LEGISLATIVE PANEL

WRITTEN MATERIAL FOR PROFESSIONALISM AFTER THE STATEWIDE JUDICIAL EMERGENCY

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Finding Professionalism in Legislative Participation

By Hannibal Heredia
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The State Bar of Georgia's *A Lawyer's Creed* provides "[t] o the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients." The *Aspirational Statement on Professionalism* sets forth "[a]s a lawyer, I will aspire to preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good."

When it comes to professionalism it is more than being civil to one another (lawyer to lawyer). There is a duty to the profession as a whole and to society as a whole. Participating in legislative advocacy is a direct manner to fulfill this area of professionalism. After all, legislation affects not only us as attorneys, but it is the backbone of society as a whole.

It is important to note that the State Bar of Georgia provides us practitioners ample opportunity to serve the public through our sections and the bar leadership. However, when it comes to legislative advocacy, one must be aware of the limitations to advocate when we are members of a mandatory bar. In *Keller v. State Bar of California*, 496 U.S. 1 (1990), the United States Supreme Court found that since California is an integrated bar (mandatory to join to practice) the California State Bar could not use compulsory dues to finance political and ideological activities with which members might disagree as it 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. Similarly, the State Bar of Georgia cannot take a position as a whole, but that does not deter us as individuals from contributing to the legislative process.

We as individuals have a voice. A voice that I can speak from experience is that our legislative and administrative leaders want to hear from us. I was fortunate to be asked to be legislative liaison for the Family Law Section for the State Bar of Georgia for the 2019, 2020 and 2021 terms. I did <u>not</u> speak for our membership as a whole. My role was to provide information to the membership and to be the central point of contact for the section and third parties as to communications to legislative items that may be of interest to the section. When I had the

opportunity to speak on bills that impacted family law, it was an honor to be able to speak in my individual capacity as a Georgia citizen before committees. But the takeaway from those times was the desire of our legislators to listen.

The pandemic presented challenges but opportunities to promote the "common good." When the Governor had to take steps to "shut down" the State, his office was aware of the need to provide continuity in certain areas. In the family law arena, several lawyers organized to promote the use of remote notarizations that the Governor's office was already advocating for. The question then became how do we do it? Once again three Family Law lawyers from three different areas of the State worked to create a suggested guide on how to preserve the integrity of remote notarizations. That guide was sent out statewide to practitioners. It allowed digital signing of documents to continue and in fact, to continue as the State opened back up. We learned this was an efficient and safe way to notarize the signature of individuals.

Also, at the start of the pandemic, travel was restricted. How were separated parents going to see their children? Family law attorneys throughout the state made their voices known. Subsequently, I, as liaison, was able to also contact members of the Governor's office to suggest that travel for parenting time be considered as "necessary travel."

I have been able to witness attorneys organize among themselves to reach out to legislators about items they believe are for the "common good." We can't all agree all the time, but an individual or a group has a voice. And as I said above, I know that voice wants to be heard by our State's leaders.

Many of us enjoyed civics when we were young. An opportunity exists to serve the public – the common good – and be a part of civics at the same time. Legislative participation thus creating one avenue for professionalism.

TRACY MASON

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Professionalism After the Statewide Judicial Emergency Order
Lawyer Engagement in Crafting and Passing Post-SJEO Legislation
September 28, 2021
Tracy Mason, Judicial Council/Administrative Office of the Courts

The Judicial Council of Georgia ("Council"), chaired by the Chief Justice of the Supreme Court of Georgia, serves as the policymaking body for Georgia's judiciary and includes representatives from all classes of court and the State Bar of Georgia. The Council's Standing Committee on Legislation ("Committee") is charged with reviewing and considering legislation affecting the judicial branch and recommending positions to the Council, as appropriate. Through this Committee, judicial branch groups share information about legislative initiatives and may choose to seek the support of the Judicial Council. This process enables the judiciary to speak with one voice on legislative matters. Council leadership stresses the importance of a unified approach, especially as it pertains to issues that affect more than one class of court.

The membership of the Committee reflects the membership of the full Council and facilitates participation in the legislative process from all classes of court. Judges can support Council-sponsored legislation by helping to draft language and/or providing the perspective of their class of court, testifying in committee hearings, and talking with their local legislative delegation about why the initiative is important to the courts. The structure and process of the Council, the Committee, and the individual court councils provide several opportunities to discuss any concerns and engage in dialogue. The Council's legislative process seeks to adhere to a spirit of collaboration and communication, with the goal of improving and enhancing the administration of justice. These goals, and the established structure of the process, lend to aspects of professionalism in that the work itself seeks to preserve and improve the legal system for the common good, and the process seeks to preserve the dignity and integrity of the profession through collaborative conduct.

