

No. 20-6044

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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MARK E. SCHELL,

Plaintiff - Appellant.

v.

THE CHIEF JUSTICE AND JUSTICES OF THE OKLAHOMA SUPREME COURT; THE MEMBERS OF THE OKLAHOMA BAR ASSOCIATION'S BOARD OF GOVERNORS; JOHN M. WILLIAMS, Executive Director, Oklahoma Bar Association, all in their official capacities,

Defendants - Appellees.

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**APPELLANT'S APPENDIX**

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Jacob Huebert  
**Scharf-Norton Center for  
Constitutional Litigation at the  
GOLDWATER INSTITUTE**  
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**U.S. District Court**  
**Western District of Oklahoma[LIVE] (Oklahoma City)**  
**CIVIL DOCKET FOR CASE #: 5:19-cv-00281-HE**

Schell v. Williams  
Assigned to: Honorable Joe Heaton  
Case in other court: Tenth Circuit, 20-06044  
Cause: 42:1983 Civil Rights Act

Date Filed: 03/26/2019  
Date Terminated: 03/25/2020  
Jury Demand: None  
Nature of Suit: 950 Constitutional - State Statute  
Jurisdiction: Federal Question

**Plaintiff**

**Mark E Schell**

represented by **Charles S Rogers**  
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*ATTORNEY TO BE NOTICED*

V.

**Defendant****John Morris Williams***Executive Director, Oklahoma Bar Association, and Secretary/Treasurer, Oklahoma Bar Association Board of Governors*represented by **Heather L Hintz**

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**Defendant****Matthew C Beese***Member, Oklahoma Bar Association Board  
of Governors*represented by **Heather L Hintz**

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ATTORNEY TO BE NOTICED

**Michael Burrage**

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ATTORNEY TO BE NOTICED

**Thomas G Wolfe**

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ATTORNEY TO BE NOTICED

**Defendant****Charles W Chesnut***President, Oklahoma Bar Association Board  
of Governors*represented by **Heather L Hintz**

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ATTORNEY TO BE NOTICED

**Michael Burrage**

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ATTORNEY TO BE NOTICED

**Thomas G Wolfe**

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ATTORNEY TO BE NOTICED

**Defendant****Justice Tom Colbert***Associate Justice of the Oklahoma Supreme  
Court*represented by **Heather L Hintz**

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**Thomas G Wolfe**

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**Defendant****Justice Doug Combs**represented by **Heather L Hintz**

*Associate Justice of the Oklahoma Supreme Court*

(See above for address)  
*ATTORNEY TO BE NOTICED*

**Kieran D Maye , Jr**  
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*ATTORNEY TO BE NOTICED*

**Michael Burrage**  
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*ATTORNEY TO BE NOTICED*

**Thomas G Wolfe**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**Justice Richard Darby**  
*Associate Justice of the Oklahoma Supreme Court*

represented by **Heather L Hintz**  
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*ATTORNEY TO BE NOTICED*

**Kieran D Maye , Jr**  
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**Michael Burrage**  
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*ATTORNEY TO BE NOTICED*

**Thomas G Wolfe**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Timothy E DeClerck**  
*Member, Oklahoma Bar Association Board of Governors*

represented by **Heather L Hintz**  
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*ATTORNEY TO BE NOTICED*

**Michael Burrage**  
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*ATTORNEY TO BE NOTICED*

**Thomas G Wolfe**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**Justice James E Edmondson**  
*Associate Justice of the Oklahoma Supreme Court*

represented by **Heather L Hintz**  
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*ATTORNEY TO BE NOTICED*

**Kieran D Maye , Jr**  
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**Michael Burrage**  
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*ATTORNEY TO BE NOTICED*

**Thomas G Wolfe**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**Mark E Fields**  
*Member, Oklahoma Bar Association Board  
of Governors*

represented by **Heather L Hintz**  
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*ATTORNEY TO BE NOTICED*

**Michael Burrage**  
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*ATTORNEY TO BE NOTICED*

**Thomas G Wolfe**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**Chief Justice Noma Gurich**  
*Chief Justice of the Oklahoma Supreme  
Court*

represented by **Heather L Hintz**  
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**Kieran D Maye , Jr**  
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**Michael Burrage**  
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*ATTORNEY TO BE NOTICED*

**Thomas G Wolfe**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**Kimberly Hayes**  
*Past President, Oklahoma Bar Association  
Board of Governors*

represented by **Heather L Hintz**  
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*ATTORNEY TO BE NOTICED*

**Michael Burrage**  
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*ATTORNEY TO BE NOTICED*

**Thomas G Wolfe**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**Brian T Hermanson**  
*Member, Oklahoma Bar Association Board  
of Governors*

represented by **Heather L Hintz**  
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*ATTORNEY TO BE NOTICED*

**Michael Burrage**  
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*ATTORNEY TO BE NOTICED*

**Thomas G Wolfe**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**James R Hicks**  
*Member, Oklahoma Bar Association Board  
of Governors*

represented by **Heather L Hintz**  
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**Michael Burrage**  
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*ATTORNEY TO BE NOTICED*

**Thomas G Wolfe**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**Andrew E. Hutter**  
*Member, Oklahoma Bar Association Board  
of Governors*

represented by **Heather L Hintz**  
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*ATTORNEY TO BE NOTICED*

**Michael Burrage**  
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*ATTORNEY TO BE NOTICED*

**Thomas G Wolfe**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**Jane Doe**  
*Successor to John Reif as Associate Justice  
of the Oklahoma Supreme Court*

represented by **Heather L Hintz**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Michael Burrage**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant**

**John Doe**  
*Successor to Patrick Wyrick as Associate  
Justice of the Oklahoma Supreme Court*

represented by **Heather L Hintz**  
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*ATTORNEY TO BE NOTICED*

**Michael Burrage**

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ATTORNEY TO BE NOTICED

**Defendant****Justice Yvonne Kauger***Associate Justice of the Oklahoma Supreme Court*represented by **Heather L Hintz**

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ATTORNEY TO BE NOTICED

**Kieran D Maye , Jr**

(See above for address)

ATTORNEY TO BE NOTICED

**Michael Burrage**

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ATTORNEY TO BE NOTICED

**Thomas G Wolfe**

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ATTORNEY TO BE NOTICED

**Defendant****David T McKenzie***Member, Oklahoma Bar Association Board of Governors*represented by **Heather L Hintz**

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ATTORNEY TO BE NOTICED

**Michael Burrage**

(See above for address)

ATTORNEY TO BE NOTICED

**Thomas G Wolfe**

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ATTORNEY TO BE NOTICED

**Defendant****Brian K Morton***Member, Oklahoma Bar Association Board of Governors*represented by **Heather L Hintz**

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ATTORNEY TO BE NOTICED

**Michael Burrage**

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ATTORNEY TO BE NOTICED

**Thomas G Wolfe**

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ATTORNEY TO BE NOTICED

**Defendant****Lane R Neal***Vice President, Oklahoma Bar Association Board of Governors*represented by **Heather L Hintz**

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ATTORNEY TO BE NOTICED

**Michael Burrage**

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ATTORNEY TO BE NOTICED

**Thomas G Wolfe**  
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ATTORNEY TO BE NOTICED

**Defendant**

**Brandi N Nowakowski**  
*Member, Oklahoma Bar Association Board  
of Governors*

represented by **Heather L Hintz**  
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**Michael Burrage**  
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ATTORNEY TO BE NOTICED

**Thomas G Wolfe**  
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ATTORNEY TO BE NOTICED

**Defendant**

**Jimmy D Oliver**  
*Member, Oklahoma Bar Association Board  
of Governors*

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ATTORNEY TO BE NOTICED

**Michael Burrage**  
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ATTORNEY TO BE NOTICED

**Thomas G Wolfe**  
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ATTORNEY TO BE NOTICED

**Defendant**

**Miles T Pringle**  
*Member, Oklahoma Bar Association Board  
of Governors*

represented by **Heather L Hintz**  
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ATTORNEY TO BE NOTICED

**Michael Burrage**  
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ATTORNEY TO BE NOTICED

**Thomas G Wolfe**  
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ATTORNEY TO BE NOTICED

**Defendant**

**Susan B Shields**  
*President-Elect, Oklahoma Bar Association  
Board of Governors*

represented by **Heather L Hintz**  
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ATTORNEY TO BE NOTICED

**Michael Burrage**  
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ATTORNEY TO BE NOTICED

**Thomas G Wolfe**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**Bryon J Will**  
*Member, Oklahoma Bar Association Board  
of Governors*

represented by **Heather L Hintz**  
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*ATTORNEY TO BE NOTICED*

**Michael Burrage**  
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*ATTORNEY TO BE NOTICED*

**Thomas G Wolfe**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**D Kenyon Williams, Jr.**  
*Member, Oklahoma Bar Association Board  
of Governors*

represented by **Heather L Hintz**  
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*ATTORNEY TO BE NOTICED*

**Michael Burrage**  
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*ATTORNEY TO BE NOTICED*

**Thomas G Wolfe**  
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*ATTORNEY TO BE NOTICED*

**Defendant**

**Justice James R Winchester**  
*Associate Justice of the Oklahoma Supreme  
Court*

represented by **Heather L Hintz**  
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*ATTORNEY TO BE NOTICED*

**Kieran D Maye , Jr**  
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*ATTORNEY TO BE NOTICED*

**Michael Burrage**  
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*ATTORNEY TO BE NOTICED*

**Thomas G Wolfe**  
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Date Filed	#	Docket Text
03/26/2019	<a href="#">1</a>	COMPLAINT against John Morris Williams filed by Mark E Schell. (Attachments: # <a href="#">1</a> Civil Cover Sheet)(ank) (Additional attachment(s) added on 3/26/2019: # <a href="#">2</a> Exhibit 1 - Oklahoma Bar Association 2019 Proposed Budget) (em). (Entered: 03/26/2019)

