

ATTACHMENT TO
APPLICATION FOR LEAVE OF COURT

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

STEPHEN KERR EUGSTER,

Plaintiff,

vs

JUSTICES OF THE WASHINGTON
SUPREME COURT, namely:

DEBRA L. STEPHENS, Chief Justice, and
Justices CHARLES W. JOHNSON,
SHERYL GORDAN McCLOUD,
CHARLES K. WIGGINS, STEVEN C.
GONZÁLEZ, MARY I. YU, BARBARA
MADSEN, SUSAN OWENS, and RAQUEL
MONTROYA-LEWIS, and MARY E.
FAIRHURST, retired, each individually in
his or her official capacity,

Defendants.

Case. No.

CIVIL RIGHTS COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF AND
DAMAGES

Plaintiff alleges:

NATURE OF THE CASE

1. The claims herein have come about because of the Supreme Court decision in *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2463 (2018).

2. The Supreme Court ruled that union fees in the public sector violate the right to free speech, overturning the 1977 decision in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) that had previously allowed such fees.

3. The cases of *Lathrop v. Donohue*, 367 US 820 (1961), and *Keller v. State Bar of Cal.*, 496 US 1 (1990) are not pertinent or appropriate. The nexus of facts in each of these

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cases was that of an integrated bar association.

4. Since January 1, 2017, Washington State Bar Association has been doing business as an integrated association of lawyers, limited practice officers, limited license legal technicians, (herein “WSBA Legal Services Association”). The term “integrated” means a lawyer must be a member of the association to practice law, which means she must also pay the annual dues required of her membership. That limited practice officer and the limited license legal technician must also be members of the association to provide the legal services allowed under their particular membership and must pay annual dues required of their membership.

5. Since January 1, 2017, the Washington Supreme Court has controlled the WSBA Legal Service Association. General Rule (GR) 12:

GR 12 Regulation of the Practice of Law. The Washington Supreme Court has inherent and plenary authority to regulate the practice of law in Washington. The legal profession serves clients, courts, and the public, and has special responsibilities for the quality of justice administered in our legal system. The Court ensures the integrity of the legal profession and protects the public by adopting rules for the regulation of the practice of law and actively supervising persons and entities acting under the Supreme Court’s authority.

JURISDICTION – VENUE

6. The Plaintiff brings this civil rights lawsuit under the First, Fifth, and Fourteenth Amendments to the United States Constitution. Because this action arises under the Constitution and laws of the United States, this Court has jurisdiction under 28 U.S.C. § 1331.

7. Also, this is an action under the Civil Rights Act of 1871, specifically, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of rights, privileges, and immunities secured to the Plaintiff by the Constitution of the United States, particularly the First, Fifth, and Fourteenth

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Amendments to the Constitution of the United States. The jurisdiction of this Court, therefore, is also invoked under 28 U.S.C. §§ 1343(a)(3), (4).

8. The action is a case of actual controversy, and Plaintiff seeks a declaration of his rights under the Constitution of the United States. Under 28 U.S.C. §§ 2201 and 2202, this Court may declare the rights of the Plaintiff and grant further necessary and proper relief, including injunctive relief, under Fed. R. Civ. P. 65.

9. The venue is proper in this Court under 28 U.S.C. § 1391(b) because it is the judicial district where Defendants reside and “in which a substantial part of the events or omissions giving rise to the claim occurred.” 28 U.S.C. § 1391(b) and 28 U.S.C. § 128(a)(1).

Parties

10. Plaintiff, Stephen Kerr Eugster, is a citizen of the United States and a resident of the state of Washington residing at Spokane, Washington.

11. Each of the Defendants is a justice of the Washington state Supreme Court created as such by Wash. Const. Art. IV. Section 2. In the capacity of being a justice, each is, enforcing the unconstitutional laws, rules, customs, practices, and policies complained of in this action. Each is sued in his or her official capacity.

