UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Policy Planning
Bureau of Competition

July 10, 2026

Supreme Court of Ohio
65 S. Front Street
Columbus, OH 43215-3431
(614) 387-9000

By email

Re: <u>Amendments to the Supreme Court Rules for the Government of the Bar of Ohio</u>

To the Honorable Chief Justice and Justices of the Supreme Court of Ohio:

We are the Directors of the Federal Trade Commission's (FTC or Commission) Office of Policy Planning and Bureau of Competition.[1] The FTC's Office of Policy Planning engages with state legislatures, regulatory boards, and other government officials on competition and consumer protection issues to champion the interests of the American people. The FTC's Bureau of Competition enforces America's antitrust laws. Competition is the lifeblood of the American economy, spurring innovation, expanding output and employment, lowering prices, improving quality, and increasing access to goods and services. Promoting competition and enhancing consumer choice are central goals for the Commission. Eliminating regulatory barriers that raise prices, prop up entrenched monopolies, or otherwise restrain the competitive economy is key to achieving these goals.

We write this letter to advance those objectives and respond to the Ohio Supreme Court's (Court) request for comment on its proposed amendment to its Rules for the Government of the Bar of Ohio (Proposed Amendment).[2] The Proposed Amendment eliminates Rule I's express reliance on accreditation by the American Bar Association (ABA) and, instead, provides two alternate means of identifying accreditors who may determine whether a law school's graduates are eligible for admission to the Ohio bar.[3] The Commission has substantial experience evaluating

[1] The views expressed in this statement represent the views of the Commission.
[2] SUP. CT. OF OHIO, AMENDMENTS TO THE SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO (2026) [hereinafter Proposed Amendment], https://www.supremecourt.ohio.gov/RuleAmendments/documents/LSAAC-%20Proposed%20Rule%20Amendments%20(Public%20Comments).pdf (proposing amendments for public comment).
[3] *See id.* R. I, § 1(C). The Court based this action on recommendations made by the Law School Accreditation Advisory Committee it appointed last year. *See* Staff Report, Supreme Court Forges New Pathway for Legal Education in Ohio, CT. NEWS OHIO (May 28, 2026), https://www.courtnewsohio.gov/happening/2026/LegalEducation_052826.asp. The Proposed Amendment is discussed in more detail in Part I *infra*.

the competitive effects of professional licensing and related restrictions across the U.S. economy.[4] Through its advocacy program, the Commission regularly advises states and localities regarding the competitive effects of various professional and occupational licensing requirements.[5] The Commission's prior advocacies highlight the risks of entrusting market participants to act as gatekeepers for their profession or to set the terms on which they and their fellow competitors may compete.[6] Two recent advocacy letters supported actions by the Texas Supreme Court and Florida Supreme Court to end their dependence on ABA law school accreditation.[7] A third advocacy letter encouraged the Tennessee Supreme Court to reduce its reliance on ABA accreditation.[8] The Commission has also brought enforcement actions in this realm, including one in which the U.S. Supreme Court affirmed that the antitrust laws limit the ability of market incumbents to suppress competition through state professional boards.[9]

Based on this experience, we applaud the Proposed Amendment's elimination of Rule I's express reliance on accreditation by the ABA to determine whether a law school's graduates are eligible for admission to the Ohio bar.[10] Allowing the ABA to monopolize the determination of the education requirements for taking the bar examination and practicing law in Ohio is inimical to the principles on which competition law rests. The ABA is dominated by practicing attorneys,

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[4] *See, e.g.*, MAUREEN K. OHLHAUSEN, FED. TRADE COMM'N, PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION ON COMPETITION AND OCCUPATIONAL LICENSURE BEFORE THE JUDICIARY COMMITTEE SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW 10–15 (Sept. 12, 2017) [hereinafter Ohlhausen House Statement], https://www.ftc.gov/system/files/documents/public_statements/1253073/house_testimony_licensing_and_rbi_act_sept_2017_vote.pdf.

[5] *See, e.g.*, MAUREEN K. OHLHAUSEN, FED. TRADE COMM'N, PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION BEFORE THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY AND CONSUMER RIGHTS "LICENSE TO COMPETE: OCCUPATIONAL LICENSING AND THE STATE ACTION DOCTRINE" 1–2 (Feb. 2, 2016) [hereinafter Ohlhausen Senate Statement], https://www.ftc.gov/system/files/documents/public_statements/912743/160202occupationallicensing.pdf; *Selected Advocacy Relating to Occupational Licensing*, FED. TRADE COMM'N, https://www.ftc.gov/policy/advocacy-research/advocacy/economic-liberty/selected-advocacy-relating-occupational-licensing (last visited July 7, 2026) (linking to over 20 such advocacies).

[6] *See* Ohlhausen Senate Statement, *supra* note 5, at 1 ("[W]hen regulatory authority is delegated to a board composed of members of the occupation it regulates," their "private interests may lead to . . . restrictions that discourage new entrants, deter competition among licensees and from providers in related fields, and suppress innovative products or services that could challenge the status quo.").

