

State Bar of Texas Will Not **SEEK REHEARING OF 5TH CIRCUIT PANEL DECISION**

THE STATE BAR OF TEXAS WILL NOT SEEK REHEARING of a U.S. Court of Appeals for the 5th Circuit panel opinion that upheld the constitutionality of most challenged State Bar activities and left intact the structure of the mandatory bar.

State Bar leaders announced the decision after the bar's board of directors met July 19 to consult outside counsel on the *McDonald v. Sorrels* litigation.

"We are pleased that the 5th Circuit panel upheld the constitutionality of nearly all of the State Bar of Texas programs and activities challenged by the plaintiffs," State Bar of Texas President Sylvia Borunda Firth said. "Today the State Bar will inform the 5th Circuit Court of Appeals it will not be filing a petition for panel rehearing or a petition for rehearing en banc. We look forward to getting back to the trial court to bring this litigation to a conclusion."

Three Texas lawyers sued the State Bar of Texas in March 2019 claiming that under the U.S. Supreme Court's 2018 *Janus v. AFSCME* decision, it is unconstitutional for an attorney to be required to join the State Bar of Texas to practice law. The plaintiffs also challenge bar programs they claim exceed the bar's "core regulatory functions."

In May 2020, U.S. District Judge Lee Yeakel granted the State Bar's cross-motion for summary judgment and denied the plaintiffs' motion for partial summary judgment. The plaintiffs appealed the decision to the 5th Circuit.

On July 2, 2021, a panel of the 5th Circuit issued its opinion, upholding the constitutionality of the vast majority of the challenged State Bar programs and activities, including the bar's CLE and annual meeting programming, diversity initiatives, the *Texas Bar Journal*, and the bulk of its access to justice initiatives.

The panel found parts of the State Bar's and Texas Access to Justice Commission's legislative efforts were not germane to the bar's purposes of regulating the legal profession or improving the quality of legal services available to Texans, and therefore use of mandatory dues for those efforts violates the constitutional rights of the plaintiffs. The panel also found the bar's procedures are not sufficient to allow members to challenge activities they believe to be nongermane.

The panel vacated the district court's summary judgment, rendered partial summary judgment in favor of the plaintiffs, and remanded the case for the district court to determine the full scope of relief to which the plaintiffs are entitled.

The court also granted a preliminary injunction preventing the State Bar from requiring the three plaintiffs to join or pay dues pending completion of the remedies phase before the district court on remand. The injunction does not prevent the State Bar of Texas from requiring membership of, or collecting dues from, other bar members.

The 5th Circuit panel opinion does not change the longstanding U.S. Supreme Court precedent that supports the mandatory bar. The opinion also does not undermine the fundamental structure and purposes of the State Bar of Texas, which was established by the Texas Legislature in aid of the Texas Supreme Court's inherent authority to regulate the practice of law.

The Texas case is one of many federal lawsuits filed across the country in recent years against mandatory bars. Read filings from these cases on the State Bar of Texas website at texasbar.com/mcdonaldvsorrels. **TBJ**

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