03/26/2019		PAYMENT FOR A CIVIL CASE Filing fee \$ 400, receipt number 1087-2889901. (Rogers, Charles) (Entered: 03/26/2019)
03/26/2019	<a href="#">2</a>	Summons Issued Electronically as to John Morris Williams. (em) (Entered: 03/26/2019)
03/26/2019	<a href="#">3</a>	ENTRY of Appearance by Charles S Rogers on behalf of All Plaintiffs (Rogers, Charles) (Entered: 03/26/2019)
03/26/2019	<a href="#">4</a>	MOTION for Leave to Appear Pro Hac Vice Filing fee \$ 50, receipt number 1087-2890401 by Mark E Schell. (Attachments: # <a href="#">1</a> Attachment)(Rogers, Charles) (Entered: 03/26/2019)
03/26/2019	<a href="#">5</a>	MOTION for Leave to Appear Pro Hac Vice Filing fee \$ 50, receipt number 1087-2890585 by All Plaintiffs. (Attachments: # <a href="#">1</a> Attachment)(Rogers, Charles) (Entered: 03/26/2019)
03/26/2019	<a href="#">6</a>	MOTION for Leave to Appear Pro Hac Vice Filing fee \$ 50, receipt number 1087-2890586 by All Plaintiffs. (Attachments: # <a href="#">1</a> Attachment)(Rogers, Charles) (Entered: 03/26/2019)
03/29/2019	<a href="#">7</a>	ORDER granting <a href="#">4</a> Motion to Appear Pro Hac Vice as to Attorney Anthony John Dick. Signed by Honorable Robin J. Cauthron on 03/29/19. (wh) (Entered: 03/29/2019)
03/29/2019	<a href="#">8</a>	ORDER granting <a href="#">5</a> Motion to Appear Pro Hac Vice as to Attorney Jacob Huebert. Signed by Honorable Robin J. Cauthron on 03/29/19. (wh) (Entered: 03/29/2019)
03/29/2019	<a href="#">9</a>	ORDER granting <a href="#">6</a> Motion to Appear Pro Hac Vice as to Attorney Aditya Dynar. Signed by Honorable Robin J. Cauthron on 03/29/19. (wh) (Entered: 03/29/2019)
04/07/2019	<a href="#">10</a>	SUMMONS Returned Executed by Mark E Schell. John Morris Williams served on 4/3/2019. (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Exhibit)(Rogers, Charles) (Entered: 04/07/2019)
04/08/2019	<a href="#">11</a>	ENTRY of Appearance by Anthony J Dick on behalf of All Plaintiffs (Dick, Anthony) (Entered: 04/08/2019)
04/24/2019	<a href="#">12</a>	ENTRY of Appearance by Michael Burrage on behalf of John Morris Williams (Burrage, Michael) (Entered: 04/24/2019)
04/24/2019	<a href="#">13</a>	ENTRY of Appearance by Patricia A Sawyer on behalf of John Morris Williams (Sawyer, Patricia) (Entered: 04/24/2019)
04/24/2019	<a href="#">14</a>	ENTRY of Appearance by Thomas G Wolfe on behalf of John Morris Williams (Wolfe, Thomas) (Entered: 04/24/2019)
04/24/2019	<a href="#">15</a>	ENTRY of Appearance by Heather L Hintz on behalf of John Morris Williams (Hintz, Heather) (Entered: 04/24/2019)
04/24/2019	<a href="#">16</a>	MOTION to Dismiss <i>Complaint Under Rules 12(b)(1) and 12(b)(6) Fed.R.Civ.P., and Brief in Support</i> by John Morris Williams. (Attachments: # <a href="#">1</a> Exhibit 1 - Rules Creating and Controlling the Oklahoma Bar Association, # <a href="#">2</a> Exhibit 2 - Order Approving 2019 OBA Budget, # <a href="#">3</a> Exhibit 3 - Application for Approval of 2019 OBA Budget, # <a href="#">4</a> Exhibit 4 - OBA Webpage, Notice and Objection Procedure to OBA Budgetary Expenditures, # <a href="#">5</a> Exhibit 5 - OBA Due Claim Form)(Burrage, Michael) (Entered: 04/24/2019)
04/25/2019	<a href="#">17</a>	ENTRY of Appearance by Jacob Huebert on behalf of Mark E Schell (Huebert, Jacob) (Entered: 04/25/2019)
04/25/2019	<a href="#">18</a>	ENTRY of Appearance by Aditya Dynar on behalf of Mark E Schell (Dynar, Aditya) (Entered: 04/25/2019)
05/15/2019	<a href="#">19</a>	AMENDED COMPLAINT against All Defendants filed by Mark E Schell.(Huebert,

		Jacob) (Entered: 05/15/2019)
05/15/2019	<a href="#">20</a>	Summons Issued Electronically as to Matthew C Beese, Charles W Chesnut, Tom Colbert, Doug Combs, Richard Darby, Timothy E DeClerck, Jane Doe, John Doe, James E Edmondson, Mark E Fields, Noma Gurich, Kimberly Hayes, Brian T Hermanson, James R Hicks, Andrew E. Hutter, Yvonne Kauger, David T McKenzie, Brian K Morton, Lane R Neal, Brandi N Nowakowski, Jimmy D Oliver, Miles T Pringle, Susan B Shields, Bryon J Will, D Kenyon Williams, Jr, James R Winchester. (em) (Entered: 05/15/2019)
05/17/2019	<a href="#">21</a>	ORDER OF RECUSAL. Signed by Honorable Robin J. Cauthron on 05/17/19. (wh) (Entered: 05/17/2019)
05/17/2019	<a href="#">22</a>	ORDER REASSIGNING CASE. Case reassigned to Honorable Stephen P. Friot for all further proceedings. Honorable Robin J. Cauthron no longer assigned to case. Entered at the direction of Honorable Robin J. Cauthron on 05/17/19. (wh) (Entered: 05/17/2019)
05/21/2019	<a href="#">23</a>	<b>ORDER OF RECUSAL.</b> Honorable Stephen P. Friot recused. Signed by Honorable Stephen P. Friot on 5/21/2019. (llg) (Entered: 05/21/2019)
05/21/2019	<a href="#">24</a>	<b>ENTER ORDER REASSIGNING CASE.</b> Case reassigned to Honorable Joe Heaton for all further proceedings. Entered at the direction of Honorable Stephen P. Friot on 5/21/2019. (llg) (Entered: 05/21/2019)
05/29/2019	<a href="#">25</a>	SUMMONS Returned Executed by Mark E Schell. Matthew C Beese served on 5/20/2019; Charles W Chesnut served on 5/20/2019; Tom Colbert served on 5/20/2019; Doug Combs served on 5/20/2019; Richard Darby served on 5/20/2019; Timothy E DeClerck served on 5/20/2019; James E Edmondson served on 5/20/2019; Mark E Fields served on 5/20/2019; Noma Gurich served on 5/20/2019; Brian T Hermanson served on 5/20/2019; James R Hicks served on 5/21/2019; Andrew E. Hutter served on 5/21/2019; Yvonne Kauger served on 5/20/2019; David T McKenzie served on 5/21/2019; Brian K Morton served on 5/21/2019; Lane R Neal served on 5/20/2019; Brandi N Nowakowski served on 5/20/2019; Jimmy D Oliver served on 5/20/2019; Miles T Pringle served on 5/21/2019; Susan B Shields served on 5/20/2019; Bryon J Will served on 5/20/2019; D Kenyon Williams, Jr served on 5/21/2019; James R Winchester served on 5/20/2019. (Attachments: # <a href="#">1</a> Exhibit 1 - 3)(Huebert, Jacob) (Entered: 05/29/2019)
06/03/2019	<a href="#">26</a>	UNOPPOSED MOTION for Extension of Time <i>File Motion to Dismiss or Otherwise Respond to Amended Complaint</i> by Tom Colbert, Doug Combs, Richard Darby, James E Edmondson, Noma Gurich, Yvonne Kauger, James R Winchester. (Maye, Kieran) (Entered: 06/03/2019)
06/03/2019	<a href="#">27</a>	ENTRY of Appearance by Kieran D Maye, Jr on behalf of Tom Colbert, Doug Combs, Richard Darby, James E Edmondson, Noma Gurich, Yvonne Kauger, James R Winchester (Maye, Kieran) (Entered: 06/03/2019)
06/03/2019	<a href="#">28</a>	ORDER granting <a href="#">26</a> defendants' unopposed motion for extension of deadline...defendants shall file their answers or other responsive pleadings to plaintiff's amended complaint <a href="#">19</a> not later than 06/21/2019. Signed by Honorable Joe Heaton on 06/03/2019. (lam) (Entered: 06/03/2019)
06/07/2019	<a href="#">29</a>	UNOPPOSED MOTION for Extension of Time to File Answer re <a href="#">19</a> Amended Complaint by John Morris Williams. (Wolfe, Thomas) (Entered: 06/07/2019)
06/10/2019	<a href="#">30</a>	ORDER granting <a href="#">29</a> defendant John M. Williams' unopposed motion for extension of deadline...defendant shall file his motion to dismiss or other responsive pleading to plaintiff's amended complaint <a href="#">19</a> not later than 06/21/2019. Signed by Honorable Joe Heaton on 06/10/2019. (lam) (Entered: 06/10/2019)
06/10/2019	<a href="#">31</a>	ENTRY of Appearance by Thomas G Wolfe on behalf of Matthew C Beese, Charles W

		Chesnut, Mark E Fields, Kimberly Hayes, Brian T Hermanson, James R Hicks, Andrew E. Hutter, David T McKenzie, Brian K Morton, Lane R Neal, Brandi N Nowakowski, Jimmy D Oliver, Miles T Pringle, Susan B Shields, Bryon J Will, D Kenyon Williams, Jr (Wolfe, Thomas) (Entered: 06/10/2019)
06/10/2019	<a href="#">32</a>	ENTRY of Appearance by Heather L Hintz on behalf of Matthew C Beese, Charles W Chesnut, Mark E Fields, Kimberly Hayes, Brian T Hermanson, James R Hicks, Andrew E. Hutter, David T McKenzie, Brian K Morton, Lane R Neal, Brandi N Nowakowski, Jimmy D Oliver, Miles T Pringle, Susan B Shields, Bryon J Will, D Kenyon Williams, Jr (Hintz, Heather) (Entered: 06/10/2019)
06/10/2019	<a href="#">33</a>	UNOPPOSED MOTION for Extension of Time to File Answer re <a href="#">19</a> Amended Complaint by Matthew C Beese, Charles W Chesnut, Mark E Fields, Kimberly Hayes, Brian T Hermanson, James R Hicks, Andrew E. Hutter, David T McKenzie, Brian K Morton, Lane R Neal, Brandi N Nowakowski, Jimmy D Oliver, Miles T Pringle, Susan B Shields, Bryon J Will, D Kenyon Williams, Jr. (Wolfe, Thomas) (Entered: 06/10/2019)
06/10/2019	<a href="#">34</a>	ENTRY of Appearance by Thomas G Wolfe on behalf of Timothy E DeClerck (Wolfe, Thomas) (Entered: 06/10/2019)
06/10/2019	<a href="#">35</a>	ENTRY of Appearance by Heather L Hintz on behalf of Timothy E DeClerck (Hintz, Heather) (Entered: 06/10/2019)
06/10/2019	<a href="#">36</a>	UNOPPOSED MOTION for Extension of Time to File Answer re <a href="#">19</a> Amended Complaint by Timothy E DeClerck. (Wolfe, Thomas) (Entered: 06/10/2019)
06/10/2019	<a href="#">37</a>	ORDER granting <a href="#">33</a> and <a href="#">36</a> defendants' unopposed motion for extension of deadline; the referenced defendants shall file their answers or other responsive pleadings to plaintiff's amended complaint <a href="#">19</a> not later than 06/21/2019. Signed by Honorable Joe Heaton on 06/10/2019. (lam) (Entered: 06/10/2019)
06/18/2019	<a href="#">38</a>	MOTION for Leave to Appear Pro Hac Vice <i>Timothy Sandefur</i> Filing fee \$ 50, receipt number 1087-2943229 by All Plaintiffs. (Huebert, Jacob) (Entered: 06/18/2019)
06/18/2019	<a href="#">39</a>	MOTION to Withdraw as Attorney by All Plaintiffs. (Dynar, Aditya) (Entered: 06/18/2019)
06/19/2019	<a href="#">40</a>	ORDER granting <a href="#">39</a> Aditya Dynar, Esq.'s motion for leave to withdraw as counsel for plaintiff...the clerk of court is directed to strike Mr. Dynar's name as counsel of record for plaintiff. Signed by Honorable Joe Heaton on 06/19/2019. (lam) (Entered: 06/19/2019)
06/19/2019	<a href="#">41</a>	ORDER granting <a href="#">38</a> Timothy Sandefur, Esq.'s motion for leave to appear pro hac vice as counsel for plaintiff. Signed by Honorable Joe Heaton on 06/19/2019. (lam) (Entered: 06/19/2019)
06/19/2019	<a href="#">42</a>	ENTRY of Appearance by Timothy Sandefur on behalf of All Plaintiffs (Sandefur, Timothy) (Entered: 06/19/2019)
06/21/2019	<a href="#">43</a>	MOTION to Dismiss <i>Amended Complaint or to Abstain</i> by Tom Colbert, Doug Combs, Richard Darby, James E Edmondson, Noma Gurich, Yvonne Kauger, James R Winchester. (Maye, Kieran) (Entered: 06/21/2019)
06/21/2019	<a href="#">44</a>	ENTRY of Appearance by Michael Burrage on behalf of Matthew C Beese, Charles W Chesnut, Mark E Fields, Kimberly Hayes, Brian T Hermanson, James R Hicks, Andrew E. Hutter, David T McKenzie, Brian K Morton, Lane R Neal, Brandi N Nowakowski, Jimmy D Oliver, Miles T Pringle, Susan B Shields, Bryon J Will, D Kenyon Williams, Jr (Burrage, Michael) (Entered: 06/21/2019)
06/21/2019	<a href="#">45</a>	MOTION to Dismiss for Lack of Jurisdiction by John Morris Williams. (Attachments: # <a href="#">1</a>

