

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FRANK J. LAWRENCE, JR.
Plaintiff – Appellant,

v.

RAE LEE CHABOT, ET. AL.,
Defendants – Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**MOTION BY APPELLANT FOR INJUNCTION TO MAINTAIN STATUS
QUO PENDING APPEAL AND TO EXPEDITE APPEAL**

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SPECIFIC RELIEF REQUESTED

Appellant moves (1) for an order prohibiting Appellees from invalidating his achieved passing Bar Examination results during the pendency of his appeal before the Court, thereby maintaining the status quo and (2) for an order to expedite the appeal.

While Appellant recognizes that delay is the natural consequence of any appellate process, this appeal involves important First Amendment freedoms. Appellant seeks an expedited hearing to protect against loss of such fragile, and cherished, constitutional interests.

SUMMARY OF ARGUMENT

In the interlocutory appeal pending in this court, Appellant Frank J. Lawrence, Jr. seeks reversal of the district court's refusal to grant a preliminary injunction, enjoining the Defendant attorney-licensing officials from using Appellant's protected First Amendment activities as a basis to deny him a license to practice law.

The district court refused to recognize that the practice of law, which is a business of core expression and advocacy, is entitled to the procedural protections that the federal courts have repeatedly extended to other First Amendment licensing structures. See, e.g., FW/PBS, Inc. v. Dallas, 493 U.S. 215, 228, 238, 241, 110 S. Ct. 596, 107 L.Ed. 2d 603 (1990); Nightclubs Inc. v. City of Paducah,

202 F.3d 884, 888-889 (6th Cir 2000) (pertaining to licensing of exotic dance expression). Since the exotic dance business is afforded the procedural protections of the First Amendment, then the practice of law – which consists of the daily expression of ideas for the redress of common law claims, statutory rights, and for the development of new legal theories – should at a minimum receive the same protections. The Supreme Court of the United States recently explained that attorney-advocacy is protected by the First Amendment. Legal Servs. Corp. v. Velazquez, 531 U.S. 533, 543, 548; 121 S. Ct. 1043; 149 L. Ed. 2d 63 (2001) (“There can be little doubt that the LSC Act funds constitutionally protected expression...”).

Using the doctrines of standing and ripeness as a basis, the lower court also refused to recognize that there is “a very real possibility” that Appellant’s protected acts will be used to deny him licensure.

After Plaintiff passed the July 2001 Michigan Bar Examination, he sought prospective equitable relief in the federal district court to enjoin the Appellees from using his protective First Amendment activities as a basis for licensure denial. Appellant is politically active and he has vigorously engaged in protected speech activities, being critical of public officials, governmental institutions and judicial decisions, as well as advocating highly specific views on important and controversial public topics. In a case recently published by this Court, Dean v.

Byerley, 354 F.3d 540 (6th Cir. 2004), the same licensing officials advanced litigation statements (at the district court) clearly supporting Appellant's claims herein by asserting at summary judgment in that case:

The Bar has had several applicants who exercised free speech in a fashion that contributed to a recommendation of denial of admission.

* * *

If Mr. Byerley had told plaintiff that he may not be admitted to the Bar because of his picketing, Mr. Byerley would merely have been pointing out to plaintiff a very real possibility.

Defendant Thomas K. Byerley's Brief in Support of Motion for Summary Judgment, Dean v. Byerley, (Appx. pp. 65-66).

However, the district court rejected Appellant's arguments, holding that Appellant's facial claims were not cognizable because the practice of law does not warrant the procedural protections of the First Amendment. Additionally, the lower court held that Appellant's claims were not ripe and he did not have standing, which effectively nullified typical federal question jurisdiction over the Appellees' licensing structure. This is especially troubling, given the principle of respecting a plaintiff's choice of a federal forum for adjudication of federal claims. England v. Louisiana State Board of Medical Examiners, 375 U.S. 411, 84 S. Ct. 461, 11 L.Ed. 2d 440 (1964); Barnes v. McDowell, 848 F.2d 725, 731, fn 8 (6th Cir. 1988); and Wicker v. Board of Education, 826 F.2d 442, 445-446 (6th Cir. 1987).

