

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

MARK E. SCHELL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-19-0281-HE
	)	
JANET JOHNSON, et al.,	)	
	)	
Defendants.	)	

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**REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT [DOC. 181]  
BY DEFENDANTS, THE MEMBERS OF THE BOARD OF GOVERNORS  
AND THE EXECUTIVE DIRECTOR OF THE OKLAHOMA BAR  
ASSOCIATION, AND THE CHIEF JUSTICE AND JUSTICES OF THE  
OKLAHOMA SUPREME COURT, NAMED IN THEIR OFFICIAL CAPACITIES**

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Submitted this 3rd day of June, 2025.

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**I. DEFENDANTS’ RESPONSE TO PLAINTIFF’S STATEMENT OF ADDITIONAL MATERIAL FACTS (“RSAF”)**

RSAF 70. Disputed in part. There are exceptions to the dues requirement. *See* Rules Creating and Controlling the OBA, O.S. tit. 5, Ch. 1, App. 1, Art. VIII, § 1 (2024).

RSAF 71. Undisputed.

RSAF 72. Undisputed as to facts, but not material or relevant.

RSAF 73. Undisputed as to facts, but not material and the activity is germane.

RSAF 74. Undisputed.

RSAF 75. Disputed in part. *See* Dep. Tr. J. Williams, Ex. 1, p. 32:2-24.

RSAF 76. Disputed in part. *See* Dep. Tr. C. Taylor, Ex. 2, pp. 31:7-16, 32:5-33:17.

RSAF 77. Disputed in part, but not material or relevant. *Schell v. Chief Just. & Justs. of the Okla. Sup. Ct.*, 11 F.4th 1178, 1193 (10th Cir. 2021) (conduct germane).

RSAF 78. Disputed in part, but not material or relevant. *Id.*

RSAF 79. Not material or relevant. *Id.*

RSAF 80. Disputed in part, but not material or relevant. *Id.*

RSAF 81. Not material or relevant. *Id.* at 1191 (affirming dismissal of dues claim).

RSAF 82. Disputed in part. *Id.* at 1193.

RSAF 83. Disputed in part. *See* Defendants’ Response to Plaintiff’s Motion for Summary Judgment (“Defs. Response”), Defendants’ Statement of Additional Undisputed Material Facts (“SAUF”) [Doc. No. 183], incorporated herein, at 13, ¶¶ 30-31.

RSAF 84. Disputed. There is no foundation that the articles were linked in emails sent to, or received by, all Oklahoma Bar Association (“OBA”) members or even Mr.

Schell. Mr. Schell has no knowledge of Lexology or receiving any Lexology emails. *See id.* at (SAUF ¶¶ 30-31; Dep. Tr. M. Schell, Ex. 3, p. 76:12-77:9. OBA members can block and customize content and must open an email to see content. Ex. 1, p. 124:2-23. Moreover, a recipient can choose to access extensive archived content compiled by Lexology that is not linked in email. *See* LEXOLOGY, [www.lexology.com/about](http://www.lexology.com/about) (last viewed June 3, 2025). OBA does not pay for Lexology. Ex. 1, p. 126:5-9. The articles are not properly before the Court.

## II. ARGUMENT AND AUTHORITIES

### A. Applicable Standard

Although Defendants agree the Court can decide the issue of germaneness as a matter of law, *see Schell*, 11 F.4th at 1193 (determining conduct germane), the Court can easily dismiss Mr. Schell’s effort to brush aside Defendants’ argument as inappropriately factual. *Keller v. State Bar of Calif.*, 496 U.S. 1, 14 (1990) teaches that a mandatory bar’s political or ideological expressive conduct is germane if it is “necessarily or reasonably incurred for” the constitutionally permissible purposes of “regulating the legal profession” or “improving the quality of legal service available to the people of the State.” *Id.* (citation omitted). Obviously, it is necessary to review the facts to properly analyze the challenged conduct’s relationship to the *Keller*-approved goals.

In adopting the “reasonably incurred” standard, *Keller* relied on and incorporated *Lathrop v. Donohue*, 367 U.S. 820 (1961) (plurality opinion). There, Justice Brennan said: “Both in purport and practice the bulk of State Bar activities serve the function, *or at least so Wisconsin might reasonably believe*, of elevating the educational and ethical standards

of the Bar to the end of improving the quality of elevating the educational and ethical standards of the Bar to the end of improving the quality of legal service available to the people of the state....it cannot be denied that this is a legitimate end of state policy.” *Lathrop*, 367 U.S. at 843 (emphasis added). Mr. Schell may not like the “reasonably incurred” standard, but it is the analysis *Keller* prescribes. *Schell*, 11 F.4th at 1190-91.<sup>1</sup>

Mr. Schell concedes that, given the difficulty of defining the categories of “regulating the practice of law” and “improving the quality and availability of legal services,” “the Supreme Court provided state bars some leeway by defining germaneness as a matter of reasonable relation.” Plaintiff’s Response (“Response”) [Doc. No. 182] at 17 (citing *Keller*). This “leeway” is the deference afforded mandatory bars.<sup>2</sup>

B. The Challenged OBJ Articles are Germane or Otherwise Constitutional.

First, assertions to the contrary, *Keller* requires Defendants to offer their analysis of why the challenged OBJ activity is germane—reasonably related to one or both of the identified categories of germane activity. *Keller*, 496 U.S. at 13-14. *See also Kingstad v. State Bar of Wis.*, 622 F.3d 708, 718-19 (7th Cir. 2010) (accepting Wisconsin Bar’s explanation of its “belie[f]” as to germaneness). All courts employ the analysis of examining the content of an article and determining whether it reasonably relates to either

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<sup>1</sup> See argument and authorities at Defs. Response [Doc. No. 183] at 18-20.

<sup>2</sup> Mr. Schell’s reliance on *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 796-97 (1988) and *Charles v. City of L.A.*, 697 F.3d 1146, 1157 (9th Cir. 2012) to support his “no deference” argument is puzzling. Response [Doc. No. 182] at 17. *Riley* concerns the standard applicable to *content-based state regulation* of protected speech. *Id.* at 796. *Charles* concerned the constitutionality of *regulatory burdens on commercial speech*. 697 F.3d at 1156-57. To the extent these opinions use the word ‘defer,’ they do not mean “leeway” in the *Keller* sense.

of the constitutionally permissible goals. Second, Defendants do not suggest the Court adopt an ‘effectively limitless’ limiting principle that ties germaneness to whether something is generally “of interest” to lawyers. Rather, the challenged OBJ articles are germane because they educate lawyers in practice areas and are accordingly “necessarily or reasonably related” to “improving the quality of legal service to the public.”<sup>3</sup> *Keller*, 496 U.S. at 13-14; *see also McDonald v. Longley*, 4 F.4th 229, 251-52 (5th Cir. 2021) (CLE and bar journal articles are germane as they assist lawyers in maintaining competency).

Next, Mr. Schell misses the mark when he argues that showing challenged conduct aids attorneys in meeting their ethical obligations reflected in the Oklahoma Supreme Court’s (“OSC”) Rules for Professional Conduct (“ORPC”) is impermissible, circular *ipse dixit*. In fact, whether challenged OBA conduct helps attorneys meet their ethical obligations is a measure of germaneness. *See McDonald*, 4 F.4th at 250 (Texas Bar’s “legal aid and *pro bono* efforts [are germane because they] help lawyers to fulfill their ethical responsibility to provide public interest legal service.”) (internal quotation, bracket and

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<sup>3</sup> As the Tenth Circuit noted, Mr. Schell’s legal arguments are largely aspirational—he seeks to apply the exacting scrutiny analysis of *Janus v. AFSCME*, 585 U.S. 878 (2018) to his claim rather than the *Keller* germaneness standard. *Schell*, 11 F.4th at 1182, 1190-91 (refusing to apply exacting scrutiny). In that same vein, Mr. Schell’s Second Amended Complaint (“SAC”) and the Response frequently cite only to the “regulating the legal profession” element of *Keller*’s twin approved goals, ignoring the co-equal element of “improving the quality of legal service available to the people of the State.” *Keller*, 496 U.S. at 13-14. This desire to restate settled, governing law to restrict mandatory bars to a purely regulatory function can be traced back to the SAC—Mr. Schell avers in his compelled membership claim that “[t]he only interests that mandatory bar association can plausibly serve are regulating the licensing and disciplining of lawyers to improve the quality of legal services.” SAC [Doc. 116] at ¶ 117 (emphasis added). As Defendants have repeatedly shown, *Keller* recognizes **disjunctive** constitutional goals.

footnote omitted), and at 252 (“Bar’s annual convention and CLE offerings help regulate the legal profession and improve the quality of legal services. Both programs assist attorneys in fulfilling requirements designed to ensure that they maintain the requisite knowledge to be competent practitioners.”) (citations omitted). Even in the Fifth Circuit’s view, if the OSC has established ethical rules with which attorneys are bound to comply, OBA activity that will help lawyers fulfill their ethical responsibilities is germane. *Id.*

The highest Oklahoma court adopted the rules, not the OBA. Defendants’ Motion [Doc. No. 181] (“Defs. Motion”) at 30. Tellingly, Mr. Schell has not challenged the constitutionality or intent of the OSC’s adoption of the MCLE or ORPC. Though the MCLE and ORPC are not “agency rules” entitled to *Chevron*-type deference,<sup>4</sup> comparing them to the OBA’s activities demonstrates that the OBA is not acting in isolation.