[7] Fed. Trade Comm'n, FTC Staff Comment to the Texas Supreme Court Regarding Proposed Amendment to Rule 1 of the Rules Governing Admission to the Bar of Texas (Dec. 1, 2025), https://www.ftc.gov/news-events/news/public-statements/ftc-staff-comment-texas-supreme-court-regarding-proposed-amendment-rule-1-rules-governing-admission; Fed. Trade Comm'n, FTC Staff Comment to the Florida Supreme Court Regarding Amendment to Rule 4-13.2 of the Florida Supreme Court's Rules Relating to Admissions to the Bar (Mar. 31, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/FloridaABALetterFinal.pdf.

[8] *See* Fed. Trade Comm'n & U.S. Dep't of Just., Comment Letter to the Tennessee Supreme Court Regarding Regulatory Reforms to Increase Access to Quality Legal Representation (Apr. 30, 2026), https://www.ftc.gov/legal-library/browse/advocacy-filings/ftc-doj-comment-letter-supreme-court-tennessee-regarding-potential-regulatory-reforms-increase (submitted jointly with the United States District Attorney for the Middle District of Tennessee and the Deputy Assistant Attorneys General at the U.S. Department of Justice's Antitrust Division). The letter responded to the Tennessee Supreme Court's invitation for comments to inform its consideration of "[w]hether the Court should modify, reduce, or eliminate its reliance on ABA accreditation" and "[w]hether there are any practicable alternatives to ABA accreditation that the Court should consider." *See* In Re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation 4, Dkt. No. ADM2025-01403 (Tenn. Sup. Ct. Sept. 16, 2025) [hereinafter Tenn. Sup. Ct. Order], https://www.ftc.gov/system/files/ftc_gov/pdf/FTCDOJLettertoTennesseeSupremeCourt.pdf.

[9] *See N.C. State Bd. of Dental Exam'rs v. FTC*, 574 U.S. 494, 513–14 (2015).

[10] Proposed Amendment, *supra* note 2.

who have strong incentives to limit the supply of lawyers competing to provide legal services. And its accreditation group is dominated by law school faculty and administrators with strong incentives to thwart lower cost alternatives for legal education. Therefore, Ohio's current reliance on ABA accreditation raises serious competitive risks by broadly delegating to the ABA the state's authority to set eligibility requirements for admission to the Ohio bar.

The stakes are real. The ABA's standards for accreditation go beyond what is reasonably necessary to assure adequate preparation to practice law in Ohio and throughout the country. This barrier unjustifiably increases the costs of legal education for many students and leads to the Ohio bar admitting fewer qualified lawyers who could provide needed legal services to the public. The Court should adopt the Proposed Amendment and thereby reduce its reliance on ABA accreditation. We encourage other states to take similar steps.

I. The Proposed Amendment would end the ABA's explicit control over whether an Ohio bar applicant's legal education is sufficient for admission, removing a core basis for the ABA's monopoly.

The Court's Proposed Amendment repeals the former mandate that an applicant for admission to the Ohio bar must, among other things, have earned a law degree from "a law school that was approved by the American Bar Association."[11] The Proposed Amendment instead conditions eligibility for bar admission on an applicant's "[h]av[ing] earned a J.D. or an L.L.B. degree from [(1)] a law school that was approved by an accrediting agency recognized by the United States Department of Education or [(2)] a state accrediting agency subject to the guidelines established by the Supreme Court of Ohio."[12]

The ABA is the largest voluntary professional organization in the world; its "mission is to be the national representative of the legal profession," serving a membership filled with practicing attorneys.[13] The ABA's Council of the Section of Legal Education and Admissions to the Bar (ABA Council) establishes the standards that law schools must meet to become accredited, covering areas such as faculty, admissions, curriculum, governance, and libraries and other facilities.[14] It also determines whether law schools have complied with these standards and warrant ABA accreditation.[15] The ABA Council has twenty-one members who are predominantly current or former law school or other university administrators or faculty; the remainder include practicing lawyers, judges, a law student, and a Senior Fellow at a trade association that represents

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[11] Ohio Gov. Bar R. I, § 1(C) [hereinafter Ohio Supreme Court Rules], https://www.supremecourt.ohio.gov/docs/LegalResources/rules/govbar/govbar.pdf (last visited July 7, 2026). The rules also provide for alternative pathways to admission, but these options impose significant limitations.

[12] Proposed Amendment, *supra* note 2, R. I, § 1(C). The Proposed Amendment makes this change in other provisions of the Court's rules on admission. *See id.* (making the same change in Rule I, Sections 2, 3, 10, and 18 as well as in Rules II, IX, and X). The effective date is not specified in the Proposed Amendment.

[13] *Consumer FAQs*, A.B.A., https://www.americanbar.org/groups/professional_responsibility/resources/resources_for_the_public/consumer_faqs/ (last visited July 7, 2026).