The lower court's decision, resulting in a highly inappropriate consequence to federal authority, is reported at Lawrence v. Chabot, et. al., 2003 U.S. Dist. LEXIS 17895 (W.D. Mich., September 29, 2004).¹ (Appx. p. 107)

During the pendency of this appeal, Appellant was threatened that the licensing officials intended to extinguish his November 2001 passing Bar Examination score once three years have elapsed. (Appx. pp. 24-26). When Appellant acquiesced and then applied for a Michigan law license, his application packet was rejected and returned to him because Appellant refused to perpetuate a release of liability in favor of the Appellees, which would purportedly shield them from liability for violating the United States Constitution. (Appx. pp. 27-29).² Appellant then sought injunctive relief in the federal district court, arguing that the threat of enforcement of the Appellee's three-year unpromulgated "policy" was adverse action and it chilled his right to appeal in this matter. (Appx. p. 3). Both the State Bar Appellees (Appx. p. 30), and the Board of Law Examiners Appellees

¹ By holding that Appellant lacked standing and his claims were not ripe, the district court effectively nullified this Court's recent decision concerning the availability of prospective equitable relief in Dubuc v. Mich. Bd. of Law Examiners, 342 F.3d 610 (6th Cir. 2003), where the Appellees unsuccessfully tried to use their own state-created rules to insulate themselves from federal scrutiny. Also, the district court's standing and ripeness assessment conflicts with the 10th Circuit's position in Roe v Ogden, 253 F.3d 1225 (10th Cir. 2001), which was cited with approval by this Court in Dubuc.

² See Dubuc 342 F.3d at 617, "[N]o state law or rule can immunize anyone from liability for violating the United States Constitution."

(Appx. p. 86), opposed Appellant's request that the district court enjoin enforcement of the unwritten three-year "policy."

On June 21, 2004, the district court refused to grant Appellant's request to enjoin the Appellees from extinguishing his passing Bar Exam score pending appeal, instead purporting to construe Appellant's request as a motion to amend the complaint. (Appx. p. 99). The district court's refusal to protect the status quo is the subject of this motion. The purpose of a stay or injunction pending appeal is to preserve the status quo pending appellate determination. McClendon v Albuquerque, 79 F.2d 1014, 1020 (10th Cir. 1996). This Court has jurisdiction. FRAP 8; 28 U.S.C. §2106; 28 U.S.C. §1292; Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog, 945 F.2d 150, 152 (6th Cir. 1991).

ARGUMENT

- I. **BY ATTEMPTING TO EXTINGUISH APPELLANT'S PASSING BAR EXAM SCORE DURING THE PENDENCY OF THIS APPEAL, ATTRIBUTABLE TO UNAVOIDABLE APPELLATE DELAY, APPELLEE CHABOT AND THE OTHER MEMBERS OF THE MICHIGAN BOARD OF LAW EXAMINERS ARE IMPROPERLY DISRUPTING THE STATUS QUO, NAMELY ERADICATING AN IMPORTANT COMPONENT TO APPELLANT'S STANDING ARGUMENT.**

ADDITIONALLY, BECAUSE APPELLEES' CLAIMED "POLICY" IS UNPROMULGATED AND IT HAS NEVER BEEN APPROVED BY THE MICHIGAN SUPREME COURT, ITS ENFORCEMENT WOULD BE CONTRARY TO ESTABLISHED MICHIGAN LAW.

Appellant's as-applied constitutional challenges to the Michigan attorney-licensing system were dismissed by the lower court on standing and ripeness grounds, Lawrence, supra, 2003 U.S. Dist. LEXIS 17895 at *17, even though Plaintiff had already graduated from law school, passed the Bar Exam, and recognized an infirm licensing system where the Appellees have admitted that it is "a very real possibility" that peaceful picketers will be denied licensure. As a result, it is important that this Court maintain the status quo among the parties and disallow the Appellees from extinguishing Appellant's passing Bar Exam score during the pendency of this appeal.

The Appellees appear to be taking the position that a passing Bar Exam score expires after three years (in this case, July 2004). Appellant intended to apply for licensure once this litigation is over and utilize the passing score that he worked so hard to achieve. If this Court does not enjoin the Appellees from doing so, Appellant will not only be stripped of an important achievement in support of standing, but he will also be penalized for pursuing this appeal.

