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SENT VIA ELECTRONIC MAIL

August 20, 2020

The Supreme Court of California
ATTN: Mr. Sunil Gupta
Principal Attorney to Chief Justice Tani G. Cantil-Sakauye
350 McAllister Street
San Francisco, CA 94102

ATTN: Mr. Jorge E. Navarrete
Clerk and Executive Officer
350 McAllister Street
San Francisco, CA 94102

Re: The John M. Langston Bar Association of Los Angeles ("Langston Bar Association") Formally Requests The Supreme Court of California to Reconsider Diploma Privilege

Dear Messrs. Gupta and Navarrete:

It is the mission of the Langston Bar Association to promote the administration of justice in the Black community and the community at large. In light of our mission, we write to respectfully request that the Supreme Court of California afford diploma privilege to law school graduates who registered for the October 2020 Bar Examination in California and who otherwise meet eligibility requirements set forth by the Court. Our reasons for requesting reconsideration of the Court's decision are outlined below.

While we deeply appreciate the Court's consideration in concluding that an in-person administration of the bar examination would be an incredible health risk amid the COVID-19 pandemic, we are reasonably certain that an online administration of the bar examination is not the appropriate remedy. Growing concerns regarding an online administration of the bar examination are vast and warrant careful consideration.

There are many indications that an online administration of the Bar examination will have disastrous consequences for applicants during these challenging and unprecedented times. Recent surveys indicate that Bar applicants have serious concerns about access to reliable and consistent internet connection and stable and quiet locations to take the Bar online. Beyond technical issues, a majority of Bar applicants are currently facing significant financial hardships and insecurities as well as housing insecurities. These problems make a fair administration of the October online administration of the Bar Examination dangerous and impossible, and are especially pernicious because they disproportionately impact Bar applicants of color.

ONLINE BAR EXAM DOES NOT CONSIDER THE UNIQUE AND DELICATE PREDICAMENT OF BLACK GRADUATES

An online administration of the bar examination fails to consider the possibility that many applicants of color may not have secure housing situations, may be ill, or caring for ill family members in the weeks leading up to, or at the time of, the examination. Under either such condition, an applicant's bar studies would be severely impacted, and an applicant would understandably be unable to adequately perform on the examination due to anxiety, illness or even grief. Systemic health and environmental inequities have placed people from racial and ethnic minority groups at a disproportionate risk of contracting COVID-19. This results in people of color and their families, being far more likely to be negatively impacted.

Further, an online administration of the bar examination would amplify already-present inequities that plague the legal profession and disproportionately affect low income graduates and graduates of color. While taking a cursory view that an online administration of the bar examination may seem like the safest choice, it will present an advantage to those with the social and economic privileges that many Black graduates do not have. These privileges include, but are not limited to, access to technically robust and up-to-date laptops, speedy and reliable Internet service, and secure quiet spaces to take a two-day online examination uninterrupted.

BLACK BAR TAKERS HISTORICALLY FAIL AT HIGHER RATES COMPARED TO OTHER RACIAL GROUPS

While we realize the State Bar has been commissioning many studies that have shown the resulting inequities of the current Bar Exam related to race, the need to right the wrongs that Black applicants have repeatedly experienced cannot be more clear. In reviewing the California State Bar's historical records of bar passage rates broken down by race, Black applicants consistently score the lowest passage rates as compared to their cohort racial groups. A look at the overall passage results of the February 2020 bar exam, revealed that merely 17.6% of Blacks passed, compared to 50.1% for Whites, 25.2% for Hispanics and 27.7 for Asians.

A 2019 California Bar Study on the Attorney Census Becoming More Diverse from 1989 to 2018, showed the "rates at which nonwhite attorneys are being admitted to the State Bar differs significantly across different groups. The proportion of Latino attorneys admitted each year has doubled from 5 to 10 percent over the last three decades, though it still lags far behind the proportion of Latinos in California." However, over "the same period, the proportion of Black attorneys admitted has remained stagnant." It should be noted that the Court's recent reduction in the Bar Exam Cut Score from 1,440 to 1,390, will only in a result in a mere 6% nominal increase of Black bar taker passage.

ARTIFICIAL INTELLIGENCE EXAM PROCTORING FRAUGHT WITH PROBLEMS

Trust in reliable technology is also a privilege that Black graduates simply do not have. The deployment of Artificial Intelligence (AI) and the inherent racial bias of facial recognition is a major source of anxiety for minority applicants. This is because Black bar takers are more likely to be hyper-aware during an online exam administration fearing that algorithms will misidentify their diverse face inflections as intentional efforts to cheat on the exam.

Moreover, facial recognition technology concerns do not end with a disproportionate impact against racial minorities. The same technology that applicants fear is highly likely to misidentify biometrics, and these applicants fear it will improperly flag cheating. It has been shown that those who outwardly exert anxiety are more likely to be flagged for cheating, raising special concerns for those with disabilities. An online administration of the bar examination would be, in many ways, unethical and inequitable.

OUR RACIAL CRISIS RECKONING HAS NEGATIVELY IMPACTED BLACK APPLICANTS

While many have been able to predict the proliferation of a global health crisis, we certainly could not foresee such civil unrest. As this Court is aware, the nation has been in uproar following the unconscionable murders of Ahmaud Arbery, Breonna Taylor, George Floyd, and far many more. After watching these murders and subsequent lack of prosecutions, and then feeling a duty to become active in social justice organizing, recent Black graduates, are physically, mentally, and emotionally exhausted, making bar preparation impossible for most.

The unprecedented impact of our racial crisis reckoning, compounded with a global pandemic, and hastily prepared online examination technology software, warrants a second look at the Court's decision to require bar examination passage for October 2020 applicants. In recognition of these extraordinary circumstances, the Langston Bar Association respectfully requests that the Court declare that law school graduates who meet eligibility requirements set forth by the Court be admitted to the California State Bar without being required to take the bar examination. We do understand and respect that ultimately, it is the Court's decision as to what limits will be placed on licensees, but we consider our request to be one that is truly equitable for all.

Thank you for your consideration of our request. We deeply appreciate the Court's care and concern for this next generation of lawyers and leadership on matters of equity in the legal profession.

Respectfully submitted,



Nyanza Shaw
2020 President
John M. Langston Bar Association