General Factual Allegations

12. Washington General Court Rules, General Court Rule 12.1 sets forth:

GR 12.1 REGULATORY OBJECTIVES Legal services providers must be regulated in the public interest. In regulating the practice of law in Washington, the Washington Supreme Court’s objectives include:

- (a) protection of the public;
- (b) advancement of the administration of justice and the rule of law;

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- (c) meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems;
- (d) transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections;
- (e) delivery of affordable and accessible legal services;
- (f) efficient, competent, and ethical delivery of legal services;
- (g) protection of privileged and confidential information;
- (h) independence of professional judgment;
- (i) accessible civil remedies for negligence and breach of other duties owed, disciplinary sanctions for misconduct, and advancement of appropriate preventive or wellness programs;
- (j) diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system.

13. The claims herein have come about because of the Supreme Court decision in *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2463 (2018).

14. Washington General Court Rules, General Court Rule 12.2 provides:

GR 12.2 Washington State Bar Association: Purposes, Authorized Activities, And Prohibited Activities

In the exercise of its inherent and plenary authority to regulate the practice of law in Washington, the Supreme Court authorizes and supervises the Washington State Bar Association's activities. The Washington State Bar Association carries out the administrative responsibilities and functions expressly delegated to it by this rule and other Supreme Court rules and orders

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enacted or adopted to regulate the practice of law, including the purposes and authorized activities set forth below. [Emphasis added.]¹

GR 12.2 (a) Purposes: **In General.** In general, the Washington State Bar Association strives to:

- (1) Promote independence of the judiciary and the legal profession.
- (2) Promote an effective legal system, accessible to all.
- (3) Provide services to its members and the public.
- (4) Foster and maintain high standards of competence, professionalism, and ethics among its members.
- (5) Foster collegiality among its members and goodwill between the legal profession and the public.
- (6) Promote diversity and equality in the courts and the legal profession.
- (7) Administer admission, regulation, and discipline of its members in a manner that protects the public and respects the rights of the applicant or member.
- (8) Administer programs of legal education.
- (9) Promote understanding of and respect for our legal system and the law.

¹ The term Washington WSBA is the name of the Washington State Bar Association by the State Bar Act. 1933 c 94 § 2, today, RCW 2.48.010.

There is hereby created as an agency of the state, for the purpose and with the powers hereinafter set forth, an association to be known as the Washington State Bar Association, hereinafter designated as the WSBA, which association shall have a common seal and may sue and be sued, and which may, for the purpose of carrying into effect and promoting the objects of said association, enter into contracts and acquire, hold, encumber and dispose of such real and personal property as is necessary thereto.

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(10) Operate a well-managed and financially sound association, with a positive work environment for its employees.

(11) Serve as a statewide voice to the public and to the branches of government on matters relating to these purposes and the activities of the association and the legal profession.

GR 12 (b) **Specific Activities Authorized.** In pursuit of these purposes, the Washington State Bar Association may:

(1) Sponsor and maintain committees and sections whose activities further these purposes;

(2) Support the judiciary in maintaining the integrity and fiscal stability of an independent and effective judicial system;

(3) Provide periodic reviews and recommendations concerning court rules and procedures;

(4) Administer examinations and review applicants' character and fitness to practice law;

(5) Inform and advise its members regarding their ethical obligations;

(6) Administer an effective system of discipline of its members, including receiving and investigating complaints of misconduct by legal professionals, taking and recommending appropriate punitive and remedial measures, and diverting less serious misconduct to alternatives outside the formal discipline system;

(7) Maintain a program, pursuant to court rule, requiring members to submit fee disputes to arbitration;

(8) Maintain a program for mediation of disputes between members and others;

(9) Maintain a program for legal professional practice assistance;

(10) Sponsor, conduct, and assist in producing programs and products of continuing legal education;

(11) Maintain a system for accrediting programs of continuing legal education;

(12) Conduct examinations of legal professionals' trust accounts;

(13) Maintain a fund for client protection in accordance with the Admission and Practice Rules;

(14) Maintain a program for the aid and rehabilitation of impaired members;