Familiarity between judges, lawyers, and legislators provides an opportunity when working on legislation – reaching out to voice support for and explain a bill requires little time commitment but can have a big impact. A lawyer's skill set and expertise can help non-lawyers understand the legal implications and complexities, and importance to the legal profession and court administration, of a particular piece of legislation. This demonstrates the second task that the CJCP calls lawyers to in its mission: "To utilize their special training and natural talents in positions of

leadership for societal betterment."[1] As these relationships are fostered, it builds trust and confidence in the individual judge or lawyer, and in the judiciary as a whole.

During the 2021 Regular Session of the Georgia General Assembly, the Judicial Council prioritized pandemic-related initiatives that would assist in resolving case backlogs and provide courts with tools to move cases. Each of these initiatives were thoughtfully crafted, refined, and pursued in a collaborative manner among stakeholders working together "to act as problem solvers performing their service on behalf of the client while adhering at all times to the public interest."[2]

The Council's top priority was an amendment to the judicial emergency statute, OCGA §§ 38-3-61; 38-3-62, that provides for the continued tolling of statutory speedy trial requirements following a judicial emergency. SB 163 was a collaborative effort led by the Council that included feedback and provisions from stakeholders across the justice system, with the ultimate goal of continued efficient administration of justice once the Statewide Judicial Emergency came to an end.[3] SB 163 achieved final passage and went in to effect July 1, 2021; it is authorized for two years, with a sunset of June 30, 2023.

The Council also pursued three recommendations made by the Judicial COVID-19 Task Force. The alternative locations statute (OCGA § 15-6-18) was amended to allow greater flexibility for superior and state courts to hold criminal jury trial proceedings in non-governmental facilities during a judicial emergency. Authority for the use of accusations as formal charging instruments (OCGA §§ 17-7-70; 17-7-70.1) was expanded, except for cases involving serious violent felonies and only 45 days or more after charges are filed. Finally, new Code Section OCGA § 17-7-4 allows a court to approve a request for a bench trial, notwithstanding an objection by the prosecuting attorney. Originally filed as three separate bills, these all achieved final passage as part of HB 635. The accusation and bench trial provisions were given a one-year authorization, with a sunset of June 30, 2022. Like SB 163, these three recommendations were developed as a result of collaboration and compromise among many justice system stakeholders, and pursued with the goal of keeping the court system operating during an unprecedented time. This partnership reflected the specific aspirational ideal, "As to my colleagues in the practice of law, I will aspire

[1] Mission of the Chief Justice's Commission on Professionalism - Calling to Tasks: http://cjcpga.org/mission/.
[2] Mission of the Chief Justice's Commission on Professionalism - Calling to Tasks: http://cjcpga.org/mission/.
[3] The Statewide Judicial Emergency terminated on Wednesday, June 30, 2021, at 11:59 p.m.: https://www.gasupreme.us/wp-content/uploads/2021/06/15th-SJEO_as-issued.pdf.

to recognize and develop our interdependence."[4] All these initiatives sought to provide a balanced approach for courts to continue to move and resolve cases during the Emergency period, and afterward as the pandemic has still, necessarily, limited the pace and scale of court operations.

The Office of Legislative Counsel is an important partner in the legislative process, as they draft and prepare legislation at the direction of legislators. The Council has had success in working with this office by preparing proposals using the Office's preferred style and speaking directly with the assigned staff member to explain the intent, background, and purpose of the proposal. This helps achieve the goal of the sponsoring entity and the goal of well-drafted law.

Professionalism is inherent in the structure of, and process followed by, the Judicial Council. Working in a collaborative and coordinated fashion has promoted honesty and trust in pursuit of an improved system. As recognized by former Chief Justice Harold D. Melton in his closing remarks at the April 23, 2021, Judicial Council General Session, this reached new levels during the Emergency: "…we have a special thing here, and it's real. And because we appreciate the talent, the dedication, and the friendship, I fully believe that we operate now in an environment of trust, openness, and collaboration. And with that we can face any other challenge that might come our way. I don't believe any of the challenges that will come will be nearly as big as the challenges that we have just overcome or are in the process of overcoming…we'll be able to do all kinds of things because we operate in the spirit of truth, openness, and collaboration."[5]

[4] Aspirational Statement on Professionalism: http://cjcpga.org/wp-content/uploads/2019/07/2-Lawyers-CreedAspStatement-v-2013-Line-Number-with-new-logo-and-seal-v07-25-19.pdf.
[5] Judicial Council of Georgia General Session, April 23, 2021: https://www.youtube.com/watch?v=swLdafW1hjM.

