

Timeline of *McDonald* Litigation

- **March 6, 2019** Plaintiffs filed complaint
- **March 25** Plaintiffs filed motion for preliminary injunction and motion for partial summary judgment on liability
- **April 25 – July 22**
 - Amicus briefs filed in support of Plaintiffs: (1) Texas Attorney General Ken Paxton; and (2) Goldwater Institute
 - Amicus briefs filed in support of the State Bar: (1) Texas Legal Ethics Counsel; (2) Former Presidents of the State Bar of Texas, Former Chairs of the Texas Bar College, and Former Chairs of the State Bar of Texas Council of Chairs; (3) Texas Access to Justice Commission; (4) Concerned Lawyers of Color
- **May 13** State Bar filed responsive briefs, cross-motion for summary judgment, and motion to dismiss for lack of subject-matter jurisdiction
- **May 23** Status conference held; Court scheduled summary-judgment merits hearing for August 1. Plaintiffs agreed to pay their 2019-2020 State Bar dues.
- **May 31** Plaintiffs filed responses and replies. Plaintiffs amended the complaint in response to the State Bar’s motion to dismiss, and added the Chief Disciplinary Counsel of the State Bar and the members of the State Bar Commission for Lawyer Discipline as defendants to the case
- **June 4** Court dismissed without prejudice the State Bar’s motion to dismiss
- **June 18** State Bar filed reply in support of cross-motion for summary judgment
- **July 15** Plaintiffs and Defendants filed a joint stipulation regarding the defendants in the action
- **August 1** Summary-judgment merits hearing held; motion for preliminary injunction dismissed
- **August 30 & September 4** State Bar filed notice of supplemental authority informing the Court of the Eighth Circuit’s favorable decision in *Fleck v. Wetch*, and Plaintiffs filed response

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| • January 15 & 21, 2020 | State Bar filed notice of supplemental authority informing the Court of the E.D. Louisiana's favorable decision in <i>Boudreaux v. La. State Bar Ass'n</i> and the Seventh Circuit's favorable decision in <i>Jarchow v. State Bar of Wis.</i> , and Plaintiffs filed response |
| • March 9 | State Bar filed notice of supplemental authority informing the Court of the Supreme Court's denial of certiorari in <i>Fleck v. Wetch</i> |
| • May 29 | The Court denied Plaintiffs' motion for partial summary judgment, granted the State Bar's cross-motion for summary judgment, and entered final judgment for the State Bar |
| • June 2 | Plaintiffs filed an appeal in the Fifth Circuit |
| • June 5 & 11 | Plaintiffs filed, and the Fifth Circuit granted, Plaintiffs' unopposed motion to expedite |
| • June 30 | Plaintiffs filed their opening brief |
| • July 30 | State Bar filed its responding brief |
| • August 5 & 13 | The Fifth Circuit oral argument panel requested, and the parties filed, supplemental briefs regarding the applicability of the Tax Injunction Act. Both parties argued the TIA is inapplicable to Plaintiffs' claims. |
| • August 11 | The oral argument panel postponed oral argument until "the court is able to return to normal operations." The oral argument panel is comprised of Judges Jerry Smith, Don Willett, and Kyle Duncan. |
| • August 14 | Plaintiffs filed their reply brief |
| • September 11 | State Bar filed a notice of supplemental authority informing the Fifth Circuit of the W.D. Michigan's favorable decision in <i>Taylor v. Barnes</i> |
| • February 26 & 27, 2021 | Plaintiffs and the State Bar filed notices of supplemental authority informing the Fifth Circuit of the Ninth Circuit's decision in <i>Crowe v. Oregon State Bar</i> |
| • March 4 | Fifth Circuit held oral argument in <i>McDonald and Boudreaux</i> |
| • May 28 | Plaintiffs filed a letter informing the Fifth Circuit they would pay their 2021 Bar dues |