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- (15) Disseminate information about the organization's activities, interests, and positions;
- (16) Monitor, report on, and advise public officials about matters of interest to the organization and the legal profession;
- (17) Maintain a legislative presence to inform members of new and proposed laws and to inform public officials about the organization's positions and concerns;
- (18) Encourage public service by members and support programs providing legal services to those in need;
- (19) Maintain and foster programs of public information and education about the law and the legal system; (
- (20) Provide, sponsor, and participate in services to its members;
- (21) Hire and retain employees to facilitate and support its mission, purposes, and activities, including in the organization's discretion, authorizing collective bargaining;
- (22) Establish the amount of all license, application, investigation, and other related fees, as well as charges for services provided by the Washington State Bar Association, and collect, allocate, invest, and disburse funds so that its mission, purposes, and activities may be effectively and efficiently discharged. The amount of any license fee is subject to review by the Supreme Court for reasonableness and may be modified by order of the Court if the Court determines that it is not reasonable;
- (23) Administer Supreme-Court-created boards in accordance with General Rule 12.3.

GR 12(c) **Activities Not Authorized.** The Washington State Bar Association will not:

- (1) Take positions on issues concerning the politics or social positions of foreign nations;
- (2) Take positions on political or social issues which do not relate to or affect the practice of law or the administration of Justice; or
- (3) Support or oppose, in an election, candidates for public office.

**WSBA Bylaws Under GR 12.2 Require Members
To Pay Dues to the Association**

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15. WSBA bylaws provide:

I. FUNCTIONS A. PURPOSES: IN GENERAL In general, the Washington State Bar Association (Bar) strives to:

1. Promote independence of the judiciary and the legal profession;
2. Promote an effective legal system, accessible to all;
3. Provide services to its members and the public;
4. Foster and maintain high standards of competence, professionalism, and ethics among its members;
5. Foster collegiality among its members and goodwill between the legal profession and the public;
6. Promote diversity and equality in the courts and the legal profession;
7. Administer admissions, regulation, and discipline of lawyers, Limited License Legal Technicians (LLLTs), and Limited Practice Officers (LPOs) in a manner that protects the public and respects the rights of the applicant or member;
8. Administer programs of legal education;
9. Promote understanding of and respect for our legal system and the law;
10. Operate a well-managed and financially sound organization, with a positive work environment for its employees;
11. Serve as a statewide voice to the public and to the branches of government on matters relating to these purposes and the activities of the organization and the legal profession.

B. SPECIFIC ACTIVITIES AUTHORIZED In pursuit of these purposes, the Washington State Bar Association may:

1. Sponsor and maintain committees and sections whose activities further these purposes;
2. Support the judiciary in maintaining the integrity and fiscal stability of an independent and effective judicial system;
3. Provide periodic reviews and recommendations concerning court rules and procedures;
4. Administer examinations and review applicants' character and fitness to practice law;
5. Inform and advise its members regarding their ethical obligations; 1 May 18, 2018 ed.

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6. Administer an effective system of discipline of lawyers, LLLTs, and LPOs, including receiving and investigating complaints of misconduct, taking and recommending appropriate punitive and remedial measures, and diverting less serious misconduct to alternatives outside the formal discipline system;
7. Maintain a program, pursuant to court rule, requiring members to submit fee disputes to arbitration;
8. Maintain a program for mediation of disputes between members and others;
9. Maintain a program for legal professional practice assistance;
10. Sponsor, conduct, and assist in producing programs and products of continuing legal education;
11. Maintain a system for accrediting programs of continuing legal education;
12. Conduct examinations of lawyer, LLLT, and LPO trust accounts;
13. Maintain a client protection fund in accordance with the Admission and Practice Rules;
14. Maintain a program for the aid and rehabilitation of impaired members;
15. Disseminate information about the organization's activities, interests, and positions;
16. Monitor, report on, and advise public officials about matters of interest to the organization and the legal profession;
17. Maintain a legislative presence to inform members of new and proposed laws and to inform public officials about the organization's positions and concerns;
18. Encourage public service by members and support programs providing legal services to those in need;
19. Maintain and foster programs of public information and education about the law and the legal system;
20. Provide, sponsor, and participate in services to its members;
21. Hire and retain employees to facilitate and support its mission, purposes, and activities, including in the organization's discretion, authorizing collective bargaining;
22. Establish the amount of all license, application, investigation, and other related fees, as well as charges for services provided by the Bar, and collect, allocate, invest, and disburse funds so that its mission, purposes, and activities may be effectively and efficiently discharged. The amount of any license fee is subject to review by the 2 May 18, 2018 ed. Supreme Court for reasonableness and may be modified by order of the Court if the Court determines that it is not reasonable;

