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Lila Deakle
County Clerk
Parker County, Texas

Yvonne Anderton

CAUSE NO. CIV-23-0240

MORGAN MCCOMB	§	IN THE COUNTY COURT
	§	
Plaintiff,	§	AT LAW NO. 2
	§	
v	§	
	§	
JEFFREY LEACH,	§	
	§	
Defendant.	§	PARKER COUNTY, TEXAS

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

COMES NOW, Plaintiff Morgan McComb ("Plaintiff" or "McComb") and brings this her Response to Defendant Jeffrey Leach's ("Defendant" or "Leach") Motion to Dismiss (the "Motion") and respectfully represents the following:

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I.
INTRODUCTION

This is not "SLAPP Suit." In fact, it's exactly the opposite. Plaintiff Morgan McComb believes that Defendant Representative Jeff Leach should be free to say anything he likes about Texit short of falsely accusing its individual supporters, like her, of committing crimes punishable by death and lengthy imprisonment. It is truly amusing to read Leach's Motion in which he and his counsel pretend to have the moral high ground in this lawsuit as heroic defenders of protected free speech under the First Amendment. The Motion is a case study in hypocrisy. If any party to this lawsuit is attempting to stifle free speech and limit public participation, it is not Morgan McComb, it is Jeff Leach.

One thing both parties can agree on: Leach *hates* the idea of Texas independence from the United States ("Texit")—hates it with a passion. If there is a more effective way to silence free speech in support of Texit than by falsely accusing anyone who speaks out in its favor of committing serious federal criminal offenses,[1] it is difficult to think of one. McComb brings this lawsuit not to "chill" Leach's free speech, but to prevent him from continuing his defamation campaign designed to silence the free speech of herself and her fellow Texans who, in her words, are "tired of living under the boot of the federal govt."

A. Leach's arguments fail. *Dickson* is distinguishable and the evidence shows McComb did not expect Leach's defamatory statement.

Leach contends this lawsuit "cannot get within a country mile of merit." Motion, p. 3. But no measure of folksy colloquialisms can lend credence to the arguments contained in Leach's Motion. Leach first advances a nonsense argument that a reasonably informed

[1] Falsely accusing his political enemies of serious crimes seems to be a modus operandi for Leach who was recently a vocal proponent of impeaching the duly elected Attorney General of Texas through a process in which his allies on the House investigation committee blatantly violated clearly established Texas law and legislative precedent by failing to place a single witness against Ken Paxton under oath. *See* Tex. Govt. Code § 301.002.

person in today's society, one where most adults are unable to identify the countries the allies fought in World War II or the number of justices on the Supreme Court, has such an understanding of the nuances of the historical context and laws relating to secession that they could not understand Leach's criminal accusations to be anything other than mere opinion. McComb begs to differ and various Tweet responses prove otherwise. The Texas Supreme Court was correct in *Dickson* that a reasonably informed person would absolutely understand, prior to *Roe* being overturned, that abortion did not literally constitute the crime of murder under the law. The same is not true of the secession topic.

Second, Leach argues that McComb's claim is barred because she invited or procured the defamation. Such a defense is negated where the evidence shows the plaintiff did not expect the defamation. As demonstrated herein, McComb did not expect Leach to defame her. Given that he almost never responded to her Tweets over a several year period (as evidenced in Defendant's own exhibits), she had no reasonable expectation that he would respond at all, much less double down as he did on accusing her of treason and sedition in response to her attempt to appeal to his humanity with rhetorical questions.

B. The gaping hole in Leach's conspiracy allegations.

Leach spends much of his extraordinarily lengthy 64-page Motion citing various blog posts and public statements from Texas Nationalist Movement ("TNM") President Daniel Miller to allege a conspiracy in which McComb, TNM, and Miller concocted a "SLAPP Strategy" and "defamation trap" against him to support his argument that McComb invited the defamation to silence Leach's "free speech." What a joke. If it is a "SLAPP Strategy" to put persons who falsely accuse others of crimes on notice that they could be sued for defamation, then every cease and desist letter sent by an attorney in this state for defamation related to false criminal accusations is a "SLAPP Strategy." The gaping logical fallacy in Leach's conspiracy theory is that it is impossible to conspire to bring a "Strategic Lawsuit

Against Public Participation" when the speech at issue is not protected free speech to begin with. Levying false accusations of criminal conduct has never been protected by the First Amendment.

TNM and Miller's public statements about the possibility of suing individuals for falsely accusing Texit supporters of treason and sedition functioned in the exact same manner as any cease and desist letter warning of potential litigation if such defamatory statements continue. In reality, Leach is no different than any other defamation defendant in that he was warned that he would be sued if his defamation continued and then was sued after he ignored the warnings and continued to make defamatory statements. It is strange, even comical, for Leach to claim that he fell prey to a "defamation trap." When someone is trying to set a trap for you, they generally do not give you multiple warnings of the so-called "trap." Yet, much of Leach's Motion is spent documenting TNM's warnings to him.

Leach has been able to get away with his defamation campaign accusing Texit supporters of treason and sedition because collectively labeling a large group of individuals as criminals is not actionable defamation under Texas law. However, when McComb pushed back against Leach by pointing out the people he is accusing of "treasonous sedition" are simply people like her who love Texas and are tired of living under an oppressive federal government, Leach accused her personally of treason and sedition, which is actionable.