- **July 1** The Bar filed a notice of supplemental authority informing the Fifth Circuit of the Tenth Circuit’s decision in *Schell* against the Oklahoma Bar
- **July 2** The Fifth Circuit rendered its decision granting partial summary judgment to the plaintiffs on all three counts. The panel remanded to the district court to determine the full scope of relief, and entered a preliminary injunction preventing the Bar from requiring the plaintiffs to join or pay fees pending completion of the remedies phase.
- **July 7 & 8** The Bar filed a motion to extend the deadline to file a petition for panel rehearing and/or rehearing en banc, and the Fifth Circuit extended the deadline to July 23
- **July 19 & 26** The Bar notified the Fifth Circuit that it did not intend to file a petition for panel rehearing and/or rehearing en banc, and the Fifth Circuit mandate issued
- **August 30** District court held a status conference regarding remedies phase of the case
- **September 30** Deadline for Bar to file a summary of action taken at State Bar of Texas Board of Directors meeting on September 24, regarding rule and policy changes in response to Fifth Circuit’s decision

State Bar Arguments on Cross-Motion for Summary Judgment

Count I

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

Count II

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

Count III

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

Related Lawsuits Against State Bars

North Dakota

Fleck v. Wetch

- **April 2019** – Amicus briefs filed in support of the State Bar of North Dakota:
 - Chuck Herring for Texas Legal Ethics Counsel; State Bar of California; joint brief of several integrated state bars (Alaska, Michigan, etc.); Missouri Bar
- **August 30, 2019** – Eighth Circuit issued decision again affirming the district court’s grant of summary judgment for the defendants on remand from the Supreme Court
- **November 21, 2019** – Fleck filed a petition for writ of certiorari in the U.S. Supreme Court
- **December 2019** – Four amicus briefs filed in support of Fleck: Liberty Justice Center; Pacific Legal Foundation; joint brief of National Right to Work Legal Defense Foundation, Inc. and Reason Foundation; 1889 Institute
- **March 9, 2020** – The U.S. Supreme Court denied Fleck’s cert. petition
- **April 3, 2020** – Fleck filed a petition for rehearing asking the Court to consider the petition at the same time as the cert. petition in *Jarchow*
- **May 4, 2020** – The U.S. Supreme Court denied Fleck’s petition for rehearing

Wisconsin

Jarchow v. State Bar of Wisconsin

- **April 8, 2019** – Complaint filed
- **May 21, 2019** – Defendants filed a motion to dismiss under 12(b)(1) and 12(b)(6), and a motion to stay the proceedings pending a resolution in *Fleck v. Wetch* (as an alternative to dismissal)
- **June 2019** – All motion to dismiss briefing completed
- **December 2019** – District court granted 12(b)(6) motion to dismiss and plaintiffs appealed the decision to the Seventh Circuit. The plaintiffs moved for summary affirmance of the district court’s decision.
- **December 23, 2019** – Seventh Circuit affirmed district court’s dismissal of the case under *Keller*
- **December 31, 2019** – Plaintiffs filed a petition for writ of certiorari in the U.S. Supreme Court
- **April 3, 2020** – Wisconsin Bar filed response to plaintiffs’ cert. petition
- **June 1, 2020** – U.S. Supreme Court denied Jarchow’s cert. petition. Justices Thomas and Gorsuch filed a short opinion dissenting from the denial of cert.

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Wisconsin

File v. Kastner et al.

- **July 25, 2019** – Complaint filed against State Bar officers, Wisconsin Supreme Court justices
- **November 2019** – Defendants filed motions to dismiss and a motion to stay the case pending resolution of the motions to dismiss
- **December 2019** – Briefing on defendants’ motions to dismiss and stay complete
- **March 2020** – Plaintiff filed a motion to disqualify Judge Adelman
- **June 29, 2020** – District court dismissed the complaint, holding that plaintiff’s claim is foreclosed by *Keller*, and denied the plaintiff’s motion to disqualify
- **July 28, 2020** – Plaintiff filed an appeal in the Seventh Circuit
- **September 8, 2020** – Plaintiff filed opening brief
- **November 6, 2020** – Defendants filed their responding brief
- **November 30, 2020** – Plaintiff’s filed reply brief
- **January 15, 2021** – Seventh Circuit held oral argument
- **July 6** – Plaintiff filed notice of supplemental authority informing the Seventh Circuit of the Fifth Circuit’s decision in *McDonald*
- **July 16** – Defendants filed a notice of supplemental authority regarding the *McDonald* decision

