

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

MARK E. SCHELL,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-2019-281-H
)	
NOMA GURICH, Chief Justice of the)	
Oklahoma Supreme Court; et al.,)	
)	
Defendants.)	

**ANSWER OF DEFENDANTS MEMBERS OF THE BOARD OF GOVERNORS
TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

COME NOW Defendants Charles W. Chesnut, President, Oklahoma Bar Association Board of Governors; Susan B. Shields, President-Elect, Oklahoma Bar Association Board of Governors; Lane R. Neal, Vice President, Oklahoma Bar Association Board of Governors; Kimberly Hays, Past President, Oklahoma Bar Association Board of Governors; Brian T. Hermanson, Member, Oklahoma Bar Association Board of Governors; Mark E. Fields, Member, Oklahoma Bar Association Board of Governors; David T. McKenzie, Member, Oklahoma Bar Association Board of Governors; Andrew E. Hutter, Member, Oklahoma Bar Association Board of Governors; D. Kenyon Williams, Jr., Member, Oklahoma Bar Association Board of Governors; Matthew C. Beese, Member, Oklahoma Bar Association Board of Governors; Jimmy D. Oliver, Member, Oklahoma Bar Association Board of Governors; Bryon J. Will, Member, Oklahoma Bar Association Board of Governors; James R. Hicks, Member, Oklahoma Bar Association Board of Governors; Brian K. Morton, Member, Oklahoma Bar Association Board of Governors;

Miles T. Pringle, Member, Oklahoma Bar Association Board of Governors; and Brandi N. Nowakowski, Member, Oklahoma Bar Association Board of Governors; all in their official capacities (collectively “Defendants”) and for their Answer to Plaintiff’s First Amended Complaint [Doc. 19], allege and state as follows¹:

1. No response is required to the allegations set out in paragraph no. 1; however, Defendants deny that this action was brought on behalf of all Oklahoma attorneys.

2. The allegations set out in paragraph no. 2 are admitted.

3. The allegations set out in paragraph no. 3 are moot given the Court’s Order dismissing Counts 1 and 2 of the First Amended Complaint [Doc. 61] (the “Order”).

4. The allegations set out in paragraph no. 4 are moot given the Court’s Order [Doc. 61].

5. The allegations set out in paragraph no. 5 are denied.

6. The allegations set out in paragraph no. 6 do not require a response.

JURISDICTION AND VENUE

7. The allegations set out in paragraph no. 7 are admitted.

8. The allegations set out in paragraph no. 8 are admitted.

9. The allegations set out in paragraph no. 9 are admitted.

¹ The paragraph numbers referred to in the Answer correspond to the numbered paragraphs of the First Amended Complaint.

10. The allegations set out in paragraph no. 10 are admitted.

PARTIES

11. With respect to the allegations set out in paragraph 11, Defendants admit that Mr. Schell is a member of the OBA, but do not know his reasons.

12. The allegations set out in paragraph no. 12 are admitted.

13. The allegations set out in paragraph no. 13 are admitted.

14. The allegations set out in paragraph no. 14 are admitted.

15. The allegations set out in paragraph no. 15 are admitted.

16. The allegations set out in paragraph no. 16 are admitted.

17. The allegations set out in paragraph no. 17 are admitted.

18. The allegations set out in paragraph no. 18 are admitted.

19. With respect to the allegations set out in paragraph no. 19, Defendants admit that the seat on the Oklahoma Supreme Court formerly occupied by the recently retired Justice was vacant when the First Amended Complaint was filed.

20. With respect to the allegations set out in paragraph no. 20, Defendants admit that the seat on the Oklahoma Supreme Court formerly occupied by the Honorable Patrick Wyrick was vacant when the First Amended Complaint was filed.

21. The allegations set out in paragraph no. 21 are admitted in that Mr. Chesnut was President of the Board of Governors when the First Amended Complaint was filed. The authority of the Board of Governors is set out primarily in the Rules Creating and Controlling the Oklahoma Bar Association (“RCAC”),

which are subject to amendment. At the time the First Amended Complaint was filed, the Board of Governors had the authority to withdraw dues and to remove attorneys from the rolls for nonpayment.

22. The allegations set out in paragraph no. 22 are admitted in that Ms. Shields was President-Elect of the Board of Governors when the First Amended Complaint was filed.

23. The allegations set out in paragraph no. 23 are admitted.

24. Defendants admit John M. Williams is the OBA's Executive Director. His responsibilities are set out primarily in the RCAC, which are subject to amendment. To the extent the balance of the allegations set out in paragraph no. 24 require a response, they are denied.