It is true that simply because an OSC-promulgated rule allows speech of a certain category, that speech is not automatically germane. For example, if an OSC rule required all OBA members to pay dues to the National Rifle Association as a condition of licensure, OBA conduct relying on that rule would not likely be germane. Defendants are not permitted to substitute their own judgment for application of the constitutional rule. However, the OSC-promulgated Minimum Continuing Legal Education (“MCLE”) and ORPC rules are relevant to determine the reasonableness of a conduct’s relationship to constitutional goals. Defs. Motion [Doc. No. 181] at 30.

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<sup>4</sup> Regardless, *Chevron* deference to agency interpretation of federal statutes based on their ambiguity no longer exists. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)).

### C. The Oklahoma Bar Journal (“OBJ”) Disclaimers

A First Amendment freedom of association claimant must show “a reasonable observer would impute some meaning to membership in the organization and the plaintiff objects to that meaning.” *Crowe v. Oregon St. Bar*, 112 F.4th 1218, 1234 (9th Cir. 2024) (petition for cert. pending, No. 24-1025) (filed Mar. 21, 2025); *see also Morrow v. State Bar of Calif.*, 188 F.3d 1174, 1177 (9th Cir. 1999).<sup>5</sup> *See also Lathrop*, 376 U.S. at 859 (“Surely the Wisconsin Supreme Court is right when it says that petitioner can be expected to realize that ‘everyone understands or should understand’ that the views expressed are those of the State Bar as an entity separate and distinct from such individual.”) ( Harlan, J., concurring) (citation omitted).

Whether a reasonable observer would associate information with a bar member depends on its context. *Crowe*, 112 F.4th at 1236. Not mere boilerplate, the OBJ disclaimers establish that, by placing the OBJ articles in context, Mr. Schell cannot claim a constitutional injury. The OBJ content is not the OBA’s expressive activity.

Attempting to nullify the OBA’s OBJ disclaimers, Mr. Schell misstates that “[t]he central issue in this case is whether OBA can force Plaintiff *to pay for* the publication of matter—whether authored by the bar or someone else—that is not germane....” Response [Doc. No. 182] at 17 (emphasis added). The Tenth Circuit affirmed this Court’s dismissal of Mr. Schell’s dues challenge. *Schell*, 11 F.4th at 1191. This Court dismissed as moot Mr.

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<sup>5</sup> Being a “member” of the OBA in this context means that Mr. Schell is licensed to practice law in Oklahoma; it does not serve to identify him with collectively-held opinions such as would membership in a political party or special interest group. *Crowe*, 112 F.4th at 1236.

Schell’s former challenge to the OBA’s *Keller* policy. *Id.* at 1186.<sup>6</sup> It is beyond dispute that Mr. Schell can be forced to pay for publication of germane content with which he disagrees.

Mr. Schell’s reliance on *Wooley v. Maynard*, 430 U.S. 705 (1977) to challenge the disclaimers is misplaced. Unlike the plaintiff in *Wooley*, Mr. Schell does not contend he is prevented from expressing his own views or required to publicly espouse an eschewed belief when others read the OBJ. *See Crowe*, 112 F.4th at 1240 n.12. (“If the state compels a speaker to actually speak (or otherwise disseminate the state’s message), the state cannot avoid a First Amendment problem simply by providing a disclaimer that says the speech is compelled.”) (citation omitted). Mr. Schell’s reliance on *Circle School v. Pappert*, 381 F.3d 172, 182 (3rd Cir. 2004) is flawed for the same reason. Response [Doc. No. 182] at 20. The law at issue there forced private schools to require students to recite a national pledge or anthem. The schools, required to notify dissenters’ parents, were determined to be the injured expressive associations. That the schools could issue disclaimers did not remedy the injury—being “compelled to speak the Commonwealth’s message.” 381 F.3d at 182. Here, in contrast, the disclaimer advises readers that the speech is not the OBA’s. Mr. Schell is never compelled to speak or publicly espouse any message.

*United States v. United Foods, Inc.*, 533 U.S. 405, 414 (2001) and *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457 (1997) likewise do not support the proposition

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<sup>6</sup> While conceptually a dues requirement could be a component of association, even if the OSC did not require dues, Mr. Schell separately objects to the requirement that he “join” the OBA. SAC [Doc No. 116] at 21, ¶119. Further, the unchallenged *Keller* policy dues refund mechanism functionally eliminates the argument that he is “subsidizing” another’s speech. *See Pomeroy v. Utah State Bar*, No. 2:21-CV-00219-TC-JCB, 2024 WL 1810229, at \*6 (D. Utah Apr. 25, 2024) (appeal pending, No. 24-4054) (citations omitted).



for which Mr. Schell cites them—“that the ‘impression of endorsement theory’ lacks relevance in the *associational* rights context.” Neither case addresses whether an observer would presume all members of the association hold the association’s views. Rather, in both cases, the Court addressed compelled assessments similar to compelled dues in the mandatory bar context. Applying *Keller*, the *Glickman* Court affirmed the constitutionality of compelled assessments imposed on an “association” of fruit growers. The growers were akin to a mandatory bar because federal regulations comprehensively restricted the group’s “marketing autonomy.” *United Foods, Inc.*, 533 U.S. at 406. Thus, fruit growers could be compelled to fund essentially germane activities such as generic advertising. *Id.* The regulation-required assessments did not constitute compelled speech because the assessments did “not require respondents to repeat an objectionable message out of their own mouths.” *Glickman*, 521 U.S. at 470. Conversely, the compelled assessments in *United Foods, Inc.* failed constitutional scrutiny because “the expression respondent is required to support is not germane to an association’s purpose independent from the speech itself.” 533 U.S. at 406.

Finally, Mr. Schell relies on *McDonald* to support his argument that disclaimers can never function to separate a licensed member from the bar’s speech as all bars “undertake expressive messaging.” Response [Doc. No. 182] at 20-21. Yet *McDonald* held the disclaimer *did* function to prevent a freedom of association violation. 4 F.4th at 252 (“the Journal purports to feature articles advancing various viewpoints, and, in any event, includes a disclaimer clarifying that the Bar does not endorse any views expressed therein. That structure suffices under *Keller*.”).

Defendants will not subject the Court to further granular analysis of the word choice in each challenged OBJ article. As noted, they all seek to instruct or provide updates on the law and are therefore germane to both constitutional purposes of regulating the profession and improving the quality of legal service to the public. *See* Defs. Resp. [Doc. No. 183] at 22-29, Again, the *McDonald* court recognized this implicitly, particularly when paired with a disclaimer. *Id.*

D. Incidental *de minimis* conduct has been recognized since *Lathrop*

*Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 567 (2001) is inapposite as it concerns regulations that restricted speech; it is not an association case. *Id.* *Lathrop* and *Schell* both contemplate that incidental non-germane conduct might not burden associational rights. *Lathrop*, 367 U.S. at 843; *Schell*, 11 F.4th at 1195 n.11.

E. The Lexology Content is not properly before the Court and is not OBA Expression

Mr. Schell testified that he had no knowledge of Lexology and did not recall having received a Lexology email. Ex. 3, p. 76:12-77:9. He lacks standing to bring a Lexology-related associational challenge. *Doyle v. Okla. Bar Ass’n*, 998 F.2d 1559, 1567 (10th Cir. 1993) (citations omitted) (one does not have standing to assert violation of rights belonging to another; standing requires direct injury). Further, there is no foundation to support the origin or alleged dissemination of the Lexology content attached to Plaintiff’s dispositive Motion—the articles were neither identified in the SAC nor shown to be linked in a Lexology email. (RSAF ¶¶ 83-84); Defs. Resp. [Doc.183] at 29-30. *Cf.* SAC [Doc. No. 116] at ¶ 91 with Plaintiff’s Motion (“Pltfs. Motion”) [Doc. Nos. 178 & 178-25-30]. The content could just as easily have been located in, and printed from, Lexology’s website.

