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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

10 **PETITION TO AMEND RULES**
11 **32(A)-(M) OF THE ARIZONA**
12 **RULES OF SUPREME COURT**

Supreme Court No. R-25-0001

STATE BAR OF ARIZONA
COMMENT

13 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar
14 of Arizona (the “State Bar”) hereby submits the following as its comment to the
15 above-captioned Petition, requesting that the Court deny the Petition. This Petition
16 was filed one month after this Court issued its Order, dated December 3, 2024, ruling
17 on Petition to Amend Rules 32(c) and (d), R-24-0030. Much of this Petition repeats
18 arguments made by Petitioners in R-24-0030. While the State Bar agrees that this
19 Court is the proper forum to decide the structure and mission of the State Bar, the
20 State Bar opposes the proposed rule amendments for the reasons set forth in this
21 Comment.
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1 **I. BACKGROUND**

2 During the last rules-cycle, the Goldwater Institute and counsel, individually
3 and on behalf of Goldwater, filed a petition to amend Rules 32(b) and (c) of the
4 Arizona Rules of the Supreme Court (the “2024 Petition”). *See* R-24-0030. Similar
5 to this Petition, the 2024 Petition sought to isolate the regulatory functions from
6 other programs and activities of the Bar funded by annual licensing fees. This Court
7 rejected the changes proposed in 2024 Petition, and instead, amended Rule 32(c)(9)
8 to clarify that all State Bar activities, not just lobbying, must comply with *Keller v.*
9 *State Bar of California*, 496 U.S. 1 (1990).¹

10 This Petition, however, goes further than the 2024 Petition by asking the Court
11 to eliminate the current mission of the State Bar promulgated by this Court and grow
12 the Administrative Office of the Court (the “AOC”) to include functions currently
13 delegated to the State Bar. The Petition ignores important aspects of our current
14 mission like protection of the public and access to justice. Additionally, Petitioners
15 ask this Court to expand the AOC by transferring the State Bar’s role in lawyer
16 regulation and continuing legal education compliance to the Court. The Petition
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23 ¹ The Petition incorrectly states that this Court amended Rule 32(c)(9) to prohibit
24 the State Bar from engaging in lobbying activities. *See* Fn. 1 of Pet. Instead, this
25 Court amended Rule 32(c)(9) to clarify that all State Bar activities must comply with
Keller, not just lobbying activities.

1 proposes a voluntary State Bar that, instead of furthering the mission set by this
2 Court, advocates for ideological causes supported by funding members. See Pet. at
3 2.
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5 **II. CURRENT MISSION OF THE STATE BAR OF ARIZONA**

6 The State Bar “exists to serve and protect the public with respect to the
7 provision of legal services and access to justice.” Rule 32(a)(2), Ariz. R. Sup. Ct.
8 This mission was given to the State Bar by this Court and the State Bar carries out
9 programs and activities, including but not limited to lawyer regulation, in
10 furtherance of this mission.
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12 **III. DISCUSSION**

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14 There are several inaccurate assertions and recitations of the current state of the
15 law made in the Petition, including how exactly *Janus v. American FSCME*, 585
16 U.S. 878, 930 (2018) applies to integrated bars. While Petitioner is correct that
17 integrated bars have recently been subject to complex litigation that Petitioners refer
18 to as the “bar wars,” what remains true today is that *Keller* and *Keller’s* progeny
19 remain controlling authority over integrated bars and *Janus* did not overturn *Keller*.
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21 **A. The State Bar is not a Labor Union.**

22 In the Petition, Petitioners assert that the State Bar has not complied with
23 *Janus* and that “*Janus* set a new rule. The Arizona Bar ignored it. This Court’s order
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1 dated 12/3/24 does not rectify this issue.” *See* Pet. at 12. This is a mischaracterization
2 of the status of the law as applied to integrated bars. *Janus* is not the applicable
3 controlling authority. *Janus*’ holding applies to public sector labor unions, not
4 integrated bars. *Janus* 138 S. Ct. 2448, 2486. The U. S. Supreme Court has yet to
5 apply *Janus*’ holding to integrated bars and overturn the germaneness framework it
6 established in *Keller*.
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8 The State Bar is not a labor organization. Labor organizations exist primarily
9 to bargain with employers for the benefit of the organization’s members on things
10 such as working conditions, benefits, and compensation. By contrast, the State Bar
11 does not engage in union-type advocacy on behalf of our members, nor does the
12 State Bar purport to speak in a unified voice on behalf of our membership. Rather,
13 the State Bar is empowered by this Court to organize and promote activities that
14 fulfill the responsibilities of the legal profession, to promote access to justice, to aid
15 in the administration of justice, to assist in the regulation and discipline of attorneys,
16 to conduct educational programs, and to provide forums for the discussion of
17 subjects pertaining to the practice of law. Rule 32(a)(2). The charges from the Court
18 to the State Bar, as spelled out in Rule 32, do not require the State Bar to heed the
19 political or ideological dispositions of our members or to speak as a voice for our
20 members. Instead, the State Bar’s functions are performed under the guiding
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1 centerpiece of protection of the public, in conformity with Rule 32.

