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# Disbarred: A Nationwide Analysis of the Impact of Mandatory Bar Associations on Lawyer Population - Summary\*

## Introduction

The legal profession is one of the most heavily regulated professions in the United States. The time, financial, and intellectual requirements limit the pool of potential lawyers. In addition to onerous education requirements, some states require lawyers to maintain membership in a state bar association, often referred to as a mandatory bar association.

- Mandatory bar associations exist in 30 U.S. states.
- Typically founded as voluntary organizations, but then, after some period of time and often at the request of bar association leadership, were vested with the regulatory power of the state.
- Average annual dues for active members in mandatory states are approximately \$407
- Average annual licensing cost for active lawyers in voluntary states is approximately \$263.
- There is scant evidence that mandatory bar associations have any significant impact on the quality of legal services compared to voluntary states.

## First Amendment Concerns

Many lawyers view the actions of mandatory bar associations as an infringement of their First Amendment rights. Some lawyers have brought legal challenges against mandatory bar associations stating that they violate their rights to free speech and association, protected by the First Amendment. They maintain that required membership in a bar association is constitutionally suspect and should be treated the same way the Court treated compelled payment of union dues in *Janus*.

## Barrier to Entry

Critics also claim that mandatory bar associations act as a monopolistic barrier to entry for aspiring lawyers and drive part-time practitioners out of state.

- Licensing typically forms at the request of practitioners.

- Producer control of licensing can be used to obtain a monopoly at the expense of consumers.
- Once producers have monopolistic control of a profession through licensing, they enact regulations that serve as a barrier to newcomers, insulate them from competition, and keep prices high.
- This leads to a reduction or stagnation in the population of producers in said profession.

Mandatory membership in an organization that charges dues can only serve to exacerbate these problems.

## Statistical Analysis

A statistical analysis was run that indicates mandatory bar associations have a significant negative impact on state lawyer population.

- States with a mandatory bar association will average roughly 15-20 percent fewer lawyers per 10,000 population (between 5 and 6 fewer lawyers per 10,000 population).
- The state of Oklahoma sits very close to the nation-wide average with approximately 34.2 lawyers per 10,000 population.
- Oklahoma could have as many as 40 lawyers per 10,000 were it not for the mandatory bar structure currently in place.

## Conclusion

Higher prices and fewer lawyers reduce access to justice by denying service to those who cannot afford it. Combine this with the legitimate First Amendment issues raised in *Fleck* and *Crowe*, and a serious case can be made for the abolition of all mandatory bar associations.

Two states have eliminated their mandatory bar in the past 10 years – Nebraska in 2013 and California in 2018. The Oklahoma legislature should remove the regulatory power of the Oklahoma Bar Association, thus returning it to voluntary status.