



July 20, 2020

VIA EMAIL

Mr. Larry P. McDougal Sr., President
State Bar of Texas
Texas Law Center
1414 Colorado Street
Austin, TX 78701

RE: Call to Action: Demand for the State Bar of Texas to address issues of racial inequality, minority access, and Black Lives Matter

Dear President McDougal,

We, the undersigned presidents of the African-American Bar Associations of Dallas, Houston, Austin, San Antonio, and Tarrant County write this letter in regard to your recent and past social media posts and comments regarding the “Black Lives Matter” movement. The State Bar of Texas (SBOT) has an obligation to its membership and the citizens of Texas to “assure all citizens equal access to justice, foster high standards of ethical conduct for lawyers . . . educate the public about the rule of law, uphold the lawyer’s creed, and promote diversity in the administration of justice and the practice of law.” As its current President, you are responsible for ensuring the SBOT’s obligations and mission are executed. However, your misleading characterizations about the Black Lives Matter movement have caused anger, frustration, and pain in the legal community, creating a perception that you lack the ability to understand the struggle for equal justice that African-Americans have faced for centuries.

I. BLACK LIVES MATTER

The hashtag or social media moniker commonly known as “#BlackLivesMatter” was created in 2013 by citizens concerned about the continued injustice experienced by Black Americans and unsatisfactory accountability in the justice system, including lack of criminal convictions or even criminal charges, for those who caused the untimely deaths of African-American citizens. As a result of these grassroots efforts, Black Lives Matter Foundation, Inc. was created with a mission “to eradicate white supremacy and build local power to intervene in violence inflicted on Black

communities by state and vigilantes.”¹ This organization is not a terrorist group. Rather, it is a collective of concerned Americans who have witnessed the unjust treatment and killings of Black men and women such as Trayvon Martin, Michael Brown, Sandra Bland, George Floyd, Breonna Taylor, Javier Ambler, and Elijah McClain and have utilized their first amendment right to protest, march, and advocate for justice on their behalf. It is these deaths and America’s centuries-old legacy of racism that fuel the engine of Black Lives Matter’s concerted effort to combat racism and injustice in all forms. This is why we are outraged by your present and past comments on the subject of Black Lives Matter.

II. ELECTIONEERING

At issue most recently is your post to the Inside Fort Bend County Courts Facebook page, in which you expressed your “personal” opinion that a woman wearing a “Black Lives Matter” t-shirt should have been removed from a polling place for violating Texas Election Code § 85.036, which prohibits electioneering. Putting aside whether Texas’s prohibition on electioneering is constitutional, *see Minnesota Voters Alliance v. Mansky*, 138 S. Ct. 1876 (2018) (stating in reference to Tex. Elec. Code Ann. § 61.010(a) that “[w]e do not suggest that such provisions set the outer limit of what a State may proscribe, and do not pass on the constitutionality of laws that are not before us”), your factual and legal analysis is incorrect.

Texas Election Code contains two provisions prohibiting electioneering: Tex. Elec. Code § 61.003 (voting generally) and § 85.036 (early voting).² Both provisions prohibit electioneering “for or against any *candidate, measure, or political party*” “within 100 feet of an outside door through which a voter may enter the building or structure in which the early voting polling place is located.” (emphasis added).³ In addition, Texas Election Code § 61.010 prohibits “wear[ing] a badge, insignia, emblem, or other similar communicative device relating to a *candidate, measure, or political party appearing on the ballot, or to the conduct of the election*, in the polling place or within 100 feet of any outside door through which a voter may enter the building in which the polling place is located.” (emphasis

¹ For more information on Black Lives Matter Foundation, Inc., we encourage you to visit <https://blacklivesmatter.com/about/>

² Tex. Elec. Code § 61.003, Electioneering And Loitering Near Polling Place:

(a) A person commits an offense if, during the voting period and within 100 feet of an outside door through which a voter may enter the building in which a polling place is located, the person: (1) loiters; or (2) electioneers for or against any candidate, measure, or political party.

Tex. Elec. Code § 85.036, Electioneering:

(a) During the time an early voting polling place is open for the conduct of early voting, a person may not electioneer for or against any candidate, measure, or political party in or within 100 feet of an outside door through which a voter may enter the building or structure in which the early voting polling place is located.

³ The Secretary of State’s Election Advisory No. 2018-11 re Certain Activities in Vicinity of Polling Places dated February 16, 2018 provides no additional guidance on electioneering.

added).⁴ A t-shirt displaying the phrase “Black Lives Matter” does not relate to a candidate, measure, or political party. Therefore, these provisions are inapplicable. Indeed, your acknowledgement that “[the shirt] does not state a specific candidate or political party” suggests that you agree. Nevertheless, you attributed your own unfounded interpretation to the prohibition on electioneering to include “a group strongly affiliated with a political party” to assert an offense. This is simply incorrect.

