

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Robert S. Bennett, Nachael Foster, §
Andrew Bayley and others similarly situated §

Plaintiffs

CIVIL ACTION 4:21-cv-2829

vs.

State Bar of Texas aka the “Texas Bar” §
(and culpable officials within it) §

CLASS ACTION COMPLAINT

Defendants

**PLAINTIFFS’ MOTION FOR THE DEFENDANT TO SHOW AUTHORITY TO
BE REPRESENTED BY ITS PRESENT LEGAL COUNSEL**

1. Come now the Plaintiffs through legal counsel Rich Robins.
2. Based on information and belief, they believe that the Defendants lack authority to be represented by their present legal counsel and law firm. The Plaintiffs, through counsel, further represent as follows:

FACTS

3. Defendants’ legal counsel, Patrick Mizell of Vinson & Elkins, recently entered an appearance in this case on Thursday, January 20th, 2022. The following Monday (January 24th, 2022) he expeditiously filed both a motion to dismiss this case or at least to transfer it to Austin, Texas to a court which the 5th Circuit Court of Federal Appeals already overturned in this compulsory membership dispute last July 2nd, 2021. See *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021).
4. At no time has the Defendant State Bar of Texas publicly demonstrated that it has remedied apparently unlawful procurement practices which compel (still obligatory) Texas Bar dues paying members to have to pay for legal services from

this law firm, or any others, regarding the ongoing mandatory bar membership dispute.

5. Indeed the Texas Government Code requires under most, if not all, seemingly applicable circumstances that competitive bidding take place between aspiring legal counsel which seek to represent a governmental entity whereby certain amounts of compensation are involved. *See generally*, **Tex. Gov't Code § 2155.132(a)**.
6. As of September of 2019, the Texas Bar had *already* paid the relevant law firm a \$100,000 self-insured amount with the understanding that that association's insurance would assume payments to that law firm from that point onward. The evidence of actual competitive procurement, however, has been and remains highly lacking. The same can be said for the Texas Bar membership's willingness to continue paying relevant insurance premiums for this highly questionable compulsory membership cause.
7. The procurement should be competitively bid and very publicly so, in part so that law firms can be heard which are actually interested in what the Texas Bar's (still compulsory) membership actually wants in this dispute.
8. Indeed, on the average, around 80% of the Texas Bar's compulsory membership does not even bother to vote in the annual, month-long, internet-enabled Texas Bar elections. *See generally* <http://www.TexasBarSunset.com/voter-abstention> . Evidence is highly lacking that the membership wants to continue having to support a compulsory membership "unified" state bar that merges attorney discipline with (potentially corrupting) trade association functions such as the peddling of continuing legal education courses regarding impermissibly (but lucratively) vague disciplinary rules.
9. Attorney Robins also mentions the still pending nature of the "existential" litigation involving the Texas Bar at the U.S. Supreme Court. *See McDonald v. Firth* (No. 21-800 (U.S.); No. 20-5448, 4 F 4th 229 (5th Cir. 2021); No. 1:19-cv-219- LY (W.D. Tex.)).
10. The U.S. Supreme Court requested a reply from the Texas Bar during December of 2021. *See*

<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21-800.html> .

11. Plaintiffs' Attorney Robins respectfully submits that the still unresolved status of this dispute in Washington D.C. (and elsewhere) makes Attorney Mizell's hastily made dismissal and transfer filings submitted the week before last seem all the more squanderous. Attorney Robins mentions that much of the Plaintiffs' class action lawsuit is based on that still ongoing federal litigation in Washington D.C.
12. Our lawsuit is also pursued against the same Texas Bar regarding which Texas' Office of the Attorney General (OAG) filed a trio of (insightful and fascinating) amicus briefs at every level in the relevant litigation which the Texas Bar ultimately lost at the federal appellate level on July 2nd, 2021. *See McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021). The OAG recently filed an amicus curiae brief with the U.S. Supreme Court in the name of the *State of Texas*. The OAG's brief opposes the respondent State Bar of Texas and supports the petitioners. Our class action lawsuit is based, in part, on the OAG's truly outstanding work as well.

ARGUMENT & AUTHORITIES

13. Federal Rule of Civil Procedure 9(2) enables the Plaintiffs and their legal counsel to dispute the purported lawful compliance of the abovementioned representative arrangement. Simply put, the Defendants lack authority to continue with the ongoing representative arrangement and the pending motions recently filed.

CONCLUSION & PRAYER

14. The Plaintiffs, through counsel, hereby challenge the Defendants' authority to be represented by their current legal counsel and law firm in this ongoing compulsory bar membership dispute. The Plaintiffs and their legal counsel request that the Defendants hereby satisfactorily establish their legal counsel's representative authority or that present legal counsel withdraw both its presence *and* pending motions in this ongoing dispute.
15. The Plaintiffs *also* request that any further procurement of legal representation in this dispute be subject to a transparent membership referendum requiring the

majority of all present compulsory dues payers of the Texas Bar to actively approve of the allegedly highly unpopular compulsory membership situation before it is further maintained. They and especially the Plaintiffs' counsel also request that responses purportedly due to the Texas Bar's two pending motions be due, if at all, no sooner than one month from the date that Texas' state entity procurement standards have finally been deemed to have been complied with successfully & satisfactorily by the Texas Bar in this case.

DATED: February 7th, 2022

Respectfully submitted,

Rich Robins
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By:



Rich Robins
Attorney-In-Charge

CERTIFICATE OF CONFERENCE


I, Rich Robins, do hereby acknowledge that on February 7th, 2022 I e-filed a copy of this motion to opposing counsel after ordinary business hours, but that conferencing has not yet taken place:

Defendant(s):

State Bar of Texas aka the “Texas Bar”
Texas Law Center
1414 Colorado Street
Austin, Texas 78701

As represented by:

Patrick Mizell
1001 Fannin St # 2300
Houston, TX 77002
pmizell@velaw.com
Tel. 713-758-2932

By: 
Rich Robins
Attorney In Charge


CERTIFICATE OF SERVICE

I, Rich Robins, do hereby certify that on February 7th, 2022, we electronically filed with the Clerk of the Court for the U.S. District Court for the Southern District of Texas (via the Court's recently merged CM/ECF/PACER system) a true and correct copy of the above and foregoing Plaintiffs' Motion for the Defendant to Show Authority to Dispute this Case. The Clerk will send notification of such filing to the Defendant State Bar of Texas aka the "Texas Bar" at:

State Bar of Texas aka the "Texas Bar"
Texas Law Center
1414 Colorado Street
Austin, Texas 78701

via their recently announced legal counsel:

Patrick Mizell
1001 Fannin St # 2300
Houston, TX 77002
pmizell@velaw.com
Tel. 713-758-2932

By: 
Rich Robins
Attorney In Charge

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ORDER

The Court hereby acknowledges the Plaintiffs’ challenging of the Defendant’s authority to be represented by their current legal counsel, and further orders as follows:

Signed on _____ at Houston, Texas.

Honorable Alfred H. Bennett
United States District Judge