

State Bar of Texas Board of Director's Meeting on 07-19-21

SANTOS VARGAS: Good morning, everyone. It is now 9:05 a.m., and I'm calling the meeting to order. All directors will be unmuted for Roll Call. With our agenda posting, we invited members of the public to view a broadcast of the Board of Directors meeting, which is live at www.youtube.com/statebaroftexas. We also provided instructions on how to sign up to speak at today's meeting. Signups were available until last Friday at 5:00 p.m. Members of the public will speak after agenda item 4 and will remain in the Zoom waiting room until it's their turn to speak. Please note that this meeting will be recorded - is being recorded, and the recording will be made available to the public. Mr. Executive Director, will you please call the roll?

TREY APFFEL: Mr. Agosto?

BENNY AGOSTO: I'm present.

TREY APFFEL: Mr. Almanzan.

ANDRES ALMANZAN: Present.

TREY APFFEL: Mr. Baruch.

CHAD BARUCH: Here.

TREY APFFEL: Ms. Bihm.

KATE BIHM: Present.

TREY APFFEL: Ms. Brooker.

REBEKAH BROOKER: Here.

TREY APFFEL: Mr. Calvillo.

DAVID CALVILLO: Here.

TREY APFFEL: Mr. Carlos Cardenas. Mr. Luis Cardenas.

LUIS CARDENAS: Here.

TREY APFFEL: Mr. Cavazos.

LUIS CAVAZOS: That was me, I'm sorry. Luis Cavazos.

TREY APFFEL: Mr. Charbonnet.

JASON CHARBONNET: Here.

TREY APFFEL: Ms. Clarke. Ms. Cordova.

DEBORAH CORDOVA: Here.

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TREY APFFEL: Mr. Crosley.

THOMAS CROSLEY: Here.

TREY APFFEL: Ms. Davis.

CHRISTINA DAVIS: Present.

TREY APFFEL: Judge Earle.

ELISABETH EARLE: Present.

TREY APFFEL: Ms. Hernandez Ferrier.

MARIA HERNANDEZ FERRIER: Present.

TREY APFFEL: Ms. Borunda Firth.

SYLVIA BORUNDA FIRTH: Present.

TREY APFFEL: Mr. Fischer.

STEVE FISCHER: Here.

TREY APFFEL: Ms. Forbes.

LUCY FORBES: Present.

TREY APFFEL: Ms. Gibson.

LAURA GIBSON: Here.

TREY APFFEL: Mr. Ginn.

CHARLIE GINN: Here.

TREY APFFEL: Mr. Goss.

ROBERT GOSS: Present.

TREY APFFEL: Mr. Harris. Mr. Harris is present. I saw him on - there he is. Ms. Harrison. Ms. Hoskins.

SONYA HOSKINS: Present.

TREY APFFEL: Mr. Huddleston.

FORREST HUDDLESTON: Here.

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TREY APFFEL: Mr. Hurst.

UNIDENTIFIED PERSON: Went under the oven.

MICHAEL HURST: Here.

TREY APFFEL: Ms. Israni.

RAKHI ISRANI: Here.

TREY APFFEL: Ms. Kern has as an excused absence. Mr. Kroger. Justice Lehrmann.

DEBRA LEHRMANN: Here.

TREY APFFEL: Ms. Cortes Mares has an excused absence. Mr. McDougal.

LARRY MCDOUGAL: Here.

TREY APFFEL: Mr. McDonald.

DWIGHT MCDONALD: Present.

TREY APFFEL: Ms. Carra Miller.

CARRA MILLER: Here.

TREY APFFEL: Ms. Mount.

LYDIA MOUNT: Here.

TREY APFFEL: Miss Murphy has an excused absence. Ms. Naylor has an excused absence. Judge Newell has an excused absence. Ms. Rispoli.

JEANINE RISPOLI: Present.

TREY APFFEL: Mr. Ritter.

MICHAEL RITTER: Here.

TREY APFFEL: Mr. Schramek.

ADAM SCHRAMEK: Here.

TREY APFFEL: Mr. Sciumbato.

AUDIE SCIUMBATO: Here.

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TREY APFFEL: Ms. Scott. Mr. Sergi.

DAVID SERGI: Here.

TREY APFFEL: Mr. David Smith. Mr. Jason Smith. Mr. Michael Smith. Mr. Todd Smith. Miss St. Yves.

DIANE ST. YVES: Here.

TREY APFFEL III: Mr. Sud.

NITIN SUD: Present.

TREY APFFEL III: Mr. Tobey.

ROBERT L. TOBEY: Here.

TREY APFFEL III: Mr. Tolchin.

ANDREW TOLCHIN: Here.

TREY APFFEL III: Judge Truncale has an excused absence. Mr. Vargas.

SANTOS VARGAS: Here.

: Mr. Vasquez - he's present. Ms. Pack Wilson.

KIMBERLY PACK WILSON: Present.

TREY APFFEL III: And Ms. Wooten has an excused absence. We have the corner.

SANTOS VARGAS: Thank you, Mr. Executive Director. I now call on director David Calvillo to unmute himself and lead the board of directors in the invocation.