Oregon

Gruber v. Oregon State Bar

Crowe v. Oregon State Bar

- **April 1 and May 24, 2019** – Magistrate judge issued findings and recommendation. Magistrate judge recommended dismissal of the suits and rejected many of the same claims and legal arguments that the *McDonald* Plaintiffs assert. The district court adopted the magistrate judge’s findings and dismissed both cases
- **May 29-30, 2019** – Plaintiffs in both cases filed a notice of appeal to the Ninth Circuit. *Crowe* lawsuit sponsored by Goldwater Institute, the same organization that is sponsoring *Fleck*
- **September – November 2019** – Appellate briefs filed in both cases. Amicus briefs in support of Oregon Bar filed by Arizona Bar, California Bar, and the State of Oregon
- **May 12, 2020** – Oral argument held in both cases consecutively
- **February 26, 2021** – Ninth Circuit issued decision affirming the district court’s dismissal of the plaintiffs’ free-speech and objection procedure claims. The Ninth Circuit also held that neither *Keller* nor *Lathrop* barred the plaintiffs’ free-association claim, and remanded to the district court on that issue.
- **April 26** – Plaintiffs in *Gruber* filed a petition for writ of certiorari in the U.S. Supreme Court. The Oregon Bar waived its right to file a response.
- **May 12** – Oregon Bar filed answers to the complaints in both cases
- **May 27** – Plaintiffs in *Crowe* filed a petition for writ of certiorari in U.S. Supreme Court. The Oregon Bar waived its right to file a response.
- **June – July** – Ten amici submitted briefs in support of petitioners in *Crowe*
- **July 28** – Plaintiff in *Gruber* filed a motion for summary judgment in the district court
- **September 8** – Bar defendants filed response to summary-judgment motion in *Gruber*
- **September 27** – The Supreme Court is scheduled to consider the cert. petitions in *Gruber* and *Crowe*

Oklahoma

Schell v. The Chief Justices of the Oklahoma Supreme Court et al.

- **March 26, 2019** – Complaint filed; lawsuit sponsored by Goldwater Institute
- **April 24, 2019** – Defendant filed motion to dismiss under 12(b)(1) and 12(b)(6)
- **May 15, 2019** – Plaintiff amended the complaint to add justices of the Oklahoma Supreme Court and members of the Bar Board of Governors
- **May 21, 2019** – Judge Friot recused himself and Judge Heaton is now presiding over the case
- **June 21, 2019** – Board of Governors, Executive Director, individual Board of Governors defendant, and OK Supreme Court justices filed separate motions to dismiss
- **September 18, 2019** – Defendants’ motions to dismiss granted in part and denied in part; only plaintiff’s third claim (Bar procedures) remains
- **October 2, 2019** – Defendants filed answers to complaint
- **March 13 & 25, 2020** – Defendants filed unopposed motion to dismiss the remaining claim due to changes in the Oklahoma Bar’s objection procedures; case is dismissed
- **April 2020** – Plaintiff filed an appeal in the Tenth Circuit
- **May 19, 2020** – Plaintiff filed opening brief
- **June 18, 2020** – Defendants filed responding brief
- **July 10, 2020** – Plaintiff filed reply brief
- **November 16, 2020** – Tenth Circuit held oral argument

- **June 29, 2021** – Tenth Circuit affirmed dismissal of the plaintiff's claim that mandatory bar fees violated his right to free speech, and reversed dismissal of plaintiff's claim that mandatory membership violated his freedom of association, because the district court did not determine whether challenged activities were germane under *Keller*.
- **July 13 & 14** – Plaintiff filed a petition for panel rehearing or rehearing en banc; the Tenth Circuit panel requested a response from the defendants
- **August 8** – Defendants filed an opposition to the plaintiff's rehearing petition
- **August 25** – Tenth Circuit granted in part the plaintiff's petition for panel rehearing on the issue of permissible discovery in the district court, and denied the plaintiff's petition for rehearing en banc. Case is remanded to the district court for further proceedings.