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23. Administer Supreme Court-created boards in accordance with General Rule 12.3.

C. ACTIVITIES NOT AUTHORIZED The Washington State Bar Association will not:

1. Take positions on issues concerning the politics or social positions of foreign nations;
2. Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice; or
3. Support or oppose, in an election, candidates for public office.

III. MEMBERSHIP

A. MEMBER LICENSE TYPES

1. Members of the Washington State Bar consist of these types of licensed legal professionals:
 - a. Lawyers admitted to the Bar and licensed to practice law pursuant to APR 3 and APR 5;
 - b. Limited License Legal Technicians; and
 - c. Limited Practice Officers.

Members of one type do not automatically qualify to be or become a member of another type, and in order to become a member of another type the member must comply with the requirements for admission as a member of that type. 4 May 18, 2018 ed.

2. Lawyers licensed to practice law in Washington pursuant to APR 8 and APR 14, or who are permitted to practice law pursuant to RPC 5.5 without being licensed in Washington are not members of the Bar.
3. Membership in the Bar ends when a member is disbarred or the equivalent, the member resigns or otherwise terminates his or her license, or when the member's license is revoked or terminated for any reason.

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16. The claims herein have come about because of the Supreme Court decision in *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2463 (2018).

17. The claims herein have come about because of the Supreme Court decision in *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2463 (2018). **The membership of the State Bar of Washington is divided into four classes: “active members, judicial members, inactive members and emeritus members.”**

18. Plaintiff is forced not only to be a member of the WSBA Legal Services Association but to pay dues to the Association. The payment of dues is mandatory.

19. If the Plaintiff does not pay his dues, he will not be able to practice law in the state of Washington.

20. The justices of the Washington State Supreme Court are acting individually and in their official capacity. The justices are acting under the color of law in violation of the Civil Rights Act of 1983.

**The WSBA Legal Services Association Speaks on Matters of Public Interest,
Using Funds Plaintiffs Are Forced to Provide as a
Condition to Practicing Law in Washington**

21. The justices of the Washington State Supreme Court are acting individually and in their official capacity. The justices are acting under the color of law in violation of the Civil Rights Act of 1983.

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23. The claims herein have come about because of the Supreme Court decision in *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2463 (2018).

24. The WSBA Legal Services Association regularly proposes legislation to the Washington Legislature.

25. The WSBA Legal Services Association regularly advocates on public policy issues, including Legislation.

26. The WSBA Legal Services Association engages in a variety of speech and advocacy directed to the public.

27. The WSBA Legal Services Association publishes a variety of material addressing matters of public interest and concern. These publications include the Washington Lawyer The WSBA Legal Services Association's speech

**Plaintiff Disagrees with the State
Bar's Speech and Objects to Being Associated
with the WSBA Legal Services Association**

28. The WSBA Legal Services Association publishes a variety of material addressing matters of public interest and concern.

29. The WSBA Legal Services Association is an expressive association—that is, its members join together to engage in advocacy and other speech.

30. The plaintiff is compelled to pay annual membership dues.

31. The Plaintiff is compelled to subsidize the WSBA Legal Services Association's speech on matters of public interest and concern.

