



Structures Work Group Meeting

November 1, 2018

Voluntary – Mandatory – Integrated

What Does the Terminology Mean?

Voluntary Bar Associations

- ▶ Members can choose to join the bar
- ▶ There are no regulatory functions; focus is on professional association services.

Mandatory Bar Associations

- ▶ Members are required to join the bar, however, the bar may or may not administer regulatory functions. For example:
 - ▶ WI and ND are mandatory, but do not administer any regulatory functions.
 - ▶ WV, NC, and VA are mandatory and only administer regulatory functions.

Integrated/Unified Bar Associations

- ▶ Members are required to join the bar, and the bar administers regulatory functions as well as professional association services.
- ▶ Among integrated bars, there are varying levels of how many regulatory functions are administered. For example:
 - ▶ WA and OR administer all regulatory functions on behalf of the Supreme Court.
 - ▶ In MT, however, discipline reports directly to the Supreme Court but the MT bar administers all other regulatory functions on behalf of the Court.



U. S. Supreme Court Decisions

N.C. Dental Case (2015)

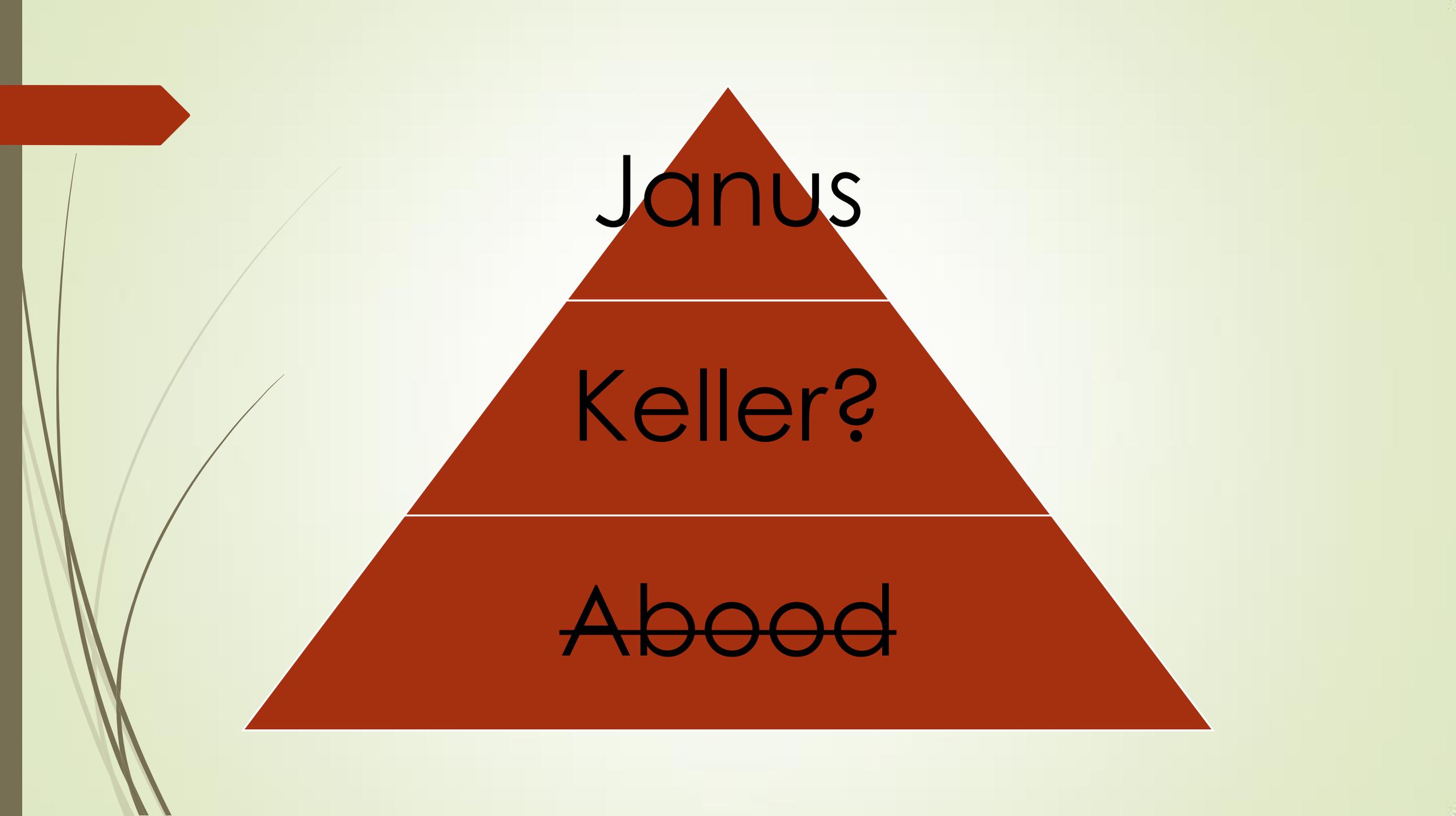
Anti-trust Immunity

- If action delivered through active market participants, then
- Active State Supervision needed for “state action” immunity from anti-trust enforcement

Janus (2018)

First Amendment

- Non members of public sector unions cannot be compelled to pay a percentage of full union dues



Janus

Keller?