2 **B. The U.S. Supreme Court Has Not Overturned *Keller v. State Bar of***
3 ***California*; and a Rule Petition is not the Appropriate Forum to**
4 **Litigate Opposition to U.S. Supreme Court Precedent.**

5 While Petitioners take issue with the germaneness test set by *Keller*, *Keller*
6 remains upheld, and the State Bar can constitutionally fund activities related to
7 lawyer regulation *and* improving the quality of legal services. The Petition focuses
8 significantly on Petitioners' belief that *Keller* should be overturned. This is not the
9 appropriate forum to litigate that issue. Only the United States Supreme Court can
10 overturn *Keller* and establish a new legal standard with respect to the integrated bar
11 structure. To date, the U.S. Supreme Court has declined several recent requests to
12 do so.² However, this issue is before the Supreme Court again during the pendency
13 of this Petition. See *Crowe v. State Bar of Oregon*, No. 24-1025 (U.S. filed March
14 21, 2025).

15 This Court has the authority to decide changes to the structure, mission and
16 scope of the State Bar's activities, irrespective of the SCOTUS' decision to revisit
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21 ² The United States Supreme Court has rejected petitions for certiorari seeking to
22 review and overturn *Keller* seven times in the last five years. See *Fleck v. Wetch*,
23 140 S. Ct. 1294 (2020); *Gruber v. Oregon State Bar*, 142 S. Ct. 78 (2021); *Crowe v.*
24 *Oregon State Bar*, 142 S. Ct. 79 (2021); *Schell v. Darby*, 142 S. Ct. 1440 (2022);
25 *McDonald v. Firth*, 142 S. Ct. 1442 (2022); *Taylor v. Heath*, 142 S. Ct. 1441 (2022);
and *File v. Hickey*, 143 S. Ct. 745 (2023).

1 *Keller*. Therefore, this Comment will not focus on whether *Keller* should be
2 overturned, but rather, why this Court should maintain the current integrated
3 structure of the State Bar.
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5 **IV. ARGUMENT**

6 **A. The State Bar’s Structure Allows the State Bar to Further the** 7 **Mission and Activities Delegated by This Court in Conformity with** 8 **Rule 32.**

9 The State Bar cannot and does not use membership fees to fund activities of
10 a political or ideological nature that are not reasonably related to lawyer regulation
11 or improving the quality of legal services. As an apolitical organization, the State
12 Bar focuses on directives from the Court that support the legal profession and needs
13 of our state with respect to legal services. Contrary to the assertion made in the
14 Petition that “mandatory bars have divided loyalties,” Pet. at 13, the State Bar of
15 Arizona prioritizes activities and programs in furtherance of the mission and
16 directives given to us by the Court, as codified in Rule 32.
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19 And while the State Bar uses annual fees only for *Keller*-compliant activities,
20 consistent with Rule 32, a member may still object to and receive a refund of the
21 annual fee allocable to those objectionable activities. *See* Rule 32(c)(9). The State
22 Bar supported the recent amendment by this Court to Rule 32(c)(9), clarifying that
23 all activities, not just lobbying, must comply with *Keller*. The Second Comment of
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1 the State Bar of Arizona to R-24-0030. Attached as Appendix.