DAVID CALVILLO: Thank you, Mr. Chair Santos Vargas, also known as the Alamo City Saint. Good morning, everyone. Let's take a moment to invoke the proper perspective before we begin this important meeting. Please, prepare yourself in the manner in which you are accustomed. Heavenly father, God of justice, God a mercy, God of truth, pour forth your blessing upon this gathering as we pray for humility, wisdom and a servant's heart. Grant us humility to carefully listen with an open mind to one another and to those who count on us. Grant us wisdom so we may have the vision to help guide this noble profession in our state. Grant us hearts of servant leaders so that everything we do is in service of the greater good, the Administration of Justice. Amen, amen, and amen.

SANTOS VARGAS: Thank you, director Calvillo for that beautiful invocation. I now call on director Dwight MacDonald to lead us - to unmute himself first and lead us in the pledges.

DWIGHT MCDONALD: Thank you, Chairman Vargas. If you would, please join me in the Pledge of Allegiance and then the Texas Pledge. I pledge allegiance...

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UNIDENTIFIED GROUP: ...Allegiance to the flag...

DWIGHT MCDONALD: ...To the United States of America...

UNIDENTIFIED GROUP: ...The United States of America, and to the Republic for which it stands one nation...

DWIGHT MCDONALD: ...Under God...

UNIDENTIFIED GROUP: ...Under God...

DWIGHT MCDONALD: ...Indivisible...

UNIDENTIFIED GROUP: ...Indivisible, with liberty and justice for all.

DWIGHT MCDONALD: And if you can join me in the Texas pledge. Honor the Texas flag...

UNIDENTIFIED GROUP: ...I pledge allegiance to thee, Texas, one state under God, one and indivisible.

SANTOS VARGAS: Thank you so much, director McDonald. Welcome, everyone, to this specially called meeting of the of the State Bar Board of Directors. At this time, we'd like to welcome any members of the public who have signed up to speak. Members of the public will remain in the Zoom waiting room until it's their turn to speak. I will address you to indicate when you can begin speaking. Each member of the public will be given three minutes to speak. At the one-minute mark I will let you know that you have one minute left with respect to your remarks. And at the three-minute mark I'll ask you to wrap up your thoughts. With that, I believe, our first public member is Mr. Tyler Epstein. Mr. Epstein, you have floor. Is it - excuse me. Mr. Epstein, are present? Mr. Epstein, I believe that you're muted.

TYLER EPSTEIN: Did you hear me? Yes, yes, I was...

SANTOS VARGAS: I can. Thank you.

TYLER EPSTEIN: Awesome. Sorry about that - little technical difficulties. Firstly, I appreciate being here. I want to start off by how this particular Zoom hearing has made me money versus costing me money. I'm able to participate in this session as well as attend a client's development project that has a little hiccup yesterday. And I'm wearing construction clothes so that I could be out there walking around in the mud, and yet at the same time be here to present my case on particularly Zoom, which is just interesting to me - kind of ironic. Everybody wants to talk about access to justice, TLAP. Those are the big talking points the bar has right now. TLAP mostly comes from the stress and anxiety of practicing law in a ever-changing, fast-paced environment where one simple 15-minute docket hearing can take up half a day and kill your productivity where there is no reason that that cannot be done via Zoom from your office. Automatically anxiety and stress comes down 'cause you don't have to knock out half a day of time. Same time you have to bill somebody for all that time that's nonproductive to be able to go to the hearing this downtown. Now your client - instead of it costing them \$45 or \$100 or \$200 to attend this dockett hearing that just resaid something, you're having to bill them five, six, \$700. Again, that's limiting access to justice 'cause some clients can't afford that. So the fact that I had a debate with Mr. Shaw was about the - about this particular topic and the fact that we're having this discussion and it's not been implemented when the ability to help the two particular things that the bar strives for, access

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to justice and TLAP, both very important, can be unlocked with Zoom, right here. I'm able - if I were to come to Austin to attend this hearing, I would have...

SANTOS VARGAS: Mr. Epstein, you have one minute remaining.

TYLER EPSTEIN: Yes, sir. I would have spent a 100 bucks on fuel. I'd have spent a couple of hundred bucks on hotel, and 100 bucks in food. And then I would have lost time with my family and then I wouldn't have been able to attend this issue this morning for my client. So I would've lost money there and my client would have lost money. So, I mean, that shows the power of Zoom, and the fact that we're having debate it is very frustrating for many people. I would say everybody that I've talked to - they're all baffled by the fact that Zoom even being debated. And that's it. I will yield the rest of my time. Thank you.

SANTOS VARGAS: Thank you very much, Mr. Epstein. I believe, our next speaker is Mr. Bob Bennett. Mr. Bennett, could you, please, unmute yourself. And Mr. Bennett, you will also have three minutes within which to give your remarks. You have the floor, Mr. Bennett.

ROBERT S. BENNETT: Thank you very much. Good morning. Having practiced law in the state of Texas and elsewhere for almost 50 years, I do believe I have a perspective in having been involved in certain bar activities presently serve on the TLAP committee. I think, I also have some insight into an organization that has deep, deep problems, and I'm not going to sugarcoat that. I appreciate what Daniel said. I think, it is important to do something like Zoom, but that's not the issue here. The issue is freedom of speech. And the way that this board of directors and the bar has treated Larry McDougal is a case in point of what needs to be changed. There was other instances where the board of directors and certain bar members tried to silence Steve Fischer. And now we have a constitutional issue that basically what you're doing is unconstitutional. I think the bar needs to realize the deep, deep problem that it's in. And certainly many members of the bar do recognize that. Let me point out that when we talk about areas that we shouldn't be doing things in and areas that aren't really helpful - I mean, this board of directors, I believe, was the one that voted - or at least some of the people on it voted on the creation of an ombudsman, which basically is an organization run by the state bar to help our clients file a grievance against us. Now, if that is not something that is against what the bar should be doing, not too sure what is. You're going to have the opportunity to go into executive session very shortly. And out of that there's going to be certain recommendations made, but if the recommendations that are made are simply let's do business as we have done in the past, let's be more focused on how we can maintain the bar, how we can maintain positions, how we can maintain paying the salaries we do, instead of why...