(RSAF ¶¶ 83, 84). *See Pomeroy*, 2024 WL 1810229, at \*3 (allegations raised in dispositive motion filed two years after complaint were unduly delayed). The Response addresses one additional Lexology article identified in the SAC [Doc. No. 116] at 16, ¶ 91, but Mr. Schell's Motion does not address it and he has brought forth no foundation to show it was anything other than customized content selected by its recipient (who was not Mr. Schell). *See* Pltfs. Motion [Doc. No. 178], Response [Doc. No. 182] at 30; (RSAF ¶ 84).

F. Any CLE Challenge has been Abandoned but CLE is Germane

Plaintiff has apparently abandoned any challenge to continuing legal education ("CLE") programs. He failed to expand the "information and belief" based CLE references in the SAC, [Doc. No. 116] at ¶¶ 92-94; could not identify and testified he "probably did not take [those] courses," Ex. 3, p. 75:23-76:11, did not address any CLE programming in his Motion, *see* [Doc. No. 178], and he has advised the Court all CLE related undisputed facts in Defs. Motion are irrelevant. Response [Doc. No. 182] at 10-11, ¶¶ 50-62. Regardless, CLE offerings are germane. *McDonald*, 4 F.4th at 251-52.

G. Advocacy Concerning the Judicial Nominating Commission ("JNC") is Germane

The Tenth Circuit determined that JNC related advocacy related is germane. *Schell*, 11 F.4th at 1193. *See* Order [Doc. No. 132] at 4 ( "judicial selection procedures....no doubt involve contentious political issues but, as the Court of Appeals noted, they involve the structure of the court system" and are germane).

WHEREFORE, Defendants respectfully request that judgment be granted in their favor as a matter of law on all Plaintiff's claims, and that Plaintiff's dispositive motion be denied in all respects.

Respectfully submitted,

/s/Heather L. Hintz

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# EXHIBIT 1

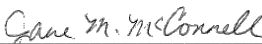
<p>Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE WESTERN DISTRICT OF OKLAHOMA</p> <p>3 MARK E. SCHELL,</p> <p>4 Plaintiff,</p> <p>5 vs. No. 5:19-CV-00281-HE</p> <p>6 JANET JOHNSON, et al.,</p> <p>7 Defendants.</p> <p>8</p> <p>9 *****</p> <p>10 DEPOSITION OF JOHN WILLIAMS</p> <p>11 30(b)(6)</p> <p>12 TAKEN ON BEHALF OF THE PLAINTIFF</p> <p>13 ON NOVEMBER 25, 2024, BEGINNING AT 10:00 A.M.</p> <p>14 IN OKLAHOMA CITY, OKLAHOMA</p> <p>15 *****</p> <p>16</p> <p>17 APPEARANCES</p> <p>18 On behalf of the PLAINTIFF:</p> <p>19 Scott Day Freeman</p> <p>20 GOLDWATER INSTITUTE</p> <p>21 500 East Coronado Road</p> <p>22 Phoenix, Arizona 85004</p> <p>23 (602) 462-5000</p> <p>24 sfreeman@goldwaterinstitute.org</p> <p>25</p> <p>26 (Appearances continued on next page.)</p> <p>27 REPORTED BY: Jane McConnell, CSR RPR CMR CRR</p>	<p>Page 3</p> <p>1 INDEX</p> <p>2 Page</p> <p>3 Direct Examination by Mr. Freeman 7</p> <p>4</p> <p>5 EXHIBITS</p> <p>6 Exhibit Description</p> <p>7 1 Amended Notice of Rule 30(b)(6) Deposition 9</p> <p>8 2 3-22-22 Letter from Miles Pringle to Senator Roger Thompson (OBA 896) 43</p> <p>9 3 2-5-18 OBA Board of Governors Update (OBA 720-722) 44</p> <p>10 4 Email String Re: Bill Text for SB 1207 - Introduced (OBA 717-719) 49</p> <p>11 5 OBA 2020 Proposed Budget (OBA 548-550) 0</p> <p>12 6 OBA 2019 Proposed Budget (OBA 454-456) 0</p> <p>13 7 OBA 2018 Proposed Budget (OBA 385-387) 0</p> <p>14 8 Title Examination Standards (OBA 552-557) 2</p> <p>15 9 9-18-23 Letter from Smith Carney (OBA 658-660) 54</p> <p>16 10 PowerPoint (OBA 1036-1039) 58</p> <p>17 11 Email String Re: SB 951 - Agencies and Private Attorney Contracts (OBA 1045, 1046) 66</p> <p>18 12 Email String Re: Take a Look Please (OBA 1102-1104) 67</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 (Exhibits continued on next page.)</p>
<p>Page 2</p> <p>1 APPEARANCES (Continued)</p> <p>2 On behalf of the DEFENDANTS MEMBERS OF THE BOARD OF GOVERNORS AND THE EXECUTIVE DIRECTOR OF THE OKLAHOMA BAR ASSOCIATION, IN THEIR OFFICIAL CAPACITIES:</p> <p>3</p> <p>4 Heather L. Hintz</p> <p>5 PHILLIPS MURRAH</p> <p>6 424 N.W. 10th, Suite 300</p> <p>7 Oklahoma City, Oklahoma 73103</p> <p>8 (405) 235-4100</p> <p>9 hlhintz@phillipsmurrah.com</p> <p>10</p> <p>11 - and -</p> <p>12 Michael Burrage</p> <p>13 WHITTEN BURRAGE</p> <p>14 512 N. Broadway</p> <p>15 Oklahoma City, Oklahoma 73012</p> <p>16 (405) 516-7800</p> <p>17 mburrage@whittenburrage.com</p> <p>18</p> <p>19 On behalf of the DEFENDANTS CHIEF JUSTICE AND JUSTICES OF THE OKLAHOMA SUPREME COURT:</p> <p>20</p> <p>21 Kieran D. Maye, Jr.</p> <p>22 MAYE LAW FIRM</p> <p>23 3501 French Park Drive</p> <p>24 Suite A</p> <p>25 Edmond, Oklahoma 73034</p> <p>26 (405) 990-2415</p> <p>27 kdmaye@mayelawfirm.com</p>	<p>Page 4</p> <p>1 EXHIBITS (Continued)</p> <p>2 Exhibit Description Page</p> <p>3 13 Email String Re: Susan's Suggested Changes (OBA 1095-1097) 68</p> <p>4 14 Addendum to December 1, 2014 Consulting Agreement Re: Taylor Capitol Group (OBA 1119-1121) 74</p> <p>5 15 Statute (OBA 952-960) 76</p> <p>6 16 Email String Re: Expect the Unexpected (OBA 934-948) (OBA 940 &amp; 941 removed from exhibit) 78</p> <p>7 17 Email String Re: Day at Capitol (OBA 897-898) 83</p> <p>8 18 Email String Re: However (OBA 983-989) 84</p> <p>9 19 Test Messages (OBA 962-971) 86</p> <p>10 20 Resolution Number One (OBA 1041-1044) 88</p> <p>11 21 Document Titled "Please Vote No" (OBA 1040) 89</p> <p>12 22 Document Titled (Please Vote No on HJR 1037 (OBA 949-951) 90</p> <p>13 23 Article by Renee DeMoss (OBA 975-982)</p> <p>14 24 Text Messages (OBA 1126-1134) 98</p> <p>15 25 OBA Policies and Procedures for the Website (No Bates Stamps) 103</p> <p>16 26 OBA Social Media Policy (No Bates Stamps) 4</p> <p>17 27 Email String Re: Cover Needs to be Changed as Well (OBA 747, 748) 118</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 (Exhibits continued on next page.)</p>