2 **B. The State Bar Advances Important State Interests Set Forth in**
3 **the Mission Given to the State Bar by this Court.**

4 **1. Protection of the Public**

5 The State Bar has a role in aiding the Court to “organize and promote activities
6 that fulfill the responsibilities of the legal profession and its members to the public.”
7 Rule 32(a)(2)(A). The following State Bar programs, in conjunction with lawyer
8 regulation, further protection of the public and should remain funded by practitioners
9 practicing in this state as a self-regulating profession:
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- 11 • The State Bar’s Fee Arbitration Program is often the first forum that
12 resolves a bar charge based on a fee dispute.
- 13 • The State Bar’s Conservatorship Program works with the Lawyer
14 Regulation Division to secure and return client funds and files when an
15 attorney facing discipline poses a risk to misappropriation of client funds
16 and/or files.
- 17 • The State Bar’s Ethics Hotline operates outside of the Lawyer Regulation
18 Division and addresses approximately 2,000 ethics inquiries a year. The
19 Ethics Hotline serves as a resource that disciplinary counsel can direct a
20 member to, to receive ethical guidance, and hopefully avoid the necessity
21 of further remedial action by the State Bar.
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- The State Bar also operates Member Assistance and Law Office Management Programs. These programs serve as critical resources for the Lawyer Regulation Division to direct members who have been identified with practice management or personal issues that could lead to ethical violations. Disciplinary counsel will utilize these programs to explore proactive assistance for members in lieu of harsher sanctions, where appropriate.

2. Access to Justice

Promoting access to justice is set forth in the State Bar's mission, under Rule 32(a)(2)(B), and aligns with Goal 1 of the Court's Strategic Agenda to expand and promote access to justice.

The State Bar's Public Service Center serves as the State Bar's hub for legal aid, resources and consumer information. The Public Service Center also organizes free legal clinics and provides advice to the public on how to engage an attorney, including modest means and pro bono programs. The Petition leaves unanswered how and who will aid the Court in, in a meaningful way, addressing the need for access to legal services and legal information for low-income individuals if the State Bar only exists as a voluntary organization controlled by the individual interests of donating members.

1 **C. Petitioners’ Proposal to Grow State Government by Transferring**
2 **the State Bar’s Lawyer Regulation and MCLE Compliance to the**
3 **Court Underestimates the Breadth of This Expansion to Maintain**
 the Level of Support the State Bar Provides to this Court.

4 Petitioners’ characterization of its proposed amendment to Rule 32 causing a
5 “modest expansion” to the AOC exemplifies a lack of understanding of what may
6 be lost if regulation is removed from an integrated structure, in which resources are
7 cross utilized to support proactive management and rehabilitative support for
8 lawyers. The benefit of maintaining lawyer regulation within an integrated bar is that
9 the lawyer regulation office has additional tools and resources to help lawyers and
10 their clients because it benefits from economies of scale.
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13 **1. Lawyer Regulation Services and Resources**

14 Lawyer Regulation is often the place where emerging issues or trends with
15 lawyers are identified. The integrated structure allows for coordination within the
16 integrated bar to quickly address such trends. For example, increases in overdraft
17 notification could prompt the lawyer regulation office to work together with the
18 member services division to develop coordinated education and training to mitigate
19 trust accounting issues for lawyers.
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22 Another example is fraud schemes targeting lawyers. When these schemes
23 became pervasive, the lawyer regulation office worked with the State Bar’s
24 communications department to place a warning on the State Bar’s webpage to alert
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1 lawyers to the scheme, provide instruction on how to identify the scheme, and
2 directed lawyers to resources to assist in the event of fraud.

3 The State Bar's Law Office Management Assistance Program (LOMAP)
4 offers hands-on training, assistance and advice to attorneys struggling to operate
5 their law offices in compliance with the ethical rules. Nearly one hundred lawyers a
6 year receive assistance through the program either by order to participate or by
7 consent to participate in the program as a term of diversion. State Bar LOMAP
8 counsel visit participating lawyers' offices in person and conduct a thorough and
9 personalized office evaluation with the lawyer. LOMAP counsel identify areas of
10 non-compliance with the rules and areas where office operations can be improved
11 or made more efficient. LOMAP then develops and implements a plan for improving
12 the lawyer's office operations. Necessary resources, including but not limited to,
13 policies, templates and software are provided to the participating lawyer for their
14 use. LOMAP counsel continues to monitor and follow up with the participating
15 lawyer for a period of eighteen months or two years to provide regular and ongoing
16 assistance. LOMAP also provides hands-on IOLTA trust account training and
17 monitoring for attorneys who are having difficulty managing their attorney IOLTA
18 accounts. The loss of the LOMAP program would likely result in a significant uptick
19 in the number of ethical violations that occur, as well as a significant increase in the
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1 recidivism rate of lawyers who have previously been found to have violated the
2 ethical rules.