SANTOS VARGAS: Mr. Bennett, you have one minute remaining.

ROBERT S. BENNETT: Thank you - what is really the best for the individual attorneys? You're going to have more lawsuits. You're going to have more legislative initiative. This old, tired statement that if we, you know, are not careful where they're going to take away our ability to self-regulate - we're past that now. We are in an arena now where the Fifth Circuit, other circuits have stated that what you're doing is wrong. You need to straighten it out. You need to get it correct. Thank you.

SANTOS VARGAS: Thank you very much, Mr. Bennett. I believe, that our last public speaker is Mr. Rich Robbins. Mr. Robbins, please unmute yourself. You now have the floor.

RICHARD ROBINS: Yes, sir. Can you hear me now?

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SANTOS VARGAS: We can.

RICHARD ROBINS: Can you hear me?

SANTOS VARGAS: We can we can't.

RICHARD ROBINS: OK, I'd like to begin, please.

SANTOS VARGAS: Please proceed.

RICHARD ROBINS: I'd like to speak about about two things - thank you. I'd like to speak about two things briefly. No. 1, I sent an email to the board about the value of looking at the Virginia Bar model of de-unification, basically separating attorney discipline from potentially corrupting trade association functions. Hopefully, you all received that. If not, please email me at your convenience at Rich@TexasBarSunset.com Long story short, the Virginia Bar makes less than \$100,000 a year in CLE sales of its own, whereas the Texas Bar sells probably more than all the rest of the bars combined in CLE based on my studies. And I've been following this for several years ever since I submitted documentation to the Sunset Review Commission. So if we could consider the Virginia Bar model, we may not have that much of a clash anymore with the Fifth Circuit. They want us to get the unnecessary frivolities out of the bar, and, I think, that's a great idea for reasons I'd be happy to explain. If I did have more time I'd rather talk about that topic, but in moving along - free speech is important to have, just as Bob Bennett had said. Tyler Epstein, our first speaker - he posted something in Andrew Tolchin's forum about the result of the Fifth Circuit and it was promptly deleted. That's not free speech. You all act like that's a substitution for online digital discussion forums, like what you had for the referendum a decade ago - it's not. There's no free speech there and everybody knows it, OK? And moving along why don't we go in and get digital discussion forms so we can decide how we want to handle this recent opinion from the Fifth Circuit Court of Appeals? We're not being consented. You've got members on the board who were elected on agreements...

SANTOS VARGAS: Mr. Robins, you have one minute left.

RICHARD ROBINS: OK - and they promptly abandon them once they're elected. Why? Well, they don't get placed on the right committees otherwise so they don't get to run for president without having to get 5,000 signatures. That's not free speech. The Fifth Circuit and the U.S. Supreme Court see through that. Look how Larry McDougal was treated after he basically made clear his desire to get grievance reform pursued. And Steve Fischer was the only one who defended him on the board, yet is he on the Ad Hoc Committee that's selected for dealing with the Fifth Circuit - which has made a big deal, and rightly so, of how Larry McDougal was treated. Meanwhile, the Texas Bar's Daily News briefing that Amy Starnes publishes - how come it can't include attorney blogs as well? And moving along the bar never got our consent before it lobbied behind the scenes to exclude attorney discipline from the Texas Citizens Participation Act. How is that free speech? Why didn't we have a discussion about that? Why don't we have a membership referendum on the...

SANTOS VARGAS: Mr. Robins, your time is up. I'll ask you to please finish your comment.

RICHARD ROBINS: Thank you. And my last comment is that these call-ins are very valuable. It's not easy for us to travel all the way to Austin. Thank you for letting this call-in happen, but I do believe that last

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month it wasn't possible. I urge you and request that in the future it'd be possible for us to call in. We can't really travel two days for a...

SANTOS VARGAS: Thank...

RICHARD ROBINS: ...Three-minute conference. Thank you all very much, and God bless.

