

No. 19-663

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In The  
**Supreme Court of the United States**

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ROBERT J. WILSON,

*Petitioner,*

v.

THE STATE BAR OF TEXAS,

*Respondent.*

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**On Petition For Writ Of Certiorari  
To The Third Court Of Appeals  
For The State Of Texas**

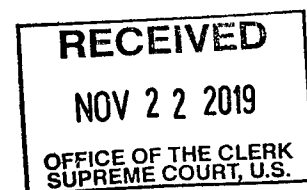
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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

### Introduction:

Petitioner contends he was disbarred without notice or opportunity to defend himself by his state bar and then denied access to the Courts for redress when he filed a lawsuit.

1. Can the State of Bar of Texas disbar one of its members without affording him due process of law as guaranteed by its own Rules of Disciplinary Procedure by claiming court created governmental immunity in contradiction of this Court's Due Process requirements as set forth in: *Dent v. West Virginia*, 129 U.S. 114 (1889); *Slochower v. Board of Education*, 350 U.S. 551(1956); *In re Oliver*, 333 U.S. 257, 273 (1948)?

2. Can a State created agency such as this Respondent deny one of its members due process of law as required by this Court in *In re Ruffalo*, 390 U.S. 544 (1968) by simply ignoring its own "right to sue" statute and be protected by court created governmental immunity?

3. Can a State created agency such as this Respondent deny one of its members due process of law as required by this Court in *In re Ruffalo*, 390 U.S. 544 (1968) and *Mathews v. Eldridge*, 424 U.S. 319, 333, 344 (1976) by simply ignoring its due process requirements in its own Rules of Disciplinary Procedure and be protected by court created governmental immunity?

## **PARTIES TO THE PROCEEDING**

Petitioner was the plaintiff in the district court proceedings and appellee in the state court of appeals proceedings. Respondent was the defendant in the district court proceedings and appellant in the state court of appeals proceedings. Petitioner was the Petitioner in the Texas Supreme Court and Respondent was the Respondent.

## **RELATED CASES**

- *Robert J. Wilson v. The State Bar of Texas*, No. D-1-GN-18-004216, District Court for Travis County, Texas, 200th Judicial District. Order of Denial on Plea to the Jurisdiction entered September 19, 2018.
- *The State Bar of Texas v. Robert J. Wilson*, No. 03-18-00649-CV, Texas Third Court of Appeals. Judgment entered March 20, 2019.
- *Robert J. Wilson v. The State Bar of Texas*, No. D-1-GN-18-004216, Supreme Court of Texas. Denial entered August 30, 2019.

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## **PETITION FOR A WRIT OF CERTIORARI**

Robert J. Wilson petitions for a writ of certiorari to review the judgment of the Third Court of Appeals for the State of Texas in this case.

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### **OPINIONS BELOW**

The Texas Third Court of Appeals' opinion (App. 1-7) did not address the abovesaid due process questions presented in its opinion: *State Bar of Tex. v. Wilson*, No. 03-18-00649-CV (Tex. App. Mar. 20, 2019). The trial court's order denying Respondent's various motions to dismiss (App. 8) was not reported.

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### **JURISDICTION**

The Texas Third Court of Appeals entered judgment reversing the trial court's denial of their Motion to Dismiss for Want of Jurisdiction on March 20, 2019 (App. 1-7); thereby ignoring Petitioner's due process concerns set forth in his appellee's brief (App. 15-16). That court of appeals thereafter denied a timely petition filed by this Petitioner for a rehearing and for en banc reconsideration of due process issues on May 3rd, 2019. (App. 9-10).

The Petitioner filed a timely Petition for Review (App. 19-34) in the Texas Supreme Court again raising Petitioner's due process concerns and that Petition was denied on August 30, 2019 without comment (App. 37).

Petitioner filed a timely motion for rehearing in that court which was denied on October 11, 2019 (App. 37-42).

This Court therefore has jurisdiction under 28 U.S.C. § 1257(a).

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**STATUTES AND CONSTITUTIONAL  
PROVISIONS INVOLVED**

This case does involve interpretation of statutory or constitutional provisions.