<p style="text-align: right;">Page 29</p> <p>1 MS. HINTZ: Same objection.</p> <p>2 <b>Q (BY MR. FREEMAN) Does the Oklahoma Bar</b></p> <p>3 <b>Association have subgroups or committees?</b></p> <p>4 A Yes.</p> <p>5 <b>Q And one of them is a legislative</b></p> <p>6 <b>committee; is that correct?</b></p> <p>7 A No.</p> <p>8 <b>Q Any subgroups or committees that concern</b></p> <p>9 <b>legislation?</b></p> <p>10 A The legislative monitoring committee.</p> <p>11 <b>Q Do you know what the legislative</b></p> <p>12 <b>monitoring committee does?</b></p> <p>13 A Yes.</p> <p>14 <b>Q What does it do?</b></p> <p>15 A It monitors legislation.</p> <p>16 <b>Q For what purpose?</b></p> <p>17 A To keep the members apprised of any</p> <p>18 potential changes in the law that might affect</p> <p>19 their practice.</p> <p>20 <b>Q So it could be -- it's not any</b></p> <p>21 <b>particularized area of the law. It's any change of</b></p> <p>22 <b>the law that could affect the practice of members?</b></p> <p>23 A Yes.</p> <p>24 <b>Q How does it convey that information to</b></p> <p>25 <b>members?</b></p>	<p style="text-align: right;">Page 31</p> <p>1 <b>of litigation or legislation? I'm sorry.</b></p> <p>2 A Well, since I don't believe anybody has</p> <p>3 ever taken advantage of it, I can't answer that</p> <p>4 question.</p> <p>5 <b>Q Okay. But I think you did mention that</b></p> <p>6 <b>was something, other than monitoring, that a</b></p> <p>7 <b>legislative monitoring committee has done.</b></p> <p>8 A Yes. I'm sorry. It's the offer. I don't</p> <p>9 know that they -- I don't believe they've ever done</p> <p>10 that.</p> <p>11 <b>Q That's what I understood you to say.</b></p> <p>12 <b>Right.</b></p> <p>13 <b>Has the legislative monitoring committee</b></p> <p>14 <b>done anything else aside from the two subjects we</b></p> <p>15 <b>just talked about?</b></p> <p>16 A They have some -- they have two life</p> <p>17 programs.</p> <p>18 <b>Q Has it proposed amendments to bills</b></p> <p>19 <b>pending in the legislature?</b></p> <p>20 A No.</p> <p>21 <b>Q Has it signaled the Bar's support or</b></p> <p>22 <b>opposition to a bill pending in the legislature?</b></p> <p>23 A No.</p> <p>24 <b>Q Does the Oklahoma Bar Association have a</b></p> <p>25 <b>retained lobbyist?</b></p>
<p style="text-align: right;">Page 30</p> <p>1 A There are two programs that are put on,</p> <p>2 and during the course of the session there are</p> <p>3 particular bills or resolutions that may be</p> <p>4 publicized either through the website or one of the</p> <p>5 publications.</p> <p>6 <b>Q And the legislative monitoring committee's</b></p> <p>7 <b>role is simply to monitor; is that correct?</b></p> <p>8 A Yes. At times they have done other</p> <p>9 things, but it's to just -- it's mainly to monitor.</p> <p>10 <b>Q Okay. And those times when it's done</b></p> <p>11 <b>something other than monitor, what did it do?</b></p> <p>12 A There were times that it offered to</p> <p>13 provide lawyers with expertise in subject matter</p> <p>14 areas to answer questions or concerns that members</p> <p>15 of the legislature may have.</p> <p>16 <b>Q Okay. So it would facilitate maybe</b></p> <p>17 <b>hooking up a legislator with some lawyer whose</b></p> <p>18 <b>practice area relates, perhaps, to a piece of</b></p> <p>19 <b>legislation that member might be working on?</b></p> <p>20 A I think that was the intent.</p> <p>21 <b>Q Is there -- does the legislature -- in</b></p> <p>22 <b>doing that, in facilitating subject matter</b></p> <p>23 <b>expertise, making that available to a member of</b></p> <p>24 <b>the legislature, does the legislative monitoring</b></p> <p>25 <b>committee consider the subject matter of the piece</b></p>	<p style="text-align: right;">Page 32</p> <p>1 A No.</p> <p>2 <b>Q Who is Clayton Taylor, Jr.?</b></p> <p>3 A He's a legislative liaison. I know he is</p> <p>4 a registered lobbyist, but he was hired as, to my</p> <p>5 understanding, as a legislative liaison.</p> <p>6 <b>Q Okay. And we'll probably come back to</b></p> <p>7 <b>this later, but who retained him? The Bar</b></p> <p>8 <b>Association?</b></p> <p>9 A Yes.</p> <p>10 <b>Q And how long has he been a legislative</b></p> <p>11 <b>liaison retained by the Bar?</b></p> <p>12 A I don't recall the exact year. Everything</p> <p>13 in my head runs by who is president at a time. I</p> <p>14 worked off of that mindset of who as opposed to the</p> <p>15 exact date of something.</p> <p>16 <b>Q The Bar president, not President Obama or</b></p> <p>17 <b>something?</b></p> <p>18 A Well, yeah.</p> <p>19 <b>Q Okay. What's your understanding of</b></p> <p>20 <b>Mr. Taylor's duties and responsibilities?</b></p> <p>21 A To review legislation, advise the</p> <p>22 leadership of the Bar Association and to have</p> <p>23 whatever discussions that he may need to have with</p> <p>24 members of the legislature.</p> <p>25 <b>Q So he is authorized to have discussions</b></p>

<p>Page 121</p> <p>1 A You know, I guess anything is possible.</p> <p>2 It didn't happen.</p> <p>3 R R d d</p> <p>4 d</p> <p>5 A Yes.</p> <p>6</p> <p>7 A It was naming a public official, and while</p> <p>8 it wasn't profanity, it was just a personal attack</p> <p>9 on a public official that violated our policy on</p> <p>10 making personal attacks on people.</p> <p>11 (Exhibit 28 marked for identification.)</p> <p>12 R d</p> <p>13 d</p> <p>14 dd</p> <p>15</p> <p>16 d</p> <p>17</p> <p>18 d d</p> <p>19</p> <p>20 MS. HINTZ: Can I interrupt and just take</p> <p>21 this copy down to show it to co-counsel since</p> <p>22 there's not a copy so he'll see what it looks like.</p> <p>23 A Your question again?</p> <p>24 R d</p> <p>25 d d d</p>	<p>Page 123</p> <p>1 A You what?</p> <p>2 d</p> <p>3 A Yeah. This is their process.</p> <p>4 d d</p> <p>5 d D d</p> <p>6 d d</p> <p>7 A Yes.</p> <p>8 d d</p> <p>9 d d d</p> <p>10</p> <p>11 A Yes.</p> <p>12 d d</p> <p>13 d d d</p> <p>14 d</p> <p>15 A I believe that would be the case.</p> <p>16 (Exhibit 29 marked for identification.)</p> <p>17 R d</p> <p>18 M d</p> <p>19 d d</p> <p>20 A Yes.</p> <p>21 d</p> <p>22</p> <p>23 A The first one is a staff write-up or we're</p> <p>24 talking about 92 is the staff write-up for the</p> <p>25 member benefit and for the member services</p>
<p>Page 122</p> <p>1 d</p> <p>2 A Right.</p> <p>3 d</p> <p>4 d d d</p> <p>5 d d d</p> <p>6 A Yes.</p> <p>7 M d</p> <p>8</p> <p>9 A Yes.</p> <p>10 d</p> <p>11 d</p> <p>12 d</p> <p>13 A Okay. It's the ballot that staff is</p> <p>14 recording on whether or not an article is going to</p> <p>15 be published. The first one is the technology theme</p> <p>16 article, and it is the recorded vote of each of the</p> <p>17 editors and any comments that they may have.</p> <p>18 M d</p> <p>19 d d d d</p> <p>20 d</p> <p>21 A Yes.</p> <p>22 d</p> <p>23 d</p> <p>24 A Yes.</p> <p>25 d d</p>	<p>Page 124</p> <p>1 committee. It's a recommendation.</p> <p>2 M d</p> <p>3 A Right.</p> <p>4 dd</p> <p>5 A It is a gathering point for all kinds of</p> <p>6 legal news and stories. It's based out of London,</p> <p>7 I believe, and it's -- somebody called it a news</p> <p>8 aggregate or something like that. It's just a big</p> <p>9 bunch of stuff that you can go in and set it for</p> <p>10 whatever you want.</p> <p>11 M d</p> <p>12 d</p> <p>13 A Yes.</p> <p>14 M d d d d</p> <p>15 d d</p> <p>16</p> <p>17 A Yes.</p> <p>18 d d</p> <p>19</p> <p>20 A Right, if they want it.</p> <p>21 d</p> <p>22 d d</p> <p>23 A Yes.</p> <p>24 d d</p> <p>25 d d</p>