SANTOS VARGAS: Thank you, Mr. Robins. I believe, we've now heard from every member of the public who signed up to speak. So the comment period is now closed. During the remainder of the meeting if there are any board members or staff who do wish to speak at any time please unmute yourself. Please remember to raise your hand via the Zoom feature - the raise your hand Zoom feature. If you click on participants on your Zoom screen you'll see a raise your hand feature. Make sure to use that, and also please make sure to state your name. I'll call on you whenever it's your turn to speak. Directors, we're going to have both open session and closed session today. You're going to have an opportunity to comment at both. One of the things that I want to establish going into this board year - last year's board chair established some guidelines and some expectations for comments from directors and I'm going to ask you to follow those things got - those same guidelines and the same expectations. And I want to go over a few of them with you. No. 1, I expect everyone, every single director to please keep your comments civil. We're a board of professionals. The public is watching us, and the public expects nothing less than the utmost professionalism from this board. Let's not let them down. Also please keep your comments and your questions directed to me. I'm not going to allow any sort of cross-commentary or any sort of cross-debate between directors. If you have comments, direct them at me. If you also - if you have questions, direct them at me and I'll call on the appropriate person to answer those questions for you. I'm not going to allow - I'm not going to limit anybody's speaking time so long as you're respectful of the board and you're keeping your comments on topic. If you start veering into topics that aren't on the agenda or if you're continuing to speak solely to prevent the board from taking action on any particular item, I will ask you to finish your thoughts. With respect to who gets to speak when, I'm going to call on directors in the order that they raise their hand virtually using the Zoom raise your hand feature. And before I allow any director to speak twice, I'm going to allow directors who haven't yet had an opportunity to speak, to speak first. Lastly, motions will not be made by any director on any topic until we get to that action item on the agenda. Do any of the directors have any questions about the guidelines and expectations that I've just gone over? OK, next we're going to move on to agenda item No. 6, the report from the president, Sylvia Firth, President Firth, the floor is yours.

SYLVIA BORUNDA FIRTH: Thank you, Santos. Good morning, everyone. My report actually consists of our very first order of business today. Ever since the McDonald case was filed against the state bar in early 2019, a combined group consisting of the ad hoc submission committee - which includes the president, the president-elect, the chair of the board, the executive director and the legislative policy chair, and also the Board Litigation Subcommittee - has worked to monitor and make decisions regarding the litigation. That setup has worked very well, and today I propose that the board continue those efforts. So at this time I'd like to move that the board grant continued authority for the ad hoc sub commissions - Ad Hoc submission committee and the Litigation Subcommittee to make decisions regarding McDonald v. Sorrels and related matters as needed.

SANTOS VARGAS: Thank you, president Firth. The motion coming from the floor - we need a second. Do we have a second from any of the directors?

YOLANDA CORTES MARES: Second.

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SANTOS VARGAS: I believe that was director Mares. Thank you, director Mares for the second. And just to restate the motion, president Firth, I believe that you move that the board grant continued authority for the Ad Hoc Submission Committee and the Litigation Subcommittee to make decisions regarding McDonald vs. Sorrels and related matter as needed. Is that accurate?

SYLVIA BORUNDA FIRTH: That's correct.

SANTOS VARGAS: Thank you. Is there any discussion?

STEVE FISCHER: Yes.

SANTOS VARGAS: I believe - OK, director Fischer, you have the floor.

STEVE FISCHER: OK, and this definitely pertains to the committee and what it needs to do. I would have like to speak about that I've been investigating other bars and how good our CLE program was and how good our financial responsibility is compared to the bars, but, unfortunately, this is the topic today. And yeah, I guess, I'm not on the Ad Hoc Committee. And I will remind you - maybe gloat a little bit - but I was the only director to defend Larry's right to free speech as much as I disagreed with it. And in the bar or in the oral arguments - look at 42.50 - and they say - they nail us for what we did to Larry. And this is another problem. The bar's attorneys do not represent my view, because the bar, just like when Donald Trump lawyer - his lawyers made false allegations and got trouble - and got in trouble, our lawyer said that we promote free speech.

CHARLIE GINN: Point of order. (CROSSTALK)

STEVE FISCHER: OK, limit my free speech. Go go ahead and prove my point.

SANTOS VARGAS: Director Fischer, one of the guidelines is - that I set out just a couple of minutes ago was for our directors to keep our comments civil. I'll ask you to please do that, sir. Who was it that had a point of order?

STEVE FISCHER: I don't want to be interrupted.

SANTOS VARGAS: Director Fischer, we have a point of order. Who has a point of order?

CHARLIE GINN: Mr. Chair, I do, Director Ginn.

SANTOS VARGAS: Director Ginn, could you please state your point of order?

CHARLIE GINN: Going into confidential information - best left for executive session.

SANTOS VARGAS: Thank you, director... (CROSSTALK)

STEVE FISCHER: No confidential information.

SANTOS VARGAS: Director Fischer, I'd ask you to please...

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CHARLIE GINN: Attorney just to be...

SANTOS VARGAS: Director Fischer, I'd ask you to please not disclose any information that's been provided to this board in closed session. And not...

STEVE FISCHER: I will.

SANTOS VARGAS: ...Disclose any privileged information. Thank you. You may continue.

STEVE FISCHER: I absolutely agree. And, you know, when I presented at a CLE - and I get plenty of requests - and Charlie showed up. I was much nicer to him than he ever was to me. I pointed him out...

SANTOS VARGAS: Director Fischer, I don't want to cut you off...

STEVE FISCHER: OK.

SANTOS VARGAS: ...But I'd ask you not to direct your comments...

STEVE FISCHER: OK.

SANTOS VARGAS: ...At any other director.

STEVE FISCHER: All right.

SANTOS VARGAS: Please direct your comments at me, director Fischer. Please continue.

STEVE FISCHER: OK. All right. We have had no discussions about free speech in executive session so this has nothing to do with it. The bar and its attorneys are not representing me when they make the allegation that we promote free speech, because if you're a director and you disagree with - and I'm going to give you concrete examples - and you disagree...

SYLVIA BORUNDA FIRTH: Mr. Chairman, I have a point of order.