JILL TRAVIS

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PROFESSIONALISM AFTER THE STATEWIDE JUDICIAL EMERGENCY ORDER 28 SEPTEMBER 2021

JILL ANDERSON TRAVIS, EXECUTIVE DIRECTOR AND POLICY ADVOCATE

There are too few lawyer-legislators. It is critically important for lawyers to help in the legislative process because lawyers are in the best position to understand how changes to the law will affect the practice of law, client outcomes, court operations, and the judicial system.

My perspective on the legislative process comes from my work serving as a policy advocate for the Georgia Association of Criminal Defense Lawyers and my 18 years serving as Deputy Legislative Counsel in the Office of Legislative Counsel.

There are several edicts from the *Lawyer's Creed and the Aspirational Statements on Professionalism* that help guide lawyers in the legislative process.

From the *LAWYERS CREED*

To the profession, I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service. (Lines16/18)

To the public...I will strive to improve the law . . . (Lines 19/21)

From *ASPIRATIONAL IDEALS*

To . . . improve the law . . . for the common good (Lines 58/9)

Good lawyering should be a moral achievement for both lawyer and the client. (Lines 69/70)

As to the public and our system of justice, I will aspire:

(e) to improve our laws and legal system by, for example:

(3) commenting publicly upon our laws; and

(4) using other appropriate methods of effecting positive change in our laws and legal system (Lines 155/169//170/174-5)

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QUESTIONS POSED:

What is the role of legislative counsel (LC)?

- Legislative Counsel enjoy an attorney-client relationship with Georgia General Assembly (GGA) members.
- LC takes an idea and creates draft legislation to bring the idea to fruition. The legislator requesting the legislation determines the policy. LC determines how to accomplish the policy. (e.g., the "how" and "where" in the Code the idea will live; if cross-reference changes are needed; word choices to accomplish the goal.)

- It is critical to fully understand the proposed idea, how that idea fits in the Code, how that idea aligns with case law, and, to the extent possible, engage stakeholders for substantive input on the idea.
- Consider constitutional implications and provide attorney/client privileged guidance. GA Rule of Professional Conduct 2.1[1] requires LC to advise of constitutional or other problems with legislation. Normally this is done in writing but can be verbal provided due to time constraints. It is the General Assembly member's decision on how to proceed in the face of the opinion.

Suggestions for working with LC:

- LC can only draft legislation for GGA members unless specifically authorized by a GGA member to work with an individual (e.g., lobbyist, constituent, etc.). This authorization is

[1] RULE 2.1 ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. A lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

The maximum penalty for a violation of this rule is disbarment.
Comment

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation. Advice couched in narrowly legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, duty to the client under Rule 1.4: Communication may require that the lawyer act if the client's course of action is related to the representation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

accomplished with a written or verbal "permission slip" outlining the scope of discussion the GGA member is allowing an individual to have with LC about the legislation to be drafted.

- Work with the LC who is assigned to the committee that (you think) will hear the bill. That attorney will be most familiar with that area of the law. If you are unsure, research the area of law and see which committee has heard similar bills. (*See* history line of Code sections for reference and review the bills listed to know which committee hears this type of bill proposal.)
- Have a good understanding of the LC drafting process and confidentiality rules. A permission slip can be narrow or broad in scope. For instance, the permission slip may only allow a person to provide input and not actually receive a copy of the drafted legislation. If you want to have continued engagement, you work with the GGA member to ensure such continued engagement is allowed to occur and the LC understands she can interact with you directly on questions, changes, updated versions, etc.
- Keep in mind the crush of legislative requests and be mindful of alerting LC to any timelines. (I drafted more than 10k bills and resolutions during my tenure and each session the office produces nearly 11k bills and resolutions.)
- Keep in mind there is no magic "push here" button in drafting legislation.
- Understand that "predrafted" bills do not necessarily speed up the process (unless prepared by someone with significant drafting experience). Making sure the LC knows the goal of the legislation is key.
- When changes are being made to a drafted bill or substitute, physically write directly on the document, or indicate where the change are to be made and draft the insert. Sort of old school redlining! This methodology speeds the redrafting and editorial process.
- Know how to track legislation. (i.e., LC#, Next 4 digits, EC, etc.)
- Read the User's Guide to the Code—understand how the Code works! You will be a better advocate!