*Tex. Gov't Code*, Sections 81.011, 81.014, & 81.017 (App. 44) states: The State Bar is a public corporation and “may sue and be sued in its own name” and it does not create any debts for the state. The Respondent (State Bar) contends that statute doesn’t apply to them when they are sued for wrongfully disbarring a bar member and that they enjoy governmental immunity from those lawsuits by court mandate.

The *Texas Rules of Disciplinary Procedure* have been declared by that State Supreme Court to have the effect of state statutes (*O’Quinn v. State Bar of Texas*, 763 S.W. 2d 397 (1988)), and therefore, the *Rules* 10.01 & 10.02, (App. 45) *Tex. R. Disc. P.* are at issue in this case if they allow the State Bar to violate a member’s due process rights when in this case, the Respondent, prepared and filed *their own* “motion for resignation” on behalf of an

unknowing bar member (Petitioner) with the state supreme court for action in total absence of that bar member's knowledge or active participation in requesting his resignation {which has the same legal effect as disbarment, Rule 10.05 (App. 46)}.

*Rule 10.01:* "Any person licensed to practice law in the State of Texas shall be permitted to file a motion for resignation in lieu of discipline . . .

*Rule 10.02:* "The Chief Disciplinary Counsel shall, within twenty days after service upon him or her of a motion for resignation in lieu of discipline, file a response on behalf of the State Bar stating whether the acceptance of the resignation is in the best interest of the public . . . The movant may, within ten days after service of such response, withdraw the motion . . ."

*Rule 10.05:* "Any resignation under this part shall be treated as a disbarment for all purposes, including client notification, discontinuation of practice, and reinstatement."

The Texas legislature did in fact immunize the employees of the State Bar

Section 81.106 Tex. Prac. & Rem. Code:

IMMUNITY. (a) The unauthorized practice of law committee, any member of the committee, or any person to whom the committee has delegated authority and who is assisting the committee is not liable for any damages for an

act or omission in the course of the official duties of the committee . . . (App. 72).

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### STATEMENT OF THE CASE

It is “the law of the land” that no man’s life, liberty or property be forfeited as a punishment until there has been a charge fairly made and fairly tried in a public tribunal. *Chambers v. Florida*, 309 U.S. 227, 236-237 (1940).

A state disbarment proceeding imposes a punishment on a lawyer and, therefore that lawyer is entitled to due process, which includes fair notice of the charges, *In re Ruffalo*, 390 U.S. 544, 550 (1968) and the accused has the right to respond to those charges, *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 84 (1988). This Court has long ago ruled that state disbarment procedures wanting in notice or the opportunity for the accused to defend himself are violations of the 14th Amendment’s requirement of due process of law. *Selling v. Radford*, 243 U.S. 46, 51 (1917).

The *Selling* case has basically set the standard test for this Court and the various States on determining the fairness and legality of State Bar’s handling of punishment procedures of its members with its three-pronged inquiry:

- (1) did the state procedure give notice and opportunity to be heard;
- (2) was there clear proof offered to reach a conclusion; or,

(3) is there grave reason existing that convinces the Court to intervene on principles of right and justice.

Petitioner's case would qualify as lacking in due process under one or all of those three inquiries since Petitioner's case involves a state bar member who was effectively disbarred without being given notice or an opportunity to defend himself. And furthermore, when Petitioner tried to address those matters by filing suit against Respondent he was again deprived of due process of law and access to the courts by Respondent's successful claim of governmental immunity by case law, even though that state's statute clearly stated that agency could "sue or be sued."

This case presents an excellent set of facts that this Court should address because Texas and other states will now attempt to use this case law created governmental immunity, of a *privately funded entity*, to deprive professionals and others of their business licenses without having to afford them due process of law by simply claiming governmental immunity when sued for redress by its members.

1. Petitioner was licensed by the State Bar of Texas in 1973. He practiced law until about 1990 when his law license was placed under an agreed three year suspension over a private criminal matter not involving his law practice. That criminal matter was formally dismissed in March of 1993 (App. 47-48). His law license suspension was to end on 12-08-1994 (App. 51-54).