		Exhibit 1 - Rules Creating and Controlling the OBA, # <a href="#">2</a> Exhibit 2 - Order Approving 2019 OBA Budget, # <a href="#">3</a> Exhibit 3 - Application for Approval of 2019 OBA Budget, # <a href="#">4</a> Exhibit 4 - OBA Webpage: Notice and Objection Procedure to OBA Budgetary Expenditures, # <a href="#">5</a> Exhibit 5 - OBA Dues Claim Form)(Burrage, Michael) (Entered: 06/21/2019)
06/21/2019	<a href="#">46</a>	MOTION to Dismiss for Lack of Jurisdiction of <i>the First Amended Complaint Under Rules 12(b)(1) and 12(b)(6) and Brief in Support</i> by Matthew C Beese, Charles W Chesnut, Mark E Fields, Kimberly Hayes, Brian T Hermanson, James R Hicks, Andrew E. Hutter, David T McKenzie, Brian K Morton, Lane R Neal, Brandi N Nowakowski, Jimmy D Oliver, Miles T Pringle, Susan B Shields, Bryon J Will, D Kenyon Williams, Jr. (Attachments: # <a href="#">1</a> Exhibit 1 - Rules Creating and Controlling the OBA, # <a href="#">2</a> Exhibit 2 - Order Approving 2019 OBA Budget, # <a href="#">3</a> Exhibit 3 - Application for Approval of 2019 OBA Budget, # <a href="#">4</a> Exhibit 4 - OBA Webpage, Notice and Objection Procedure to OBA Budgetary Expenditures, # <a href="#">5</a> Exhibit 5 - OBA Dues Claim Form)(Burrage, Michael) (Entered: 06/21/2019)
06/21/2019	<a href="#">47</a>	MOTION to Dismiss <i>under Fed.R.Civ.P., Rules 12(b)(1) and 12 (b)(6), and Brief in Support</i> by Timothy E DeClerck. (Hintz, Heather) (Entered: 06/21/2019)
06/28/2019	<a href="#">48</a>	UNOPPOSED MOTION for Extension of Time <i>to Respond to Motions to Dismiss</i> by All Plaintiffs. (Huebert, Jacob) (Entered: 06/28/2019)
07/01/2019	<a href="#">49</a>	ORDER granting <a href="#">48</a> plaintiff's unopposed motion for extension of deadline...plaintiff shall file his response to motions to dismiss <a href="#">45</a> , <a href="#">46</a> and <a href="#">47</a> not later than 07/19/2019. Signed by Honorable Joe Heaton on 07/01/2019. (lam) (Entered: 07/01/2019)
07/19/2019	<a href="#">50</a>	RESPONSE in Opposition re <a href="#">43</a> MOTION to Dismiss <i>Amended Complaint or to Abstain</i> filed by All Plaintiffs. (Huebert, Jacob) (Entered: 07/19/2019)
07/19/2019	<a href="#">51</a>	RESPONSE in Opposition re <a href="#">45</a> MOTION to Dismiss for Lack of Jurisdiction filed by All Plaintiffs. (Huebert, Jacob) (Entered: 07/19/2019)
07/19/2019	<a href="#">52</a>	RESPONSE in Opposition re <a href="#">46</a> MOTION to Dismiss for Lack of Jurisdiction of <i>the First Amended Complaint Under Rules 12(b)(1) and 12(b)(6) and Brief in Support</i> , <a href="#">47</a> MOTION to Dismiss <i>under Fed.R.Civ.P., Rules 12(b)(1) and 12 (b)(6), and Brief in Support</i> filed by All Plaintiffs. (Huebert, Jacob) (Entered: 07/19/2019)
07/22/2019	<a href="#">53</a>	UNOPPOSED MOTION for Extension of Time to File Response/Reply as to <a href="#">50</a> Response in Opposition to Motion, <a href="#">51</a> Response in Opposition to Motion, <a href="#">52</a> Response in Opposition to Motion, by Matthew C Beese, Charles W Chesnut, Tom Colbert, Doug Combs, Richard Darby, Timothy E DeClerck, Jane Doe, John Doe, James E Edmondson, Mark E Fields, Noma Gurich, Kimberly Hayes, Brian T Hermanson, James R Hicks, Andrew E. Hutter, Yvonne Kauger, David T McKenzie, Brian K Morton, Lane R Neal, Brandi N Nowakowski, Jimmy D Oliver, Miles T Pringle, Susan B Shields, Bryon J Will, D Kenyon Williams, Jr, John Morris Williams, James R Winchester. (Burrage, Michael) (Entered: 07/22/2019)
07/23/2019	<a href="#">54</a>	ORDER the joint unopposed motion for extension of deadline <a href="#">53</a> is granted...defendants shall file their reply to plaintiff's responses to defendants' motions to dismiss not later than 08/09/2019. Signed by Honorable Joe Heaton on 07/23/2019. (lam) (Entered: 07/23/2019)
08/09/2019	<a href="#">55</a>	REPLY to Response to Motion re <a href="#">45</a> MOTION to Dismiss for Lack of Jurisdiction filed by John Morris Williams. (Burrage, Michael) (Entered: 08/09/2019)
08/09/2019	<a href="#">56</a>	REPLY to Response to Motion re <a href="#">43</a> MOTION to Dismiss <i>Amended Complaint or to Abstain</i> filed by Tom Colbert, Doug Combs, Richard Darby, James E Edmondson, Noma

		Gurich, Yvonne Kauger, James R Winchester. (Attachments: # <a href="#">1</a> Exhibit)(Maye, Kieran) (Entered: 08/09/2019)
08/09/2019	<a href="#">57</a>	REPLY to Response to Motion re <a href="#">46</a> MOTION to Dismiss for Lack of Jurisdiction <i>of the First Amended Complaint Under Rules 12(b)(1) and 12(b)(6) and Brief in Support</i> filed by Matthew C Beese, Charles W Chesnut, Mark E Fields, Kimberly Hayes, Brian T Hermanson, James R Hicks, Andrew E. Hutter, David T McKenzie, Brian K Morton, Lane R Neal, Brandi N Nowakowski, Jimmy D Oliver, Miles T Pringle, Susan B Shields, Bryon J Will, D Kenyon Williams, Jr. (Burrage, Michael) (Entered: 08/09/2019)
08/09/2019	<a href="#">58</a>	REPLY to Response to Motion re <a href="#">47</a> MOTION to Dismiss <i>under Fed.R.Civ.P., Rules 12(b)(1) and 12(b)(6), and Brief in Support</i> filed by Timothy E DeClerck. (Hintz, Heather) (Entered: 08/09/2019)
09/06/2019	<a href="#">59</a>	NOTICE (other) by Tom Colbert, Doug Combs, Richard Darby, James E Edmondson, Noma Gurich, Yvonne Kauger, James R Winchester re <a href="#">56</a> Reply to Response to Motion, <a href="#">43</a> MOTION to Dismiss <i>Amended Complaint or to Abstain of Supplemental Authority</i> (Attachments: # <a href="#">1</a> Exhibit Fleck v Wetch 8th Cir Opinion)(Maye, Kieran) (Entered: 09/06/2019)
09/09/2019	<a href="#">60</a>	NOTICE (other) by Matthew C Beese, Charles W Chesnut, Mark E Fields, Kimberly Hayes, Brian T Hermanson, James R Hicks, Andrew E. Hutter, David T McKenzie, Brian K Morton, Lane R Neal, Brandi N Nowakowski, Jimmy D Oliver, Miles T Pringle, Susan B Shields, Bryon J Will, D Kenyon Williams, Jr, John Morris Williams re <a href="#">46</a> MOTION to Dismiss for Lack of Jurisdiction <i>of the First Amended Complaint Under Rules 12(b)(1) and 12(b)(6) and Brief in Support</i> , <a href="#">45</a> MOTION to Dismiss for Lack of Jurisdiction <i>Joint Notice of Supplemental Authority</i> (Burrage, Michael) (Entered: 09/09/2019)
09/18/2019	<a href="#">61</a>	ORDER defendants' motions to dismiss <a href="#">43</a> , <a href="#">45</a> , <a href="#">46</a> and <a href="#">47</a> are granted in part and denied in part as set forth in the order...see order for specifics. Signed by Honorable Joe Heaton on 09/18/2019. (lam) (Entered: 09/18/2019)
10/02/2019	<a href="#">62</a>	ANSWER to <a href="#">19</a> Amended Complaint by Tom Colbert, Doug Combs, Richard Darby, James E Edmondson, Noma Gurich, Yvonne Kauger, James R Winchester.(Maye, Kieran) (Entered: 10/02/2019)
10/02/2019	<a href="#">63</a>	ANSWER to <a href="#">19</a> Amended Complaint <i>by Members of the Board of Governors</i> - by Matthew C Beese, Charles W Chesnut, Mark E Fields, Kimberly Hayes, Brian T Hermanson, James R Hicks, Andrew E. Hutter, David T McKenzie, Brian K Morton, Lane R Neal, Brandi N Nowakowski, Jimmy D Oliver, Miles T Pringle, Susan B Shields, Bryon J Will, D Kenyon Williams, Jr.(Burrage, Michael) (Entered: 10/02/2019)
10/02/2019	<a href="#">64</a>	ANSWER to <a href="#">19</a> Amended Complaint by John Morris Williams.(Burrage, Michael) (Entered: 10/02/2019)
10/02/2019	<a href="#">65</a>	ANSWER to <a href="#">19</a> Amended Complaint by Timothy E DeClerck.(Wolfe, Thomas) (Entered: 10/02/2019)
10/24/2019	<a href="#">66</a>	JOINT STATUS REPORT AND DISCOVERY PLAN by Plaintiff Mark E Schell. (Huebert, Jacob) (Entered: 10/24/2019)
10/30/2019	<a href="#">67</a>	CIVIL SCHEDULING CONFERENCE DOCKET: Scheduling Conference set for 11/27/2019 @ 09:40 AM in Chambers before Honorable Joe Heaton. Joint Status Report due by 11/18/2019. (lam) (Entered: 10/30/2019)
10/30/2019	<a href="#">68</a>	UNOPPOSED MOTION to Continue <i>Scheduling Confernece</i> by Tom Colbert, Doug Combs, Richard Darby, James E Edmondson, Noma Gurich, Yvonne Kauger, James R Winchester. (Maye, Kieran) (Entered: 10/30/2019)