25. The allegations set out in paragraph no. 25 are admitted.

26. The allegations set out in paragraph no. 26 are admitted.

27. The allegations set out in paragraph no. 27 are admitted.

28. The allegations set out in paragraph no. 28 are admitted.

29. The allegations set out in paragraph no. 29 are admitted.

30. The allegations set out in paragraph no. 30 are admitted.

31. The allegations set out in paragraph no. 31 are admitted.

32. The allegations set out in paragraph no. 32 are admitted.

33. The allegations set out in paragraph no. 33 are admitted.

34. The allegations set out in paragraph no. 34 are admitted.

35. The allegations set out in paragraph no. 35 are admitted.

- 36. The allegations set out in paragraph no. 36 are admitted.
- 37. The allegations set out in paragraph no. 37 are admitted.
- 38. The allegations set out in paragraph no. 38 are admitted.
- 39. The allegations set out in paragraph no. 39 do not require a response.

FACTS

Oklahoma's Mandatory Bar Association Membership and Fees

- 40. The allegations set out in paragraph no. 40 are admitted.
- 41. The allegations set out in paragraph no. 41 are admitted only in that dues are a requirement, but Defendants state there are exceptions to the requirement, and further, that Art. VIII, §§ 1-4 of the RCAC speak for themselves as to their terms.

42. While the Oklahoma Supreme Court may suspend membership under the circumstances set out in the RCAC, the allegations set out in paragraph no. 42 are denied in that Art. VIII, §§ 2, 4 of the RCAC speak for themselves as to their terms.

43. While the Oklahoma Supreme Court may reinstate membership and strike a member from the rolls under the circumstances set out in the RCAC, the allegations set out in paragraph no. 43 are denied in that Art. VIII, § 5 of the Rules speaks for itself as to its terms.

44. The allegations set out in paragraph no. 44 are admitted to the extent that if he is a licensed Oklahoma attorney who desires to practice in the State, Mr. Schell is required to be a member of the OBA and generally, to pay dues, but further

states there are exceptions to the dues requirement set out in the RCAC and the OBA's policies and procedures.

45. The allegations set out in paragraph no. 45 are admitted.

46. The allegations set out in paragraph no. 46 are admitted.

47. With respect to the allegations set out in paragraph no. 47, Defendants admit generally that the members of the Board of Governors have power to approve use of funds that may be comprised in part by member dues, as subject to the requirements and limits of, and further set out in, the RCAC.

48. The allegations set out in paragraph no. 48 are denied.

49. Article VIII, §§ 2-3 of the OBA's bylaws speak for themselves as to their express terms, and Defendants deny any characterization of them other than as they are fully stated and read together with the RCAC and other sections of the bylaws, as they may be amended.

50. Article VIII, § 9 of the OBA's bylaws speaks for itself as to its express terms, and Defendants deny any characterization of it other than as it is fully stated and read together with the RCAC and other sections of the bylaws, as they may be amended.

51. Article VIII, § 4 of the OBA's bylaws speaks for itself as to its express terms, and Defendants deny any characterization of it other than as it is fully stated and read together with the RCAC and other sections of the bylaws, as they may be amended.

52. The allegations set out in paragraph no. 52 are denied, but Defendants admit the OBA engages with legislative proposals that are germane.

53. The allegations set out in paragraph no. 53 are denied, and Defendants deny that an individual member's acts or opinions are the acts or opinions of the OBA.

54. The allegations set out in paragraph no. 54 are denied, and Defendants deny that an individual member's acts or opinions are the acts or opinions of the OBA.

55. Defendants admit that the OBA and/or OBA voluntary committee membership engage with legislation that is germane, but deny that the OBA engages in activities that are non-germane under *Keller*, or that an individual member's acts or opinions are the acts or opinions of the OBA or these Defendants.

56. Defendants admit that the OBA voluntary committee membership engage with legislation that is germane, but deny that voluntary committee membership engage in activities that are non-germane under *Keller*, or that an individual member's acts or opinions are the acts or opinions of the OBA or these Defendants.

57. The allegations set out in paragraph no. 57 are denied.

58. The allegations set out in paragraph no. 58 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

59. The allegations set out in paragraph no. 59 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

60. The allegations set out in paragraph no. 60 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

61. The allegations set out in paragraph no. 61 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

62. The allegations set out in paragraph no. 62 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

63. The allegations set out in paragraph no. 63 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

64. The allegations set out in paragraph no. 64 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged

speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

65. The allegations set out in paragraph no. 65 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

66. The allegations set out in paragraph no. 66 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

67. Defendants have insufficient information to admit or deny the allegations of paragraph no. 67, and therefore deny same.