3 As mentioned in Section IV.B.1. above, the integrated bar structure also
4 allows lawyer regulation to work closely with programs such as the Fee Arbitration
5 Program, Conservatorship Program, and Client Protection Fund to provide
6 contemporaneous services to clients impacted by lawyer misconduct or incapacity.
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8 While lawyer regulation could be moved to the Court through an expansion
9 of the AOC, the State Bar believes that maintaining lawyer regulation under the
10 current structure better supports lawyers and clients of lawyers involved in
11 disciplinary matters.
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13 **2. Practice Area Committees**

14 State Bar committees and staff play a vital role in helping practitioners and
15 the Court update or refine practice rules, changes to the law, and best practices. For
16 example, Arizona Revised Statute § 12-110(A) provides:
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18 The state bar, or a representative group selected by the bar, shall act as
19 an advisory board and shall either voluntarily or upon request of a
20 majority of the judges of the supreme court, consult with, recommend
21 to or advise the court on any matter dealt with or proposed to be dealt
22 with in the rules.

23 The State Bar's practice area committees, each year, engage in thoughtful
24 study and discussion of rules related to their respective practice areas. In
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1 coordination with these standing committees, the State Bar proposes rule changes
2 and comments to rule changes for the Court's consideration every rules-cycle.

3 Additionally, the State Bar also administers both the Civil and Criminal Jury
4 Instructions Committee, which, under established guidelines, update, and revise jury
5 instructions to ensure that such instructions are current, correct, and concise.
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7 These practice area committees, including the Civil Practice and Procedure,
8 Criminal Practice and Procedure, Family Law Practice and Procedure, and Jury
9 Instruction Committees, provide a tremendous amount of value to practitioners and
10 the bench through their study and work to update and refine the rules and practice
11 procedures. The State Bar, as a member-funded organization, provides this forum
12 and assures this support to both the Court and practitioners in our state.
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15 **V. CONCLUSION**

16 The State Bar agrees with Petitioners that this Court is the proper forum to
17 decide the mission, structure, and governance of the State Bar. However, the State
18 Bar opposes Petitioners' proposal to drastically reshape the role of the State Bar and
19 the support it provides by delegation to this Court. The State Bar believes that such
20 a change would be to the detriment of the legal community and the public it serves.
21 For the reasons set forth in this Comment, the State Bar respectfully requests that
22 the Court deny the Petition.
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1 RESPECTFULLY SUBMITTED this 1st day of May 2025.

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4 Lisa M. Panahi
5 FOR THE STATE BAR OF ARIZONA

6 Electronic copy filed with the
7 Clerk of the Supreme Court of Arizona
8 this 1st day of May 2025.

9 by: PSequin

APPENDIX

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10 **PETITION TO AMEND RULES**
11 **32(b) AND (c) OF THE ARIZONA**
12 **RULES OF SUPREME COURT**

Supreme Court No. R-24-0030

13 **STATE BAR OF ARIZONA**
14 **COMMENT**

15 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar
16 of Arizona (the “State Bar”) hereby submits the following as its second comment to
17 the above-captioned Petition.

18 In January 2024, Petitioner filed a Petition proposing to amend Rules 32(b)
19 and (c), Ariz. R. Sup. Ct. The State Bar filed a Comment in opposition in April 2024.
20 After considering the Petition, the public comments, and the Reply during its August
21 2024 Rules Agenda, the Court issued an Order on August 22, 2024, proposing a
22 revision to Rule 32(c)(9), continuing consideration until it’s December 2024 Rules
23 Agenda, and opening an abbreviated public comment period on a proposed
24 amendment to Rule 32(c) only.

25 The amended language proposed by this Court to Rule 32 would codify in

1 Rule 32(c)(9) that all activities conducted by the State Bar shall comply with *Keller*
2 *v. State Bar of California*, 496 U.S. 1 (1990). The State Bar supports the amended
3 language set forth in the Court's Order.
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5 RESPECTFULLY SUBMITTED this 1st day of October, 2024.
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8 Lisa M. Panahi
9 General Counsel

10 Electronic copy filed with the
11 Clerk of the Supreme Court of Arizona
12 this 1st day of October, 2024.

13 by: PSeguin
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