10/30/2019	<a href="#">69</a>	ORDER granting <a href="#">68</a> defendants' unopposed motion for continuance...the 11/27/2019 status conference is continued to the court's next available scheduling conference docket. Signed by Honorable Joe Heaton on 10/30/2019. (lam) (Entered: 10/30/2019)
10/30/2019		Per order <a href="#">69</a> the 11/27/2019 status conference is continued to the court's next available status conference docket. (lam) (Entered: 10/30/2019)
12/02/2019	<a href="#">70</a>	CIVIL SCHEDULING DOCKET: Scheduling Conference set for 1/8/2020 @ 09:30 AM in Chambers before Honorable Joe Heaton. Status Report due by 12/30/2019. (nv) (Entered: 12/02/2019)
01/08/2020	<a href="#">71</a>	SCHEDULING ORDER: Motions in limine due 6/15/2020; Statement of cs due 6/15/2020; Proposed Findings of Fact and Conclusions due 6/15/2020; Bench Trial set on the court's 07/2020 trial docket Courtroom 501 before Honorable Joe Heaton. Discovery due by 4/1/2020. Motions due by 4/15/2020. Pretrial Report due by 6/15/2020. Signed by Honorable Joe Heaton on 01/08/2020. (lam) (Entered: 01/08/2020)
02/07/2020	<a href="#">72</a>	NOTICE (other) by Mark E Schell of <i>Automatic Substitution of Official Capacity Defendants</i> (Huebert, Jacob) (Entered: 02/07/2020)
02/20/2020	<a href="#">73</a>	NOTICE of Subpoena by Mark E Schell (Attachments: # <a href="#">1</a> Attachment Subpoena) (Huebert, Jacob) (Entered: 02/20/2020)
02/27/2020	<a href="#">74</a>	MOTION to Quash <i>Plaintiff's Subpoena Duces Tecum [Doc. 73]</i> by Matthew C Beese, Charles W Chesnut, Tom Colbert, Doug Combs, Richard Darby, James E Edmondson, Mark E Fields, Noma Gurich, Kimberly Hayes, Brian T Hermanson, James R Hicks, Andrew E. Hutter, Yvonne Kauger, David T McKenzie, Brian K Morton, Lane R Neal, Brandi N Nowakowski, Jimmy D Oliver, Miles T Pringle, Susan B Shields, Bryon J Will, D Kenyon Williams, Jr, John Morris Williams, James R Winchester. (Wolfe, Thomas) (Entered: 02/27/2020)
03/02/2020	<a href="#">75</a>	<b>STRICKEN</b> RESPONSE in Opposition re <a href="#">74</a> MOTION to Quash <i>Plaintiff's Subpoena Duces Tecum [Doc. 73]</i> filed by Mark E Schell. (Attachments: # <a href="#">1</a> Exhibit Exhibits A - B) (Huebert, Jacob) For failure to comply with ECF Policies & Procedures Manual, Section II.A.4.a (rb). (Entered: 03/02/2020)
03/02/2020	<a href="#">76</a>	Exhibit List / Witness List by Plaintiff Mark E Schell. (Huebert, Jacob) (Entered: 03/02/2020)
03/04/2020	<a href="#">77</a>	RESPONSE in Opposition re <a href="#">74</a> MOTION to Quash <i>Plaintiff's Subpoena Duces Tecum [Doc. 73]</i> filed by Mark E Schell. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2)(Huebert, Jacob) (Entered: 03/04/2020)
03/04/2020	<a href="#">78</a>	ENTRY of Appearance by Gary W Wood on behalf of Clayton C. Taylor (Wood, Gary) (Entered: 03/04/2020)
03/04/2020	<a href="#">79</a>	MOTION to Quash <i>Plaintiff's Subpoena Duces Tecum and Subpoena to Testify at a Deposition</i> by Clayton C. Taylor. (Wood, Gary) (Entered: 03/04/2020)
03/05/2020	<a href="#">80</a>	ORDER striking <a href="#">74</a> and <a href="#">79</a> motions to quash for failure to comply with LCvR37.1...both motions may be re-urged if the required in person conference of counsel does not result in resolution of the matters in dispute. Signed by Honorable Joe Heaton on 03/05/2020. (lam) (Entered: 03/05/2020)
03/13/2020	<a href="#">81</a>	UNOPPOSED MOTION to Dismiss <i>Plaintiff's Third Claim for Relief Pursuant to Federal Rule of Civil Procedure 12(c)</i> by Matthew C Beese, Charles W Chesnut, Tom Colbert, Doug Combs, Richard Darby, Timothy E DeClerck, Jane Doe, John Doe, James E Edmondson, Mark E Fields, Noma Gurich, Kimberly Hayes, Brian T Hermanson, James R Hicks, Andrew E. Hutter, Yvonne Kauger, David T McKenzie, Brian K Morton, Lane R

		Neal, Brandi N Nowakowski, Jimmy D Oliver, Miles T Pringle, Susan B Shields, Bryon J Will, D Kenyon Williams, Jr, John Morris Williams, James R Winchester. (Attachments: # <a href="#">1</a> Exhibit 1 - New Keller Policy)(Hintz, Heather) (Entered: 03/13/2020)
03/25/2020	<a href="#">82</a>	ORDER granting <a href="#">81</a> defendants' unopposed motion to dismiss plaintiff's third claim for relief pursuant to Fed.R.Civ.Pro. 12(c); plaintiff's third claim for relief is dismissed as moot; each party shall bear its own costs and fees related to plaintiff's third cause of action as set out in the unopposed motion. Signed by Honorable Joe Heaton on 03/25/2020. (lam) (Entered: 03/25/2020)
03/25/2020	<a href="#">83</a>	JUDGMENT for the reasons stated in the court's 09/18/2019 order and 03/25/2020 order this case is dismissed. Signed by Honorable Joe Heaton on 03/25/2020. (lam) (Entered: 03/25/2020)
04/02/2020	<a href="#">84</a>	NOTICE OF APPEAL as to <a href="#">82</a> Order on Motion to Dismiss, <a href="#">83</a> Judgment by Mark E Schell. Filing fee \$ 505, receipt number 1087-3130761. (Huebert, Jacob) (Entered: 04/02/2020)
04/02/2020	<a href="#">85</a>	PRELIMINARY RECORD LETTER - Electronic Transmission of Notice of Appeal with Preliminary Record sent to Tenth Circuit Court of Appeals re <a href="#">84</a> Notice of Appeal (Attachments: # <a href="#">1</a> Attachment 1- Preliminary Record)(rb) (Entered: 04/02/2020)
04/02/2020	<a href="#">86</a>	AMENDED NOTICE OF APPEAL as to <a href="#">61</a> Order on Motion to Dismiss, Order on Motion to Dismiss/Lack of Jurisdiction,, <a href="#">83</a> Judgment by Mark E Schell . (Huebert, Jacob) (Entered: 04/02/2020)
04/02/2020	<a href="#">87</a>	AMENDED PRELIMINARY RECORD LETTER - Electronic Transmission of Notice of Appeal with Preliminary Record sent to Tenth Circuit Court of Appeals re <a href="#">86</a> Amended Notice of Appeal (Attachments: # <a href="#">1</a> Attachment 1- Amended Preliminary Record)(rb) (Entered: 04/02/2020)
04/03/2020	<a href="#">88</a>	TRANSCRIPT Order Form by Mark E Schell that transcripts Are not necessary. See order form for dates and proceedings. (Huebert, Jacob) (Entered: 04/03/2020)
04/03/2020	<a href="#">89</a>	Tenth Circuit USCA Case Number 20-6044 for <a href="#">86</a> Amended Notice of Appeal filed by Mark E Schell. Civil case docketed. Preliminary record filed. DATE RECEIVED: 04/02/2020 Docketing statement due 04/16/2020 for Mark E. Schell. Transcript order form due 04/16/2020 for Mark E. Schell. Notice of appearance due on 04/16/2020 for Matthew C. Beese, Charles W Chesnut, Tom Colbert, Doug Combs, Richard Darby, Timothy E. DeClerck, Jane Doe, John Doe, James E. Edmondson, Mark E. Fields, Noma D. Gurich, Kimberly Hayes, Brian T. Hermanson, James R. Hicks, Andrew E. Hutter, Yvonee Kauger, David T. McKenzie, Brian K. Morton, Lane R. Neal, Brandi N. Nowakowski, Jimmy D. Oliver, Miles T. Pringle, Mark E. Schell, Susan B. Shields, Bryon J. Will, D. Kenyon Williams Jr., John Morris Williams and James R. Winchester. (rb) (Entered: 04/06/2020)
04/08/2020	<a href="#">90</a>	TRANSCRIPT LETTER re <a href="#">86</a> Amended Notice of Appeal filed by Mark E Schell. The record is ready for appeal purposes. (rb) (Entered: 04/08/2020)
04/30/2020	<a href="#">91</a>	ORDER of USCA as to <a href="#">86</a> Amended Notice of Appeal filed by Mark E Schell. Order filed by Clerk of the Court clarifying the appellees on appeal and amending the official caption. See order for details. (rb) (Entered: 04/30/2020)

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**App.018**

<b>PACER Login:</b>	GWLegal:3370130:0	<b>Client Code:</b>	Scheff v OSB
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	5:19-cv-00281-HE Start date: 1/1/1971 End date: 5/15/2020
<b>Billable Pages:</b>	21	<b>Cost:</b>	2.10



(17) MARK E. FIELDS, Member, Oklahoma )  
Bar Association Board of Governors; )  
(18) DAVID T. MCKENZIE, Member, )  
Oklahoma Bar Association Board of Governors;) )  
(19) TIMOTHY E. DECLERCK, Member )  
Oklahoma Bar Association Board of Governors;) )  
(20) ANDREW E. HUTTER, Member, )  
Oklahoma Bar Association Board of Governors;) )  
(21) D. KENYON WILLIAMS, JR., Member, )  
Oklahoma Bar Association Board of Governors;) )  
(22) MATTHEW C. BEESE, Member, )  
Oklahoma Bar Association Board of Governors;) )  
(23) JIMMY D. OLIVER, Member, Oklahoma )  
Bar Association Board of Governors; )  
(24) BRYON J. WILL, Member, Oklahoma )  
Bar Association Board of Governors; )  
(25) JAMES R. HICKS, Member, Oklahoma )  
Bar Association Board of Governors; )  
(26) BRIAN K. MORTON, Member, )  
Oklahoma Bar Association Board of Governors;) )  
(27) MILES T. PRINGLE, Member, Oklahoma )  
Bar Association Board of Governors; )  
(28) BRANDI N. NOWAKOWSKI, Member, )  
Oklahoma Bar Association Board of Governors,) )  
all in their official capacities, )  
)  
Defendants. )  
)

**FIRST AMENDED COMPLAINT**

1. This civil rights lawsuit seeks to protect the First and Fourteenth Amendment rights of Oklahoma attorneys who have been forced to join the Oklahoma Bar Association (“OBA”) and to subsidize political and ideological speech by the OBA that they do not wish to support.