How can lawyers support advocates (lawyers/judges) who are actively engaged in the legislative process?

- Read the legislation.
- Provide comments in writing and explain suggestions for improvements on why the bill, as drafted, is problematic.
- If advocacy is requested by way of reaching out to your own Senator or Representative, help with the reach out!

2021 Pandemic legislation

- **HB 635 (Act 202)**
- **SB 163 (Act 213)**
- **HB 371**
- **HB 405**

KYLE WILLIAMS

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Standing Board Policy 100 (Legislative Policy and Procedure)

LEGISLATIVE POLICY AND PROCEDURE
ADOPTED BY BOARD OF GOVERNORS JUNE 14, 1986,
AMENDED JUNE 20, 1992, JUNE 18, 1994

1.01. General Legislative Policy.

a. The Bylaws set forth the restrictions on establishing a legislative policy. Article II, Section 6 of the Bylaws provides that:

   No legislation shall be recommended, supported or opposed by the State Bar unless:
   1. such action has been initiated by an appropriate committee or section, or by any ten members of the Board of Governors; and
   2. the text of the legislation is furnished to the President, the President-elect and the Advisory Committee on Legislation at least thirty days prior to its submission for support or opposition as set forth below; and
   3. provided further:
      i. that such legislative position receives a majority vote of the members of the State Bar present at a meeting; or
      ii. that such legislative position receives a two-thirds vote of the members of the Board of Governors present and voting; or
      iii. when the Board of Governors is not in session, such legislative position receives a two-thirds vote of the members of the Executive Committee voting.

   In addition to and in aid of these legislative powers, the Board shall have the power to adopt, by a vote of two-thirds of the members of the Board present and voting, a Standing Board Policy regarding legislation. Such Standing Board Policy shall be binding from session to session unless suspended, modified or rescinded pursuant to a two-thirds vote of the members of the Board present and voting.

   No committee or section of the State Bar shall recommend, support or oppose any legislation except in the manner herein provided.

b. No legislative position shall be taken by the State Bar or any committee, section or other organizational element thereof except as provided for in this policy. Committees, sections or other organizational elements of the Bar are encouraged to debate and discuss legislation relating to their areas of expertise and to let the Advisory Committee on Legislation know of their positions. The ultimate position of the State Bar, however, will be determined pursuant to this Policy.
c. A legislative position, once adopted, shall remain an official position of the State Bar during the full biennial session of the General Assembly in which it was adopted unless rescinded or modified.
d. Failure to receive a necessary two thirds vote to favor or oppose legislation shall not be considered adoption of the contrary position.
e. All legislative positions adopted by the State Bar shall be reduced to writing and communicated to the General Assembly as the organizational positions of the State Bar.
f. The Advisory Committee on Legislation, the Board, or the Executive Committee may allow any interested person to appear before it in person and in writing in support of or in opposition to any legislative proposal being considered subject to reasonable limitations on available time.
g. The Board and Executive Committee shall have authority to take reasonable action necessary to communicate and advocate legislative positions adopted pursuant to the Bylaws and this policy.

h. The Board or the Executive Committee shall have the authority to designate persons to promote State Bar legislative positions. Persons so designated shall be authorized to agree to and to support amendments and substitute legislation which are consistent with legislative positions previously adopted pursuant to the Bylaws and this Policy. No section, committee or other Bar-related organization shall hire or designate any persons or entities to promote State Bar or their own legislative positions nor shall such sections, committees or Bar-related organization expend any funds of the section, committee or organization in the support of or opposition to any legislative positions unless expressly approved by the Board of Governors or the Executive Committee. Should the Board of Governors or the Executive Committee approve such expenditures, the funds of the section, committee or Bar-related organization shall be paid into the Legislative Advocacy Fund.
i. Nothing in this policy shall be construed to prevent members of the State Bar from presenting their own personal views concerning any legislative matter and members are encouraged to do so while making clear that they are speaking only in their personal capacity.