68. The allegations set out in paragraph no. 68 are denied. The alleged advertisement's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author or advertiser.

69. The allegations set out in paragraph no. 69 are denied.

70. The allegations set out in paragraph no. 70 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

71. The allegations set out in paragraph no. 71 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

72. The allegations set out in paragraph no. 72 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

73. The allegations set out in paragraph no. 73 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

74. The allegations set out in paragraph no. 74 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

75. The allegations set out in paragraph no. 75 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

76. The allegations set out in paragraph no. 76 are denied. The alleged OBJ article's content speaks for itself and must be read as a whole and the alleged

speech or opinions expressed are not that of Defendants, the OBA, or anyone other than the author.

OBA's Dues Refund Procedures

77. The allegations set out in paragraph no. 77 are admitted generally in that at the time the First Amended Complaint was filed the OBA gave notice of proposed budgets, including by publishing a summary in the OBJ, but Defendants deny that the procedure alleged in paragraph no. 77 comprises the entire process, which is set out in more detail in the RCAC and bylaws.

78. Defendants deny that Exhibit 1 is the complete proposed budget.

79. The allegations set out in paragraph no. 79 are denied, and Defendants further deny that Exhibit 1 is the complete proposed budget.

80. The allegations set out in paragraph no. 80 are denied, and Defendants further deny that Exhibit 1 is the complete proposed budget.

81. The allegations set out in paragraph no. 81 are denied.

82. With regard to the allegations set out in paragraph no. 82, the policy speaks for itself.

83. The allegations set out in paragraph no. 83 are denied.

84. With regard to the allegations set out in paragraph no. 84, the policy speaks for itself.

85. With regard to the allegations set out in paragraph no. 85, the policy speaks for itself.

86. With regard to the allegations set out in paragraph no. 86, the policy speaks for itself.

87. With regard to the allegations set out in paragraph no. 87, the policy speaks for itself.

88. With regard to the allegations set out in paragraph no. 88, the policy speaks for itself.

89. The allegations set out in paragraph no. 89 are denied.

Plaintiff's Injury

90. Defendants are without sufficient information to admit or deny the allegations set out in paragraph no. 90, and therefore deny same, but also specifically deny that Mr. Schell is without effective means or recourse. Defendants further deny that the speech alleged is that of the OBA or is non-germane. Further, the allegations as to membership are moot given the Court's Order [Doc. 61].

91. Defendants are without sufficient information to admit or deny the allegations set out in paragraph no. 91, and therefore deny same, but also specifically deny that Mr. Schell is injured by the dues requirement, and that the allegations are moot given the Court's Order [Doc. 61].

92. Defendants are without sufficient information concerning Mr. Schell's wishes or intent to admit or deny those allegations, and therefore deny the same, but also specifically deny that Mr. Schell is injured by the dues requirement and deny the balance of the allegations. Further, the allegations set out in paragraph no. 92 are moot given the Court's Order [Doc. 61].

93. Defendants are without sufficient information concerning Mr. Schell's wants or intent to admit or deny those allegations, and therefore deny the same, but also specifically deny that Mr. Schell is injured by the dues requirement and deny the balance of the allegations in paragraph no. 93.

FIRST CLAIM FOR RELIEF

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

94. Defendants incorporate their answers to paragraph nos. 1-93.

95. The allegations set out in paragraph no. 95 state a legal conclusion and do not require a response. Further, the allegations set out in paragraph no. 95 are moot given the Court's Order [Doc. 61].

96. The allegations set out in paragraph no. 96 state a legal conclusion and do not require a response. Further, the allegations set out in paragraph no. 96 are moot given the Court's Order [Doc. 61].

97. The allegations set out in paragraph no. 97 are denied. Further, the allegations set out in paragraph no. 97 are moot given the Court's Order [Doc. 61].

98. The allegations set out in paragraph no. 98 state a legal conclusion and do not require a response. Further, the allegations set out in paragraph no. 98 are moot given the Court's Order [Doc. 61].

99. The allegations set out in paragraph no. 99 state a legal conclusion and do not require a response. Further, the allegations set out in paragraph no. 99 are moot given the Court's Order [Doc. 61].

100. The allegations set out in paragraph no. 100 are denied. Further, the allegations set out in paragraph no. 100 are moot given the Court's Order [Doc. 61].

101. The allegations set out in paragraph no. 101 are denied. Further, the allegations set out in paragraph no.101 are moot given the Court's Order [Doc. 61].