~~Abood~~

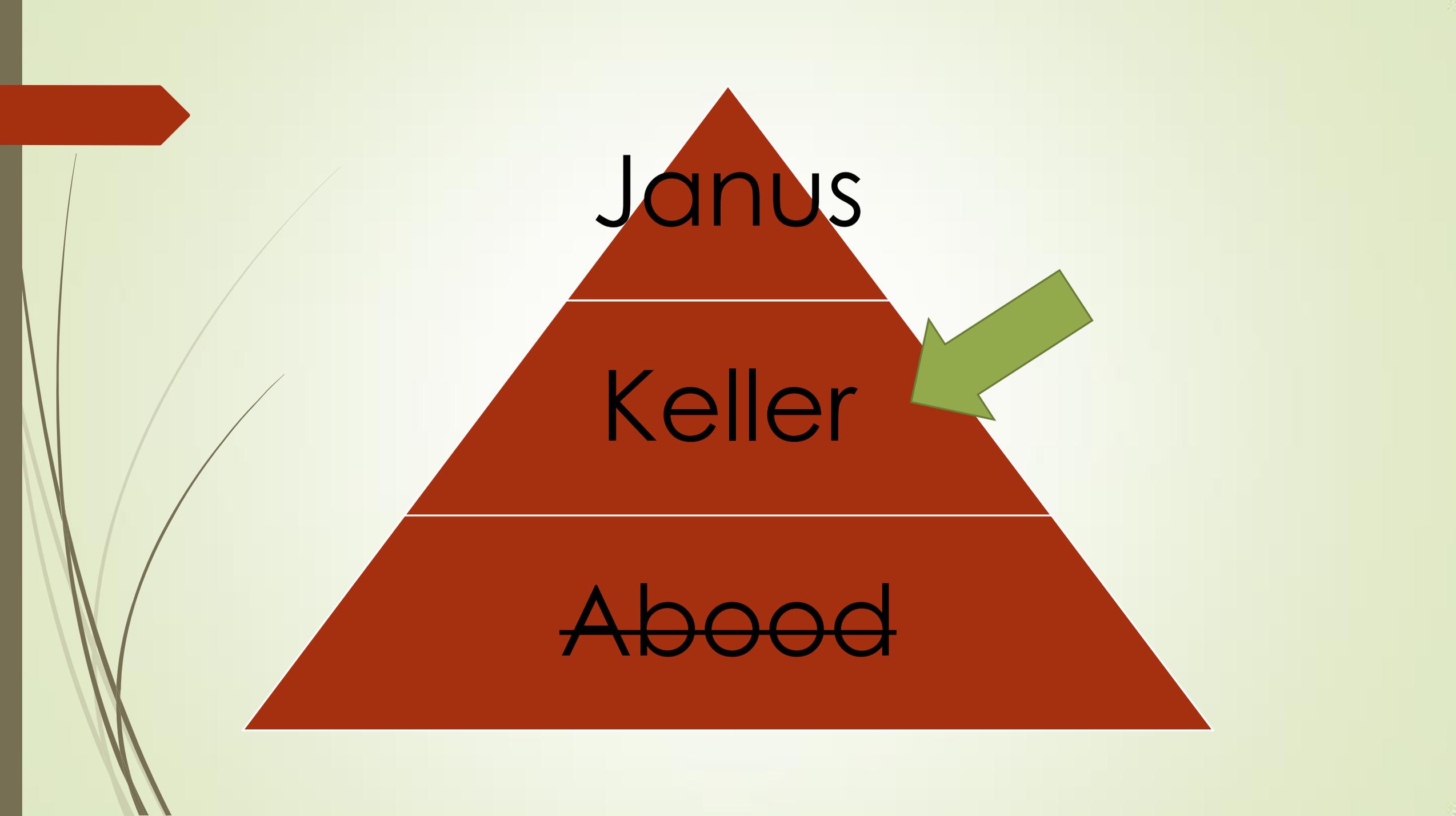


Abood v. Detroit Board of Education (1977)

- ▶ Non-members of public sector union may be assessed agency fees to recover the costs of "**collective bargaining, contract administration, and grievance adjustment purposes,**" however, objectors to union membership or policy may not have their dues used for other ideological or political purposes.
- ▶ Public sector employees cannot be required to be members of the union, but they can be required to pay the documented costs of contract administration and negotiation.

Keller v. State Bar of California (1990)

- ▶ Under *Lathrop v. Donahue* (1961), free association rights are not violated by requiring paid membership in a state bar association because of the governmental interest in **“regulating the legal profession”** and **“improving the quality of legal services”** available to the people of the state.
- ▶ A state bar may use mandatory membership payments to fund activities without violating free speech rights if those activities are necessarily or reasonably incurred to serve those governmental purposes.
- ▶ A state bar may not constitutionally fund “non-germane” activities, i.e., activities of a political or ideological nature that do not advance the state’s interest in regulating the legal profession or improving the quality of legal services.