<p>Page 125</p> <p>1 d</p> <p>2 A No.</p> <p>3 M d</p> <p>4 A No.</p> <p>5 M d d d</p> <p>6 d d</p> <p>7 A You're not a member of the Oklahoma Bar.</p> <p>8 dd M d</p> <p>9 d M d</p> <p>10 A They would have access to email.</p> <p>11 d</p> <p>12 d d</p> <p>13</p> <p>14 A Yes.</p> <p>15 d d</p> <p>16</p> <p>17 A There's an agreement that allows that to</p> <p>18 happen. I don't know if it's the granting of a</p> <p>19 license. There's just approval for that.</p> <p>20 d d</p> <p>21 d d</p> <p>22 A No. I tried to. It was just too much</p> <p>23 and it was just -- yeah. That would be impossible,</p> <p>24 sir.</p> <p>25 d d d d</p>	<p>Page 127</p> <p>1 d d</p> <p>2 A Yes.</p> <p>3 M d</p> <p>4 d d d</p> <p>5</p> <p>6 A No.</p> <p>7 d d d</p> <p>8</p> <p>9 A What do you mean "implemented any</p> <p>10 programs"? I don't understand that.</p> <p>11 d</p> <p>12 d d</p> <p>13 d d d</p> <p>14 A No.</p> <p>15 d d</p> <p>16 d</p> <p>17 A There's a couple of programs that might</p> <p>18 fall under that heading, but I don't know that they</p> <p>19 are. There was one program that they did on lawyer</p> <p>20 bias to make sure that lawyers were in tune with</p> <p>21 clients and giving the best services based upon the</p> <p>22 client and to not have any personal prejudices.</p> <p>23 That's already included in the rules</p> <p>24 governing professional conduct. So I don't know if</p> <p>25 that falls under that.</p>
<p>Page 126</p> <p>1 d</p> <p>2 d</p> <p>3 A No association resources are involved in</p> <p>4 that.</p> <p>5 d</p> <p>6 d d</p> <p>7 A No. No.</p> <p>8 d d</p> <p>9 A Yes.</p> <p>10 d d d d</p> <p>11 d</p> <p>12 A I have never seen that.</p> <p>13 d</p> <p>14 d</p> <p>15 A I've always wondered that, too.</p> <p>16 d d d</p> <p>17 d d</p> <p>18</p> <p>19 A Okay.</p> <p>20 d</p> <p>21 d d d d</p> <p>22 d d d d</p> <p>23 d</p> <p>24 A Okay.</p> <p>25 R d d</p>	<p>Page 128</p> <p>1 And there was a program that they did on</p> <p>2 the Voting Rights Act that had to do with minority</p> <p>3 impact on some voting legislation.</p> <p>4 d</p> <p>5 d d d</p> <p>6</p> <p>7 A No. I don't think so.</p> <p>8 d</p> <p>9 d d</p> <p>10 A I believe that the diversity committee in</p> <p>11 like 2019 were part of the Pride celebration in</p> <p>12 Tulsa, and that was not approved by the Board of</p> <p>13 Governors or endorsed by the association. That was</p> <p>14 a committee acting without any permission or</p> <p>15 authority from the association.</p> <p>16 d</p> <p>17</p> <p>18 d d</p> <p>19 d</p> <p>20 A No.</p> <p>21 d</p> <p>22 d d</p> <p>23 d d d</p> <p>24 d</p> <p>25 A For what?</p>

<p>1 ERRATA SHEET Page 133</p> <p>2 Schell vs. Janet Johnson, et al.</p> <p>3 DEPOSITION OF JOHN WILLIAMS</p> <p>4 REPORTED BY: Jane McConnell, CSR RPR RMR CRR</p> <p>5 DATE DEPOSITION TAKEN: November 25, 2024</p> <p>6 JOB FILE NO. 171856</p> <p>7 PAGE LINE IS SHOULD BE</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	
<p>1 CERTIFICATE Page 134</p> <p>2 STATE OF OKLAHOMA )</p> <p>3 ) SS:</p> <p>4 COUNTY OF OKLAHOMA )</p> <p>5 I, Jane McConnell, Certified Shorthand</p> <p>6 Reporter within and for the State of Oklahoma, do</p> <p>7 hereby certify that the above-named JOHN WILLIAMS</p> <p>8 was by me first duly sworn to testify the truth, the</p> <p>9 whole truth, and nothing but the truth, in the case</p> <p>10 aforesaid; that the above and foregoing deposition</p> <p>11 was by me taken in shorthand and thereafter</p> <p>12 transcribed; and that I am not an attorney for nor</p> <p>13 relative of any of said parties or otherwise</p> <p>14 interested in the event of said action.</p> <p>15 IN WITNESS WHEREOF, I have hereunto set my</p> <p>16 hand and official seal this 4th day of December,</p> <p>17 2024.</p> <p>18 </p> <p>19 Jane McConnell, CSR RPR RMR CRR</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

# EXHIBIT 2

Mark E. Schell vs. Janet Johnson  
Clayton Charles Taylor, Jr.

February 14, 2025

19-00281-HE

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UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF OKLAHOMA

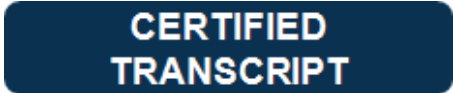
Mark E. Schell,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No.
	)	19-00281-HE
	)	
Janet Johnson, et al.,	)	
	)	
Defendants.	)	
_____	)	

DEPOSITION OF CLAYTON CHARLES TAYLOR, JR.

Oklahoma City, Oklahoma  
February 14, 2025

Prepared by:

Gerard T. Coash, RPR, RMR  
Certified Reporter  
Certification No. 50503



Mark E. Schell vs. Janet Johnson  
Clayton Charles Taylor, Jr.

February 14, 2025

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2	WITNESS	PAGE	2		
3	CLAYTON CHARLES TAYLOR, JR.		3	Exhibit 25	Schell v. The Chief Justice and Justices of the Oklahoma Supreme Court, et al., No. 20-6044 --
4	Examination by Mr. Freeman	7	4		
5	Examination by Mr. Maye	71	5	Exhibit 26	Clay Taylor LinkedIn Profile --
6			6	Exhibit 27	Clay Taylor Biography Description --
7			7		
8	EXHIBITS MARKED		8		
9	EXHIBITS	DESCRIPTION	9		
10	Exhibit 1	Bills of Interest to the Practice of Law PowerPoint, March 6, 2018 TAYLOR.001 - .012	10		
11			11		
12	Exhibit 2	OBA Legislative Kickoff 2021 PowerPoint TAYLOR.013 - .044	12		
13			13		
14	Exhibit 3	OBA Legislative Kickoff 2023 TAYLOR.045 - .073	14		
15	Exhibit 4	Addendum to December 1, 2014 Consulting Agreement TAYLOR.074	15		
16			16		
17	Exhibit 5	OBA Legislative Reading Day 2017 TAYLOR.075 - .099	17		
18			18		
19	Exhibit 6	OBA Legislative Reading Day 2018 TAYLOR.100 - .124	19		
20	Exhibit 7	Please Vote No on SJR43 TAYLOR.125	20		
21			21		
22	Exhibit 8	Please Vote No on SJR43 TAYLOR.126	22		
23	Exhibit 9	Email string ending from Clay Taylor to John Williams dated 1-22-18 OBA_000717 - 000718	23		
24			24		
25			25		
Page 3			Page 5		
1	Exhibit 10	OBA Board of Governor's Update 2-5-18; Email from Clay Taylor to John Williams dated 3-5-18 OBA_000720 - 000722	1	DEPOSITION OF CLAYTON CHARLES TAYLOR, JR. was taken on February 14, 2025, commencing at 1:33 p.m., with the witness appearing from the offices of Riggs Abney, 528 NW 12th Street, Oklahoma City, Oklahoma; with all other participants appearing via videoconference from their respective locations, before Gerard T. Coash, a Certified Reporter in the State of Arizona. * * *	
2			2		
3	Exhibit 11	Email from Clay Taylor to Janet Johnson, et al., dated 5-15-23 OBA_000934	3		
4			4		
5	Exhibit 12	Please Vote No on HJR 1037 OBA_000949	5	APPEARANCES:	
6			6		
7	Exhibit 13	Please Vote No on SJR43 OBA_000950	7	For the Plaintiff:	
8			8	GOLDWATER INSTITUTE	
9	Exhibit 14	Text messages OBA_000962 - 000970	9	By: Scott Day Freeman, Esq. Adam Shelton, Esq. 500 East Coronado Road Phoenix, Arizona 85004 602-462-5000 Litigation@goldwaterinstitute.com	
10	Exhibit 15	Email string ending from Clay Taylor to John Williams dated 2-20-18 OBA_001003 - 001005	10		
11			11		
12	Exhibit 16	Email from Clay Taylor to John Williams dated 5-11-20 OBA_001019 - 001021	12		
13			13		
14	Exhibit 17	Please Vote No on SB1404, SB1626, SB1801, SB1861 OBA_001040 - 001046	14	For the Defendants Members of the Board of Governors and The Executive Director of the Oklahoma Bar Association, in their Official Capacities:	
15			15	PHILLIPS MURRAH, PC	
16	Exhibit 18	Email string ending from Clay Taylor to John Williams dated 3-4-18 OBA_001100 - 001104	16	By: Heather L. Hintz, Esq. 424 NW 10th Street Suite 300 Oklahoma City, Oklahoma 73103 405-235-4100 hlhintz@phillipsmurrah.com	
17			17		
18	Exhibit 19	OBA Board of Governor's Update 2-5-18 OBA_001105	18	For the Defendants Chief Justice and Justices of the Oklahoma Supreme Court in their Official Capacities:	
19			19	MAYE LAW FIRM, PLLC	
20	Exhibit 20	Addendum to December 1, 2014 Consulting Agreement OBA_001106	20	By: Kieran D. Maye, Jr., Esq. 3501 French Park Drive Suite A Edmund, Oklahoma 73034 405-990-2415 kdmaye@mayelawfirm.com	
21			21		
22	Exhibit 21	Consulting Agreement OBA_001120 - 001121	22		
23	Exhibit 22	Screenshots of conversations OBA_001126 - 001134	23		
24			24		
25	Exhibit 23	Oklahoma Bar Association Keller Policy	25		

Mark E. Schell vs. Janet Johnson  
Clayton Charles Taylor, Jr.