In the meantime, Petitioner had become embroiled in a civil lawsuit in Tarrant County, Texas District Court with his former law associates and the State Bar over disputed legal fees sharing and he was held in contempt and ordered to pay a fine, which he later did and that case was dismissed (App. 49). Petitioner moved out of the state during that time period to become a certified professor of law and a permanent resident of the state of Arizona. Petitioner decided to take the Arizona Bar exam in early 2012 and requested the Respondent verify his good standing with the Texas Bar. The Respondent replied to Petitioner that he had resigned in 1994. Petitioner immediately denied resigning and demanded an investigation of his so-called resignation letter's origin (App. 63-70), which demands Respondent ignored. He later filed a civil suit for redress against Respondent (App. 55-62), in the 200th District Court of Travis County, Texas requesting a declaratory judgment (for the return of his suspended Texas Law License No. 21718300) and for money damages for defamation.

Respondent replied to that lawsuit by filing a Plea to the Jurisdiction combined with a 91a Motion to Dismiss and an Answer.

## **2. Disposition in the trial:**

The Trial Court heard the Respondent's motions in the 200th District Court of Travis County, Don R. Burgess presiding. The trial court denied the motion in open court. (App. 8).

The Respondent filed an interlocutory appeal from the denial of their Plea to the Jurisdiction and Dismissal Motion.

**3. Disposition in the Court of Appeals:**

The Third Court of Appeals, in Austin, Texas, with Justices: Goodwin, Baker, and Shannon, presiding, in Cause No. 03-18-00649-CV reversed the trial court and granted the State Bar's Plea to the Jurisdiction on the grounds that the State Bar enjoyed total governmental immunity from lawsuits and then dismissed Petitioner's entire lawsuit with costs assessed against him (App. 1-7). That court totally failed to address Petitioner's complaints of being stripped of his law license without due process of law as was guaranteed by this Court, *In re Ruffalo*, 390 U.S. 544 (1968).

Petitioner filed a motion for rehearing and for en banc reconsideration again raising his claims of being denied due process, equal protection, and access to the courts, but that Court of Appeals denied his motions on May 3, 2019. (App. 11-17).

**4. Disposition in the Texas Supreme Court:**

Petitioner filed a timely Petition for Review (App. 19-36) in the Texas Supreme Court again raising the issues of his being stripped of his law license without due process, equal protection and access to the courts and that Court denied said Petition on August 30, 2019 without comment (App. 37). Petitioner filed a timely Motion for Rehearing on Sept. 10, 2019 (App. 38-43), again raising the issues of denial of due process, equal

protection, and access to the court issues. That court denied his Motion on October 11, 2019, without comment (App. 37).

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### **REASONS FOR GRANTING THE WRIT**

The Court should grant the writ in order to decide the important questions this case presents.

**I. Can a privately funded state agency, such as Respondent, deprive a member of his license to practice his or her trade, by claiming governmental immunity and thereby deny him due process, equal protection of the law, and redress in the courts?**

**II. Can a quasi-judicial agency, created by state statute such as Respondent, deprive a professional of his or her license to practice his or her profession without following their own statutory Rules which require due process of law be afforded?**

**III. This appeal is of fundamental importance to the legal relationship that exists between the various state bars and other privately funded closed shop organizations which have mandatory dues paying memberships.**

Assuming the truth of Petitioner's pled allegations of his never resigning from the Texas State Bar (App "M" at paragraphs 4-17, & its Exh. "2 & 3") which is the standard rule in appellate cases such as this,



Respondents' self-serving and misleading and fabricated motion of resignation (App. "N") that they presented to the Texas Supreme Court for purposes of disbarring Petitioner should shock the conscience of the Members of this Court, aside from the fact that it was done in total denial of due process of law and equal protection. To allow such court made law as created in this case and behavior by a state bar or any other state controlled closed shop operations to become acceptable would forever create a dark stain on the relationship of state bars and other closed shops agencies with their dues paying and mandatory members and effectively strip those individuals of the protections guaranteed in the Fourteenth Amendment of the U.S. Constitution.