While also a movement, “Black Lives Matter” is an affirmative and aspirational statement. Indeed, all Americans should be able to state that Black Lives Matter. Stating such does not mean that only Black Lives Matter, but instead is a plea from Black Americans, who have endured dehumanization and marginalization throughout the history of this country, to America demanding, even helplessly pleading at times, that it acknowledges that their lives matter too. Thus, when not weaponized politically or falsely characterized, the statement itself is apolitical, and consistent with the goals of the American Dream.

Further, your analogy that wearing a Black Lives Matter T-Shirt is similar to wearing a Make America Great Again (“MAGA”) hat is misplaced. That phrase has resonated with the Republican Political Party since President Reagan and is now synonymous with the campaign slogan of Donald J. Trump. Accordingly, that phrase or any item stating MAGA is unquestionably intertwined with the Republican Party and a political candidate. In contrast, Black Lives Matter is not affiliated with any party, candidate, or current elected official. And even though members of one political party seem to be unwilling to proclaim such a statement, that does not make it a statement about a candidate or a political party, or even a statement “strongly affiliated” with a party.

As the President of the State Bar of Texas, your comments, regardless of whether expressed in your personal capacity, carry the weight of perceived authority on various subject matters, including this one. Your post has caused many to question your ability to empathetically understand the plight of Black Americans in this country. Equally, it has called into question your ability to lead the State Bar of Texas and its diverse membership.

⁴ Tex. Elec. Code § 61.010, Wearing Name Tag or Badge in Polling Place:

(a) Except as provided by Subsection (b), a person may not wear a badge, insignia, emblem, or other similar communicative device relating to a candidate, measure, or political party appearing on the ballot, or to the conduct of the election, in the polling place or within 100 feet of any outside door through which a voter may enter the building in which the polling place is located.

(b) An election judge, an election clerk, a state or federal election inspector, a certified peace officer, or a special peace officer appointed for the polling place by the presiding judge shall wear while on duty in the area described by Subsection (a) a tag or official badge that indicates the person's name and title or position.

III. CALL TO ACTION: COLLABORATION TO IMPROVE THE STATE BAR OF TEXAS

We acknowledge your recent YouTube video in which you state that you “wholeheartedly support the State Bar of Texas’s commitment to equal justice under the law and diversity in our administration of justice in the practice of law and will work towards these ends.”⁵ Equally, we acknowledge your desire to create a taskforce to address the issues of diversity within the practice of law.

Notwithstanding, we demand that your administration undertake these additional actions:

1. **Require Anti-Racism/Implicit Bias Training for All Attorneys for Annual CLE Certification:** This training should be created, implemented, and maintained by the State Bar of Texas’s Office of Minority Affairs in consultation with the Diversity in the Profession Committee.
2. **Increase Funding for the Office of Minority Affairs:** This additional funding to the Office of Minority Affairs should allow it to increase programming and communication on issues regarding diversity and racial issues within the State Bar of Texas.
3. **Work with the Texas Bar Journal to Publish Highlights and Stories Regarding Successes and Challenges Regarding Diversity within the Profession:** These highlights and stories should increase awareness of successes and challenges regarding diversity within the profession, which is important as Texas and our state Bar become more diverse.

Moreover, we request that you personally apologize to the election worker who you claimed was in violation of the Texas Election Code. We also demand that you retract/correct your original post with the proper factual and legal analysis regarding Black Lives Matter and wearing its apparel within polling locations.⁶

While it is unfortunate that your comments have caused such consternation within our profession and the general public, we hope that they will spark an opportunity for us to work collectively to address systematic injustice, racism, and implicit bias so that our state Bar may become more inclusive and understanding of the discriminations suffered by people of color in our profession, especially African-Americans.

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⁵ Your apology regarding your electioneering post, <https://www.youtube.com/watch?v=ICmmShk8PrA>.

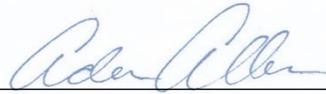
⁶ This includes your prior mischaracterization of Black Lives Matter movement as a terrorist group.

We welcome a response no later than Friday, July 31, 2020. We look forward to working collaboratively to obtain equal justice under the law and diversity in the administration of justice.

Sincerely,



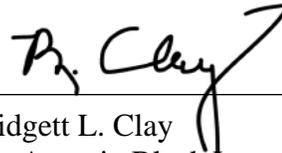
KoiEles Lomas Spurlock
J.L. Turner Legal Association, President
(Dallas, TX)



Aden M. Allen
Austin Black Lawyers Association, President



R. J. Blue
Houston Lawyers Association, President



Bridgett L. Clay
San Antonio Black Lawyers Association, President



Angel Williams
L. Clifford Davis Legal Association, President
(Tarrant County, Texas)



Hon. Rudolph "Rudy" K. Metayer
African American Lawyers Section, Chair

cc:
State Bar of Texas Board of Directors