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Subject: Comments on Supreme Court Task Force on the Role of the State Bar of Michigan

Comment on the Supreme Court's Task Force on the Role of the State Bar of Michigan (SBM) Introduction

In nearly 50 years of being a member of the SBM, I do not recall any Task Force or Study Group created either by the Bar or Court which has caused such a strong negative reaction to both the creation and recommendations as does the present Task Force. I respectfully suggest, because the Court established the Task Force and appointed its members, the Court has an obligation to investigate the reaction.

I suggest two primary reasons for the reaction. First, the reason the Task Force was created was never expressed in its Report. However, all those who have written about it, most notably those authoring articles/letters in the SBM Journal (April - July) and past Presidents of the SBM, know the reason. It was the SBM's support for donor transparency in Supreme Court elections. Nearly 90% of the public and all other bi partisan study groups support donor transparency as necessary to knowledgeably electing Justices and the maintenance of an independence of judiciary. So it is shocking that SBM's support for donor transparency somehow became the basis for the creation of a Task Force to evaluate its mandatory nature and the standards to be applied in the future by the SBM to satisfy *Keller v State Bar of California*, 496 US 1 (1990). Frankly, many suspect this whole affair resulted from a far too narrow view that donor darkness is speech and support for transparency somehow offends speech and association rights of "some" members. The position that transparency is anything other than, as Justice Scalia explained, a requirement of " good citizenship" rather than impermissible intrusion on First Amendment rights, has been rejected by 8 of 9 US Supreme Court Justices. *McCutcheon v FEC*, 134 S. Ct. 1434,1459-1460 (2014); *Doe v Reed*, 130 S. Ct. 2811 (2010) Hard to understand how the SBM act of "good citizenship" exhibited by its support for donor transparency in judicial elections is somehow not permissible under *Keller*.

Second, the Report itself points to only two alleged violation of *Keller* by the SBM, both unsubstantial, in nearly 25 years. That record is exemplary. Yet, for some reason the Task Force chose to recommend restricting SBM activities to those far more restrictive than *Keller* requires and thereby stills the voice that speaks for the vast majority of Bar members. Given, the history of the creation of the Task Force and it's draconian recommendations restricting SBM's activities, one is left to wonder why!

Comments

Since donor transparency was the reason for creating the Task Force and the Task Force never directly addressed whether such activity was permissible under *Keller*, this Court must do so . I respectfully suggest the court should hold both speaking out on donor transparency is *Keller*

permissible and, given the SBM's exemplary record protecting the first Amendment rights of it's member, a change in the test used to judge whether activities are Keller permissible is not warranted. If the SBM is muzzled on important issues relating to the fair administration of justice in this State, such silence may be interpreted by the public as consent to practices that threaten the rule of law. (" Silence is consent". Sir Thomas Moore.) It will also force the vast majority of members to pay dues for a Bar emasculate from representing the interest of the public and the membership.

The Task a Force also recommends that Sections who involve themselves in ideological activities cannot be identified as being a part of the SBM. Yet, again, has such Section activity been taken as SBM sanctioned? Not that I know of. It's important for the Bar to offer its members specializes Sections tailored to the member's practice. If the Court somehow perceives a connection problem, how about requiring any action taken by a Section be accompanied by a "Disclaimer" which indicates such action is taken independent from and not sanctioned by the SBM. From a practical standpoint any Section which acts in contravention of the Disclaimer will make a terrible political mistake for it will and should be rebuked by the SBM and lose creditability.

I leave to those more knowledgable, the task of critiquing other problematical Recommendations made by the Task Force.

Respectfully submitted,
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