SANTOS VARGAS: Yes, president Firth, could you please state your point of order?

SYLVIA BORUNDA FIRTH: Mr. Fischer, you're off the agenda topic. The agenda of the topic - the motion is to grant continued authority to the Ad Hoc sub-commission - submission committee and the litigation subcommittee to make decisions regarding McDonald v. Sorrels and related matters despite being needed. (CROSSTALK)

SANTOS VARGAS: Director Fischer, please hold on until president Firth is done with her point of order.

SYLVIA BORUNDA FIRTH: I would request that we stay on topic with the agenda to avoid violations of the Open Meetings Act.

SANTOS VARGAS: President Firth, your point of order is well taken. Director Fischer, I'd ask that you please stay on topic. One of...

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STEVE FISCHER: The topic is that I'm...

SANTOS VARGAS: Director Fischer.

STEVE FISCHER: No, you're proving exactly what I'm trying to do that you're going to cut me off. You're going to have every director, you know...

SANTOS VARGAS: Director Fischer - director Fischer I will not tolerate - as chair of this board, I will not tolerate comments that are not professional and uncivil. I ask you to please continue keeping in mind that we have - this is an emergency meeting, a specially called meeting, and we need to stay on topic with respect to the points that are on the agenda. I'd ask you to please continue...

STEVE FISCHER: OK.

SANTOS VARGAS: ...And please stay on topic, sir.

STEVE FISCHER: OK, I'm against this and I'll be the only one that's against that committee because you're not talking about free speech and because you're going to allow our attorneys to make those same allegations that we promote free speech. So it is definitely germane if I tell you examples of why the blog does not allow free speech, aside from everybody cutting me off. I mean, that's fairly obvious. So that's how I'm going to give you examples, because it's germane to the committee. And I want that committee - which, of course, didn't include me because I was for Larry - to know that. That's germane. So anybody else want to make a point of order?

SANTOS VARGAS: Director Fischer, I would ask that you please...

STEVE FISCHER: All right.

SANTOS VARGAS: ...Direct your comments to me.

STEVE FISCHER: I'm going to do it correctly. The state bar has never allowed free speech unless you agree with them 100%. You can look at the candidates for president. They're picked not on any special qualifications because they've always agreed with the state bar. Look at the last four people that run. But in my opinion, in my free speech and why this Ad Hoc committee does not represent me - it starts with a letter from Sylvia Firth saying that I can't speak to the media - not true. I can't speak as bar spokesman or representative. I just got that. Again, when the letters were sent out for the directors from the district I was not allowed to write my own letter. I am the elected person from District 17. The bar PR does it. That's limiting.

SANTOS VARGAS: I don't want to cut you off, director Fischer, but...

STEVE FISCHER: There should be.

SANTOS VARGAS: One of the things that I - director Fischer, one of the things that I asked at the beginning of this meeting is that we please stay on topic...

STEVE FISCHER: This is on topic.

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SANTOS VARGAS: ...And stay on the agenda, please.

STEVE FISCHER: It's on topic.

SANTOS VARGAS: We have the - director Fischer...

STEVE FISCHER: It's on topic, that is, if I'm talking about...

SANTOS VARGAS: Director Fischer, we have a motion on the floor. Do you have continued comments with respect to the motion...

STEVE FISCHER: Yes.

SANTOS VARGAS: ...That is on the floor?

STEVE FISCHER: I want to show why this motion should be defeated. I'm showing it by the fact that....

SANTOS VARGAS: Then defeat the motion.

STEVE FISCHER: Yeah, well, I'm trying to, OK? So that's another issue, that that board is going to say, yeah, we have free speech, of course, leaving all - any dissenters out. Next, you know, we can go back 10 years. And the bar has this history - when I tried to get petitions, the bar had - and nobody said I was disrupting anything. I was sitting in a hallway, waiting for a break. And the bar had armed guards remove me. Is that free speech?

DAVID SERGI: Oh, come on.

STEVE FISCHER: Is that what we're talking about? Next, when I got nominated and I had my petitions, when the bar said, we are having events for the presidential candidates, I was excluded. Everybody else got paid for it by dues to go to Lubbock and speak to their bar in Amarillo. And I was not allowed to speak. Luckily, Frank Stevenson said, well, you're a director. You can speak at the meeting. This goes all - and Larry's free speech? That's part of what the committee is going to have to deal with. Larry said nothing that any Republican congressman wouldn't have said. And while I disagree, I warned you guys. I told you - and that's why I'm excluded from the committee. I told you that this was going to come back to bite you. Did you listen? No, so now you're going to show the Supreme Court or whatever court that you have this committee with only one point of view. So I can go on and on about free speech. I'll cut that down. But the committee...

SANTOS VARGAS: Thank you, director Fischer. Are you done?

STEVE FISCHER: No, I'm just saying that, you know, the bar should try to have a diverse committee, not by brown and black and women. It should have diversity of ideas on these committees. And if you ever speak up, you're off. You don't have a chance. And, well - and I'm going to take this further because you can kick Larry around and he'll take it. I'm not. I fight back.

SANTOS VARGAS: Thank you, director Fischer. Director Tolchin, I see that you have your hand raised. Director Tolchin, you have the floor.

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ANDREW TOLCHIN: Before deciding who we will entrust decision-making to, can we all please be fully briefed so that we have as much information as possible before making that decision? Therefore, if possible, could we go to the closed session and do whatever we're going to do to be fully informed and then have a discussion in public about who we're entrusting with this important decision-making authority? Thank you.