1.02. Board of Governors.

a. Consideration of any legislative proposal by the Board shall proceed in the following order:
    1. A written proposal shall be presented by an appropriate committee or section or by any 10 members of the Board to the Advisory Committee on Legislation, the President, the President-elect, and each member of the Executive Committee at least 30 days prior to a meeting of the Board. Such proposal shall, as a minimum, include the following:
        i. the specific legislation, if any, which is pending or proposed;
        ii. if no specific legislation is pending or proposed, a statement of the issues to be addressed by the legislation;
        iii. a summary of the existing law;
        iv. principal known proponents or opponents of the legislation and, if possible, a brief statement of the reasons for opposition or support by the other interests;
        v. a listing of any other committees or sections which may have an interest in the legislation and a certification that any such committees have been provided a copy of the proposal simultaneous to its transmission to the Advisory Committee on Legislation; and
        vi. the position which the committee, section or group recommends be adopted by the State Bar.
    2. The Advisory Committee on Legislation, after consideration of the legislative proposal in accordance with Rule 1.04 of this policy, shall make a written recommendation concerning the proposal to the Board at its next meeting. A copy of the written recommendation shall be furnished to each member of the Executive Committee at least ten (10) days prior to the Board meeting.
    3. The Board shall determine specifically by a majority vote of members present and voting whether the proposed legislative action is germane to the legitimate purposes of the State Bar.
    4. If the determination in section (3) above is affirmative, then at least two thirds of the members of the Board present and voting must vote to recommend, to support, or to oppose the legislative proposal.
b. Legislative positions may be considered and adopted by the Board at any special or regular meeting.

1.03. Executive Committee.

a. Consideration of any legislative proposal by the Executive Committee shall proceed in the following order:
    1. a proposal adopted by the Advisory Committee on Legislation or from a member of the Executive Committee shall be presented;
    2. the Executive Committee shall specifically determine by a majority of members voting whether the proposed legislative action is germane to the legitimate purposes of the State Bar;
    3. if the determination in subsection (2) above is affirmative, then the Executive Committee shall then determine by a majority vote of those voting either that (i) the requested legislative action could not reasonably have been submitted for consideration by the Board of Governors in accordance with existing policies, or: (ii) that a significant material change in circumstances since the last Board of Governors has made the Executive Committee action necessary;

4. if either determination in subsection (3) above is affirmative, at least two thirds of the members of the Executive Committee voting must vote to recommend, to support, or to oppose the legislative proposal.

b. The Executive Committee shall take no action inconsistent with previous action of the Board on substantially identical legislation unless there has been a significant material change in circumstances since the last meeting of the Board of Governors. The failure to receive the required two thirds vote of the Board of Governors shall not be considered "previous action" by the Board.

c. If any emergency exists and is not feasible for the Executive Committee to act, then the president, upon consultation with and agreement by any two from among the president-elect, the immediate past president and the chairman of the Advisory Committee on Legislation may act upon pending or proposed legislation.

d. Any action taken by the Executive Committee or president shall be reported to the Board at its next meeting.

1.04. Advisory Committee on Legislation.

a. Structure--The Advisory Committee shall be composed of at least nine members, at least six of whom shall be members of the Board at the time of their appointment and the Immediate Past President.

b. Initial Terms--The nine members of the Advisory Committee appointed to serve effective July 1, 1986, shall be appointed for initially staggered terms as set out below:
   1. three members, including two members of the Board, shall be appointed by the immediate past president for one-year terms.
   2. three members, including two members of the Board, shall be appointed by the president for two-year terms.
   3. three members, including two members of the Board, shall be appointed by the president-elect for three year terms.
   4. the chairman shall be appointed by the president.

c. Terms--Commencing July 1, 1987, the president-elect shall appoint three members, at least two of whom shall be members of the Board at the time of their appointment, to three-year terms and shall name a chairman-elect. The chairman-elect shall become chairman when the president-elect becomes president. The President, upon consultation with and agreement by the President-elect shall have the power to appoint additional voting members to the Advisory Committee who shall serve during the one-year term of his presidency. However, in any event at least two-thirds of this Committee will be members of the Board at the time of their appointment.

d. The Advisory Committee will meet for the purpose of developing its recommendations to the Board and Executive Committee with regard to requests to adopt a legislative position.

e. In each case involving a proposed legislative position, the Advisory Committee shall make a recommendation to the Board or the Executive Committee on the following:
   1. whether the proposed legislative action is germane to the legitimate purposes of the State Bar; and
   2. the legislative position which the Board or Executive Committee should adopt.