C. Leach's Tweet falls squarely within the elements of defamation per se.

Leach's Motion should be denied because his Tweet, in full context, is the very definition of defamation per se and falls squarely within the elements. If McComb's case is so clearly without merit, then why did Leach and his counsel need an astonishing 64 pages to say it (not to mention hundreds of pages of exhibits)? The legal issues in this case are not complex and could have been briefed in 20 pages or less. The majority of Leach's Motion is spent mud-slinging McComb, her counsel, Miller and TNM. Leach's vitriolic Motion reads as

though took the opportunity to use it as personal therapy time to vent his irrational, unhinged hatred of freedom-loving Texit supporters and to artificially run up the attorneys' fees he hopes to collect against Plaintiff. He should not be rewarded for this effort.

For all Leach's ranting, there is no getting around the fact that he publicly and falsely associated McComb with the criminal conduct of treason and sedition because of her support of an entirely legal democratic process of placing a referendum for Texas independence to a popular vote. Leach made these accusations with actual malice. Leach's status as a legislator and an attorney certainly had the propensity to convince a reasonably informed reader in today's society that support of Texit amounts to the crimes of treason and/or sedition. The evidence also shows that Leach did, in fact, convince readers of this. A legislator and a lawyer should know better than to falsely accuse individuals of crimes for the purpose of silencing their speech, and Jeff Leach should be held accountable for running his mouth in this manner.

II.
STATEMENT OF ISSUES

McComb does not dispute that the TCPA applies. "To prevail on a claim of defamation, a plaintiff must prove "(1) the publication of a false statement of fact to a third party, (2) that was defamatory concerning the plaintiff, (3) with the requisite degree of fault, and (4) damages, in some cases." *Lilith Fund for Reproductive Equity v. Dickson*, 662 S.W.3d 355, 363 (Tex. 2023). As in *Dickson*, this case turns on the first element—specifically, whether Leach's statement was a false statement of fact or an opinion—but with the additional issue of whether McComb invited or procured Leach's statement. If the plaintiff did not know that the defendant would make the defamatory statement, the plaintiff will not be held to have invited or procured the defamation simply by taking some action that prompted it. *See Frank B. Hall & Co., Inc. v. Buck*, 678 S.W.2d 612, 617–18 (Tex. App.—Houston [14th Dist.] 1984,

writ ref'd n.r.e.); *Free v. American Home Assur. Co.*, 902 S.W.2d 51, 54–55 (Tex. App.—Houston [1st Dist.] 1995, no writ). Therefore, the legal questions to be answered for the purposes of the Motion and this Response may be concisely summarized as follows:

(1) Would a reasonable person perceive Leach's statement to be a statement of fact or a statement of opinion?

(2) Can McComb be held to have invited or procured the defamation because she knew he would make the defamatory statement?

III.
ARGUMENT AND AUTHORITY

A. The *Dickson* case does not bar Plaintiff's claims because reasonably informed persons in today's society are not aware that advocating for Texas secession is not a crime of treason or sedition.

Both parties point to the *Dickson* case as guiding precedent in this action. Plaintiff certainly does not disagree with the Texas Supreme Court's ruling in *Dickson*, which centered around whether the defendant's statement that "abortion is murder" was a statement of fact or a statement of opinion. The applicable legal standard set forth in *Dickson* is whether, "from the perspective of a reasonable person's perception of the entirety of the communication," it can reasonably be interpreted as stating facts or opinion. *Dickson*, 662 S.W.3d at 363. The Texas Supreme Court was correct when it observed: "In this country, a reasonable reader could not be ignorant of the ongoing, highly publicized, and fervent debate over many decades regarding the morality and legality of abortion." *Id.* at 364. However, unlike the abortion issue, a reasonable reader in this country and in this state *could* be ignorant of the not-so-highly publicized debate over secession, specifically, whether advocating for secession constitutes the crimes of treason or sedition. For that reason, *Dickson* and its progeny do not bar McComb's defamation claim.

The sad truth is that a reasonably informed person in today's American society is not very well-informed at all when it comes to historical context. While generations past may

have received an education that would arm them with the historical context and critical thinking skills to understand that Texit advocacy is not a crime, today's public is not so equipped and could easily be fooled by Leach's Tweets, especially given his status as a legislator and lawyer.

Leach's Motion spends much time recounting the historical context of the "Longstanding Debate" on secession in this country and in this state to make the argument that "a reasonable reader would be familiar with it." *See* Motion, p. 45–50. While we would all love to believe that the reasonable American or Texan would be familiar with the historical context of the secession debate, numerous surveys and studies conclusively demonstrate that this is not the case.

Due to the abysmal state of American education, particularly regarding U.S. history, according to a 2018 survey conducted by Lincoln Park Strategies and in partnership with the Woodrow Wilson National Fellowship Foundation at Princeton University, only one in three Americans have enough basic knowledge of American history to even pass the U.S. citizenship exam.[2] The survey revealed the following embarrassing results from a randomized sample of 1,000 Americans given *multiple-choice* questions:

- 60% did not know which countries the United States fought in World War II;[3]
- 57% did not know how many Justices serve on the U.S. Supreme Court;[4]
- 87% did not know when the U.S. Constitution was ratified (most answered 1776);[5]

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[2] Arthur Levine, *When it comes to knowledge of American history, we are a nation at risk*, THE HILL, Oct. 17, 2018, *available at* https://thehill.com/opinion/education/411700-when-it-comes-to-knowledge-of-american-history-we-are-a-nation-at-risk/.
[3] *National Survey Finds Just 1 in 3 Americans Would Pass Citizenship Test*, INSTITUTE FOR CITIZENS AND SCHOLARS, Oct. 3, 2018, *available at* https://citizensandscholars.org/resource/national-survey-finds-just-1-in-3-americans-would-pass-citizenship-test/.
[4] *Id.*
[5] *Id.*