SANTOS VARGAS: Thank you, director Tolchin. Is there - does anybody else have any discussion with regard to the motion that's currently on the floor? Hearing none, all directors in favor please say, aye, any opposed please say, nay. The aye's first.

MARY SCOTT: Aye.

SANTOS VARGAS: All in favor, please say, aye.

BOARD OF DIRECTORS: Aye.

SANTOS VARGAS: All opposed, please say, nay.

STEVE FISCHER: Nay.

SANTOS VARGAS: The ayes have it, and the motion is adopted. Moving on to agenda item 7A. As you all know, on July 2 of this year, a panel of the 5th Circuit Court of Appeals issued its opinion in the McDonald v. Sorrels case. At this time, I'm going to call on our outside counsel, Mr. Tom Leatherbury at Vinson & Elkins, to update the board on the opinion issued by the 5th Circuit. And Mr. Tolchin, you just referred to this just a few minutes ago. But after Mr. Leatherbury provides his report, the board is going to go into closed session. And so, directors, I'm going to ask that you please reserve any questions that you have for Mr. Leatherbury and our outside counsel team until we do go into closed session. Mr. Leatherbury, you now have the floor.

TOM LEATHERBURY: Thank you, Mr. Chair, for this opportunity to summarize the opinion in McDonald and to update the board on the developments in other cases in other circuits pending against mandatory state bars. As you recall, we argued the case on March 4 before a panel consisting of Judge Jerry Smith, Judge Don Willett and Judge Kyle Duncan. As the chair said, the court issued - the panel issued its opinion on July 2. Let me run through the key holdings because there has been some press coverage, some misinformation, some other information. But I'm glad to have this opportunity. The court held, first, as both the bar and the plaintiffs had argued, that the bar's membership fees and the legislatively imposed legal services fees are regulatory fees and not taxes. And therefore, the Tax Injunction Act did not bar the plaintiff's lawsuit. Turning to the merits of plaintiff's first two claims, the claim for violation of freedom of association and freedom of speech, the court recognized that the two key U.S. Supreme Court precedents, Keller vs. State Bar of California and Lathrop vs. Donohue, were not overruled by Jannis - by the Jannis case. The U.S. Supreme Court decided in the public union context in 2018. And therefore, Keller and Lathrop remain binding law. This was one of the plaintiff's main arguments. And the court rejected it. The court then joined the Ninth Circuit in the Oregon case and the 10th Circuit in the Oklahoma case in interpreting Lathrop and Keller as leaving open the question of, quote, "whether lawyers may be constitutionally mandated to join a bar association that engages in non-germane activities," that is activities not sufficiently connected to a state bar's permissible objectives of regulating the legal profession and improving the quality of legal services available to Texans. Answering that question, the Fifth Circuit held that compelled membership in a bar association

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that engages in non-germane activities fails the constitutional test, which was exacting scrutiny; and therefore, would violate the First Amendment right of freedom of association. So the question then became whether the bar engaged in non-germane activities on the record that had been made in the district Court. The Fifth Circuit rejected another of plaintiff's main arguments, that is that the bar could do nothing that the plaintiffs characterized as political or ideological, and held that most of the bars challenged activities were germane, including its support of pro bono and legal aid efforts, the annual meeting, the CLE programs, the Texas bar journals, the diversity initiatives and a number of the state bars, and the Texas Access to Justice Commission's legislative activities. The court held that all of these activities contributed to either regulating the legal profession or improving the quality of legal services in Texas. The court, however, held that certain legislative activities of the bar and the Access to Justice Commission were not germane to the permissible purposes. The court did not preclude the bar from engaging in all legislative lobbying. To quote from the opinion, lobbying for legislation regarding the function of the state's courts or legal system writ large is germane so, too, is advocating for laws, governing the activities of lawyers quoi lawyers. But advocacy for some, quote, "changes to the state's substantive law is non-germane," close quote. The court specifically took issue with some of the legislative proposals supported in the past by the family of probate and LGBTQ+ sections of the state bar. As for the Access to Justice Commission, the court stated that to the extent the bar is supporting commission activities limited to helping low income Texans access legal services, it is germane. According to the court, the commission's germane activities include lobbying for funding for civil legal services, creating pro bono opportunities for law students, and providing training for attorneys, as well as helping the Supreme Court of Texas make Texas courts more accessible and navigable to low income Texans, such as by creating forms and pro bono pro se forms and pro bono toolkits. But the court held it was non-germane for the commission to, quote, "lobby for changes to Texas substantive law designed to benefit low income Texans," close quote. In sum, the court held that because the bar engages in some non-germane activities, compelling the plaintiffs to join it violates their right of freedom of association. As options for addressing the found constitutional violation, the Fifth Circuit wrote that the bar can cease engaging in non-germane activities or that Texas could adopt a different system of regulating the legal profession as a minority of other states have done. The Fifth Circuit further held that the bar needed to change its procedures to notify bar members of and allow them to challenge activities that they allege were non-germane. According to the Fifth Circuit panel, the bar must provide its members with more fulsome notice regarding how their dues will be spent and where their fees will go and must provide a more extensive procedure for attorneys to object to allegedly non-germane expenditures and seek a refund. The court granted the three plaintiffs who were - who brought the lawsuit a preliminary injunction preventing the bar from requiring three plaintiffs to join or pay dues pending completion of the remedies phase before the district court on remand. This relief applies to the three plaintiffs only. As an alternative holding to its freedom of association holding, the court held that spending on several non-germane activities that it had identified would also violate plaintiff's freedom of speech. Now I want to turn from McDonald to the significant activities and other state bar cases since the last bar board meeting in June. The Louisiana case, which - with which we were combined for argument at the Fifth Circuit, was decided by our same panel on the same day. And the holding was similar. This case - the Louisiana case was at the motion to dismiss stage, so the court reversed and remanded for further proceedings on all three claims - freedom of association, freedom of speech and procedural due process. The deadline for the Louisiana Bar to file a petition for rehearing was last Friday, the, and no petition was filed. Our deadline for filing any further petitions for rehearing or petition for rehearing and bond in the 5th Circuit is this Friday, 23. The court extended it by one week from the traditional deadline of 16. In the Oklahoma case, the 10th Circuit issued its opinion, just several days before our opinion, on June 29. The 10th Circuit reversed the dismissal of plaintiff's freedom of association claim because the district court had made no determination of whether the bar's alleged