2. The State of Oklahoma requires attorneys to join and pay fees to a bar association, the OBA, to be allowed to practice law in the state. Okla. Stat. tit. 5, ch. 1, app. 1, art. 2 § 1; *id.* art. 8, §§ 1-4.

3. Oklahoma's requirement for attorneys to join the OBA violates their First Amendment rights to free speech and association, and is not necessary to regulate the legal profession or improve the quality of legal services in Oklahoma.

4. The collection and use of mandatory bar dues to subsidize political and ideological speech without attorneys' affirmative consent violates their First Amendment right to choose what private speech they will and will not support, and is not necessary to regulate the legal profession or improve the quality of legal services in Oklahoma.

5. Further, even if one assumes mandatory bar membership and dues are not inherently unconstitutional, the OBA fails to provide essential safeguards to ensure that attorneys' dues are not used for activities that are not germane to the OBA's purpose of improving the quality of legal services by regulating the legal profession.

6. This lawsuit therefore asks this Court to declare Oklahoma's bar membership requirement unconstitutional and order Defendants to stop forcing attorneys to subsidize the OBA's speech without their affirmative consent, or, alternatively, to order Defendants to adopt procedures to protect attorneys from being forced to subsidize OBA speech and activities that are not germane to improving the quality of legal services and regulating the legal profession.

### **JURISDICTION AND VENUE**

7. This action is brought under 42 U.S.C. §§ 1983 and 1988.

8. This Court has subject matter jurisdiction over Plaintiff's claims under 28 U.S.C. §§ 1331 and 1343.

9. This Court has authority to grant declaratory and other relief under 28 U.S.C. §§ 2201 and 2202.

10. Venue is appropriate under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiff's claims occurred in this District.

### **PARTIES**

11. Plaintiff Mark E. Schell is a citizen of the United States and resides in Tulsa, Oklahoma. Plaintiff Schell is a duly licensed attorney under the laws of Oklahoma and is a member of the OBA because membership is a mandatory prerequisite to practice law in the State of Oklahoma under Okla. Stat. tit. 5, ch. 1, app. 1, art. 2 § 1.

12. Defendant Noma Gurich is Chief Justice of the Oklahoma Supreme Court. The Oklahoma Supreme Court is responsible for enforcing laws requiring membership and funding of the OBA as a condition of practicing law in the State of Oklahoma. *See* Okla. Stat. tit. 5, ch. 1, app. 1, art. 8 § 2.

13. Defendant Tom Colbert is an Associate Justice of the Oklahoma Supreme Court.

14. Defendant Doug Combs is an Associate Justice of the Oklahoma Supreme Court.

15. Defendant Richard Darby is an Associate Justice of the Oklahoma Supreme Court.

16. Defendant James E. Edmondson is an Associate Justice of the Oklahoma Supreme Court.

17. Defendant Yvonne Kauger is an Associate Justice of the Oklahoma Supreme Court.

18. Defendant James R. Winchester is an Associate Justice of the Oklahoma Supreme Court.

19. Defendant Jane Doe is an individual whose identity is currently unknown, who will imminently succeed the recently retired Hon. John Reif as the Associate Justice of the Oklahoma Supreme Court from the state's first judicial district.

20. Defendant John Doe is an individual whose identity is currently unknown who will imminently succeed the Hon. Patrick Wyrick as the Associate Justice of the Oklahoma Supreme Court from the state's second judicial district.

21. Defendant Charles W. Chesnut is President of the Oklahoma Bar Association Board of Governors ("Board"). The Board has the authority to withdraw and use mandatory Oklahoma Bar Association dues paid by attorneys and to remove attorneys from the OBA's membership rolls for nonpayment of dues.

22. Defendant Susan B. Shields is President-Elect of the Board.

23. Defendant Lane R. Neal is Vice President of the Board.

24. Defendant John M. Williams is the OBA's Executive Director and Secretary/Treasurer of the Board. As the OBA's Executive Director, he is responsible for enforcing the laws requiring membership and funding of the OBA as a condition of

practicing law in the State of Oklahoma. *See* Okla. Stat. tit. 5, ch. 1, app. 1, art. 6, § 4; *id.* art. 8, §§ 2, 4; Okla. Bar Ass'n Bylaws Art. IV, § 4.

25. Defendant Kimberly Hays is Past President and a member of the Board.
26. Defendant Brian T. Hermanson is a member of the Board.
27. Defendant Mark E. Fields is a member of the Board.
28. Defendant David T. McKenzie is a member of the Board.
29. Defendant Timothy E. DeClerck is a member of the Board.
30. Defendant Andrew E. Hutter is a member of the Board.
31. Defendant D. Kenyon Williams, Jr., is a member of the Board.
32. Defendant Matthew C. Beese is a member of the Board.
33. Defendant Jimmy D. Oliver is a member of the Board.
34. Defendant Bryon J. Will is a member of the Board.
35. Defendant James R. Hicks is a member of the Board.
36. Defendant Brian K. Morton is a member of the Board.
37. Defendant Miles T. Pringle is a member of the Board.
38. Defendant Brandi N. Nowakowski is a member of the Board.
39. All Defendants are sued in their official capacities.

## **FACTS**

### **Oklahoma's Mandatory Bar Association Membership and Fees**

40. Oklahoma law compels every attorney licensed in Oklahoma to be a member of the OBA in order to practice law in the state. Okla. Stat. tit. 5, ch. 1, app. 1, art. 2, § 1.

41. Oklahoma law also compels attorneys licensed in Oklahoma to pay annual dues to the OBA. Okla. Stat. tit. 5, ch. 1, app. 1, art. 8, §§ 1-4.

42. If an attorney fails to pay mandatory dues, the Oklahoma Supreme Court shall suspend the attorney's membership, which prohibits the attorney from practicing law in Oklahoma unless reinstated by the court after paying the dues and a penalty. Okla. Stat. tit. 5, ch. 1, app. 1, art. 8 §§ 2, 4.

43. If an attorney does not file an application for reinstatement within one year of suspension for nonpayment of dues, he or she automatically ceases to be a member of the OBA, and the OBA Board of Governors shall cause his or her name to be stricken from the OBA's membership rolls. Okla. Stat. tit. 5, ch. 1, app. 1, art. 8 § 5.

44. As an Oklahoma attorney, Plaintiff Mark E. Schell is compelled to join the OBA and to pay membership dues to OBA as a condition of engaging in his profession.

45. Plaintiff Schell has paid annual dues to the OBA since approximately 1984.

46. As the members of the Oklahoma Supreme Court, Defendants Gurich, Colbert, Combs, Darby, Edmondson, Kauger, Winchester, Jane Doe, and John Doe act under color of state law to enforce laws requiring membership in and funding of the OBA as a condition of practicing law in the State of Oklahoma.

### **OBA's Use of Mandatory Fees for Political and Ideological Speech**

47. As the members of the Board, Defendants Chesnut, Shields, Neal, John M. Williams, Hays, Hermanson, Fields, McKenzie, DeClerck, Hutter, D. Kenyon Williams, Beese, Oliver, Will, Hicks, Morton, Pringle, and Nowakowski withdraw and use mandatory OBA member dues on behalf of the OBA, acting under color of state law.

48. The OBA uses members' mandatory dues to engage in speech, including political and ideological speech.

49. Article VIII, Sections 2 and 3, of the OBA's bylaws authorizes the OBA to create a "Legislative Program" through which the OBA may propose legislation "relating to the administration of justice; to court organization, selection, tenure, salary and other incidents of the judicial office; to rules and laws affecting practice and procedure in the courts and in administrative bodies exercising adjudicatory functions; and to the practice of law."

50. Article VIII, Section 9, of the OBA's bylaws authorizes the OBA to "make recommendations upon any proposal pending before [the] Legislature of the State of Oklahoma or any proposal before the Congress of the United States of America, if such proposal relates to the administration of justice, to court organization, selection, tenure, salary or other incidents of the judicial office; to rules and laws affecting practice and procedure in the courts and in administrative bodies exercising adjudicatory functions; and to the practice of law."

51. Article VIII, Section 4, of the OBA's bylaws provides that the OBA may endorse "[a]ny proposal for the improvement of the law, procedural or substantive . . . in principle," with no restriction on subject matter.

52. Under these provisions of its bylaws, the OBA has advocated for and against both procedural and substantive proposed state legislation.

53. For example, in 2009, the OBA publicly opposed a controversial tort reform bill.

54. In 2014, the OBA created a petition to oppose legislation, SJR 21, that would change the way that members of the Oklahoma Judicial Nomination Commission were selected, sent emails to its membership urging them to oppose the measure, and staged a “rally” at the State Capitol to oppose the measure.

55. The OBA continues to support and oppose state legislation.

56. OBA committees also draft and promote state legislation.

57. The OBA uses mandatory member dues to publish political and ideological speech in its *Oklahoma Bar Journal* publication.

58. For example, the January 2016 *Bar Journal* included an article by the OBA’s then-president criticizing the United States Supreme Court’s decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), for supposedly changing the United States “to ‘a government of the corporations, by the bureaucrats, for the money.’”

59. An article by the OBA’s then-president in the February 2016 *Bar Journal* criticized lawmakers for supposedly attacking “[t]he independence of our judiciary” and criticized “super PACs” for supposedly “threaten[ing] to corrupt the political process” with “virtually unlimited campaign contributions.”

60. An article by the OBA’s then-president in the March 2016 *Bar Journal* criticized Oklahoma’s legislature for not regulating the oil and gas industry to restrict the use of “injection wells” alleged to cause earthquakes.