102. The allegations set out in paragraph no. 102 are denied. Further, the allegations set out in paragraph no. 102 are moot given the Court's Order [Doc. 61].

103. The allegations set out in paragraph no. 103 are denied. Further, the allegations set out in paragraph no. 103 are moot given the Court's Order [Doc. 61].

104. The allegations set out in paragraph no. 104 are denied. Further, the allegations set out in paragraph no. 104 are moot given the Court's Order [Doc. 61].

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. Defendants incorporate their answers to paragraph nos. 1-104.

106. The allegations set out in paragraph no. 106 are denied. Further, the allegations set out in paragraph no. 106 are moot given the Court's Order [Doc. 61].

107. The allegations set out in paragraph no. 107 are denied. Further, the allegations set out in paragraph no. 107 are moot given the Court's Order [Doc. 61].

108. The allegations set out in paragraph no. 108 are denied, including that the state forces attorneys to subsidize the OBA's political or ideological speech. Further, the allegations set out in paragraph no. 108 are moot given the Court's Order [Doc. 61].

109. The allegations set out in paragraph no. 109 are denied. Further, the allegations set out in paragraph no. 109 are moot given the Court's Order [Doc. 61].

110. The allegations set out in paragraph no. 110 are denied. Further, the allegations set out in paragraph no. 110 are moot given the Court's Order [Doc. 61].

111. The allegations set out in paragraph no. 111 are denied. Further, the allegations set out in paragraph no. 111 are moot given the Court's Order [Doc. 61].

112. The allegations set out in paragraph no. 112 are denied. Further, the allegations set out in paragraph no. 112 are moot given the Court's Order [Doc. 61].

113. The allegations set out in paragraph no. 113 are denied. Further, the allegations set out in paragraph no. 113 are moot given the Court's Order [Doc. 61].

114. The allegations set out in paragraph no. 114 are denied. Further, the allegations set out in paragraph no. 114 are moot given the Court's Order [Doc. 61].

115. The allegations set out in paragraph no. 115 are denied. Further, the allegations set out in paragraph no. 115 are moot given the Court's Order [Doc. 61].

116. The allegations set out in paragraph no. 116 are denied. Further, the allegations set out in paragraph no. 116 are moot given the Court's Order [Doc. 61].

117. The allegations set out in paragraph no. 117 are denied. Further, the allegations set out in paragraph no. 117 are moot given the Court's Order [Doc. 61].

118. The allegations set out in paragraph no. 118 are denied. Further, the allegations set out in paragraph no. 118 are moot given the Court's Order [Doc. 61].

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. Defendants incorporate their answers to paragraph nos. 1-118.

120. The allegations set out in paragraph no. 120 state a legal conclusion and do not require a response.

121. To the extent the allegations set out in paragraph no. 121 state a legal conclusion, they do not require a response. Defendants deny that the OBA's procedures fail to comply with applicable legal requirements.

122. The allegations set out in paragraph no. 122 are denied.

123. The allegations set out in paragraph no. 123 are denied.

124. The allegations set out in paragraph no. 124 are denied.

125. The allegations set out in paragraph no. 125 are denied.

126. The allegations set out in paragraph no. 126 are denied.

127. The allegations set out in paragraph no. 127 are denied.

128. The allegations set out in paragraph no. 128 are denied.

Requests for Relief

Defendants deny that plaintiff is entitled to judgment in his favor, or to any relief, including that sought in lettered paragraphs A-F of the First Amended Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim as to Defendants upon which relief may be granted.
2. Plaintiff failed to utilize the policies, procedures or opportunities offered to challenge any expenditure he may contend is non-germane, and is therefore barred from bringing a personal or an applied challenge.
3. Plaintiff's claims are barred by the applicable statute of limitations and the doctrine of laches.
4. Plaintiff's request for attorney's fees is barred by the Civil Rights Act.
5. The OBA has complied with state law, including the Oklahoma Constitution, with regard to treatment of contingent liabilities and otherwise.

WHEREFORE, Defendants pray that plaintiff take nothing by way of the remaining count of the First Amended Complaint, and that plaintiff's requests for relief be denied in their entirety; that Defendants recover all costs of this action, including a reasonable attorney's fee, and that Defendants be granted such other and further relief, whether legal or equitable, as may be just and proper.

Respectfully submitted,

/s/ Michael Burrage

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**ATTORNEYS FOR DEFENDANTS
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GOVERNORS**

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2019, I filed the attached document with the Clerk of Court. Based on the records currently on file in this case, the Clerk of Court will transmit a Notice of Electronic Filing to the following:

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