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activities were germane or not germane under Keller. The court ruled for the bar in the freedom of speech claim. And the Oklahoma bar had amended its procedures which originally were complained about by those plaintiffs during the course of the lawsuit. And the procedures were not at issue on appeal. The plaintiff in the Oklahoma case, not the bar, but the plaintiff, has filed a petition for rehearing or rehearing en banc. And the 10th Circuit has requested a response from the Oklahoma bar. The date that the bar has asked the court to extend it to is early August. In Michigan, the 6th Circuit, just last Friday, affirmed summary judgment for the Michigan bar, holding the Keller and Lathrup was still good law and had not been overruled by Jannis. Those plaintiffs raise, primarily, the large issue of whether Jannis had overruled the precedents of U.S. Supreme Court and did not challenge particular activities. In the Oregon case that we've discussed before, two petitions for certiorari were filed by the plaintiffs and are pending in the U.S. Supreme Court. The petitions are scheduled to be considered in late September, but that could be pushed back if the court requests a response from the Oregon State Bar. The Wisconsin case is still pending decision in the circuit court after argument. And in the Utah case, which was later filed than all the rest of these cases, the bar recently filed its motion to dismiss on multiple grounds earlier this month. I would be remiss if I didn't extend my deepest thanks to the senior staff of the bar, for all their support in this litigation, and to the committees that we have worked with. Also I want to thank the lawyers who helped us compile the record and gather affidavits in support of our motion for summary judgment - which Judge Appfel granted - and those lawyers who filed very persuasive amicus briefs arguing about improving the quality of legal services in Texas and regulating the profession and how the bar's activities were germane. Those lawyers include the lawyers at Shell, Herring & Panzner, Baker Botts, Johnston, Toby and Baruch, Thompson Coburn and Gray Reed. And if I left anybody out, I sincerely apologize. And last, I want to thank our team, my colleagues Pat Mozelle and Josh Johnson and Morgan Kelly, who've been in it from the beginning and have worked very hard on behalf of the bar. Mr. Chair, that's my report.

SANTOS VARGAS: Thank you so much, Mr. Leatherbury. And thank you - want to echo what you said just a minute ago, Mr. Leatherbury. Thank you to you and all of our outside counsel team. You have been so helpful throughout this process, and we thank you for your efforts. Directors, we're now going to move on to agenda Item 7C. And we're going to go into closed session. It is now 9:49 a.m., and the state bar board of directors will now recess the open meeting and reconvene in closed session, as authorized by Texas Governor Code Section 551.071 for the purpose of consulting with legal counsel on pending and contemplated litigation, including regarding McDonald et al vs. Sorrels et al, #20-50448 the Fifth Circuit Court of Appeals. At this time we'll have a two-minute recess for our moderator, Ms. Greens, to put all of our members, including section reps and liaisons, into a breakout room for the closed session. All other individuals, including non-essential staff and other guests, will remain watching the broadcast. We will notify the public when we're five minutes out from returning to open session. And any director who's attending by Zoom, please make sure that your video is on so that we can visually confirm your identity. If you are attempting by telephone only, we've already confirmed their identity and so you don't need to do anything there. One important reminder for all of the records whenever we are in closed session, please make sure that we do not use the chat feature during closed session - or open record purposes. And with that, we're going to go into closed session.

SANTOS VARGAS: Are we live yet? Thank you for your patience, everyone. I'm going to call the meeting back to order. It is now 11:35 a.m., and the open session of the board of directors executive committee meeting will now reconvene. During the closed session, only matters relating to consultations with legal counsel on pending and contemplated litigation were discussed. No action was taken in the closed session. And now that we're back in open session, we're going to move on to agenda Item 7E. And I'm going to call on Director Mary Scott to provide the joint recommendation of the board's litigation

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subcommittee and ad hoc submission committee. Director Scott, you have floor. Director Scott, I believe you may be muted. Can you unmute yourself, please?

MARY SCOTT: I was muted, my apologies. Thank you, Mr. Chair. I have a motion to bring before the board coming out of our closed session. My motion is after consulting with legal counsel and consulting - and considering the recommendation of the ad hoc submission committee and litigation subcommittee and after considering our options, I move that Vinson and Elkins be directed to notify the Fifth Circuit that the bar will not seek rehearing of the panel's decision in McDonald vs. Sorrel.

