

Supreme Court Turns Down Free Speech Challenge to Mandatory Bar Dues, Membership

Kevin Daley

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The Supreme Court declined to take up a First Amendment challenge on Monday to the so-called integrated bar, which requires attorneys in 30 states to join a bar association and pay fees as a condition of practicing law.

The petitioners, Adam Jarchow and Michael Dean, are lawyers in Wisconsin who object to joining and supporting the state bar association. They say the Wisconsin bar promotes political positions with which they disagree, such as support for felon voting rights.

"The state bar is among the most active and powerful political-advocacy organizations in Wisconsin, forcefully engaging in legislative and policy debates within the state and entering political debates on seemingly every hot-button issue under the sun," their appeal reads. A coalition of conservative and libertarian legal groups like the Cato Institute and the Pacific Legal Foundation filed briefs urging the Court to hear the case.

The case is one of several petitions pending before the justices that follow the 2018 decision that struck down mandatory government union dues on First Amendment grounds. The plaintiffs in these petitions say the logic of that ruling, *Janus v. AFSCME*, should be applied to similar contexts involving compulsory bar association fees or compelled union representation in collective bargaining. Probing the relationship between free speech and economic or social policy—from campaign spending to abortion—is becoming a defining feature of the current Supreme Court. In dissent in the *Janus* decision, Justice Elena Kagan accused the conservative majority of "turning the First Amendment into a sword" to attack everything from workaday economic policy to regulations on pro-life crisis pregnancy centers.

The Court did not give reasons for turning down Monday's case, as is typical of such orders. Justice Clarence Thomas, joined by Justice Neil Gorsuch, dissented from the Court's refusal to take up the dispute.

The Supreme Court has turned back challenges to the integrated bar before, first in 1961 and then again in a 1990 case called *Keller v. State Bar of California*. While that seems to put the integrated bar on sound constitutional footing, Jarchow and Dean said the *Janus* decision changed everything since it overturned past precedents on which the prior integrated bar decisions relied.

"The intellectual underpinning of both decisions having been dismantled by *Janus*, the Court should take this opportunity to overrule them," the petition reads.

Thomas seemed to agree in his dissent Monday.

"There is effectively nothing left supporting our decision in *Keller*," Thomas wrote. "If the rule in *Keller* is to survive, it would have to be on the basis of new reasoning that is consistent with *Janus*."

The petitioners said the First Amendment problem in their case is comparatively more serious than *Janus*. Before *Janus*, public employees were only required to pay a fee. They were not forced to enroll in a union. In the 30 states where the integrated bar is in force, lawyers are required to pay fees and join the state bar or risk professional penalties like suspension of a law license.

In its own legal filings, the state bar countered that much of its advocacy work is funded by purely voluntary contributions. When paying annual dues, lawyers can pay a higher fee to support "non-chargeable activities" or a lower fee that is used for ordinary, nonpolitical regulation of law practice. That distinction should mitigate any First Amendment objections that arise, lawyers for the bar argued.

"The State Bar of Wisconsin has in place a very aggressive review process that ensures members' First Amendment rights are respected, including a policy that mandatory dues do not support any direct lobbying expenses regardless of subject matter," the bar said in a statement following Monday's order. The bar also said it was pleased to see the appeal turned down.

Other *Janus* follow-on cases are working their way through the federal courts. One petition now before the justices seeks to recoup mandatory dues public workers paid in the past. Another, also at the petition stage, asks whether public workers must accept labor unions as their "sole and exclusive bargaining agent" in negotiations over wages and working conditions. Another case in an Austin federal court similarly challenges Texas's integrated bar.

Lawyers for Jarchow and Dean declined to comment for this story. The case is No. 19-831 *Jarchow v. State Bar of Wisconsin*.