

JOE K. LONGLEY

3305 NORTHLAND DRIVE
SUITE 500
AUSTIN, TEXAS 78731

February 12, 2019

Mr. William O. Whitehurst, JR.
7500 Rialto Blvd., Bldg. II, Ste. 250
Austin, TX 78735
bwhitehurst@nationaltriallaw.com

RE: Your letter dated February 11, 2019

Dear Bill:

The invective you've chosen to use in your letter is most unfortunate, not to mention, uncalled for. You could have easily called me to learn the true facts that are at variance with almost every statement contained in your letter.

For instance, if you care to take the time to view the video of the [January 18 Board meeting](#), you would learn that the pledge that I gave to the TYLA membership on January 11 to table the "action item" on my TYLA election proposal was a promise made and a promise kept. On January 11, I told the TYLA Directors that I would delay my "action item" for 30 Days—and that's exactly what I did. (JKL & Chair Laura Gibson both confirm the no action item. Video at 1:59).

Wherever you got the notion that I "had no intention of keeping that promise" was totally false. Laura Gibson, Trey Apffel, and I all confirmed that we were all on the same page—no action item. That was the state of the discussion when I left the podium.

In fact, in answer to board member questions, I agreed to form a subcommittee to study the issue since it was not going to be voted on as an action item. (Video at 2:00).

However, after hearing from several former TYLA Presidents, the meeting took an unexpected turn. Instead of allowing the issue to benefit from further study by being postponed, Director Alistair Dawson moved that the issue be decided. He moved to maintain the voting status quo—thereby calling for a vote that would effectively exclude 76,000 active bar members from voting in the 2019 TYLA President-elect's race conducted by the State Bar. His motion was seconded by Director Jerry Alexander and carried by a unanimous vote by those voting, with my abstention. (Video at 2:45:47-2:50).

Such a vote to exclude active members from voting in state-wide elections conducted by the State Bar is unprecedented in the Bar's 80 year history.

Prior to that vote, no Board had ever voted to deny “one member-one vote” to active bar members in any state-wide race to put a candidate on the Board of Directors. Thus, the issue was decided without postponement—and without resolution of the constitutional and rule of law questions I had raised.

After the meeting, I reviewed my options as to the best method to seek clarification of what appears to be an invalid Board action taken outside the Constitution, State Bar Act and State Bar Rules. I settled upon seeking an AG Opinion, as State Bar Presidents have done several times in the past when Board action has been uncertain or challenged as invalid. See e.g. AG Op. GA-0995 (2013). Your comment that “I had already decided to circumvent the SBOT Board another way if my proposal was rejected” is simply not true. (State Bar Video at 2:00).

My decision to seek an opinion from the Texas Attorney General was not made until January 19th – the day after the Board had taken its unprecedented action of voter suppression.

I think you’ll agree that the right to self-govern the activities of the State Bar of Texas resides within all 103,342 active bar members’ right to vote. Likewise, I think you’ll not dispute that the statewide race for President-Elect of TYLA is an election *conducted by* the State Bar of Texas. Further, I think you’ll agree that over 76,000 active bar members are excluded from voting for TYLA President-Elect despite there being no authority to exclude such members in any of the three governing documents that govern the State Bar of Texas activities-- and no Board vote ever taken to exclude them in the past.

So, for background, here are some undisputed “Bar” facts:

1. 76,000 active bar members are excluded from voting in the statewide election conducted by the SBOT to elect a TYLA president-elect who sits and votes on the Board of Directors (BOD);
2. Such exclusion is based solely on a member “aging-out” of TYLA membership through the passage of time;
3. No authority exists in the bar’s governing documents to impose such exclusion on any bar member;
4. No vote prior to 1-18-2019 was ever made by a BOD imposing such an exclusion;
5. The 26th Amendment to the U.S. Constitution prohibits age discrimination in voting;¹

¹ The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.

6. The non-TYLA member voting exclusion is inconsistent with §81.0242 & §81.053 of the State Bar Act;
7. AG Op. GA-0995 (2013) holds that Board actions inconsistent with the State Bar Act or State Bar Rules are invalid and “unenforceable.”

After some deliberation, and consistent with my oath of office to “preserve, protect and defend Constitution and laws of the United States, and of this State,” I sent my request now referenced as RQ-0265.

It is my hope that an opinion can be issued in time for application, if needed, in the upcoming state-wide bar elections scheduled for April 2019, or at least before the legislature adjourns at the end of May.

In any event, I welcome both you and the State Bar Board to join me in seeking AG clarification through the opinion process. The deadline for submission to the Opinions Committee is February 20.

Next, your characterization of my personal visit to a state senator is likewise inaccurate. Far from having been “leaked out” as you characterized it, there was no secret about my meeting, nor was there any question that the views I communicated were personal rather than official. Prior to meeting with the senator, I had already met with our new Supreme Court Liaison and had imparted the exact same personal views to her.

By the time of both of these meetings, these personal proposals had been previously published in my President’s Pages in the TBJ as my personal preferences. (See TBJ November 2018; and TBJ January 2019).

Nevertheless, you requested me as a “personal friend” to request of the senator’s office that my personal proposals not be put into “bill form.” As you confirm, I agreed to do so at your request and then affirmed to you that it had been done.

To sum up, my request of the AG is not premature, unnecessary, nor inappropriate. In fact it goes to the heart of whether the action vote by the Board of Directors was constitutional, lawful and within the rule of law. The Board of Directors itself made the choice to “finalize” the discussion thereby placing itself in the “awkward position” of having to file briefs addressing these matters which the Board’s own precipitous action made ripe. My subsequent action to seek the opinion of the AG was precipitated by the Board moving for a vote on an action item *that I had pulled down*.

The irony of your use of the word “destroy” is thick when it was the Board of Directors who voted to exclude 76,000 active bar members from a statewide vote that puts the President-Elect of TYLA on our governing Board for the next three years. Stated simply, this issue is ripe for determination, not through my actions, but rather through the actions taken by the Board Members calling for a vote on a matter which could have been avoided. The further irony is that usually it is the Board of Directors that seeks to postpone, study,

and create committees and task forces that sometimes seem never ending. Not this time. (Video at 2:45:47-2:50).

As to transparency, you need only read the April 2017 TBJ containing the Q & A's for all the candidates to see that my solo reason for running was to protect our right to vote in a self-governing environment.² That I have done, and that I will continue to do.

I have been true to my oath and my pledges and I will continue to deliver on those in the future.

Finally, the issues regarding *Fleck* and *Janus* relating to mandatory versus voluntary use of Bar dues are placed into clear focus based upon the actions of the Board voting on matters so clearly questionable under the United States Constitution, the State Bar Act, and the State Bar Rules. All state bar members are entitled to answers—and I am proud to seek them through the vehicle of RQ-0265. February 20 is the deadline to submit briefs to the Attorney General, and I encourage all interested members of the Bar and public to submit their views.

To close, and with all due respect, I reject the requests you make on the last page of your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe K. Longley", with a stylized flourish at the end.

Joe K. Longley

cc via email: All Members State Bar of Texas

² **Q:** Why do you want to serve as President of the State Bar of Texas?

A: Longley: Through my candidacy, I seek to reform the way the State Bar currently conducts its business. The State Bar of 2017 seemingly exists only for itself with little thought given to the voting rights of its members. 80 TBJ 217 (2017).