McDonald Lawsuit Update – September 2019

V&E

Timeline of *McDonald* Litigation

• March 6	Plaintiffs filed complaint
• March 25	Plaintiffs filed motion for preliminary injunction and motion for partial summary judgment on liability
• April 25 – July 22	Amicus briefs filed in support of Plaintiffs: • Texas Attorney General Ken Paxton • Goldwater Institute Amicus briefs filed in support of the State Bar: • Texas Legal Ethics Counsel • Former Presidents of the State Bar of Texas, Former Chairs of the Texas Bar College, and Former Chairs of the State Bar of Texas Council of Chairs • Texas Access to Justice Commission • Concerned Lawyers of Color
• May 13	State Bar filed responsive briefs, cross-motion for summary judgment, and motion to dismiss for lack of subject-matter jurisdiction
• May 23	Status conference held; Court scheduled summary-judgment merits hearing for August 1. Plaintiffs agreed to pay their 2019-2020 State Bar dues.
• May 31	Plaintiffs filed responses and replies. Plaintiffs amended the complaint in response to the State Bar's motion to dismiss, and added the Chief Disciplinary Counsel of the State Bar and the members of the State Bar Commission for Lawyer Discipline as defendants to the case
• June 4	Court dismissed without prejudice the State Bar's motion to dismiss
• June 18	State Bar filed reply in support of cross-motion for summary judgment
• July 15	Plaintiffs and Defendants filed a joint stipulation regarding the defendants in the action
• August 1	Summary-judgment merits hearing held; motion for preliminary injunction dismissed
• August 30 & September 4	State Bar filed notice of supplemental authority informing the Court of the Eighth Circuit's favorable decision in *Fleck v. Wetch*, and Plaintiffs filed response

State Bar Arguments on Cross-Motion for Summary Judgment

Count I

The State Bar argues that Plaintiffs' facial challenge to membership in the State Bar is clearly foreclosed by binding Supreme Court precedent in *Keller* and *Lathrop*.

Count II

The State Bar argues that Plaintiffs' challenge to specific State Bar expenditures fails because all of the State Bar's expenditures are consistent with *Keller* as they relate to regulating the legal profession and improving the quality of legal services.

Count III

The State Bar argues that Plaintiffs' challenge to the State Bar's procedures for providing members with a refund for expenditures with which they disagree fails because all of the State Bar's expenditures are germane under *Keller*.

Related Lawsuits Against State Bars

Eighth Circuit *Fleck v. Wetch* (North Dakota Bar)	• **April 2019** – Amicus briefs filed in support of the State Bar of North Dakota: • Chuck Herring for Texas Legal Ethics Counsel; State Bar of California; joint brief of several integrated state bars (Alaska, Michigan, etc.); Missouri Bar • **April 18** – Appellant filed his reply brief • **June 13** – Oral argument held • **August 30** – Eighth Circuit issued decision again affirming the district court's grant of summary judgment for the defendants on remand from the Supreme Court
Oregon *Gruber v. Oregon State Bar* *Crowe v. Oregon State Bar*	• **April 1, 2019** – Magistrate judge issued findings and recommendation. Magistrate judge recommended dismissal of the suits and rejected many of the same claims and legal arguments that the *McDonald* Plaintiffs assert • **May 24** – District court adopted the magistrate judge's findings and dismissed both cases • **May 29-30** – Plaintiffs in both cases filed a notice of appeal to the Ninth Circuit. *Crowe* lawsuit sponsored by Goldwater Institute, the same organization that is sponsoring *Fleck* • **September 4** – Plaintiffs in both cases filed appellate briefs with the Ninth Circuit
Oklahoma *Schell v. Gurich* (Oklahoma Bar)	• **March 26, 2019** – Complaint filed; lawsuit sponsored by Goldwater Institute • **April 24** – Defendant filed motion to dismiss under 12(b)(1) and 12(b)(6) • **May 15** – Plaintiffs amended the complaint to add justices of the Oklahoma Supreme Court and members of the Bar Board of Governors • **May 21** – Judge Friot recused himself and Judge Heaton is now presiding over the case

	• **June 21** – Board of Governors, Executive Director, individual Board of Governors defendant, and OK Supreme Court justices filed separate motions to dismiss
Wisconsin *Jarchow v. State Bar of Wisconsin*	• **April 8, 2019** – Complaint filed • **May 21** – Defendants filed a motion to dismiss under 12(b)(1) and 12(b)(6), and a motion to stay the proceedings pending a resolution in *Fleck v. Wetch* (as an alternative to dismissal) • **May 31** – Court set November 9, 2020 as placeholder trial date, noting both sides predict case will be resolved by motion
Louisiana *Boudreaux v. Louisiana State Bar and the Louisiana Supreme Court*	• **August 1, 2019** – Complaint filed; lawsuit sponsored by Goldwater Institute
Michigan *Taylor v. State Bar of Michigan et al.*	• **August 22, 2019** – Complaint filed against the State Bar of Michigan, and President and other officers of the State Bar of Michigan Board of Commissioners