- 72% could not identify the 13 original colonies;[6]
- 76% could not correctly identify one thing Benjamin Franklin was famous for (37% thought he invented the light bulb);[7]
- 25% were unaware that the First Amendment guarantees freedom of speech;[8]
- 57% did not know Woodrow Wilson was president during World War I.[9]

Even worse, the survey ranked the results by state and found that, out of the 50 states, Texans finished in 39th place.[10]

In 2011, Newsweek conducted a similar survey of 1,000 random Americans also using questions from the U.S. citizenship exam and found 29% of Americans could not name the Vice President and 73% could not identify an accurate reason for the Cold War.[11] In 2015, a survey of the student body of Texas Tech University found that most students could not correctly answer questions like "Who won the Civil War?" or "Who did we gain our independence from?"[12] A 2008 study by the Intercollegiate Studies Institute surveyed 2,500 Americans and found that only half of adults could name the three branches of government.[13]

Yet, Leach expects the Court to believe that a reasonable reader would understand the nuances of the law regarding secession and its historical context. This is nonsense. As the Texas Supreme Court observed, due to the "highly publicized and fervent" debate over abortion, it would be impossible for a reasonable reader to be ignorant of the fact that abortion

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[6] *Id.*
[7] *Id.*
[8] Amanda Woods, *Americans don't know much about nation's history: survey*, NEW YORK POST, Feb. 15, 2019, *available at* https://nypost.com/2019/02/15/americans-dont-know-much-about-nations-history-survey/.
[9] *Id.*
[10] *Supra* note 3.
[11] Andrew Romano, *How Ignorant Are Americans?*, NEWSWEEK, March 20, 2011, available at https://www.newsweek.com/how-ignorant-are-americans-66053.
[12] Saba Naseem, *How Much U.S. History Do Americans Actually Know? Less Than You Think.*, SMITHSONIAN MAGAZINE, May 28, 2015, available at https://www.smithsonianmag.com/history/how-much-us-history-do-americans-actually-know-less-you-think-180955431/
[13] *Id.*

does not literally constitute the crime of murder under state law. *See Dickson*, 662 S.W.3d at 364–66. By contrast, given the embarrassing relative ignorance of Americans, and Texans in particular, on basic U.S. history and civics as demonstrated above, a reasonable reader could absolutely be ignorant as to whether advocacy for Texas independence/secession is or is not a crime of treason or sedition.

B. *O'Rourke v. Warren* is inapposite for the same reasons as *Dickson*.

Leach also cited the non-binding precedent of *O'Rourke v. Warren* in which the billionaire owner of an energy company who was a major donor to Governor Abbott in the 2022 governor's race sued Beto O'Rourke for making statements that Kelcy Warren's donations amounted to extortion, bribery, and corruption. Motion, p. 45 (citing *O'Rouke v. Warren*, No. 03-22-00416, 2023 WL 3914278 (Tex. App.—Austin June 9, 2023, pet. filed). Essentially, O'Rourke claimed on the campaign trail that Warren's $1 million donation to Abbott's campaign was a politically corrupt bribe to Abbott in exchange for Abbott avoiding policies that would require Warren's company and other energy companies to spend money to winterize their facilities, which O'Rourke claimed would have avoided the catastrophic power grid failures during winter storms in recent years. *See O'Rourke*, 2023 WL 3914278, at *1–5.

Like *Dickson*, the Austin Court of Appeals held in *O'Rourke* that the statements were opinion and not factual statements because "a reasonable reader would also be well acquainted with the 'ongoing, highly publicized, and fervent debate' about campaign donations and the effect of money in politics." *Id.* at *10. It is no secret in today's society that wealthy people make donations to politicians because they want that politician to act in the donor's best interest and that, while there are regulations regarding the amounts and disclosures of such donation, it is universally understood that this behavior is not illegal.

Unlike the abortion and political donation issues in *Dickson* and *O'Rourke*, however, the debate on secession is not highly publicized. It is not something one sees on the front page of newspapers or in regular segments on cable news. What people *do* know about secession, however, is that the last time states tried to secede, the government of the United States made war on them to force them to stay in the Union. Because secession resulted in the use of military force on the seceding states, a reasonable person might very well conclude that there is something criminally unlawful about advocating for secession.

C. Leach's status as a legislator and lawyer and the context of his statements makes it even more likely that a reasonable reader could (and in fact *did*) take them as statements of fact.

A reasonable reader is even more likely to conclude advocacy for Texit is treason or sedition when the statement is coming from a state legislator and lawyer. Unlike Beto O'Rourke, who, as the Austin court noted, "clearly qualified his statements as his subjective, personal belief on a political issue—that the donation 'looks a lot like a bribe to me,' or '[t]hat's pretty close to a bribe, by any definition I'm familiar with," *Id.* at *12, Leach's statement dispensed with *any* qualifications when he responded to McComb's Tweet where she questions Leach's accusations that supporting Texit is "treasonous sedition." Leach responded, "Unequivocally yes." Motion, p. 30.

In addition to his reply to McComb, Leach's Tweets in which he explicitly states that support for Texit constitutes treason and/or sedition are as follows:

- "This same representative [referring to Bryan Slaton] – who here is violating his very oath of office – will proudly pledge allegiance to the American flag every day when we commence #txlege session. This ridiculous bill [referring to the Texit Bill] is the very definition of hypocritical & seditious treason & it is already dead."

- "Based on what you've said the bill does, it seems like the most anti-American bill I've seen in my 4+ terms in the Texas House. It's a disgrace to the Lone Star State. The very definition of seditious. A true embarrassment. And you should be ashamed of yourself for filing it."