The lower court's ripeness/standing decision, if upheld, effectively precludes typical federal question jurisdiction over federal claims by directing aggrieved applicants to an illusory post-decision review process that does not mandate, and is extremely unlikely to lead to any actual judicial review. Although the Appellees will likely cite Fieger v. Thomas, 74 F.3d 740 (6th Cir. 1996) for the proposition

that appellate review of the Appellee's administrative decisions is available, the truth of the matter is that the Michigan Supreme Court has historically refused to hear Bar applicant's challenges.³ The ripeness doctrine should not be applied in a manner that effectively eliminates federal trial court jurisdiction over significant federal questions, ones that involve governmental censorship and implicate injury to First Amendment rights, constitutional injuries that the law regards as irreparable. Prospective judicial consideration, by a federal court, is the only effective (and truly meaningful) remedy for the possibility of censorship of such fragile, and cherished, constitutional interests. This court should, therefore, preserve the status quo by enjoining the Appellees from taking away an important component to Appellant's claims of constitutional standing, namely his passing exam score.

³ See, Bagne v. BLE, 636 N.W.2d 140 (Mich. 2001), Dubuc v. BLE, 627 N.W.2d 603 (Mich. 2001), Porter v. BLE, 460 Mich. 1204 (Mich. 1999), Wells v. BLE, 590 N.W.2d 64 (Mich. 1999), Chapman v. BLE, 584 N.W.2d 735 (Mich. 1998), Mouradian v. BLE, 567 N.W.2d 242 (Mich. 1997), Maxon v. BLE, 557 N.W.2d 315 (Mich. 1996), Chapman v. BLE, 552 N.W.2d 168 (Mich. 1996), Becker v. BLE, 543 N.W.2d 209 (Mich. 1995), Burton v. BLE, 535 N.W.2d 793 (Mich. 1995), Yashinsky v. BLE, 528 N.W.2d 741 (Mich. 1995), Thomas v. BLE, 519 N.W.2d 897 (Mich. 1994), Wiegen v. BLE, 518 N.W.2d 486 (Mich. 1994), Wiegen v. BLE, 512 N.W.2d 318 (Mich. 1993), Hillis v. BLE, 511 N.W.2d 685 (Mich. 1993), Winokur v. BLE, 509 N.W.2d 156 (Mich. 1993), Scarfone v. BLE, 503 N.W.2d 904 (1993), Hillis v. BLE, 498 N.W.2d 736 (Mich. 1993), Mayfield v. BLE, 489 N.W.2d 776 (Mich. 1992), Sheikh v. BLE, 486 N.W.2d 686 (Mich. 1992), Qua v. BLE, SC No. 90203 (1991), Holland v. BLE, SC No. 80597 (1987), Chrzanowski v. BLE, SC No. 79219 (1986), Jaglan v. BLE, SC No. 77692 (1986).

This Court should also know that Appellees' threat to apply the three-year unpromulgated "policy" against Appellant finds no basis in the law. Appellees repeatedly cite MCL 600.934(3)(a) in support of their position, yet by its very terms, this statute only applies to out-of-state residents.

The Appellee Members of the Michigan Board of Law Examiners' authority to enact rules governing the licensing of attorneys is found in MCL 600.925, which provides in part that "The board may adopt suitable regulations, subject to approval by the supreme court, concerning the performance of its functions and duties." However, here they have enacted no rule whatsoever that would enable them to nullify Appellant's passing grade. In Kelly v. Board of Law Examiners, 454 Mich. 1206; 558 N.W.2d 212 (1997), the Appellees similarly attempted to force an unpromulgated requirement upon a previously suspended attorney. The Court flatly rejected the Appellees' unauthorized attempt, noting that "Rule 8, nor any other rule or statute, authorizes the Board of Law Examiners" to do what it did. Even the dissent in Kelly would probably agree with Appellant since the dissent seemed to locate *some* authority that tangentially touched upon the issues under consideration. Id. 558 N.W.2d at 215 (Weaver, J. dissenting). Here, MCL 600.934(3)(a), a statute dealing with out-of-state residents, is the best that Appellees can do. There is ample authority supporting the proposition that the "subject to approval by the supreme court" requirement is strictly enforced in other

contexts. Yashinsky v. BLE, 450 Mich. 1208; 539 N.W.2d 378 (1995) (rejecting Board of Law Examiner unauthorized act); Schlender v. Schlender, 235 Mich.App. 230, 232; 596 N.W.2d 643 (1999) (“The policy at issue here was never approved by the Supreme Court”); Estate of Augusta v. Gaba, 119 Mich.App. 300; 326 N.W.2d 489 (1982) (a local court rule requiring jury fees to be paid within 30 days from the date stamped on the notice for trial was invalid because it had not been submitted to the Supreme Court); Wyandotte Rolling Mills Co. v. Robinson; 34 Mich. 428 (1876) (it was not within the power of the superior court of Detroit to shorten the default period to 10 days in the absence of such authority).