February 14, 2025

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<p>1 who the client is, do that writing for it.</p> <p>2 Q. Again, just on last year for now, were you asked</p> <p>3 to state a position on behalf of the Bar either in favor</p> <p>4 or opposing a piece of legislation?</p> <p>5 A. I do recall that the Board of Governors did vote</p> <p>6 to take a position on several pieces of legislation. I</p> <p>7 don't remember what they were.</p> <p>8 Q. How would they communicate that to you? Meaning</p> <p>9 how would they let you know the Bar is in favor or --</p> <p>10 A. Typically a call from the executive director.</p> <p>11 Sorry, I didn't mean to -- my apologies for</p> <p>12 speaking over you there.</p> <p>13 Q. So that would be by phone call typically?</p> <p>14 A. Typically.</p> <p>15 Q. And then -- hypothetically speaking, last year,</p> <p>16 if the Bar asked you to relay sort of the Bar's support</p> <p>17 for legislation X, how would you do that at the</p> <p>18 legislature?</p> <p>19 A. It just depends on what the subject matter is.</p> <p>20 It's a broad -- I mean, anything from verbal</p> <p>21 communications in person to email communications or</p> <p>22 anything in between are kind of how I communicate with the</p> <p>23 legislature, depending on what the subject matter and the</p> <p>24 need is in the case.</p> <p>25 Q. Does Oklahoma have -- I'm thinking about</p>	<p>1 with members of the legislature to discuss that particular</p> <p>2 issue?</p> <p>3 A. Do I recall the specific meeting? No. Do I know</p> <p>4 that those meetings occurred? Yes.</p> <p>5 Q. And was that --</p> <p>6 A. And let me say -- let me define "meeting" for you</p> <p>7 a little bit broadly. I just want you to get kind of --</p> <p>8 you probably understand this, but meetings for me often</p> <p>9 typically happen in a hallway outside somebody's office</p> <p>10 with like 55 people around, but those are how our</p> <p>11 conversations happen.</p> <p>12 Q. Yeah, I got a sense of what your life is like for</p> <p>13 sure.</p> <p>14 Hold on a second. Excuse me.</p> <p>15 So while you don't recall any specific</p> <p>16 meetings, you know that they did occur last year, correct?</p> <p>17 A. I would say conversations occur.</p> <p>18 Q. Okay. And was one of the points of those</p> <p>19 conversations to relay the Bar's position as to the</p> <p>20 judicial nomination and selection process?</p> <p>21 A. I mean, yes. That's kind of a crude way of</p> <p>22 putting it. I don't mean to call your framing of it</p> <p>23 crude, but yeah. I mean, that's a broad way of describing</p> <p>24 it.</p> <p>25 Q. Other than bills related to the judicial</p>
Page 31	Page 33
<p>1 Arizona's system now. But does the Oklahoma legislature</p> <p>2 have a sort of formal system where parties can -- and</p> <p>3 individuals -- can sort of log their support or opposition</p> <p>4 to a particular bill?</p> <p>5 A. There is no real formal public comment whatsoever</p> <p>6 involved in the Oklahoma legislative process.</p> <p>7 Q. Was judicial selection -- the judicial selection</p> <p>8 process on the legislative agenda last year, 2024?</p> <p>9 A. Yes.</p> <p>10 Q. Is that --</p> <p>11 A. Can you clarify -- can you specify that a little</p> <p>12 bit more? Because judicial selection process is a pretty</p> <p>13 broad topic.</p> <p>14 Q. Modifying the way judges are nominated and</p> <p>15 appointed to their positions?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. And that was part of last year's</p> <p>18 legislative drama, so to speak?</p> <p>19 A. I have vague recollections of that subject matter</p> <p>20 being one of the many thousands of fights I was in last</p> <p>21 year at the capitol, yes, sir.</p> <p>22 Q. And that is a subject of interest to the Oklahoma</p> <p>23 Bar Association, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And so did you -- do you recall last year meeting</p>	<p>1 nominating and selection process -- and I'm going to --</p> <p>2 let's maybe look back instead of one year to five years.</p> <p>3 Can you recall any other bills that the Bar</p> <p>4 had a particular interest in having you down there talking</p> <p>5 with members about?</p> <p>6 A. Not in particular. I mean, that's kind of pretty</p> <p>7 much the central theme to our work is around access to</p> <p>8 justice is what I would call it in what you would call</p> <p>9 kind of making sure we have quality judges in Oklahoma,</p> <p>10 that kind of seems to be the themes. And typically the</p> <p>11 legislation that is in those subject matters relates to</p> <p>12 the judicial nominating commission more often than not.</p> <p>13 I don't know that there are a lot of other</p> <p>14 things I can think of over time that we have really gotten</p> <p>15 involved with. I could be wrong. But it just doesn't --</p> <p>16 I mean, that's kind of the central theme of what we've</p> <p>17 worked on.</p> <p>18 Q. All right. Let me see if I can figure out how to</p> <p>19 share documents here.</p> <p>20 A. And we have, I think, pulled up your exhibits.</p> <p>21 So if you do want to tell us what it is --</p> <p>22 THE WITNESS: Is that what this is, Gary?</p> <p>23 MR. WOOD: Yeah.</p> <p>24 THE WITNESS: If you want to tell us what</p> <p>25 exhibit number you're looking at, we can also try to pull</p>

Mark E. Schell vs. Janet Johnson  
Clayton Charles Taylor, Jr.

February 14, 2025

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1 MS. HINTZ: Nothing from me, Scott.  
2 (An off-the-record discussion ensued.)  
3 MR. MAYE: I don't need anything. This is  
4 Kieran Maye.  
5 MS. HINTZ: Heather Hintz would like the  
6 early transcript, a regular -- like a rush transcript or a  
7 dirty transcript, and a synced transcript to the video,  
8 and a regular transcript.  
9 THE COURT REPORTER: There actually is no  
10 video.  
11 (An off-the-record discussion ensued.)  
12 MS. HINTZ: My order is simply for a dirty  
13 copy and then a regular copy in the due course of time.  
14 MR. FREEMAN: Same for me, same for  
15 plaintiff.  
16 MR. WOOD: No order from the witness.  
17 He does want to read and sign.  
18 (Exhibits submitted but not used during the  
19 deposition were marked for identification.)  
20 (The deposition was concluded at 3:33 p.m.)  
21  
22  
23  
24  
25

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CLAYTON CHARLES TAYLOR, JR.

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1 STATE OF ARIZONA )  
2 COUNTY OF MARICOPA )  
3 BE IT KNOWN the foregoing deposition was  
4 taken by me pursuant to stipulation of counsel; that I was  
5 then and there a Certified Reporter of the State of  
6 Arizona, and by virtue thereof authorized to administer an  
7 oath; that the witness before testifying was duly sworn by  
8 me to testify to the whole truth; notice was provided that  
9 the transcript was available for signature by the  
10 deponent; that the questions propounded by counsel and the  
11 answers of the witness thereto were taken down by me in  
12 shorthand and thereafter transcribed into typewriting  
13 under my direction; that the foregoing pages are a full,  
14 true, and accurate transcript of all proceedings and  
15 testimony had and adduced upon the taking of said  
16 deposition, all to the best of my skill and ability.  
17 I FURTHER CERTIFY that I am in no way related to  
18 nor employed by any parties hereto nor am I in any way  
19 interested in the outcome hereof.  
20 DATED at Phoenix, Arizona, this 21st day of  
21 February, 2025.  
22  
23  
24  
25