- "Any legislator who signs on to support this reckless, seditious and treasonous bill will not pass a single bill this session. This isn't a threat. It's a promise."

- Gotta read Section 1 before you get to Section 2, Teresa. You want to publicly devout yourself to treason & sedition against the United States of America?! Fine. But count me – and the vast, vast majority of freedom-loving Texans – out on this nonsense."

Motion, pp. 17, 26; Defendant's Exhibit A-4, p. Appx 068 and A-8, p. Appx 142.

Leach stated twice that support for Texit is the "very definition" of "seditious" and "seditious treason." When a lawyer-turned-lawmaker references a "definition," a reasonable inference is that he is referencing a legal definition, which would be the crimes of sedition and treason punishable by imprisonment not to exceed 20 years and by death, respectively. *See* Petition, p. 4 (setting forth the definitions and punishment for "seditious conspiracy" and "treason" found in 18 U.S.C. §§ 2384 and 2381). If readers thought he was referencing a non-legal definition, even the Miriam-Webster dictionary defines "sedition" as "incitement of resistance to or insurrection against lawful authority," which would suggest criminal behavior.[14] Merriam-Webster defines "treason" as "the offense of attempting by overt acts to overthrow the government of the state to which the offender owes allegiance or to kill or personally injure the sovereign or the sovereign's family."[15] Either way, treason and sedition are defined as serious crimes.

The parties do not disagree that McComb is known to support Texit and is "TNM's Canvassing Coordinator." Motion, p. 4. McComb has "earned a reputation of being a 'prominent MAGA-backing Republican campaign worker" who is an "activist and tough political infighter." *Id.* at p. 11. The context of McComb being associated with the "MAGA"

[14] *Sedition*, Merriam-Webster Online Dictionary, *available at* https://www.merriam-webster.com/dictionary/sedition, last visited Aug. 2, 2023.
[15] *Treason*, Merriam-Webster Online Dictionary, *available at* https://www.merriam-webster.com/dictionary/treason, last visited Aug. 2, 2023.

political movement to "Make America Great Again" through a return to a government that abides by the Constitution is significant. Through a pervasive media narrative, those like McComb associated with being a "MAGA Republican" have been demonized by President Biden himself as being "a clear and present danger to our democracy":

> Donald Trump and the MAGA Republicans represent an extremism that threatens the very foundations of our republic. . . . I believe it's my duty, my duty to level with you, to tell the truth, no matter how difficult, no matter how painful. And here, in my view, is what is true. MAGA Republicans do not respect the Constitution, do not believe in the rule of law. They did not recognize the will of the people and refuse to accept the results of a free election. . . . They promote authoritarian leaders and they fanned the flames of political violence that are a threat to our personal rights, to the pursuit of justice, the rule of law, the very soul of this country. And look at the mob that stormed the United States Capitol on January 6, brutally attacking law enforcement, not as insurrectionists placing a dagger at the throat of our democracy, but they're look at as patriots. They see their MAGA failure to stop a peaceful transfer of power after the 2020 election as preparation for the 2022 and 2024 elections. They tried everything last time to nullify the votes of 81 million people. This time, they're determine to succeed in thwarting the will of the people. That's why respected conservatives, like federal Circuit Court Judge Michael Luttig, has called Trump and extreme MAGA Republicans a clear and present danger to our democracy.

Jake Thomas, *Read Everything Joe Biden Said in His 'Soul of the Nation' Speech*, Newsweek (Sept. 1, 2022).[16]

Since January 6, 2021, the American public has been inundated with near-constant news media coverage claiming that MAGA Republicans are a "danger to democracy" and incited a "deadly insurrection" at the U.S. Capitol.[17] High-profile defendants associated with

[16] Available at https://www.newsweek.com/read-everything-joe-biden-said-his-soul-nation-speech-1739192.
[17] One of numerous examples: Jason Nichols, *President Biden Is Right: MAGA Republicans Are a Threat to Our Democracy*, Newsweek, Sept. 7, 2022, available at https://www.newsweek.com/president-biden-right-maga-republicans-are-threat-our-democracy-opinion-1740602.

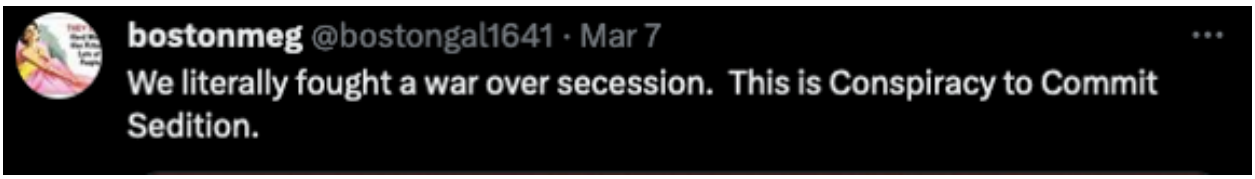
the MAGA movement have literally been sentenced to prison for sedition.[18] As Leach points out, McComb herself has been accused and indicted for a felony due to her political activism in exposing political corruption, accusations she denies and for which she maintains her innocence. *See* Motion, pp. 14–15; Exhibit B, Declaration of Morgan McComb.