The Respondent did not deny that active participation by this Petitioner was lawfully required by their *Rules of Disciplinary Proc.* (App. 45) before a bar member's motion for resignation could be prepared and submitted to their supreme court for action. And, that *assumes the bar member* actually desired to resign, which is in dispute in this case. When confronted with the two letters from Petitioner denying his resignation (App. 65-70), Respondent could and should have handled the dispute internally, but chose to ignore Petitioner's complaints, leaving him *no alternative* but to sue them. And then, Respondent, finding itself in litigation over these matters, sought protection from a member's lawsuit by claiming governmental immunity while at the same time, ignoring their own *Rules of Disciplinary Procedure* 10.01, 10.02. 10.05 (App. 45) which were obviously intended to provide due process

and equal protection to all parties when a bar member wanted to resign.

Petitioner contends Respondent is bound by the clear provisions of its Enabling Act of the State Bar. It was never the intent of the Texas legislature to give the Respondent immunity from law suits by its members, but only to protect the employees and staff of the State bar from personal liability. (Apps. 44; 72) *Tex. Gov. Code, Title 2, Chapter 81.014 and 81.106.*

In its enabling act which created it, the Texas State Bar could always sue and be sued in its own name. It is a public corporation and is totally self-supporting and does not create any liability or debt obligations for the state (App. 44), Sect. 81.017 *Tex. Gov. Code Title 2, Chap. 2*); nor is it financially supported by the State's taxpayers or the State treasury.

The Respondent filed its own "motion to resign" (App. 78-88) on *behalf* of Petitioner in July of 1994 with the Texas Supreme Court, but failed to disclose to that Court that Petitioner had not complied with the requirements of resignation from the State Bar (App. 45), or that his criminal case had been dismissed (App. 47-48), and Petitioner was totally unaware of the proceedings. Petitioner's lawsuit contends that Respondent did not comply with its own *Rules* that require *the bar member to prepare and file* a formal motion to resign. Nowhere in those *Rules* does it authorize any other person but the resigning member to prepare and file such an instrument. Those *Rules* were designed to protect both parties. Petitioner was in effect disbarred

without his consent, knowledge or participation, which is clearly a violation of his rights of due process of law. *In re Ruffalo*, 390 U.S. 544 (1968) wherein the U.S. Supreme Court has stated that State disbarment actions must afford due process. See also, *Tex. Const., Article I, Section 19*, and the *14th Amendment* to the *U.S. Constitution* on due process requirements. And, *Keller v. State Bar of California*, 496 U.S. 1, 10-13 (1990).

The Respondent's former legal counsel, Mary F. Klapperich, created, prepared and filed the subject resignation motion. She even voiced her express doubts concerning its legal sufficiency (App. 73-74). Texas Courts look to the *nature, purpose and powers* in determining if the agency is a governmental entity that will enjoy sovereign or governmental immunity. *Ben Bolt v. Tex. Political Subdivisions*, 212 S.W. 3d 323 (Tex. 2006).

The Texas legislature is best positioned to create sovereign immunity because that is within their jurisdiction in order to protect their policymaking function. *Wasson Interests Ltd. v. City of Jacksonville*, 489 S.W. 3d 427 (Tex. 2018). They purposefully did not grant Respondent immunity from lawsuits when they acted to protect Respondents' employees and staff.

Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. *Ex Parte Radford*, 243 U.S. 46 (1917); *Spevack v. Klein*, 385 U.S. 511, 515 (1967).

Petitioner accordingly is entitled to procedural due process, which includes fair notice of the charge,

S<sup>ee</sup> *In re Oliver*, 333 U.S. 257, 273 (1948). It was said in *Randall v. Brigham*, 7 Wall. 523, 540 (1868) that when proceedings for disbarment are “not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defense.” “Therefore, one of the conditions this Court considers in determining whether disbarment by a state should be followed . . . is whether the state procedure suffered from want of notice or opportunity to be heard and therefore it was lacking in due process.” *Selling v. Radford*, 243 U.S. 46, 51 (1917).

The case at bar certainly is a shocking example of due process denied to a citizen-lawyer.

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### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,  
ROBERT J. WILSON,  
*Petitioner*

Dated: November 20, 2019