  
Gerard T. Coash, RMR  
Certified Reporter #50503

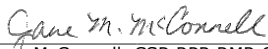
# EXHIBIT 3



<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE WESTERN DISTRICT OF OKLAHOMA</p> <p>3 MARK E. SCHELL,</p> <p>4 Plaintiff,</p> <p>5 vs. No. 5:19-CV-00281-HE</p> <p>6 JANET JOHNSON, et al.,</p> <p>7 Defendants.</p> <p>8</p> <p>9 *****</p> <p>10</p> <p>11 DEPOSITION OF MARK SCHELL</p> <p>12 TAKEN ON BEHALF OF THE DEFENDANTS</p> <p>13 ON NOVEMBER 26, 2024, BEGINNING AT 10:07 A.M.</p> <p>14 IN OKLAHOMA CITY, OKLAHOMA</p> <p>15</p> <p>16 *****</p> <p>17</p> <p>18 APPEARANCES</p> <p>19 On behalf of the PLAINTIFF:</p> <p>20 Scott Day Freeman</p> <p>21 GOLDWATER INSTITUTE</p> <p>22 500 East Coronado Road</p> <p>23 Phoenix, Arizona 85004</p> <p>24 (602) 462-5000</p> <p>25 sfreeman@goldwaterinstitute.org</p> <p>(Appearances continued on next page.)</p> <p>REPORTED BY: Jane McConnell, CSR RPR CMR CRR</p>	<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 Page</p> <p>3 Direct Examination by Ms. Hintz 5</p> <p>4 Cross-Examination by Mr. Maye 104</p> <p>5 Redirect Examination by Ms. Hintz 115</p> <p>6 Recross-Examination by Mr. Maye 131</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 Exhibit Description</p> <p>10 1 Official Form 201 24</p> <p>11 2 Vanguard - Firehawk Aerospace Inc. 27</p> <p>12 Article</p> <p>13 3 U.S. SEC Form 8-K 29</p> <p>14 4 Case No. PB-21-97 Petition to 39</p> <p>15 Determine Death of Last Surviving</p> <p>16 Joint Tenant</p> <p>17 5 Legislative Guide 2014 46</p> <p>18 6 Oklahoma Continuing Legal Education 58</p> <p>19 Commission Attorney Credits Report</p> <p>20 7 Oklahoma Statute - Title 5, Section 92</p> <p>21 Preamble - Lawyer's Responsibilities</p> <p>22 8 Oklahoma Statute - Title 5, Section 96</p> <p>23 1.1 - Competence</p> <p>24 9 Coates vs. Fallin, 316 P.3d 116</p> <p>25 924(2013)</p> <p>Brief of Amicus Curiae Unit Corporation in Support of Respondents Filed with Consent of all Parties 119</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES (Continued)</p> <p>2 On behalf of the DEFENDANT MEMBERS OF THE BOARD OF</p> <p>3 GOVERNORS AND THE EXECUTIVE DIRECTOR OF THE OKLAHOMA</p> <p>4 BAR ASSOCIATION, IN THEIR OFFICIAL CAPACITIES:</p> <p>5 Heather L. Hintz</p> <p>6 PHILLIPS MURRAH</p> <p>7 424 N.W. 10th, Suite 300</p> <p>8 Oklahoma City, Oklahoma 73103</p> <p>9 (405) 235-4100</p> <p>10 hlhintz@phillipsmurrah.com</p> <p>11 - and -</p> <p>12 Michael Burrage</p> <p>13 WHITTEN BURRAGE</p> <p>14 512 N. Broadway</p> <p>15 Oklahoma City, Oklahoma 73012</p> <p>16 (405) 516-7800</p> <p>17 mburrage@whittenburrage.com</p> <p>18 On behalf of the DEFENDANTS CHIEF JUSTICE AND</p> <p>19 JUSTICES OF THE OKLAHOMA SUPREME COURT:</p> <p>20 Kieran D. Maye, Jr.</p> <p>21 MAYE LAW FIRM</p> <p>22 3501 French Park Drive</p> <p>23 Suite A</p> <p>24 Edmond, Oklahoma 73034</p> <p>25 (405) 990-2415</p> <p>kdmaye@mayelawfirm.com</p> <p>ALSO PRESENT: John Williams</p>	<p style="text-align: right;">Page 4</p> <p>1 STIPULATIONS</p> <p>2 It is hereby stipulated and agreed by and</p> <p>3 between the parties hereto, through their respective</p> <p>4 attorneys, that the deposition of Mark Schell may be</p> <p>5 taken pursuant to notice and in accordance with the</p> <p>6 Federal Rules of Civil Procedure on November 26,</p> <p>7 2024 at the offices of 512 N. Broadway, Oklahoma</p> <p>8 City, Oklahoma, before Jane McConnell, CSR RPR RMR</p> <p>9 CRR.</p>

<p style="text-align: right;">Page 73</p> <p>1 <b>Q (BY MS. HINTZ) Well, you didn't watch</b></p> <p>2 <b>them before you put them --</b></p> <p>3 A I did not watch them, no, if that was your</p> <p>4 question.</p> <p>5 <b>Q Did your lawyers decide which programs to</b></p> <p>6 <b>challenge in the lawsuit?</b></p> <p>7 MR. FREEMAN: Form; foundation.</p> <p>8 A Did my lawyers decide? I think we</p> <p>9 discussed those things, but that would be privilege.</p> <p>10 So I'm not sure how to answer your question.</p> <p>11 <b>Q (BY MS. HINTZ) When did you form the</b></p> <p>12 <b>intent to file the lawsuit at issue?</b></p> <p>13 A I have been considering it for a very long</p> <p>14 time.</p> <p>15 <b>Q When did you form the intent to do it?</b></p> <p>16 MR. FREEMAN: Form.</p> <p>17 A When did I form the intent? It would have</p> <p>18 been sometime, obviously, before the lawsuit was</p> <p>19 filed, but I can't tell you exactly how long.</p> <p>20 <b>Q (BY MS. HINTZ) Did you assist in drafting</b></p> <p>21 <b>the initial complaint?</b></p> <p>22 A Did I insist on drafting it?</p> <p>23 <b>Q Assist.</b></p> <p>24 A Assist.</p> <p>25 MR. FREEMAN: Form.</p>	<p style="text-align: right;">Page 75</p> <p>1 A Please, you need to help me out when you</p> <p>2 say "assisted."</p> <p>3 <b>Q (BY MS. HINTZ) Did you make edits?</b></p> <p>4 A I'm sure I may have made edits.</p> <p>5 <b>Q Have you read or reviewed any part of the</b></p> <p>6 <b>10th Circuit Court of Appeals order in this case?</b></p> <p>7 A I read it when it came out.</p> <p>8 <b>Q What do you recall about it?</b></p> <p>9 A That part of it survived, part of it</p> <p>10 didn't, and it was sent back down.</p> <p>11 <b>Q Do you recall that the 10th Circuit</b></p> <p>12 <b>determined that a number of articles that you</b></p> <p>13 <b>challenged were on their face germane?</b></p> <p>14 A I don't recall that. I do recall, I</p> <p>15 think, that there was a time limit imposed.</p> <p>16 <b>Q Were you involved in the decision to file</b></p> <p>17 <b>a second amended complaint?</b></p> <p>18 A I'm sure I was.</p> <p>19 <b>Q And, again, did you assist in drafting the</b></p> <p>20 <b>second amended complaint?</b></p> <p>21 A I would have reviewed it and made whatever</p> <p>22 edits I thought might have been appropriate.</p> <p>23 <b>Q Did you, again, with the second amended</b></p> <p>24 <b>complaint review any of the continuing legal</b></p> <p>25 <b>education courses that are challenged in the</b></p>
<p style="text-align: right;">Page 74</p> <p>1 A I reviewed it and I may have made some</p> <p>2 changes, comments, etc.</p> <p>3 <b>Q (BY MS. HINTZ) You don't specifically</b></p> <p>4 <b>recall?</b></p> <p>5 A No, I don't.</p> <p>6 <b>Q Do you recall when it was filed?</b></p> <p>7 A As we sit here, no.</p> <p>8 <b>Q Did you assist in drafting the amended</b></p> <p>9 <b>complaint?</b></p> <p>10 A Again, I'm sure I looked at it and had</p> <p>11 comments, suggestions, etc.</p> <p>12 <b>Q But you don't recall?</b></p> <p>13 A But I don't recall.</p> <p>14 <b>Q Do you know why the complaint was amended?</b></p> <p>15 A I believe it was because of some rulings</p> <p>16 that were made. I don't recall that specifically.</p> <p>17 <b>Q You don't have any specific knowledge?</b></p> <p>18 A I did at one time, but I certainly don't</p> <p>19 now.</p> <p>20 <b>Q Did you assist in drafting any of the</b></p> <p>21 <b>appellate briefing in this case?</b></p> <p>22 A Again, I'm sure I reviewed it.</p> <p>23 <b>Q But you don't recall whether you assisted</b></p> <p>24 <b>in drafting it?</b></p> <p>25 MR. FREEMAN: Form.</p>	<p style="text-align: right;">Page 76</p> <p>1 <b>complaint before it was filed?</b></p> <p>2 A My recollection is that I had reviewed</p> <p>3 several of them.</p> <p>4 <b>Q You took the course?</b></p> <p>5 A I didn't hear you say "took the course."</p> <p>6 <b>Q Reviewing -- let me rephrase it. Did you</b></p> <p>7 <b>take the course?</b></p> <p>8 A Did I take the course? Well, without</p> <p>9 looking at them specifically, I couldn't be</p> <p>10 absolutely sure, but I probably did not take the</p> <p>11 courses, plural.</p> <p>12 <b>Q Are you aware that your lawsuit challenges</b></p> <p>13 <b>the Lexology service offered to Oklahoma Bar</b></p> <p>14 <b>members?</b></p> <p>15 A That Lexology service, perhaps you need to</p> <p>16 explain that. Refresh my memory.</p> <p>17 <b>Q I would just like to know if you're aware</b></p> <p>18 <b>of that?</b></p> <p>19 A As you stated it, I'm not aware of it.</p> <p>20 <b>Q Do you know what the Lexology service is?</b></p> <p>21 A No.</p> <p>22 <b>Q Do you know what the basis of your First</b></p> <p>23 <b>Amendment challenge to the Lexology service is?</b></p> <p>24 A I'd have to go back and look at it, but I</p> <p>25 don't recall as I sit here.</p>

