and they still must pay for the cost of attorney regulation. If they wish to join a bar association, they may;[4] but if their views diverge with the bar association, attorneys are free to leave and disassociate themselves from the bar association's speech, but continue practicing law. Were *Keller* overturned, the 32 states with mandatory bar associations would merely join these 18 states in regulating attorneys without First Amendment impingement.

Moreover, overturning *Keller* would not lead to a groundswell of litigation. Rather, it would end the continuing flood of lawsuits *Keller* has caused. Since *Keller* was decided, there has been an unbroken chain of litigation resulting from lawyers pushing back against the violations of their First Amendment rights that a compelled association scheme inevitably breeds. *See, e.g.*, *Lautenbaugh v. Nebraska State*

[4] Every voluntary state still has an active state bar association, *see* ABA Division for Bar Services, *2011 State and Local Bar Membership, Administration and Finance Survey* (2012).

Bar Ass'n, 2012 WL 6086913 (D. Neb. Dec. 6, 2012); *Kingstad v. State Bar of Wisconsin*, 622 F.3d 708 (7th Cir. 2010); *Romero v. Colegio de Abogados de Puerto Rico*, 204 F.3d 291 (1st Cir. 2000); *Popejoy v. New Mexico Bd. of Bar Comm'rs*, 887 F. Supp. 1422 (D.N.M. 1995); *Schneider v. Colegio de Abogados de Puerto Rico*, 917 F.2d 620 (1st Cir. 1990); *Fleck v. McDonald, et al.*, 1:15-cv-00013-DLH-CSM (D.N.D. filed Feb. 3, 2015). This chain of litigation is unsurprising, and doubtless more litigation is imminent considering mandatory bar associations' incorrect view that *Keller* authorized two broad purposes to compel dues as well as the lax manner in which many mandatory bar associations have implemented the *Keller*/*Hudson* safeguards.[5]

In ruling on behalf of the Petitioners and overturning *Abood*, this Court should disregard any

[5] Despite *Keller*'s command that mandatory bar's implement safeguards designed to protect members' First Amendment rights from further impingement, ten years after *Keller* was decided, an astonishing 26 of the 32 states with mandatory bar associations had failed to institute safeguards that met the constitutional minimum. Ralph H. Brock, "*An Aliquot Portion of Their Dues:" A Survey of Unified Bar Compliance with* Hudson *and* Keller, 1 Tex. Tech. J. Tex. Admin. L. 23, 53-85 (2000). Professor Brock identified the mandatory state bar associations of Alabama, Alaska, Arizona, Florida, Georgia, Hawaii, Idaho, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, and Wyoming as having either deficient *Keller*/*Hudson* safeguards or no *Keller*/*Hudson* safeguards at all. *Id*. at 53-85.

speculation that reconsideration of *Abood* will have dire consequences for mandatory bar associations. Not only is *Keller* readily distinguishable from *Abood* due to the narrow permission *Keller* gave mandatory bars to compel fees, the fact of the matter is 18 states are achieving the compelling state interest of improving the practice of law through the regulation of attorneys without the compulsion of mandatory state bar associations and without the litigation that comes with compulsion.

CONCLUSION

For the foregoing reasons, the judgment of the Ninth Circuit should be reversed.

Respectfully submitted,

CLINT BOLICK
JAMES M. MANLEY*
JARED BLANCHARD
**Counsel of Record*
GOLDWATER INSTITUTE
SCHARF-NORTON CENTER FOR
CONSTITUTIONAL LITIGATION
500 E. Coronado Road
Phoenix, Arizona 85004
(602) 462-5000
cbolick@goldwaterinstitute.org
jmanley@goldwaterinstitute.org
jblanchard@goldwaterinstitute.org

Attorneys for Amicus Curiae

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