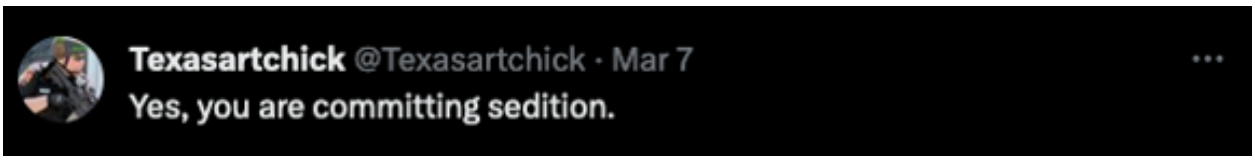
Leach is correct in his Motion that the Court must "consider the circumstances and context in which the allegedly defamatory statement was made." *Id.* at p. 44 (citing *O'Rourke*, 2013 WL 3914278, at *9). Since all of the forgoing events and narratives about "MAGA Republicans," such as McComb, have been the subject of ongoing and pervasive media coverage and the criminal indictments of McComb were featured in news media, this context should be considered. At the time Leach accused McComb of being "Unequivocally" guilty of "treasonous sedition" for her view that "Texas should secede from the United States of America, much of the public associated people like McComb with seditious and treasonous activity by virtue of her status as a "MAGA Republican." The politically motivated criminal allegations against her made her reputation even more vulnerable to Leach's accusations. Given this context, a reasonable reader could have believed that Leach was accusing McComb and other Texit supporters of literal crimes, and many who commented on Leach's Texit-related posts seemed to believe exactly this. The following is a sample of the Tweets found in **Exhibit A** hereto responding to Leach's various Tweets stating that support of Texit is treason and/or sedition:

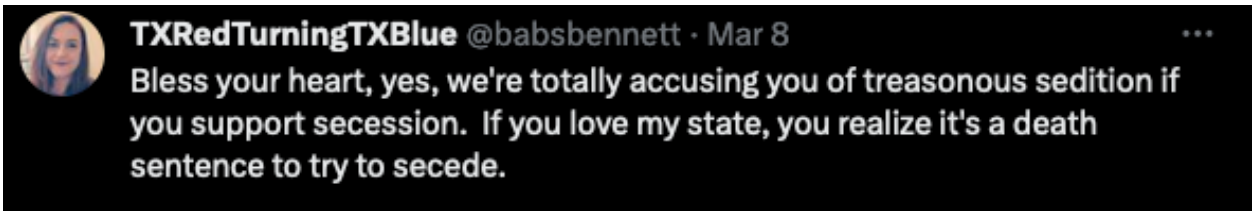
[18] *E.g.* Jim Hoft, *Regime Seeks 25-Year Prison Sentence for Oath Keepers Founder Stewart Rhodes for Standing Outside US Capitol on Jan 6, Telling Members to Not Bring Weapons and Committing No Violence – Sentence is 4 Times Avg Time Served for Murderers*, Gateway Pundit, May 6, 2023, available at https://www.thegatewaypundit.com/2023/05/regime-seeks-25-year-prison-sentence-for-oath-keepers-founder-stewart-rhodes-for-standing-outside-us-capitol-on-jan-6-telling-members-to-not-bring-weapons-and-committing-no-violence-sentence-is-4-t/.

Is he so fucking stupid that he doesn't know that calling for Texas to secede from the Union is treason, or does he just not care?

Exhibit A. Several who commented on McComb's Tweet to which Leach responded with his defamatory statement also seem to believe supporting Texit is treason or sedition:







Accordingly, under the "reasonable reader" standard articulated in *Dickson*, unlike the abortion issue, given the general lack of historical knowledge of Americans and Texans as to comparatively nuanced and less-publicized issues such as secession, a reasonable reader armed with the context of Leach's communications and the recent public controversies surrounding MAGA Republicans and McComb herself could have understood (and in fact did understand) Leach's Tweet to be a factual accusation of criminal conduct toward McComb.

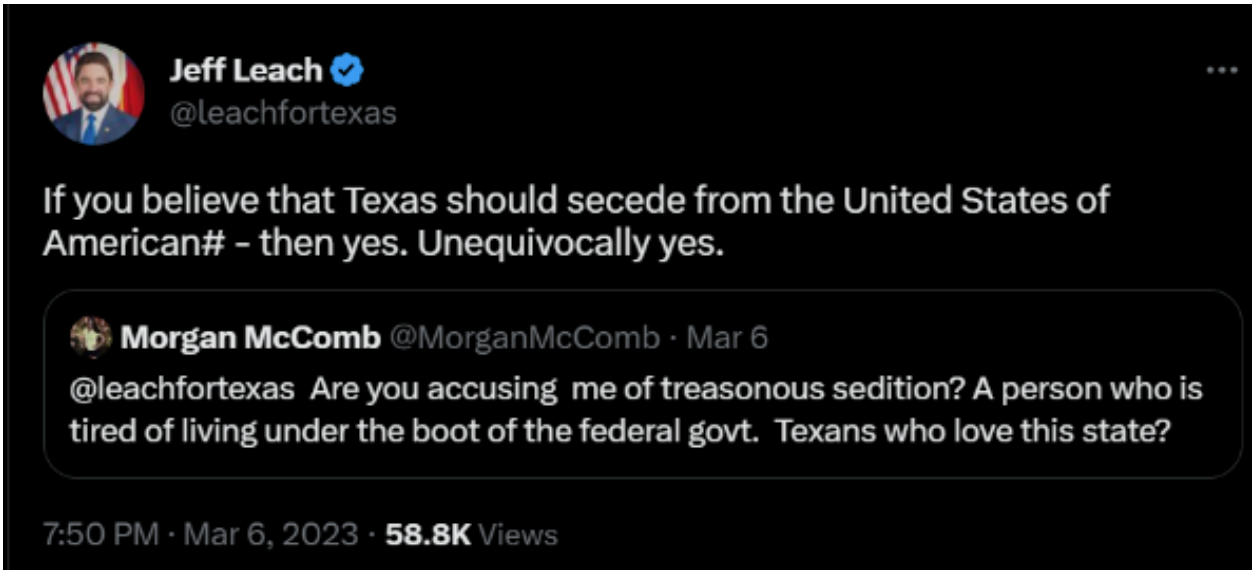
D. McComb cannot be held to have invited or procured the defamation because she did not have a reasonable expectation that Leach would respond at all to her argument as to why she is not guilty of "treasonous sedition," much less respond in the manner that he did.