<p style="text-align: right;">Page 77</p> <p>1 <b>Q Do you recall receiving emails from a</b></p> <p>2 <b>Lexology service?</b></p> <p>3 A I received emails from a Lexology service?</p> <p>4 <b>Q I'm asking if you recall ever having</b></p> <p>5 <b>received one.</b></p> <p>6 A Would they say Lexology?</p> <p>7 <b>Q I'm just asking what you recall.</b></p> <p>8 A I received a lot of emails. Whether I</p> <p>9 received any from them or not, I don't know.</p> <p>10 <b>Q Is it your contention that when a person</b></p> <p>11 <b>reads an article published in the Oklahoma Bar</b></p> <p>12 <b>Journal, that person could reasonably believe it's</b></p> <p>13 <b>your speech?</b></p> <p>14 MR. FREEMAN: Form.</p> <p>15 A When you say me, are you referring to the</p> <p>16 author of the article?</p> <p>17 <b>Q (BY MS. HINTZ) Is it your contention,</b></p> <p>18 <b>that when a person reads an article published in</b></p> <p>19 <b>the Oklahoma Bar Association, that person could</b></p> <p>20 <b>reasonably believe it is your speech?</b></p> <p>21 A I see.</p> <p>22 MR. FREEMAN: Form.</p> <p>23 A Yeah. I mean, I think it depends on the</p> <p>24 article.</p> <p>25 <b>Q (BY MS. HINTZ) Do you think that the</b></p>	<p style="text-align: right;">Page 79</p> <p>1 and do it.</p> <p>2 We talked about how I thought that the Bar</p> <p>3 was active in some of this stuff and shouldn't be,</p> <p>4 judges were active and shouldn't be, and what we</p> <p>5 could do about it and what we couldn't do about it,</p> <p>6 and whether some of the articles that the Bar was</p> <p>7 publishing were appropriate, etc. There were just a</p> <p>8 lot of things we talked about.</p> <p>9 <b>Q You just testified that you discussed</b></p> <p>10 <b>that -- I believe the word you used was "judges were</b></p> <p>11 <b>doing that."</b></p> <p>12 A Uh-huh.</p> <p>13 <b>Q What do you mean by "doing that"?</b></p> <p>14 A Like I previously testified, we had one</p> <p>15 Supreme Court judge apparently come down and</p> <p>16 advocate against a bill that was pending, and then</p> <p>17 I know that we had a district court judge call the</p> <p>18 head of the judiciary committee at that time and</p> <p>19 tell him he better not pass that thing.</p> <p>20 <b>Q And you recall discussing those with other</b></p> <p>21 <b>people?</b></p> <p>22 A I do. I recall the discussions. I can't</p> <p>23 recall all the specifics.</p> <p>24 <b>Q Who did you have the discussions with?</b></p> <p>25 A Well, the one gentleman, he's a lawyer in</p>
<p style="text-align: right;">Page 78</p> <p>1 <b>article that you published back in the day is my</b></p> <p>2 <b>speech?</b></p> <p>3 A Do I think it's your speech? The article</p> <p>4 was nothing but an explanation of the law. So it's</p> <p>5 not really anybody's speech.</p> <p>6 <b>Q You indicated that you thought about</b></p> <p>7 <b>filing this lawsuit before it was filed; is that</b></p> <p>8 <b>accurate?</b></p> <p>9 A Yes.</p> <p>10 <b>Q Did you talk about the issues related to</b></p> <p>11 <b>the challenges that you're bringing in your lawsuit</b></p> <p>12 <b>with anyone before you filed the lawsuit?</b></p> <p>13 A Yes. I'm sure I did.</p> <p>14 <b>Q Do you remember who you talked to?</b></p> <p>15 A I know I -- excuse me. I spoke with a</p> <p>16 number of people over a time period, legislators,</p> <p>17 lobbyists, other lawyers about various issues and</p> <p>18 then other businessmen that I knew and associated</p> <p>19 with. There were quite a few people, but to ask me</p> <p>20 if I remember specifically, I can't.</p> <p>21 <b>Q What issues did you talk about?</b></p> <p>22 A We talked about a lot of things. We</p> <p>23 talked about how plaintiffs' lawyers were very</p> <p>24 active at the legislature and other -- if you wanted</p> <p>25 to assert a position, you needed to go down there</p>	<p style="text-align: right;">Page 80</p> <p>1 Sapulpa, on the work comp thing. I can't recall his</p> <p>2 name right now, though. It's been too many years</p> <p>3 ago.</p> <p>4 I don't recall which, whether it was the</p> <p>5 House or the Senate judiciary committee member that</p> <p>6 told me about Justice Gurich's involvement.</p> <p>7 <b>Q You said "the workers' comp thing" just a</b></p> <p>8 <b>moment ago. What did you mean by that?</b></p> <p>9 A The reform effort. I'm sorry. The work</p> <p>10 comp reform effort.</p> <p>11 <b>Q So you believe that there was activity</b></p> <p>12 <b>before workers' comp was changed?</b></p> <p>13 A Activity?</p> <p>14 <b>Q You said judges were doing it.</b></p> <p>15 A While we were trying to get the reform</p> <p>16 bill passed, there was a lot of activity insofar as</p> <p>17 lobbying for and against the bill by various people.</p> <p>18 <b>Q And you personally were in favor of the</b></p> <p>19 <b>workers' compensation bill?</b></p> <p>20 A Very much so.</p> <p>21 <b>Q And you succeeded. It was revised, it was</b></p> <p>22 <b>changed, right, in 2012 or thereabouts?</b></p> <p>23 A Yes.</p> <p>24 <b>Q Have you ever communicated in writing, by</b></p> <p>25 <b>letter or email, with anyone, other than your</b></p>

Page 133		Page 135	
1	JURAT	1	CERTIFICATE
2	Schell vs. Janet Johnson, et al.	2	STATE OF OKLAHOMA )
3	I, MARK SCHELL, do hereby state under oath	3	) SS: COUNTY OF OKLAHOMA )
4	that I have read the above and foregoing deposition	4	I, Jane McConnell, Certified Shorthand
5	in its entirety and that the same is a full, true	5	Reporter within and for the State of Oklahoma, do
6	and correct transcription of my testimony so given	6	hereby certify that the above-named MARK SCHELL was
7	at said time and place.	7	by me first duly sworn to testify the truth, the
8		8	whole truth, and nothing but the truth, in the case
9		9	aforsaid; that the above and foregoing deposition
10		10	was by me taken in shorthand and thereafter
11	Signature of Witness	11	transcribed; and that I am not an attorney for nor
12		12	relative of any of said parties or otherwise
13		13	interested in the event of said action.
14	Subscribed and sworn to before me, the	14	IN WITNESS WHEREOF, I have hereunto set my
15	undersigned Notary Public in and for the State of	15	hand and official seal this 6th day of December,
16	Oklahoma by said witness, MARK SCHELL, on this	16	2024.
17	_____ day of _____, 2024.	17	
18		18	
19		19	Jane McConnell, CSR RPR RMR CRR
20		20	
21		21	
22	NOTARY PUBLIC	22	
23	MY COMMISSION EXPIRES: _____	23	
24	(JMc) JOB FILE #171857	24	
25		25	

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1	ERRATA SHEET
2	Schell vs. Janet Johnson, et al.
3	DEPOSITION OF MARK SCHELL
4	REPORTED BY: Jane McConnell, CSR RPR RMR CRR
5	DATE DEPOSITION TAKEN: November 26, 2024
6	JOB FILE NO. 171857
7	PAGE LINE IS SHOULD BE
8	_____
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