Therefore, this Court should enjoin the Appellees from enforcing their three-year unwritten “policy” against the Appellant because it would not only affect Appellant’s claims of standing, but such a “policy” was created in the complete absence of authority.⁴

II. A BALANCING OF THE PREREQUISITES FOR INJUNCTIVE RELIEF PENDING APPEAL CLEARLY SUPPORTS THE GRANTING OF SUCH RELIEF IN THIS MATTER.

⁴ For a good analogy, this Court should review the case of Spruytte v. Walters, 753 F.2d 498 (6th Cir. 1985), which was evaluated under Michigan’s Administrative Procedures Act (which arguably does not apply to the Appellees). This Court noted that Michigan courts “have shown a strong tendency to require agencies to act pursuant to formal rules rather than through informal policies” and “When an agency is required to act pursuant to a rule but has failed to do so, the agency is wholly without legal authority to act.” Id. at 505-506

Appellant previously filed a request in this Court seeking a stay of proceedings in the lower court, after the district judge rejected Appellant's disqualification argument. Appellant premised his request upon this Court's decision in Collier v. Picard, 237 F.2d 234, 235 (6th Cir. 1956) and 28 U.S.C. §2106. Because Appellant was not seeking to restrain any of the parties, but merely to halt further judicial rulings by the district court, he relied upon the above authority and did not brief the elements for injunctive relief. On March 19, 2004 Judges Robert B. Krupansky, Ronald L. Gilman and Thomas B. Russell denied Appellant's request, stating that the disqualification issue could not be appealed with an otherwise appealable interlocutory order. Finding that the disqualification issue was not inextricably intertwined with the existing appeal, the panel then resorted to reviewing the elements for injunctive relief. Since Appellant did not brief the issue, the Court consequentially found that Appellant failed to make a showing of a likelihood of success.

In this motion, however, Appellant is seeking to restrain the Appellees from enforcing their unwritten "policy" against him. In determining whether a stay should be granted under Fed. R. App. P. 8(a), a court considers the same four factors that are traditionally considered in evaluating the granting of a preliminary injunction. These well-known factors are: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving

party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay. These factors are not prerequisites that must be met, but are interrelated considerations that are balanced together. Michigan Coalition of Radioactive Material Users, *supra*, 945 F.2d at 153.

A. Appellant Has Established A Serious Question Going To The Merits.

To justify the granting of a stay, a movant need not always establish a high probability of success on the merits. However, the movant is always required to demonstrate more than the mere "possibility" of success on the merits. For example, even if a movant demonstrates irreparable harm that decidedly outweighs any potential harm to the Appellee if a stay is granted, he is still required to show, at a minimum, serious questions going to the merits. *Id.* at 153-154, *accord* Grutter v. Bollinger, 247 F.3d 631, 633 (6th Cir. 2001).

One way to establish the "serious question going to the merits" element for injunctive relief is to show that the district court's decision (i.e. standing and ripeness) conflicts with another published decision. See, e.g., *Id.* 247 F.3d at 633 (discussing conflicting district court opinions). The 10th Circuit's recent analysis regarding standing and ripeness in Roe v. Ogden, 253 F.3d 1225 (10th Cir. 2001) clearly shows that the lower court's decision is questionable at best. The district court's decision effectively nullifies the effect of this Court's recent published

decision in Dubuc v. Mich. Bd. of Law Examiners, 342 F.3d 610 (6th Cir. 2003), which emphasized the availability of prospective equitable relief in Michigan attorney-licensing cases. Further, Appellant's arguments are procedurally proper since one may challenge a defect of "process" without exhausting administrative proceedings or receiving a final decision. Bowers v. Flint, 325 F.3d 758, 762 (6th Cir. 2003). The State Bar of Michigan's representation at the summary judgment stage of the Dean v. Byerley case that it was "a very real possibility" that a picketing bar applicant could be denied licensure clearly supports Appellant's arguments that his pleas for help are not "speculative" in any sense of the word. As for Appellant's facial challenge, the key aspect in the lower court's erroneous conclusion was its rejection of the reality that attorney-advocacy, as a profession, is protected by the First Amendment. The district court brushed aside Legal Services Corporation v. Velazquez, 531 U.S. 533, 121 S. Ct. 1043, 1049 L.Ed. 2d 63 (2001) and Plaintiff's contention that the practice of law (like other First Amendment businesses, e.g., newspapers, theaters, charitable solicitors, or adult entertainment enterprises) was itself protected by First Amendment licensing principles.