Janus

Keller

~~Abood~~

What Next?

Review all functions through both lenses

Anti-trust Immunity (*North Carolina*):

- ▶ Active State Supervision where market participants are involved

First Amendment (*Janus*):

- ▶ The U.S. Supreme Court might apply exacting or strict scrutiny to review a law that restricts a fundamental personal liberty, like freedom of expression.
 - ▶ Under strict scrutiny, such a law will stand only when the law serves a compelling government interest.
 - ▶ Regulating the legal profession (*Keller*)
 - ▶ Improving the quality of legal service available to the people of the state (*Keller*)

AND

- ▶ The law must be the least restrictive means to effectively achieve the interest; that is, narrowly tailored.

Do the GR 12.1 Regulatory Objectives identify compelling state interests? And, if so, are we achieving them in the least restrictive means?

SPECTRUM OF WSBA PROGRAMS

REGULATORY

PROFESSIONAL

Program Area	Regulatory Required by Court Rule or Order				Mandatory Required by Court Rule or Order		Permissive		Court Rule or Order							Authorized by	
	Coordinated Discipline	Coordinated Admissions	Coordinated Mandatory Continuing Legal Education	Coordinated Licensing and Membership Records	Other Supreme Court Mandated Boards	Client Protection	Professional Responsibility Program	Member Assistance	Practice Assistance	Diversity	Public Services	Professional Development	Member Engagement	Law Improvement & Government Relations	Continuing Legal Education	Sections	
Authority	RPC, ELC; LLLTRPC, ELLTIC, IPORPC, ELPOC, GR 12	APR 3, 5, 6, 9, 20-25; GR12	APR 11, GR 12	APR 17.	ATJB Order, APR 12, APR 28, GR 25, GR12	APR 15, GR 12, ELC 7.7	APR 19, GR 12	APR 19, GR 12	APR 19, GR12	GR 12	GR 12	GR 12	GR 12	GR 9, GR 12	GR 12	GR12	
Funding	General Fund	General Fund	General Fund	General Fund	General Fund	CP & General Funds	General Fund	General Fund	General Fund	General Fund	General Fund	General Fund	General Fund	General Fund	CLE Fund	General & Sections Fund	
Principal Functions	Intake Investigation Prosecution	Licensing Exam Development and Grading	Compliance Tracking	Licensing & Status Changes	Access to Justice Board	Investigation	Ethics Line	Discipline Diversion	Reference Library	Research	Programs: Moderate Means Call to Duty	Legal Lunchbox	Outreach	Legislation Tracking	21st Century Skills Seminars and Products	Networking	
	Adjudication: Hearing Officers Disciplinary Board Disciplinary Selection Panel	Board of Bar Examiners	Course & Sponsor Accreditation	Maintain Member Records	Limited License Legal Technician Board	Payment of Claims	Committee on Professional Ethics	Judicial Assistance Services Program	CaseMaker (Legal Research Tool)	Legal Community Outreach	Education	Mentorship	NWLawyer and Other Publications	Legislative Committee	Substantive Law Seminars and Products	Leadership Opportunities	
	Diversion	Character and Fitness Reviews	MCLE Board	Pro Hace Vice	Limited Practice Officers Board	Client Protection Fund Board	Ethics Advisory Opinions	Work & Wellness Consultation, Group and Referral Services	Practice Management Discounts	Education	Pro Bono and Public Service Committee	Law School Outreach	Editorial Advisory Committee	Court Rules Committee	Deskbooks	Scholarships & Grants	
	Discipline Advisory Round Table	Character and Fitness Board			Practice of Law Board	Custodianships	Ethics Outreach	WSBAConnects (24/7 Assistance)		Committee for Diversity		Young Lawyers Committee	Awards Committee	Judicial Recommendations Committee	CLE Committee		
	Ethics School	Special Admissions (Motions, Transfers, etc.)					Ethics Seminars and Products			Washington Leadership Institute			Nominations Committee	Council on Public Defense	New Lawyer Education Programs		
		Law Clerk Program and Board					Practice Compliance Services										
		Rule 9 Interns															
	Preadmission and Readmission Courses																
FTE																	
Direct Cost																	
Indirect Cost																	
Total Cost																	
Infrastructure	Board and Office of Executive Director, Office of General Counsel, Finance & Administration, Human Resources, and Communications Functions																



REGULATORY										SPECTRUM				PROFESSIONAL			
Regulatory										Mandatory				Permissive			
Program Area	Continuing Education	Continuing Education	Continuing Education	Continuing Education	Other Training	Coordinated Discipline	Coordinated Admissions	Coordinated Mandatory Continuing Legal Education	Coordinated Licensing and Membership Records	Other	Other	Other					
											RPC, ELC; LLTRPC, ELLTC; LPORPC, ELPOC, GR 12	APR 3, 5, 6, 9, 20-25; GR12	APR 11, GR 12	APR 17.			
											General Fund	General Fund	General Fund	General Fund			
											Intake Investigation Prosecution	Licensing Exam Development and Grading	Compliance Tracking	Licensing & Status Changes			
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