61. An article by Defendant John M. Williams in the April 2016 *Bar Journal* criticized legislation that would change Oklahoma’s method of judicial selection as one of many alleged legislative “attack[s on] the Oklahoma Bar Association or the courts.”

62. Another article in the April 2016 *Bar Journal* entitled “We Don’t Want to Be Texas” also criticized efforts to change Oklahoma’s method of judicial selection.

63. An article by the OBA’s then-president in the May 2016 *Bar Journal*: (1) criticized the United States Supreme Court’s decisions in *Citizens United*, 558 U.S. 310, and *McCutcheon v. FEC*, 572 U.S. 185 (2014), falsely stating that they “have allowed unlimited campaign contributions by political action committees that do not have to identify contributors”; (2) praised Jane Mayer’s book *Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right* for its exposition of a supposed “takeover of our government by big money from the oil and gas industry”; (3) praised former Vice President Al Gore for “advocating that our environment and climate suffered from a failure of our government to regulate the fossil fuel industry”; and (4) called on OBA members to “take action now” and “stand up for people and stop control of our government by the oil and gas industry.”

64. An article in the May 2016 *Bar Journal* entitled “State Attorney General Argues Against Tribal and State Interests” criticized an amicus brief filed by the State of Oklahoma (together with other states) in *Dollar General Corporation v. Mississippi Band of Choctaw Indians*, 136 S. Ct. 2159 (2016), alleging that the state’s arguments were (among other things) “disingenuous” and the product of “uninformed bias.”

65. An article by the OBA’s then-president in the September 2016 *Bar Journal* again praised Jane Mayer’s *Dark Money* book, describing it as “a snapshot of history of the United States at a time when money controls our government.”

66. The OBA's then-president stated in that same article that he wanted Mayer to speak at the OBA's annual meeting because "[w]e need to hear what she says about dark money and the future of American democracy," including "how corrupt our government has become and how big money is turning our government into a government of the corporations, by the bureaucrats, for the money."

67. Mayer then gave the keynote address on these topics at OBA's Annual Meeting on November 3, 2016, less than one week before the 2016 general election.

68. In the September 2016 *Bar Journal*, an advertisement for Mayer's keynote address quoted Mayer as stating: "I will talk about the way money is becoming a growing factor in judicial races and what the consequences are. . . . I see the money as a real threat to judicial integrity and independence . . . .The courts are very much part of their plan, and they've gone about swaying them by changing the way the law is taught in law schools, paying for judicial junkets in which they push their viewpoint on the judges and by trying to use dark money to win judicial elections."

69. The advertisement then made clear that, with the word "they," Mayer was referring to "wealthy conservative libertarians."

70. An article by the OBA's then-president in the November 2016 *Bar Journal* urged readers to contact legislators to advocate for increased funding of the judicial branch, particularly greater funding to pay bailiffs and court reporters.

71. An article by Defendant John M. Williams in the April 2017 *Bar Journal* criticized legislative proposals to change Oklahoma's method of judicial selection,

suggesting that, if they passed, “big money and special interest groups [would] elect judges and justices and campaign contributions [would] buy court opinions.”

72. An article by the OBA’s then-president in the May 2017 *Bar Journal* stated that attorneys must “warn [the public] of the potential ill effects of reintroducing politics into our judicial selection process.”

73. An article by Defendant John M. Williams in the May 2018 *Bar Journal* criticized “attacks” on Oklahoma’s system of “merit selection” of judges.

74. An article in the November 2018 *Bar Journal* entitled “Tort Litigation for the Rising Prison Population” argued that Oklahoma’s prison system was underfunded and advocated that the state legislature eliminate prisons’ and jails’ exemption from tort liability.

75. An article by Defendant Chesnut in the February 2019 *Bar Journal* criticized claims that lawyers have too much influence in the state legislature and alleges that “having lawyers in the Legislature is a plus.”

76. A “Legislative News” column in the March 2019 *Bar Journal* stated that “MORE LAWYERS ARE NEEDED” as members of the state legislature.

### **OBA’s Dues Refund Procedures**

77. Before submitting its annual budget to the Oklahoma Supreme Court, the OBA publishes a proposed budget in its *Bar Journal*.

78. The OBA’s proposed budget for 2019, a copy of which is attached as Exhibit 1, included a list of categories of expenditures, the amount the OBA budgeted for

each category in 2018, and the amount the OBA proposed to spend for each category in 2019.

79. The OBA's proposed budget does not identify any specific expenditures the OBA has made or proposed to make; it only identifies categories of expenditures.

80. The OBA's proposed budget does not state whether any past or proposed expenditures of member dues were or are germane to the purpose of improving the quality of legal services and regulating the legal profession.

81. The OBA's proposed budget does not provide members with sufficient information to determine whether any past or proposed expenditure of member dues were or are germane to the purpose of improving the quality of legal services and regulating the legal profession.

82. According to a "Notice and Objection Procedure to OBA Budgetary Expenditures" adopted by the Board, "[a] member may object to a proposed or actual expenditure of monies by the OBA as not within the purposes or limitations set out in the [OBA's] Rules or Bylaws, and seek refund of a pro rata portion of his or her dues expended, plus interest, by filing a written objection with the Executive Director."

83. The Notice and Objection Procedure expressly excludes the opportunity to object to actual or proposed expenditures for political, ideological, or other speech that is made within the scope of the OBA's Rules or Bylaws.

84. The Notice and Objection Procedure requires a member to submit a separate "OBA Dues Claim Form" for each budgetary expenditure to which he or she objects, "postmarked not later than Sixty (60) days after the approval of the annual

budget by the Oklahoma Supreme Court or January 31st of each year, whichever shall first occur.”

85. The Notice and Objection Procedure requires the OBA’s Executive Director to review an objection within 21 days, “together with the allocation of dues monies to be spent on the activity or action,” and grants him or her discretion to issue a refund of a pro rata portion of the member’s dues, plus interest.

86. Alternatively, the Executive Director may refer a member objection for hearing before an “OBA Budget Review Panel” consisting of three OBA members selected from the OBA’s Budget Committee by the OBA President Elect.

87. The OBA Budget Review Panel must then conduct a hearing of the member’s objection and provide a written decision within 30 days of that hearing.

88. A member may appeal the Budget Review Panel’s decision for consideration by the Board, whose “decision shall be final.”

89. The Notice and Objection Procedure therefore does not provide an opportunity for a member to have an objection heard by a neutral decision-maker.

### **Plaintiff’s Injury**

90. Plaintiff Mark E. Schell opposes the OBA’s use of any amount of his mandatory dues to fund any amount of political or ideological speech, regardless of its viewpoint, including but not limited to the examples set forth above, but he has been without effective means to prevent it and without effective recourse.

91. Oklahoma's requirement that all attorneys join the OBA injures Plaintiff Mark E. Schell because he does not wish to associate with the OBA or its political and ideological speech. But for the requirement, he would not be a member.

92. Oklahoma's requirement that all attorneys pay dues to the OBA injures Plaintiff Mark E. Schell because he does not wish to fund the OBA's political and ideological speech and other activities. But for the requirement, he would not do so.

93. The OBA's lack of safeguards to ensure that members are not required to pay for political and ideological speech and other activities not germane to regulating the legal profession or improving the quality of legal services injures Plaintiff Mark E. Schell because he does not want to fund such activities in any amount.

**FIRST CLAIM FOR RELIEF**

**Compelled membership in the OBA violates attorneys' First and Fourteenth Amendment rights to free association and free speech.**

94. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth here.

95. The First and Fourteenth Amendment protect not only the freedom of association but also the freedom not to associate.

96. The First and Fourteenth Amendment protect the freedom of speech, which includes the right to avoid subsidizing the speech of other private speakers.

97. By its very nature, a mandatory bar association such as the OBA violates these rights.

98. Mandatory associations, particularly mandatory associations for expressive purposes, are permissible only when they serve a compelling state interest that the

government cannot achieve through other means significantly less restrictive of First Amendment freedoms.

99. The only state interests that a mandatory bar association can plausibly serve are regulating the legal profession and improving the quality of legal services.

100. The state can readily use means significantly less restrictive of First Amendment freedoms to regulate the legal profession and improve the quality of legal services.

101. For example, the State of Oklahoma could regulate the legal profession directly, or through an agency under its jurisdiction, without requiring attorneys to join or pay a bar association, as at least 18 other states do.

102. By failing to utilize means significantly less restrictive of associational freedoms than a mandatory association, Defendant members of the Oklahoma Supreme Court and the OBA maintain and actively enforce a set of laws, practices, procedures, and policies that deprive Plaintiff Mark E. Schell of his rights of free speech and free association in violation of the First and Fourteenth Amendments.

103. This deprivation of constitutional rights is causing Plaintiff Mark E. Schell to suffer irreparable injury for which there is no adequate remedy at law. Unless this deprivation of rights is enjoined by this Court, Plaintiff will continue to suffer irreparable harm.

104. Plaintiff is entitled to declaratory and injunctive relief against Defendants' continued enforcement and maintenance of these unconstitutional laws, practices,

procedures, and policies, and is entitled to an award of attorneys' fees. *See* 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§ 1983, 1988.

### **SECOND CLAIM FOR RELIEF**

**The collection and use of mandatory bar dues to subsidize the OBA's speech—including its political and ideological speech—violates attorneys' First and Fourteenth Amendment rights to free speech and association.**

105. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth here.

106. The OBA collects and uses mandatory bar fees to subsidize its speech, including its political and ideological speech as described above, without attorneys' affirmative consent.

107. The OBA provides no way for attorneys to avoid having their dues used to subsidize its speech, including its political and ideological speech.

108. The state could readily serve its interest in improving the quality of legal services and regulating the legal profession without forcing attorneys to subsidize the OBA's speech, including its political and ideological speech.

109. The state could improve the quality of legal services and regulate the legal profession without requiring attorneys to fund a bar association at all. It could adopt measures to improve the quality of legal services and regulate the legal profession directly, or through an agency under its jurisdiction, as at least 18 other states do.

110. Alternatively, Oklahoma could require that the OBA use mandatory bar dues only for regulatory activities, as Nebraska has done.

111. Because the state could readily serve its interest in improving the quality of legal services in ways significantly less restrictive of free speech and association, the OBA violates the First and Fourteenth Amendments by collecting and using mandatory bar dues to subsidize *any* of its speech.

112. Alternatively, the OBA violates the First and Fourteenth Amendments by collecting and using mandatory bar dues to subsidize its political and ideological speech.

113. At the very least, the OBA violates the First and Fourteenth Amendments by collecting and using mandatory bar dues to subsidize its speech and other activities that are not germane to improving the quality of legal services and regulating the legal profession.

114. Accordingly, to protect members' First Amendment rights, the OBA must create an "opt-in" system for attorneys to subsidize its speech and non-germane activities; it cannot require attorneys to opt out. *See Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018). Unless an attorney provides affirmative consent, his or her dues cannot be used to subsidize the OBA's non-germane activities or its speech, including but not limited to its political and ideological speech.