f. In addition to the above, the Advisory Committee shall also have the authority to draft and submit to the Board or the Executive Committee, legislative concepts which may or should be the subject of legislation and recommend positions with respect thereto.

g. When the General Assembly is in session, appropriate committees and sections of the State Bar may submit legislative proposals to the Advisory Committee for approval by the Executive Committee. All such proposals, however, shall be in writing and satisfy the format requirements set forth in subsection (a)(1) of Rule 1.02 of this policy.

h. The Advisory Committee shall review all legislation filed in the State Legislature which would require an amendment to the State Constitution. The Advisory Committee shall determine whether the State Bar should take a position pursuant to this policy regarding the proposed constitutional amendment.

i. All matters concerning contract and finance shall be submitted to the Executive Committee for approval.

1.05. Legislative Drafting and Consulting Services.

a. The State Bar, at the sole discretion of the Executive Committee, may provide legislative drafting, legal research and other similar services to the Office of the Governor and members of the Georgia General Assembly. THE DECISION BY THE STATE BAR TO PROVIDE SUCH SERVICES DOES NOT CONSTITUTE AN ENDORSEMENT BY THE STATE BAR OF ANY LEGISLATION REVIEWED OR DRAFTED.
    1. All requests for legislative drafting or consulting services should be directed to the President of the State Bar who shall immediately place the request on the agenda of the next Executive Committee Meeting.
    2. Consideration of any legislative drafting or consulting request by the Executive Committee shall proceed in the following order:
        i. the president shall present the request for legislative drafting or consulting services to the Executive Committee;
        ii. the Executive Committee shall specifically determine by a majority of members voting that the drafting, research or review of the proposed legislation would not be adverse to the interests of the State Bar;
        iii. if the determination in subsection (ii) above is affirmative, then the Executive Committee shall determine by majority vote whether or not to provide such services;
        iv. if the determination in subsection (iii) above is affirmative, the Executive Committee shall refer the matter to the Legislative Research Committee, or other appropriate State Bar committee or section.
    3. Should any emergency exist and it is not feasible for the Executive Committee to act, then the President, upon consultation with and agreement by any two from among the President-elect, the immediate past President, the Chair of the Advisory Committee on Legislation or the Chair of the Legislative Research Committee, may act upon the pending request for legislative drafting or consulting services.
    4. The final copy of any proposed legislation drafted by any member or members of the State Bar under this provision shall contain the following disclaimer at the head of the first page, unless the proposed legislation has been considered under the provisions of section 1.01 through 1.04 above: "The State Bar of Georgia has drafted the following proposed legislation as a service to the Georgia General Assembly and the Office of the Governor. The State Bar takes no position either for or against the enactment of such legislation unless the legislation is approved under the provisions of the State Bar of Georgia's Standing Board Policy 100."
b. Whenever the Executive Committee grants a request to provide legislative drafting or consulting services under this rule, the President, or his or her designee, shall report to the next meeting of the Board of Governors the nature of the referral and current status.

496 U.S. 1
110 S.Ct. 2228
110 L.Ed.2d 1
Eddie KELLER, et al., Petitioners

v.

STATE BAR OF CALIFORNIA et al.

No. 88-1905.

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

Syllabus

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 *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 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. 9-17.

(a) The State Supreme Court's determination that the State Bar is a "government agency" for the purposes of 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. 10-13.

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(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. 13.

(c) The guiding standard for determining permissible Bar expenditures relating to political or ideological activities is whether the challenged expenditures are 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. 13-16.

(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 *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. 16-17.

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. 17.

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, Sacramento, Cal., for petitioners.

Seth M. Hufstedler, Los Angeles, Cal., for respondents.

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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.[1] It is

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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.

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.[2] Assert-

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ing that their compelled 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.

The Supreme Court of California reversed the Court of Appeal by a divided vote. The court reasoned that respond-

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ent's 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.

"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

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

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.[3] 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.

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 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 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

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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").

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.[4] Only lawyers 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.

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& Prof.Code Ann. § 6100 (West Supp.1990) (disbarment or suspension).

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

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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.

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.

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-

serv ices. 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

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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 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:

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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 jus-

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tify 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." *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 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 5-6. 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 9, 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.

[1.] 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.

[2.] 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.

[3] 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.

[4] 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.