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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND RULES 32(c)
AND (d), RULES OF THE SUPREME
COURT

Supreme Court No. R-19-0005

**Comments in Support of Petition to
Amend Rules 32(c) and (d),
Rules of the Supreme Court**

Pursuant to Rule 28(e), Rules of the Supreme Court, Gregory W. Falls, a member of the State Bar of Arizona (“State Bar” or “Bar”), hereby submits the following comments in support of the above-captioned Petition to Amend Rules 32(c) and (d), Rules of the Supreme Court (“Petition”), filed by Timothy Sandefur, individually and on behalf of the Goldwater Institute (collectively “Petitioners”).

I. Background.

I filed a similar petition on January 10, 2017 for the purpose of splitting the functions of the State Bar into two distinct subsets. *See* R-17-0022. The first would have been be a mandatory membership organization (“Mandatory Bar”) to

maintain control over lawyer licensing to practice law with no substantive changes in that process. If we all agree that lawyer licensing is a good thing for protection of the public, that protection would have remained unchanged.

The second subset would have been a purely voluntary membership organization (“Voluntary Bar”). Some lawyers, such as those speaking for the State Bar, claim substantial professional benefits from their membership in the Bar. Others may receive limited benefits. Yet others receive no known benefits, but everyone is compelled to pay the same price. Without knowing it, they also support the State Bar’s lobbying positions, whether they agree with them or not. My petition would have allowed the State Bar to operate much as it does now, but as a voluntary membership organization serving its members.

The Court accepted comments on my petition and heard informally from parties on both sides. My petition was denied without comment from the Court on August 29, 2017. *See Minutes, Arizona Supreme Court No. 5900 at 12* (filed August 31, 2017).

II. Comments in Support of the Petition.

The Petition calls for a bifurcation of the State Bar in much the same manner as I proposed in 2017. A Mandatory Bar, with mandatory dues, would cover licensing, discipline, and other necessary lawyer regulatory activities, and fund the client protection fund. It appears from the Petition that those functions would

remain entirely unchanged, under the State Bar with supervision by the Court. I am aware there are forces seeking to change what it means to practice law and what are the educational and licensing requirements necessary to do so. Saving those issues for another time, I support the Mandatory Bar provisions of the Petition.

It appears the second of the bifurcated Bars proposed in the Petition would be a Voluntary Bar, if the State Bar chooses to have one, and in whatever form it may so choose. The Voluntary Bar would be authorized to offer services to anyone at any price, as a whole package or in individual pieces, and at terms favorable to “members” who had paid voluntary dues. In other words, the Voluntary Bar would look and feel much like many other voluntary professional membership organizations, in Arizona and around the country, to which lawyers and people of almost all other professions belong. Such organizations can be highly successful and often are very well known, even outside the profession, if they serve their members (and often the general public) well. *See, e.g.*, The American Bar Association; Petition at 8. I pay to belong to other voluntary membership organizations. I support the Voluntary Bar provisions of the Petition.

Finally, as I understand the Petition, it suggests a far more comprehensive financial reporting scheme by the Bar than I proposed back in 2017, on both the Mandatory and Voluntary sides, including auditing of expenditures to ensure the

members know how their dues are being spent. I am not sure whether a voluntary organization should be forced by Court rule to account for its expenditures. If the members want that, they should have the right to demand it, or a right to leave the organization.

The Mandatory Bar, however, must disclose to its members how their dues are spent. We have no choice. If we want to practice law, we must join the Mandatory Bar. Accountability to members and the public demands full and complete disclosure of how member dues are used. I support the audit the Mandatory Bar provisions of the Petition.

Much like the rest of the population, lawyers are people. We have diverse beliefs and interests. We are members of all political parties, and many of us are members of no party. We are conservatives, liberals, and libertarians, among other things. Some of us believe in small government, others would prefer that government take a larger role. We have very diverse practices that rapidly are changing with the times. What some lawyers do defined as the practice of law looks nothing like the practice of law done by someone else. One size does not fit all. Nevertheless, the State Bar could offer most of us something for which many would pay a fee, voluntarily, to receive services. What it cannot do is compel every Arizona lawyer to fund every State Bar activity whether that lawyer agrees with them or not. *See* Petition at 9.

Any suggestion that Arizona lawyers who are dissatisfied with State Bar lobbying expenditures may take advantage of the so called “opt out rule” under Rule 32(c)(8), Rules of the Supreme Court, is absurd. We are people living busy lives, representing clients, and doing everything else required in this modern 24/7 world. Are the thousands of us admitted to the State Bar really expected to individually monitor the Bar and submit objections to expenditures with which we disagree? Is there a more cumbersome rule – calling for several thousand individual lawyer auditors?

I believe, as I did in 2017, that the long term viability of the opt out rule is highly questionable, and the Court should recognize this. *Cf. Knox v. Serv. Employees Int'l. Union, Local 1000*, 132 S. Ct. 2277, 2292-93 (2012) (“As we have recognized, the First Amendment does not permit a union to extract a loan from unwilling nonmembers even if the money is later paid back in full.”).

The fact that State Bar members are “members,” not the “nonmembers” protected under *Knox*, is a distinction of questionable significance. “The right to eschew association for expressive purposes is likewise protected.” *Janus v. Am. Fed'n of State, County, & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2463 (2018). “Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command” *Id.* The simple answer is not a rule, as we have now, compelling everyone to join the Bar for all purposes. The

constitutionally correct answer is a Voluntary Bar.

Whatever it may cost to maintain a Mandatory Bar, as proposed in the Petition, appears to be something the members will have to bear. But there must be a full and complete accounting of that cost. The current system does not accomplish this.

For example, the Petition lists the current annual fees paid by State Bar members, based on the special category to which each member belongs, as follows:

- Active members: \$505
- Active members admitted fewer than three years: \$345
- Inactive members: \$265
- Retired members: \$215
- Judicial members: \$340
- In-house counsel: \$379
- In-house counsel admitted fewer than three years: \$259

See Petition at 4.

I understand why some members can and may be asked to pay more than other members. The level of services provided to them and differing levels of need to protect the public are two immediately obvious differentiators. But what is it about inactive members that requires them to pay \$265 per year to essentially keep their names on a list of inactive members? What about retired members paying

\$215 per year for the same extremely limited benefit? There truly should be more accountability to all members.

III. Conclusion.

For the foregoing reasons, I support the request of Petitioners that this Court adopt amendments to Rule 32(c) and (d), Rules of the Supreme Court.

RESPECTFULLY SUBMITTED: May 1, 2019.

By /s/ Gregory W. Falls
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