115. Under existing law, Defendants maintain and enforce a set of laws, practices, procedures, and policies that are not adequate to ensure that mandatory dues will not be used for the impermissible purposes described above without affirmative consent.

116. Accordingly, Defendants are currently maintaining and actively enforcing a set of laws, practices, procedures, and policies that deprive Plaintiff Mark E. Schell of his

rights of free speech and free association in violation of the First and Fourteenth Amendments.

117. This deprivation of constitutional rights is causing Plaintiff Mark E. Schell to suffer irreparable injury for which there is no adequate remedy at law. Unless this deprivation of rights is enjoined by this Court, Plaintiff will continue to suffer irreparable harm.

118. Plaintiff Mark E. Schell is entitled to declaratory and injunctive relief against Defendants' continued enforcement of these unconstitutional laws, practices, procedures, and policies, and is entitled to an award of attorneys' fees. *See* 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§ 1983, 1988.

### **THIRD CLAIM FOR RELIEF**

**The OBA violates attorneys First and Fourteenth Amendment rights by failing to provide safeguards to ensure mandatory dues are not used for impermissible purposes.**

119. The allegations in the preceding paragraphs are incorporated by reference as if fully set forth here.

120. To the extent mandatory bar fees are constitutional at all, the Supreme Court has required bar associations such as the OBA to ensure that such fees are used only for activities germane to improving the quality of legal services and regulating the legal profession. *See Keller v. State Bar of Cal.*, 496 U.S. 1, 14 (1990).

121. To protect the rights of OBA members and ensure mandatory member fees are used only for chargeable expenditures, *Keller* requires the OBA to institute safeguards that provide, at a minimum: (1) notice to members, including an adequate

explanation of the basis for the dues and calculations of all non-chargeable activities, verified by an independent auditor; (2) a reasonably prompt decision by an impartial decision-maker if a member objects to the way his or her mandatory dues are spent; and (3) an escrow for amounts reasonably in dispute while such objections are pending.

*Keller*, 496 U.S. at 14. The OBA does not satisfy any of these requirements.

122. Because the OBA does not provide members with sufficient information to determine whether its expenditures are chargeable, much less employ any independent auditor, it fails to provide an adequate explanation for the basis of member dues as *Keller* requires.

123. The OBA does not provide members who object to its past and proposed expenditure an opportunity to present their objections to an impartial decision-maker as *Keller* requires.

124. The OBA does not require any portion of an objecting member's dues to be placed in escrow as *Keller* requires.

125. Therefore—even assuming mandatory bar membership and fees are constitutional at all—the OBA fails to provide the minimum safeguards required by the First and Fourteenth Amendments before collecting and expending mandatory member dues.

126. For these reasons, Defendants maintain and enforce a set of laws, practices, procedures, and policies that deprive Plaintiff Mark E. Schell of his First and Fourteenth Amendment rights.

127. This deprivation of constitutional rights is causing Plaintiff Mark E. Schell to suffer irreparable injury for which there is no adequate remedy at law. Unless this deprivation of rights is enjoined by this Court, Plaintiff will continue to suffer irreparable harm.

128. Plaintiff Mark E. Schell is entitled to declaratory and injunctive relief against Defendants' continued enforcement and maintenance of these unconstitutional laws, practices, procedures, and policies, and is entitled to an award of attorneys' fees. See 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§ 1983, 1988.

### **REQUEST FOR RELIEF**

Wherefore, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor and:

A. Declare that Defendants violate Plaintiff's rights to freedom of speech and association under the First and Fourteenth Amendments by enforcing Oklahoma statutes that make membership in the OBA and mandatory dues a condition of practicing law in Oklahoma;

B. Declare that Defendants may not require an attorney to pay mandatory dues or fees to subsidize the OBA's speech, including its political and ideological speech or any of its non-germane activities, unless the member has affirmatively consented to having dues or fees used for those purposes, as required by *Janus v. AFSCME*;

C. Permanently enjoin Defendants and all persons in active concert or participation with them from enforcing Okla. Stat. tit. 5, ch. 1, app. 1, art. 2, § 1, which

mandates membership in the OBA, and Okla. Stat. tit. 5, ch. 1, app. 1, art. 8, §§ 1-4, which requires payment of membership fees to the OBA;

D. In the alternative, declare that Plaintiff's rights to freedom of speech and association under the First and Fourteenth Amendments are violated by the OBA's failure to implement the minimum safeguards required by *Keller v. State Bar of California*, and preliminarily and permanently enjoin Defendants from collecting mandatory bar dues until the OBA adopts the minimum safeguards *Keller* requires;

E. Award Plaintiff Mark E. Schell his costs, attorneys' fees, and other expenses as provided by law, including 42 U.S.C. § 1988; and

F. Order such additional relief as may be just and proper.

Dated: May 15, 2019

**MARK E. SCHELL**

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**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

MARK E. SCHELL, )  
 )  
 Plaintiff, )  
 vs. ) NO. CIV-19-0281-HE  
 )  
 NOMA GURICH, Chief Justice of the )  
 Oklahoma Supreme Court, *et al.*, )  
 )  
 Defendants. )

**ORDER**

This case challenges the State of Oklahoma’s requirement that attorneys join and pay dues to the Oklahoma Bar Association (“OBA”) and the OBA’s use of the attorneys’ mandatory dues. Plaintiff asserts claims against the Justices of the Oklahoma Supreme Court (“Defendant Justices”), the OBA’s Executive Director, John M. Williams (“Defendant Williams”), and the members of the OBA’s Board of Governors (“Defendant Board Members”). All defendants have filed motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6).

**Background**

Oklahoma law requires every attorney to join and pay dues to the OBA in order to practice law in Oklahoma. Plaintiff contends the requirement for attorneys to join the OBA and the collection and use of mandatory bar dues to subsidize political and ideological speech without his consent violates his First Amendment rights to free speech and association. He contends the requirements are not necessary to regulate the legal profession or to improve the quality of legal services in Oklahoma. He further contends

that, even if mandatory bar membership and dues are otherwise constitutional, the Oklahoma structure fails to provide constitutionally required safeguards to ensure that an attorneys' dues are not used for activities unrelated to improving the quality of legal services and regulating the legal profession. Through this lawsuit, plaintiff:

asks this Court to declare Oklahoma's bar membership requirement unconstitutional and order Defendants to stop forcing attorneys to subsidize the OBA's speech without their affirmative consent, or, alternatively, to order Defendants to adopt procedures to protect attorneys from being forced to subsidize OBA speech and activities that are not germane to improving the quality of legal services and regulating the legal profession.

First Amended Complaint [Doc. #19] at ¶ 6.

### Discussion

Defendants assert they are immune from suit and should be dismissed from this case. Additionally, they contend compulsory membership in, and payment of dues to, an integrated bar association is constitutional and that the OBA's refund procedures for dues spent on non-germane speech meet constitutional standards.

#### A. Immunity

##### 1. Legislative immunity

A state "[c]ourt and its members are immune from suit when acting in their legislative capacity." Supreme Court of Va. v. Consumers Union of U.S., Inc., 446 U.S. 719, 735 (1980). Defendant Justices correctly assert that when they enact the rules governing the practice of law in Oklahoma, they act in their legislative capacity and therefore are immune from any suit relating to such activities. However, legislative

immunity does not absolutely insulate the Defendant Justices from the declaratory and injunctive relief sought in this case, as they also act in an enforcement capacity. The Supreme Court has concluded that circumstance permits a suit of the sort involved here to go forward notwithstanding legislative immunity. Id. at 737.

2. Eleventh Amendment immunity

Defendants contend the claims against them are also barred by Eleventh Amendment immunity. Under the Eleventh Amendment:

[s]tates may not be sued in federal court unless they consent to it in unequivocal terms or unless Congress, pursuant to a valid exercise of power, unequivocally expresses its intent to abrogate the immunity. This prohibition encompasses suits against state agencies [and] [s]uits against state officials acting in their official capacities. But, [u]nder *Ex Parte Young*[, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908)], a plaintiff may avoid the Eleventh Amendment’s prohibition on suits against states in federal court by seeking to enjoin a state official from enforcing an unconstitutional statute.

Collins v. Daniels, 916 F.3d 1302, 1315 (10th Cir. 2019) (internal quotations and citations omitted).

It appears to be undisputed that all defendants in this case are state officials or are viewed as such for Eleventh Amendment purposes, and that, unless the Ex Parte Young exception applies, they are immune from suit. When determining whether the Ex Parte Young exception applies, a court “need only conduct a straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” Hill v. Kemp, 478 F.3d 1236, 1259 (10th Cir. 2007) (internal quotations and citations omitted). Here, the First Amended Complaint alleges an

ongoing course of conduct which violates the plaintiff's rights and seeks prospective relief through a declaratory judgment or an injunction.

Defendant Williams and the Defendant Board Members make the further argument that they do not come within the Ex Parte Young exception because they are not persons with the power to implement any relief the court may order. The applicable standard is that:

in making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional, it is plain that such officer must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the state, and thereby attempting to make the state a party. . . . Defendants are not required to have a "special connection" to the unconstitutional act or conduct. Rather, state officials must have a particular duty to "enforce" the statute in question and a demonstrated willingness to exercise that duty.

Peterson v. Martinez, 707 F.3d 1197, 1205 (10th Cir. 2013) (internal quotations and citations omitted). "Connection to the enforcement of an act may come by way of another state law, an administrative delegation, or a demonstrated practice of enforcing a provision. But when a state law explicitly empowers one set of officials to enforce its terms, a plaintiff cannot sue a different official absent some evidence that the defendant is connected to the enforcement of the challenged law." Id. at 1207.

It is undisputed that the Defendant Justices, acting together as the Oklahoma Supreme Court,<sup>1</sup> are responsible for enforcing the laws requiring membership in the OBA

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<sup>1</sup> *The Defendant Justices contend the Ex Parte Young exception does not apply because they cannot individually order anything, and can act only as a court collectively. In Verizon Md. Inc. v. Pub. Serv. Comm'n of Md., 535 U.S. 635, 645-46 (2002), the Supreme Court implicitly rejected*

as a condition of practicing law in Oklahoma. *See* Okla. Stat. tit. 5, ch. 1, app. 1, art. 8 §1. Thus, to the extent this case is seeking to enjoin the Defendant Justices' enforcement of the mandatory membership in, and payment of dues to, the OBA, the Ex Parte Young exception to Eleventh Amendment immunity applies. In light of the relief sought here, the Defendant Justices are not immune from suit under the Eleventh Amendment.<sup>2</sup>

With respect to Defendant Williams' and the Defendant Board Members' argument that they lack necessary enforcement power to be proper parties, the court concludes otherwise. While they do not have ultimate authority over membership and dues-handling issues, they have a sufficient connection with the enforcement of the membership and dues requirements to make the Ex Parte Young exception applicable. Under the Rules Creating and Controlling the Oklahoma Bar Association, Defendant Williams is required to notify members who have not paid their mandatory dues and to certify the names of these members to the Oklahoma Supreme Court. *See* Okla. Stat. tit. 5, ch. 1, app. 1, art. 6 § 4.