While Leach correctly points out that "a plaintiff cannot base a defamation claim on a statement she procured from the speaker or invited him to make,"[19] under Texas law this so-called "consent" defense does not apply where the individual does not know the defamation

[19] Motion, p. 60 (citing *Lyle v. Waddle*, 188 S.W.2d 770, 772 (Tex. 1945).

will follow the request. *E.g., Frank B. Hall & Co., Inc. v. Buck*, 678 S.W.2d 612, 617–18 (Tex. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.); *Rackley v. Decker Food Co.*, No. 05-94-01052-CV, 1995 WL 447567, at *2 (Tex. App.—Dallas July 26, 1995, writ denied) ("Effective consent to a defendant's statements requires that the plaintiff know what the defendant will say. . . ."); *Ramos v. Henry C. Beck Co.*, 711 S.W.2d 331, 336 (Tex. App.—Dallas 1986, no writ) ("However, for invitation or consent to exist, there must be evidence to indicate that [the plaintiff] knew [the defendant] would defame him when [the plaintiff] made his inquiry.").

Here, an objective reading of McComb's Tweet to Leach indicates she was asking him rhetorical questions. In making the Tweet at issue below:



McComb was making an argument in the form of a rhetorical question. Exhibit B, p. 2. Subjectively, McComb felt that if she could get Leach to at least consider that Texit supporters are not bad people, just people who, like she said in the Tweet, are "Texans who love this state" and who are simply "tired of living under the boot of the federal govt," that might have an effect on softening his hateful rhetoric. *Id.*

McComb was attempting to appeal to Leach's humanity to get him to see Texit supporters like herself in a different light. *Id.* Though they have not spoken since 2016,

McComb and Leach have known each other personally by virtue of both being active with the Republican Party in Collin County. *Id.* at p. 1. McComb had previously been an opponent of Texit but changed her mind on the issue since living under the oppressive Biden administration and observing a federal government that she perceives has completely overstepped its constitutional bounds. *Id.* Since McComb knew Leach personally and believed that Leach knew of her previous opposition to Texit, she reached out to him with her Tweet in an appeal to his humanity. *Id.* at pp. 1–2. She genuinely wanted him to understand why people like her support Texit so that he would stop being so hateful with his rhetoric. *Id.* at 2.

As evidenced by Defendant's own Exhibits A-29 through A-37, Leach seldom ever responds to any of McComb's numerous Tweets to him and did not respond to those Tweets. Exhibit B, p. 2. Thus, McComb could not have had any reasonable objective expectation that Leach would respond to her on this occasion, and in fact, she did not expect him to respond. *Id.* Since, under Texas law, the absence of knowledge that the defendant will defame the plaintiff negates any defense that the plaintiff invited or procured the defamation this fact conclusively negates Leach's defense. *Supra*, p. 16 (authorities cited).

Not only did McComb not expect Leach to respond at all, but she did not expect him to so callously double down in accusing her "Unequivocally" of "treasonous sedition." Exhibit B, p. 2. Indeed, when you are a human with any shred of humility or empathy, you do not expect a person to respond to an appeal to their sense of empathy to be met with none.

For McComb, it is truly difficult to understand Leach's irrational hatred for Texit supporters. From her perspective, the federal government has blatantly breached its obligations to Americans by consistently and systematically trampling on the individual freedoms guaranteed by the Constitution. Salient recent examples from the past few years under the Biden administration include the following, but are far from an exhaustive list:

- Locking up numerous peaceful protestors in sub-human conditions in a mold and rat-infested Washington, DC jail facility where they have been tortured with solitary confinement for 23 hours per day, beaten, malnourished, denied healthcare, and then put in front of a kangaroo court where they are denied basic due process rights and given lengthy prison sentences based on outlandish legal theories and little to no evidence.

- Instructing the FBI to brand and investigate parents who peacefully protest the policies of school boards as "domestic terrorists."

- Sending SWAT-style teams to arrest and intimidate peaceful pro-life activists in front of their screaming children.

- Sending SWAT-style teams to raid the homes of and arrest prominent political opponents over charges that have never before been used in such a manner.

- Labeling an entire political movement, so-called "MAGA Republicans" as extremists and so-called enemies of the state.

- Hiring 87,000 new IRS agents to target middle-class Americans.

- Implementing policies to force Americans to choose between keeping their jobs and receiving an experimental vaccine with an undisclosed, unknown safety record for which the manufacturer has immunity from liability and that is approved by government scientists who receive royalties from the revenue generated from its distribution.

- Instructing social media platforms to censor anyone posting speech that the government does not like.

- Opening the southern border to an invasion of unvetted illegal migrants.

- Obstructing any meaningful investigation into the Biden family receiving millions in apparent bribe money in exchange for policy decisions while using any excuse to prosecute Biden's primary political opponent.