Louisiana
Boudreaux v.
Louisiana State Bar
Ass'n et al.

- **August 1, 2019** – Complaint filed against Louisiana Bar, the Louisiana Supreme Court and justices; lawsuit sponsored by Goldwater Institute
- **September 30, 2019** – Defendants filed motions to dismiss under 12(b)(6) and 12(b)(1)
- **November 2019** – Briefing on defendants' motions to dismiss complete
- **January 13, 2020** – District court granted defendants' 12(b)(2) and 12(b)(6) motions to dismiss, dismissing all three of plaintiff's claims against all defendants
- **February 10, 2020** – Plaintiff filed appeal in the Fifth Circuit
- **May 22, 2020** – Briefing in the Fifth Circuit is complete

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- **March 4, 2021** – Oral argument held immediately following the *McDonald* oral argument
 - **July 2** – Fifth Circuit issued its decision reversing the district court's dismissal of all three of plaintiff's claims, and remanded to the district court for further proceedings.
 - **July 26** – Plaintiff filed motion for preliminary injunction to prevent the Bar from requiring him to maintain membership or pay dues while the case is pending
 - **August 23** – Defendants filed their answer to the complaint after the plaintiff declined to file an amended complaint
 - **September 21** – Defendants filed a notice that the Louisiana Supreme Court amended its rules regarding the scope of permissible Bar activities
 - **September 28** – Court is set to hold a status conference regarding issues including summary judgment motions practice, a discovery schedule, and a potential hearing date on the plaintiff's motion for a preliminary injunction
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Michigan

Taylor v. Barnes et al.

- **August 22, 2019** – Complaint filed against the State Bar of Michigan, and President and other officers of the State Bar of Michigan Board of Commissioners
- **September 19, 2019** – Defendants filed answer to complaint
- **May 14, 2020** – Parties filed, and court entered, stipulation dismissing the Michigan Bar as a defendant; only individual defendants remain
- **May 15, 2020** – Plaintiff filed motion for summary judgment and opening brief in support
- **June 15, 2020** – Defendants filed opening brief in response to plaintiff’s motion, and in support of cross-motion for summary judgment
- **July 27, 2020** – Summary judgment briefing completed
- **September 8, 2020** – The district court granted summary judgment for the Bar defendants on all of the plaintiff’s claims, including that mandatory membership in, and financial support for, the State Bar of Michigan violate attorneys’ First Amendment rights to freedom of association and speech—two of the same claims made by the *McDonald* plaintiffs
- **November 24, 2020** – Plaintiff filed opening brief in Sixth Circuit
- **December 24, 2020** – Defendants filed responding brief
- **February 4, 2021** – Plaintiff filed reply brief
- **July 9** – Defendants filed notice of supplemental authority informing the Sixth Circuit of the Fifth Circuit’s decisions in *McDonald* and *Boudreaux*
- **July 15** – The Sixth Circuit affirmed summary judgment for the Bar defendants, rejecting the plaintiff’s claim that *Janus* implicitly overruled *Keller*
- **September 1** – The plaintiff filed a petition for writ of certiorari in the U.S. Supreme Court

Utah

*Pomeroy v. Utah
State Bar et al.*

- **April 13, 2021** – Complaint filed against Utah State Bar, Executive Director, President, President-Elect, and Commissioners; lawsuit sponsored by Goldwater Institute
- **July 7** – Defendants filed a motion to dismiss under 12(b)(1) and 12(b)(6) based on Eleventh Amendment immunity, lack of Article III standing, and failure to state a claim on the merits
- **August 19** – Plaintiff filed an opposition to the defendants’ motion to dismiss
- **October 1** – Deadline for the defendants’ reply in support of motion to dismiss