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*this distinction by allowing the plaintiffs to challenge an order of the Public Service Commission of Maryland by suing its individual members. Further, numerous federal courts have allowed suits against individual supreme court justices to proceed where an injunction against all, or a majority, might be necessary to provide the plaintiff with effective relief. See, e.g., LeClerc v. Webb, 419 F.3d 405, 414 (5th Cir. 2005); Abrahamson v. Neitzel, 120 F. Supp. 3d 905, 919-20 (W.D. Wis. 2015); Nat'l Ass'n for Advancement of Multijurisdictional Practice v. Berch, 973 F. Supp. 2d 1082, 1093-94 (D. Ariz. 2013); Rapp v. Disciplinary Bd. of Haw. Sup. Ct., 916 F. Supp. 1525, 1531 (D. Haw. 1996).*

<sup>2</sup> *The Defendant Justices also contend the Ex Parte Young exception is not applicable because there is no enforcement action pending or threatened against plaintiff. However, the Supreme Court has concluded that a threatened or pending enforcement proceeding is not required. See Supreme Court of Va., 446 U.S. at 737 (“If prosecutors and law enforcement personnel cannot be proceeded against for declaratory relief, putative plaintiffs would have to await the institution of state-court proceedings against them in order to assert their federal constitutional claims. This is not the way the law has developed, and, because of its own inherent and statutory enforcement powers, immunity does not shield the Virginia Court and its chief justice from suit in this case.”).*

Further, the Board of Governors has the authority to remove attorneys who do not pay mandatory dues from the OBA's membership rolls and identifies attorneys who have not paid their annual dues and reports their names to the Oklahoma Supreme Court, which then suspends them from the practice of law. *See* Okla. Stat. tit. 5, ch. 1, app. 1, art. 8 § 2.

Additionally, both Defendant Williams and the Board play important roles in the process the OBA has established for attorneys to object to specific expenditures of their dues, the process that plaintiff challenges in his third claim for relief. A member's objection to an expenditure must be submitted to Defendant Williams, who reviews the objection and has the discretion to either issue a refund to the member or refer the matter to an OBA Budget Review Panel. That panel's decisions may then be appealed to the Board. *See* Notice and Objection Procedure to OBA Budgetary Expenditures. Further, the expenditures to which a member might object are authorized by the Board. *See* Okla. Stat. tit. 5, ch. 1, app. 1, art. 7 § 2.<sup>3</sup>

In any event, the defendants are not immune from suit based on the Eleventh Amendment, in light of the nature of the relief sought by plaintiff and the defendants' potential roles as to any relief that might be ordered.

B. Jurisdiction to Review the Actions of the Oklahoma Supreme Court

The Defendant Justices also assert this court lacks subject matter jurisdiction to review the actions of the Oklahoma Supreme Court. While federal district courts do not

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<sup>3</sup> *For substantially the same reasons as stated in footnote 2 with respect to members of the state supreme court, suits based on Ex Parte Young may be brought against individual members of the Board of Governors even though it acts collectively.*

have jurisdiction to review final judgments of a state court in judicial proceedings, a federal court does have jurisdiction over general attacks on the constitutionality of state bar admission rules. *See* D.C. Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983); Van Sickle v. Holloway, 791 F.2d 1431, 1436 (10th Cir. 1986). Since this case involves a general challenge to Oklahoma’s rules requiring attorneys to join and pay dues to the OBA, and does not involve any review of a final judgment, this court has jurisdiction over it.

C. Abstention

Defendants further assert this court should abstain from interfering in state court matters. However, they have not identified a persuasive basis for doing so. There are no pending state judicial proceedings addressing the questions at issue in this case, as would be necessary for Younger<sup>4</sup> abstention. The challenges to the Oklahoma bar admission rules do not present difficult questions of state law such as might warrant abstention under Burford.<sup>5</sup> And, as various of the cases cited above suggest, disputes of this sort are often addressed in federal court. The court concludes a basis for abstention has not been shown.

D. Failure to state a claim

When considering whether a plaintiff’s claim should be dismissed under Rule 12(b)(6), the court accepts all well-pleaded factual allegations as true and views them in the light most favorable to the plaintiff as the nonmoving party. S.E.C. v. Shields, 744 F.3d 633, 640 (10th Cir. 2014). All that is required is “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2). The complaint

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<sup>4</sup> Younger v. Harris, 401 U.S. 37 (1971).

<sup>5</sup> Burford v. Sun Oil Co., 319 U.S. 315 (1943).

must, though, contain “enough facts to state a claim to relief that is plausible on its face” and “raise a right to relief above the speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 555 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Shields, 744 F.3d at 640 (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)).

The United States Supreme Court has addressed the question of bar membership twice. In Lathrop v. Donohue, 367 U.S. 820 (1961), the Supreme Court held that compulsory membership in, and payment of dues to, a state bar association was constitutional. While there was no majority opinion in Lathrop, a majority of the Justices agreed that mandatory paid membership in the bar did not violate an individual’s freedom of association. In Keller v. State Bar of Calif., 496 U.S. 1, 4 (1990), a unanimous Supreme Court “agree[d] that lawyers admitted to practice in the State may be required to join and pay dues to the State Bar”. The Supreme Court further held:

the compelled association and integrated bar are justified by the State’s interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity. The difficult question, of course, is to define the latter class of activities.

*Id.* at 13-14. In light of the difficulty is determining the boundaries of germane speech, the Supreme Court held that bar associations must put in place “the sort of procedures

described in [*Teachers v.*] *Hudson*[, 475 U.S. 292 (1986)]” for the collection of dues. Id. at 17.

Defendants assert that compulsory membership in, and payment of dues to, an integrated bar association are constitutional under controlling precedent and that the OBA has adopted the required Keller procedures. Defendants therefore contend that plaintiff’s claims should be dismissed for failure to state a claim.

In light of the Supreme Court’s decisions in Lathrop and Keller, plaintiff’s claims directed to compelled membership in the OBA and to the collection and use of mandatory bar dues to fund activities germane to regulating the legal profession and improving legal services fail. To the extent that plaintiff contends the recent case of Janus v. AFSCME, 138 S.Ct. 2448 (2018) requires a different result, the court is unpersuaded. Janus involved the payment of agency fees by non-members of a public employee union. While there are some parallels between Janus and the circumstances here, there are also differences. There is also no suggestion in Janus that either Lathrop or Keller were overruled or otherwise called into question. In such circumstances, the court is obliged to follow the cases which most directly control, and therefore declines to speculate as to whether the Supreme Court might reach some different result if it were to revisit either Lathrop or Keller. See Agostini v. Felton, 521 U.S. 202, 237 (1997); Rodriguez de Quijas v. Shearson/Am. Exp., Inc., 490 U.S. 477, 484 (1989).

Plaintiff’s first and second claims will be dismissed.

The court reaches a different conclusion as to the third claim, which challenges whether appropriate safeguards are in place to meet Keller standards, i.e., whether the

procedures appropriately protect the rights of members who do not wish to subsidize activities beyond those germane to improving legal services and regulating the profession. The complaint alleges that the OBA's proposed budget does not identify planned expenditures with sufficient specificity for members to make a meaningful decision as to whether or how to challenge a proposed expenditure or category of expenditures. It alleges that the OBA's procedures do not permit resolution of a member's objections by an impartial decision maker. It also alleges the OBA does not require any portion of an objecting member's dues to be placed in escrow. *See* First Amended Complaint at ¶¶ 77-89, 122-124. Those allegations potentially support a successful claim under the standards set out in Keller. The motions will be denied as to the third claim.

#### Conclusion

Defendants' motions to dismiss [Doc. Nos. 43, 45, 46, and 47] are **GRANTED in part and DENIED in part** as set forth above.

**IT IS SO ORDERED.**

Dated this 18th day of September, 2019.

  
\_\_\_\_\_  
JOE HEATON  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

MARK E. SCHELL, )  
 )  
 Plaintiff, )  
 )  
 vs. ) NO. CIV-19-0281-HE  
 )  
 NOMA GURICH, Chief Justice of )  
 the Oklahoma Supreme Court, et al., )  
 )  
 Defendants. )

**ORDER**

Defendants' Unopposed Motion to Dismiss Plaintiff's Third Claim for Relief Pursuant to Federal Rule of Civil Procedure 12(c) [Doc. #81] is **GRANTED**. Plaintiff's third claim for relief is **DISMISSED** as moot. Each party shall bear its own costs and fees related to plaintiff's third cause of action, as set out in the unopposed motion.

**IT IS SO ORDERED.**

Dated this 25<sup>th</sup> day of March, 2020.

  
\_\_\_\_\_  
JOE HEATON  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

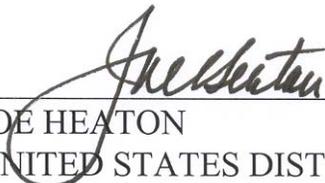
MARK E. SCHELL, )  
 )  
 Plaintiff, )  
 )  
 vs. ) NO. CIV-19-0281-HE  
 )  
 NOMA GURICH, Chief Justice of )  
 the Oklahoma Supreme Court, et al., )  
 )  
 Defendants. )

**JUDGMENT**

For the reasons stated in the court’s September 18, 2019, order and March 25, 2020,  
order, this case is **DISMISSED**.

**IT IS SO ORDERED.**

Dated this 25<sup>th</sup> day of March, 2020.

  
\_\_\_\_\_  
JOE HEATON  
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MARK E. SCHELL, )  
 ) Civil Case No. 5:19-cv-00281-F  
 Plaintiff, )  
 )  
 v. )  
 )  
 NOMA GURICH, Chief Justice of )  
 the Oklahoma Supreme Court, et al. )  
 )  
 Defendants. )  
 )

**AMENDED NOTICE OF APPEAL**

Notice is hereby given that Mark Schell, Plaintiff in the above named case hereby appeals to the United States Court of Appeals for the Tenth Circuit from the September 18, 2019 Order (Doc. 61) and final judgment (Doc. 83) entered in this action on March 25, 2020.

Dated: April 2, 2020

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of April 2020, I filed the attached document with the Clerk of the Court. Based on the records currently on file in this case, the Clerk of the Court will transmit a Notice of Electronic Filing to those registered participants of the Electronic Case Filing System as follows:

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\_\_\_\_\_  
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**RESPECTFULLY SUBMITTED** this 18th day of May 2020 by:

/s/ Anthony J. Dick

Anthony J. Dick

**JONES DAY**

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### **CERTIFICATE OF DIGITAL SUBMISSION**

I hereby certify that with respect to the foregoing:

- (1) all required privacy redactions have been made per 10th Cir. R. 25.5;
- (2) if required to file additional hardcopies, that the ECF submission is an exact copy of those documents;
- (3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, and according to the program are free from viruses.

/s/ Anthony J. Dick

Anthony J. Dick

**JONES DAY**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18th day of May 2020, the foregoing Brief was filed and served on all counsel of record via the ECF system.

/s/ Anthony J. Dick  
Anthony J. Dick  
**JONES DAY**