These brazen acts of oppression reflect a monstrous federal bureaucratic state that has grown out of control and completely lost touch with the Constitution. Today's federal government directly employs approximately 9 million people and has an additional 5 million contractors, making up almost 10 percent of the entire US workforce.[20] This massively

[20] Kristin Tate, *The sheer size of our government workforce is an alarming problem*, The Hill, April 14, 2019, *available at* https://thehill.com/opinion/finance/438242-the-federal-government-is-the-largest-employer-in-the-nation/

wasteful bureaucracy has a current budget of $6.2 trillion, $1.5 trillion of which is deficit spending.[21] This has led to an unsustainable national debt of $32 trillion ($253,000 per taxpayer).[22] With foreign nations increasingly moving away from the dollar, the federal deficits and debt are a ticking time bomb with Congress demonstrating no resolves to curb spending in a meaningful way.[23]

So yes, against this backdrop McComb had hoped that Leach might consider her view on the oppressive nature of the federal government to be at least somewhat legitimate, but she was badly mistaken. While McComb was aware of Daniel Miller's statements about potential defamation lawsuits referenced in Leach's Motion, McComb did not send the Tweet for the purpose of filing this lawsuit against him. *Id.* As in her previous and numerous Tweets to Leach, to which Leach did not respond, McComb simply wanted to make a point to Leach to show him another perspective. *Id.*

When McComb saw his response, she was, of course, angry and offended at being personally accused of crimes. *Id.* Who wouldn't be? She tweeted her responses: "This was not the safe answer" and "You are writing checks with your mouth that you can't cash," to warn Mr. Leach that he had crossed the line and was looking at a possible lawsuit. *Id.* When Mr. Leach did nothing to qualify his criminal accusations against her in any way, she decided that the only way to hold him accountable for his behavior in defaming her and her fellow Texit supporters was to file this lawsuit. *Id.* Leach's words are harmful to her reputation because they cause the public to associate her political work for TNM and in support of Texit with criminal activity. *Id.*

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[21] US Debt Clock, available at https://www.usdebtclock.org/ (last visited Aug. 2, 2023).
[22] *Id.*
[23] Ian Bezek, *De-dollarization: What Happens if the Dollar Loses Reserve Status?*, U.S. News & World Report, June 27, 2023, available at https://money.usnews.com/investing/articles/de-dollarization-what-happens-if-the-dollar-loses-reserve-status.

E. Issuing warnings to the public to cease and desist false criminal accusations or face a potential defamation lawsuit is not a "SLAPP Strategy."

In attempting to claim McComb's Tweet was a "defamation trap," Leach refers to Daniel Miller and TNM's public statements about potential lawsuits against those who falsely accused Texit supporters of treason or sedition as a "SLAPP strategy." *See* Motion, pp. 19–23, 28–34. In other words, Leach characterizes Texit supporters' desire not to be falsely accused of serious crimes every time they speak out in favor of a perfectly legal process as a conspiracy to bring "Strategic Lawsuits Against Public Participation." *Id.* at 19.

Apparently, it is completely lost on Leach and his counsel that falsely accusing others of serious crimes has never been protected free speech. It has always been defamation per se. *See infra* p. 23 (discussion citing *Tatum* and *Wechter* cases). While Leach claims this lawsuit "can't get within a country mile of merit," in reality, his statement fits squarely within the elements of a defamation per se. The only reason Leach has any argument at all that his false criminal accusations are not actionable defamation depends entirely on two very recent 2023 opinions that, for the reasons described above, are distinguishable from this case. Both the Dallas Court of Appeals and the trial court in *Dickson* and *O'Rourke* found that the statements at issue *were* defamatory. *See Dickson*, 662 S.W.3d at 360; *O'Rourke*, 2023 3914278, at *1. It was only the fact that the issues of abortion and political donations in return for favors are so commonplace in public discussion that no reasonable person could have understood the statements to be accusations of actual crimes. As demonstrated above, that is not the case with the secession issue.

So, is Leach correct that a stated threat to sue someone who falsely accuses you of a crime a "SLAPP Strategy"? If that were the case, then every cease and desist letter sent by a lawyer in this state to any putative defendant who has falsely accused their client of a crime is a "SLAPP Strategy." The answer is clearly "no." That being the case, how are Daniel

Miller and TNM's articles and statements regarding potential defamation suits against those who falsely accuse Texit supporters functionally any different than a cease and desist letter? Clearly, they are not. Leach even admits in his Motion that the statements had the same effect as a cease and desist letter: "According to TNM's president, these SLAPP threats were successful: they would generally "tamp [secession opponents] down." Motion, p. 22. So, in other words, just like a cease and desist letter, the publicly announced threat of defamation lawsuits actually prevented people from committing actionable defamation.

Leach did not heed that warning. He likes to believe that he is special. He threw a rather childish hissy fit about being served with process at work,[24] something that happens to normal people every day in this country, and even had his attorneys whine about it for him in the Motion at page 2. Leach's fragile ego was so severely injured by being served with process at work (an act that would have taken no more than 30 seconds if Leach had not droned on about it on the official record), that he proposed an amendment to House Bill 3474 stating: "A person may not serve citation or other civil process in person on a member, officer, or employee of the senate or house of representatives during any legislative hearing." Amend. No. 1 H.B. 3474, 88th Leg., 1st Sess. (Tex. 2023).[25]

But Leach is not special. He is just like any other defendant in a defamation case that was given notice of the plaintiff's intent to sue him if did not stop making false statements and then continued to make false statements. Leach ignored the multiple "cease and desist letters" that came in the form of TNM and Miller's public statements that he described in his own Motion and then continued to publicly defame Texit supporters as criminals. He finally crossed the line into actionable defamation when he personally accused Morgan McComb of

[24] In case the Court wishes to view his reaction: https://rumble.com/v2jevzy-texas-house-rep.-jeff-leachs-hilarious-reaction-to-being-served-with-a-defa.html
[25] Available at https://capitol.texas.gov/tlodocs/88R/amendments/pdf/HB03474H22.PDF

"treasonous sedition." Comically, Leach claims that McComb set a "defamation trap" for him when she tried to reason with him by appealing to his humanity. Motion, pp. 28–30. If Miller, TNM, and McComb were attempting to set a "defamation trap" for Leach, they did an extremely poor job of it by giving Leach multiple public warnings over a number of years. Is it a "trap" when someone follows through on a warning they have given you multiple times? Obviously not. Leach simply could not control his hatred for Texit supporters enough to stop himself from falsely accusing them of crimes they have not committed.