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32. The WSBA Legal Services Association provides a limited mechanism by which members may avoid subsidizing some of the WSBA Legal Services Association’s speech. The WSBA Legal Services Association provides an optional dues reduction for certain “nonchargeable” activities that currently includes “all direct lobbying activity.”

33. The WSBA Legal Services Association bylaws provide for a “Keller Deduction.”

XV. KELLER DEDUCTION As a mandatory bar association, the Bar may not use compulsory license fees of any member who objects to that use for political or ideological activities that are not germane, or reasonably related, to regulating the legal profession or improving the quality of legal services. *Keller v. State Bar of California*, 496 U.S. 1 (1990). These activities are considered “nonchargeable.” The Bar may use compulsory license fees for all other activities . . .

34. But, *Keller* is not apposite because it pertains to “integrated bar associations.” *Keller* does not apply to “integrated legal services associations of lawyers, limited practice officers, limited license legal technicians.

35. On any event, the WSBA Legal Services Association still treats as “chargeable” much of its speech on matters of public interest and concern, including non-lobbying advocacy concerning the regulation of the legal profession and legal reform and speech on many subjects pertaining to the practice of law, the operation of government, and the provision of public services.

36. Accordingly, there is no mechanism by which a member may avoid subsidizing entirely the WSBA Legal Services Association’s speech on matters of public interest and concern.

37. Plaintiffs individually disagree with other speech by the WSBA Legal Services Association.

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38. Plaintiffs do not wish to fund the WSBA Legal Services Association's advocacy and other speech and, if given the choice, would not fund those activities.

39. Plaintiffs object to being required to be members of the WSBA Legal Services Association of Washington.

40. Plaintiffs object to associating with the WSBA Legal Services Association and its speech.

41. Plaintiffs have suffered, are suffering, and will suffer irreparable harm from being required to join and pay dues to the WSBA Legal Services Association.

**Mandatory Membership in, and Compelled Contribution to,
the WSBA Legal Services Association Is Not Tailored
To Support Any Compelling State Interest**

42. The only possible state interests served by requiring attorneys to join and pay dues to the WSBA Legal Services Association are regulating the legal profession and improving the quality of legal services.

43. Eighteen states regulate the practice of law without requiring attorneys to join and pay dues to a bar association.

44. Like those eighteen states, Washington could use means significantly less restrictive of First Amendment freedoms than compelling membership and funding of the WSBA Legal Services Association to regulate the legal profession and improve the quality of legal services.

**Mandatory Membership in, and Compelled Contribution to,
the WSBA Legal Services Association Is Not Tailored to
Support Any Compelling State Interest**

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45. The only possible state interests served by requiring attorneys to join and pay dues to the WSBA Legal Services Association are regulating the legal profession and improving the quality of legal services. App. 42

46. Eighteen states regulate the practice of law without requiring attorneys to join and pay dues to a bar association.

47. Like those eighteen states, Washington could use means significantly less restrictive of First Amendment freedoms than compelling membership and funding of the WSBA Legal Services Association to regulate the legal profession and improve the quality of legal services.

48. Like those eighteen states, Washington could use means significantly less restrictive of First Amendment freedoms than compelling membership and funding of the WSBA Legal Services Association to regulate the legal profession and improve the quality of legal services.

COUNT ONE

Compelling Dues Payments to the WSBA Legal Services Association Violates the Plaintiff's First Amendment Rights

49. Plaintiff incorporates and re-alleges every allegation in the preceding paragraphs as though fully set forth here.

50. The First Amendment to the United States Constitution provides: "Congress shall make no law...abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

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51. The Fourteenth Amendment to the United States Constitution incorporates the protection of the First Amendment against the States.

52. The freedom of speech “includes both the right to speak freely and the right to refrain from speaking at all.” *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

53. The First Amendment likewise protects the “right to eschew association for expressive purposes.” *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2463 (2018).

54. Compelled association is permissible only when it “serve[s] a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.” *Janus*, 138 S. Ct. at 2465.

55. By requiring the Plaintiff to make financial contributions in support of the WSBA Legal Services Association, Defendants impinge the Plaintiff’s rights under the First and Fourteenth Amendments to be free from compelled association.