The district court ruled that Michigan's licensing statute posed no threat to free speech since the statute does not specifically regulate what a person may say.

This ruling missed the essential point of this lawsuit. See Polaris Amphitheater Concerts Inc. v. Cir of Westerville, 267 F.3d 503, 508 (6th Cir. 2001):

"A content-neutral regulation that 'places unbridled discretion in the hands of a governmental official or agency constitutes a prior restraint and may result in censorship.'"

An attorney is licensed to be a professional advocate and no one in Michigan (given the statutory restriction that limits who may practice as an attorney to those who are licensed members of the Michigan Bar) may engage in attorney-advocacy without the prior approval of the Michigan licensing authorities.

The practice of law consists of the daily expression of ideas for the redress of common law claims, statutory rights, equitable interests and/or constitutional rights, and for the development of new legal theories. These kind of expressive activities inherently involve important public issues and are, thus, regarded as primary values that are protected by the First Amendment. Lac Vieux Desert Band or Chippewa Indians v. Michigan Gaming Control Board, 276 F.3d 876, 880 (6th Cir. 2002). Hence, the practice of law is a fundamental First Amendment activity. Legal Services Corporation, supra. See, also, Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 781, 108 S.Ct. 2667, 101 L.Ed. 2d 669 (1988) and Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 108 S.Ct. 2138, 100 L.Ed 2d 771 (1988).

Whenever First Amendment activity is subject to the prior approval of public officials, the approval process functions as a prior restraint. Prior restraints carry a heavy presumption of unconstitutionality, and they must have adequate procedural safeguards. FW/PBS. Inc. v. Dallas, 493 U.S. 215, 228, 238-241, 110 S. Ct. 596, 107 L.Ed 2d 603 (1990), and Nightclubs Inc v. City of Paducah, supra at 888-889.

Adequate procedural safeguards entail narrow, definite and objective criteria, time limits on decision-making, and the availability of prompt judicial review of an adverse decision. FW/PBS Inc. v. Dallas, supra, Nightclubs Inc. v. City of Paducah, supra, City of Littleton v. Z. J. Gifts D-4, L.L.C, ___ U.S. ___, 124 S. Ct. 2219, ___ L.Ed.2d ___ (2004).

The Michigan attorney-licensing procedure patently violates the First Amendment since it functions as an unlawful prior restraint of protected First Amendment activity. Attorney-advocacy is core speech in a society governed by the Rule of Law. The Michigan licensing process suffers from the “two evils that will not be tolerated” whenever government licenses First Amendment activity namely, the unbridled discretion vested in government officials, and, the risk of indefinite delay. Nightclubs. Inc. v. City of Paducah, supra.

Lastly, and perhaps most alarming, the Appellees will cite this Court’s unpublished opinion in Roe v. State Bar, 74 Fed. Appx. 490; 2003 U.S. App.

LEXIS 16777 (6th Cir., August 12, 2003) in support of their arguments. What the Appellees will not tell this Court, however, is that they were exposed for advancing less than candid litigation statements in that case. This debacle was chronicled in the December 2003 edition of the State Bar of Michigan's own official publication, the Michigan Bar Journal. See, 82 Michigan Bar Journal 9 (December 2003) (a copy is attached at Appx. p. 133). The same misrepresentations made in the Roe case were undoubtedly advanced before Judge McKeague in this case (Appx. p. 15). To add insult to injury, Judge McKeague's decision now on appeal was heavily relied upon by U.S. District Judge Richard Alan Enslen in another recent decision (Appx. pp. 57, Dubuc v. Parker). The Appellees will assuredly tout the Roe case, the lower court's decision in this case, and Judge Enslen's opinion in Dubuc v. Parker, but what Appelles will not tell this Court is that their misrepresentations have started an unfortunate chain reaction that only this Court can correct.

B. Extinguishing Appellant's Passing Bar Exam Score, On Account Of Appellant's Desire To Seek Appellate Review Before Submitting To A Constitutionally Infirm Licensing System, Constitutes Irreparable Loss.