F. Leach's Motion must be denied because his statement meets all of the elements of defamation per se.

"To prevail on a claim of defamation, a plaintiff must prove '(1) the publication of a false statement of fact to a third party, (2) that was defamatory concerning the plaintiff, (3) with the requisite degree of fault, and (4) damages, in some cases.'" *Dickson*, 662 S.W.3d at 363. "Defamation per se occurs when a statement is so obviously detrimental to one's good name that a jury may presume general damages, such as for loss of reputation or for mental anguish." *Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 624 (Tex. 2018). "A false statement which charges a person with the commission of a crime is libelous per se." *Leyendecker & Associates, Inc. v. Wechter*, 683 S.W.2d 369, 374 (Tex. 1984).

McComb has already established above that Leach's statement was not mere opinion but was a false statement of fact accusing her of serious crimes. Treason and sedition are federal crimes punishable by death and lengthy imprisonment. *See* 18 U.S.C. §§ 2381 & 2384. Leach published his accusation of "treasonous sedition" against McComb to third parties via Twitter.

Leach's statement accusing McComb of treasonous sedition was false because advocating for the Texas Legislature to pass a bill allowing Texans to vote on whether they wish for Texas to assert its independence from the United States does not meet the definitions

of treason or sedition under the United States Code because it does not involve advocacy for the use of force or levying war against the United States. *See id.* (defining "treason" and "seditious conspiracy").

Actual malice is the requisite degree of fault a plaintiff is required to prove when a limited-purpose public figure sues a nonmedia defendant involving a matter of public concern. *See, e.g.*, *WFAA-TV, Inc. v. McLemore*, 978 S.W.2d 568, 573 (Tex. 1998). Actual malice is defined as making the statement "with knowledge that it was false or with reckless disregard of whether it was true or not" and may be established by circumstantial evidence establishing that the defendant entertained serious doubts about the truth of the statement. *E.g. Franco v. Cronfel*, 311 S.W.3d 600, 607 (Tex. App.—Austin 2010, no pet.). Circumstantial evidence showing reckless disregard may derive from the 'defendant's words or acts before, at, or after the time of the communication.'" *Id.* (quoting *Clark v. Jenkins*, 248 S.W.3d 418, 435 (Tex. App.—Amarillo 2008, no pet.).

Jeff Leach is a 2008 graduate of SMU Dedman School of Law and is counsel with the law firm of Gray Reed & McGraw.[26] He is currently serving his sixth term in the Texas House of Representatives. One of the committees he has served on in the Texas House is the Committee on Criminal Jurisprudence. Given his background as a lawyer and a legislator who has served on a committee related to criminal jurisprudence, it is simply not plausible that Leach does not know that advocacy for a peaceful process involving a popular vote on Texas independence is not in any way treason or sedition as those crimes are defined in the United States Code.

Sedition or "seditious conspiracy" as it is officially titled, requires a conspiracy to use force. 18 U.S.C. § 2384. The definition of "treason" requires the perpetrator to have levied

[26] *Jeff Leach*, Gray Reed & McGraw, P.C., available at https://www.grayreed.com/Our-People/Jeff-Leach (last visited Aug. 2, 2023).

war against the United States or aid and comfort to its enemies. 18 U.S.C. § 2381. Peaceful advocacy for a popular vote does neither. Any lawyer would know this. Furthermore, Leach received multiple warnings in replies to his Tweets to put him on notice of this, including one by undersigned counsel referenced in the Motion at page 57. Similar examples of individuals urging Leach to consult federal law may be found in Defendant's Exhibit A-4 at Appx 077, 086, 092, 093, 115 et seq. Yet, despite having every reason to know that Texit advocacy is not treason or sedition, Leach accused McComb of the same.

IV.
CONCLUSION

Falsely accusing someone or a group of people of crimes in order to accomplish a political objective should not be tolerated in a free society. Instead of engaging in a discussion or debate about the pros and cons of Texit, like a decent human being, Leach instead attempts to discredit its supporters, including McComb, by accusing them of treason and sedition. As demonstrated by numerous responsive Tweets from users who believe Texit advocacy is treason or sedition, Leach's defamation tactic is effective because it takes advantage of the woeful lack of public knowledge on the historical context of secession and the legal implications thereof. McComb finally had enough and decided to do something about it by filing this lawsuit.

McComb submits to this Court that Texans should be able to expect better from their elected representatives than to be faced with false criminal accusations for expressing lawful viewpoints. Leach accuses McComb of an "assault on free speech" by filing this suit. Motion, p. 2. McComb would respond by asking the Court to consider which course of action is more likely to encourage public participation in political discourse: allowing elected officials to associate lawful speech from citizens with criminal conduct or holding them accountable for

such conduct? For her part, McComb would answer the latter, and that is why this lawsuit is the opposite of a "SLAPP Suit."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Response on all counsel of record in this action by Texas EFile on August 3, 2023.

/s/ *Paul M. Davis*
Paul M. Davis

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Filing Code Description: Answer/Response
Filing Description: Plaintiff's Response to Defendant's Motion to Dismiss
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