SANTOS VARGAS: Director Scott, I believe that your motion, just to be clear, was that Vinson and Elkins are outside counsel, be directed not to file a petition for rehearing in the Fifth Circuit and to notify the Fifth Circuit that a petition for rehearing - panel rehearing or en banc rehearing will not be filed. Is that correct, Dr. Scott?

MARY SCOTT: That's correct. That's correct, Mr. Chair.

SANTOS VARGAS: Thank you, Director Scott. The motion coming from a committee does not require a second. All in favor of the motion. Please say aye.

UNIDENTIFIED PEOPLE: Aye.

SANTOS VARGAS: All opposed please say nay. The ayes have it, and the motion is adopted. Thank you, everyone, for attending this meeting on such an important topic. Now that we have taken a vote on this matter, I'm going to call our executive director, Mr. Trey Apffel, to speak to the board. (Unintelligible) just take it.

TREY APFFEL: Thank you, Mr. Chair. Just very briefly, as executive director and now with the decision of the board today, I am confident that the State Bar of Texas can move forward and continue to achieve our mission and statutory purposes in compliance with the Fifth Circuit panel opinion. Thank you very much.

SANTOS VARGAS: Thank you. Mr. Executive Director. And now I'll call our president, Sylvia Borunda Firth about her comments. Ms. Borunda Firth, you have the floor.

SYLVIA BORUNDA FIRTH: Thank you very much. I'll also be very brief. We're pleased that the Fifth Circuit upheld the constitutionality of nearly all of the State Bar of Texas, the State Bar of Texas programs and activities that were challenged by the plaintiffs. We look forward to getting back to the trial court to bring this litigation to a conclusion. The court 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 Fifth 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 to the Texas Supreme Court's inherent authority to regulate the practice of law. We will be posting additional information with regard to the action taken by the board today - available for the public on the state bar's website. We encourage anyone who would like additional information to contact Trey Apffel at the state bar. And we'll make sure you get the appropriate information. Thank you.

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SANTOS VARGAS: Thank you, President Borunda Firth. I believe that concludes all of the action items. Are there any other motions from the floor that we need to consider? Hearing none, is there any other business that we need to consider? Hearing none, before we adjourn...

BENNY AGOSTO: (Unintelligible) may I - real quickly, I think I heard...

SANTOS VARGAS: Yes, Director Agosto.

BENNY AGOSTO: Thank you. Very briefly, I heard that there were going to be some talking points for us in case people call and ask us. And I just wanted to make sure those were being prepared or going to be prepared, then they are made available.

SANTOS VARGAS: Director Agosto, I believe that you'll have access to those talking points in your board effects. So be on the lookout, and you'll be provided notice when those are available.

BENNY AGOSTO: Thank you, sir.

SANTOS VARGAS: Thank you, Director Agosto. Does anybody else that has any questions before we adjourn?

MIHCAEL HURST: Yes, Mr. Chair.

SANTOS VARGAS: Yes, Director Hurst.

MIHCAEL HURST: OK, thank you very much. And I just want to briefly say in summary what was said in closed session about the appreciation and respect for all the hard work and - that went into both the committee's leadership, led by Mary Scott from the subcommittee and the ad hoc committee, as well as our outstanding outside counsel, led by Tom Leatherbury along with Pay Mycell and Morgan and Josh - Josh being a former U.S. Supreme Court clerk - and that this was a very well vetted, well discussed process that went through multiple meetings and many opinions and thoughts that led to a unanimous recommendation. And thank you for the leadership of all involved, including President Firth and certainly our executive director Trey Apffel.

SANTOS VARGAS: Thank you, Director Hurst. Is there anybody else that has any comments or questions before we adjourn?

LUCY FORBES: I do. I want to thank you for an exceptional first meeting, Chairman Vargas. Thank you. You did a phenomenal job.

SANTOS VARGAS: Thank you, Director Forbes.

LAURA GIBSON: And Chair Vargas, are we going to recite our mission statement?

SANTOS VARGAS: We absolutely are.

LAURA GIBSON: Great.

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SANTOS VARGAS: That's the next item on our agenda. Thank you so much for reminding me. So, directors, for those who are our new directors, it's a tradition of this board and it will continue to be the tradition under my leadership as chair, to recite the state bar mission statement prior to the adjournment of each of our meetings. You're going to see the mission statement on your screen. And so, directors, I ask all of you to please join me now in reciting the State Bar of Texas mission statement.

UNIDENTIFIED PEOPLE: The mission of the State Bar of Texas it to support the administration of the legal system, assure all citizens equal access to justice, foster high standards of ethical conduct for lawyers, enable its members to better serve their clients and the public, educate the public about the rule of law, and promote diversity in the administration of justice and the practice of law.

SANTOS VARGAS: With that, thank you to everyone who's taken time on a busy Monday to attend this specially called meeting and to attend to this very important business of the state bar. And with that, I will entertain a motion to adjourn. (Unintelligible) adjourn. Do we have a second?

UNIDENTIFIED PEOPLE: I second.

SANTOS VARGAS: Director Forbes, I believe, seconded it. All in favor, say aye.

UNIDENTIFIED PEOPLE: Aye.

SANTOS VARGAS: Is there anybody opposed?