Appellant has a First Amendment right to pursue this appeal and petition the courts for redress of grievances. BE&K Constr. Co. v. NLRB, 536 U.S. 516; 122 S. Ct. 2390; 153 L. Ed. 2d 499 (2002) ("The United States Supreme Court recognizes the right to petition as one of the most precious of the liberties

safeguarded by the Bill of Rights, and the right is implied by the very idea of a government, republican in form.”). By threatening Appellant with adverse consequences (forcing him to retake the Bar Exam) on account of the appellate delay in this matter, the Appellees are threatening action that would "deter a person of ordinary firmness" from continuing to exercise his right to petition the courts for redress of grievances. Thaddeus X v. Blatter, 175 F.3d 378, 396 (6th Cir. 1999). Even de minimus injury to First Amendment rights constitutes irreparable loss, which is a predicate for federal injunctive relief. Elrod v Burns, 427 US 347, 373, 96 SCt 2673, 49, L Ed 2d 547 (1976). Appellant spent all of his savings to pass the Bar Exam, and it should not be taken away for such retaliatory or arbitrary reasons. (Appx. p. 1, Affidavit of Appellant).

C. A Stay Of Appellees’ Three-Year Unpromulgated “Policy” Would Not Harm One Single Person.

If the Appellees were to be enjoined from enforcing their invalid and unwritten “policy,” it is hard to imagine who would suffer. Appellant is not seeking an injunction pending appeal that would affect other applicants, only his own passing exam score.

D. The Public Interest Would Be Served By Allowing Appellant To Pursue This Appeal Without The Threat Of Adverse Action. The Unfortunate Reality Of Delay In The Appellate Process Should Not Be Used To Cause Injury To A Party.

The public interest would be served if the Court grants this request because

of the strong federal substantive interest in allowing litigants to petition the courts for redress without the fear of such reprisal. The unfortunate reality of delay in the appellate process should not be used to allow one party to unjustly punish the other.

III. THIS COURT SHOULD EXPEDITE HEARING THIS MATTER, GIVEN THAT IT INVOLVES IMPORTANT FIRST AMENDMENT INTERESTS THAT ARE WORTHY OF VINDICATION.

The interlocutory appeal filed in this matter has already been briefed by all parties and it is awaiting submission to a panel. Because this case involves a claimed affront to federally secured freedoms, this Court should consider setting this matter for oral argument as soon as possible. This Court's zeal to stand up and protect constitutional rights was articulated in Fellowship of Christ Church v. Thorburn, 758 F.2d 1140, 1143 (6th Cir. 1985):

"[T]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the peoples' federal rights."

If this Court ultimately concludes that Appellant's arguments on appeal are correct, important First Amendment rights will be vindicated and the "very real possibility" that picketers will be denied a law license for peaceably speaking-out will cease to exist. This is an important First Amendment case. Appellant respectfully seeks this Court's permission to set the underlying appeal in this matter for oral argument as soon as possible.

CONCLUSION

This Court should enjoin the Appellees from extinguishing Appellant's passing Bar Exam score. Such relief will help to maintain the status quo, by preserving Appellant's argument that his passing score provides him standing. Further, because the Appellees never sought the permission of the Michigan Supreme Court or promulgated their three-year "policy," no authority whatsoever even exists for their proposed actions. Kelly, supra.

Plaintiff has shown substantial questions going to the merits of this action. First, the lower court's standing/ripeness analysis, that relegates licensure challenges to after-the-fact litigation, conflicts with the 10th Circuit's position in Roe. By not respecting a citizen's choice of a federal forum for the adjudication of federal claims, the district court's opinion also represents a highly inappropriate consequence to federal authority. As for Appellant's facial challenge, the lower court additionally failed to recognize that the business of attorney advocacy should receive the same protections that other First Amendment licensing structures share. This is supported by the Supreme Court's recent decision in Velazquez, which noted that "There can be little doubt that the LSC Act funds constitutionally protected expression..." If exotic dancers' licensing systems get the procedural protections of the First Amendment, then attorney advocacy – quintessential First

Amendment “constitutionally protected expression” – should at least be regarded as highly.

Decisions like this Court’s unpublished opinion in Roe, the lower court rulings in this case, and Dubuc v Parker, are premised upon an unfortunate chain relation fueled by litigant nondisclosure. See, 82 Michigan Bar Journal 9 (December 2003), Opinion and Dissent, Character and Fitness Review – Is the Process Fit? Therefore this Court should be very suspicious of any attempt by the Appellees to cite those cases.

Lastly, Appellant respectfully requests that this Court set this matter for oral argument as soon as possible, given the important and cherished rights involved.

Dated: July 2, 2004

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