56. Because Washington could regulate the legal profession through means significantly less restrictive of First Amendment freedoms, compelling dues payments to subsidize the WSBA Legal Services Association’s speech violates the Plaintiff’s rights under the First and Fourteenth Amendments.

57. Plaintiff has no adequate remedy at law.

58. The controversy between Defendants and Plaintiff is a definite and concrete dispute concerning the legal relations of parties with adverse legitimate interests.

59. The dispute is real and substantial, as the Defendants are continuing to collect fees from Plaintiff as a condition of practicing law in Washington.

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60. The declaratory relief sought is not based on a hypothetical state of facts, nor would it amount to mere advisory opinion, as the parties dispute the legality of the ongoing requirement to pay dues.

61. As a result of the preceding, an actual and justiciable controversy exists between the Plaintiff and the WSBA Legal Services Association regarding their respective legal rights, and the matter is ripe for review.

62. The plaintiff is entitled to injunctive and declaratory relief, providing that the requirement to pay membership dues to the **WSBA Legal Services Association** as a condition of being licensed to practice law in Washington is unconstitutional.

COUNT TWO

**Requiring Plaintiff to Join the WSBA Legal Services Association Violates
His First Amendment Rights**

63. Plaintiff incorporates and re-alleges every allegation in the preceding paragraphs as though fully set forth.

64. By requiring Plaintiff to be members of the **WSBA Legal Services Association**, Defendants are impinging the Plaintiff's rights under the First and Fourteenth Amendments to be free from compelled speech and compelled association.

65. Because Washington could regulate the legal profession through means significantly less restrictive of First Amendment freedoms, compelling membership in the **WSBA Legal Services Association** violates Plaintiff's rights under the First and Fourteenth Amendments.

66. The plaintiff has no adequate remedy at law.

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67. The controversy between Defendants and Plaintiff is a definite and concrete dispute concerning the legal relations of parties with legitimate adverse interests.

68. The dispute is real and substantial, as the Defendants are continuing to require the Plaintiff to maintain membership in the WSBA Legal Services Association as a condition of practicing law in Washington.

69. The declaratory relief sought is not based on a hypothetical state of facts, nor would it amount to mere advisory opinion, as the parties dispute the legality of the ongoing requirement to maintain membership in the WSBA Legal Services Association.

70. As a result of the preceding, an actual and justiciable controversy exists between the Plaintiff and the **WSBA Legal Services Association** regarding their respective legal rights, and the matter is ripe for review.

71. Plaintiff is entitled to injunctive and declaratory relief, providing that the requirement to become a member of the **WSBA Legal Services Association** as a condition of being licensed to practice law in Washington is unconstitutional. **Costs and Attorneys' Fees.**

72. Under 42 U.S.C § 1988, the Plaintiff seeks an award of costs and attorneys' fees incurred in the litigation of this case.

Prayer for Relief

For these reasons, Plaintiff requests that the Court:

1. Under 42 U.S.C § 1988, the Plaintiff seeks an award of costs and attorneys' fees incurred in the litigation of this case.

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2. Enter a judgment declaring that Washington's statute requiring payment of mandatory dues to the **WSBA Legal Services Association**, codified by GR 12.3 impermissibly abridges Plaintiff's First Amendment rights;

3. Enter a judgment declaring that Washington's statute requiring membership in the **WSBA Legal Services Association**, codified at GR 12.2, impermissibly abridges Plaintiff's First Amendment rights;

4. Enjoin Defendants from continuing to collect membership dues;

5. Enjoin Defendants from continuing to require membership in the **WSBA Legal Services Association**;

6. Order Defendants to refund the Plaintiff's membership- dues payments received in violation of Plaintiff's rights; and

7. Grant Plaintiff additional or different relief as the Court deems just and proper, including an award of reasonable attorneys' fees and costs of this action.

April 13, 2020

Stephen Kerr Eugster, pro se
WSBA # 2003

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