[14] *See* A.B.A. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2025–2026 [hereinafter ABA Standards], https://www.americanbar.org/groups/legal_education/accreditation/standards/standards-rules (last visited July 7, 2026).

[15] *Schools Seeking Council Approval*, A.B.A., https://www.americanbar.org/groups/legal_education/accreditation/ (last visited July 7, 2026). The law school accreditation application process is lengthy, including payment of a fee, preparation of studies by the applicant, collection of data, and a site evaluation team visit and report. *See id*.

universities' interests.[16] These ABA Council members are selected by an ABA Section largely composed of law school faculty and administrators.[17]

Reducing Ohio's reliance on ABA law school accreditation, then, is a welcome exercise of the Court's authority over admission to the practice of law in Ohio.[18] These actions will not eliminate the ABA's accreditation monopoly in the short term, but they will make it less secure. The first prong will not immediately result in new competitive alternatives but, coupled with developments on the state and federal level, it may help promote new competition. *See* Part IV.A *infra*. The second prong creates the opportunity for the Ohio Supreme Court to expand competitive alternatives to the approximately 20 law schools that currently have state, but not ABA, accreditation. *See* Part IV.B *infra*. We urge states to consider initiating or expanding programs through which they accredit law schools and to consider extending approval to non-ABA-accredited law schools that are accredited by other states.

II. Professional boards or trade associations often have strong incentives to restrain competition and may misuse delegated state power to exclude competitors.

Antitrust law has long recognized that professional boards and trade associations frequently have inherent incentives to undermine competition.[19] As Adam Smith observed, "[p]eople of the same trade seldom meet, even for merriment or diversion, but the conversation ends in a conspiracy against the public or in some contrivance to raise prices."[20] Professional and trade associations thus have often been found to violate the antitrust laws when they enter into agreements restricting competition among themselves,[21] or when interfering with the ability of others to compete.[22]

Some conduct by professional associations can generate important benefits. For example,

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[16] *Section of Legal Education and Admissions to the Bar Leadership*, A.B.A., https://www.americanbar.org/groups/legal_education/about/leadership/ (last visited July 7, 2026) (showing the professional titles of the 21 Council members, with 14 listing current or former positions at law schools or universities and Daniel Madzelan listing his position with the American Council on Education).

[17] The ABA's Section of Legal Education and Admissions to the Bar has over 17,000 members. *About the Section of Legal Education and Admissions to the Bar*, A.B.A., https://www.americanbar.org/groups/legal_education/about/ (last visited July 7, 2026); *New to Bar Admissions? What You Might Like to Know About: The ABA's Connection to Bar Admissions*, 90 THE BAR EXAMINER 86 (Spring 2021), https://thebarexaminer.ncbex.org/article/spring-2021/new-bar-admissions-aba-connections/ (reporting that the Section's "membership is generally composed of legal educators and bar examiners" but "is open to any ABA member").

[18] *See* OHIO CONST. art. IV, § 2(B)(1)(g) (granting the Ohio Supreme Court authority over "[a]dmission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law").

[19] The Ohio Board of Bar Examiners is a professional board whose members are appointed by this Court; the ABA is a trade association. *See* Ohio Supreme Court Rules, *supra* note 11, R. I, § 4(A).

[20] United States v. Realty Multi-List, Inc., 629 F.2d 1351, 1370 (5th Cir. 1980) (quoting Note, *Arbitrary Exclusion from Multiple Listing: Common Law and Statutory Remedies*, 52 CORN. L.Q. 570 (1967)); *see* ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 55 (Great Books 1952) (1776).

[21] *See, e.g.*, Goldfarb v. Va. State Bar, 421 U.S. 773, 783 (1975) (holding that a county bar association rule establishing a minimum fee schedule enforced via potential disciplinary action was "a classic illustration of price fixing" by the state bar); FTC v. Ind. Fed'n of Dentists, 476 U.S. 447, 456–65 (1986) (affirming an FTC order that an Indiana Federation of Dentists policy requiring its members to withhold x-rays violated the antitrust laws).

[22] *See, e.g.*, E. States Retail Lumber Dealers' Ass'n v. United States, 234 U.S. 600, 611–14 (1914) (affirming Sherman Act violation against associations of retail lumber dealers who conspired to prevent competition from wholesale dealers); Fashion Originators' Guild, Inc. v. FTC, 312 U.S. 457, 463–65 (1941) (affirming FTC order that a trade association of garment manufacturers cease an organized boycott designed to thwart the sale of lower-priced garments that are similar to the trade association members' original styles).

adopting voluntary standards governing product safety or professional qualifications, promulgated with "meaningful safeguards" around the process for developing such standards, can have "significant procompetitive advantages."[23] Voluntary industry standards are therefore generally assessed under the rule of reason, which weighs a restraint's procompetitive and anticompetitive effects.[24] Yet courts recognize the inherent anticompetitive incentives in many standards organizations that may lead to abuse of the standards process, particularly where "many of [the standards organization's] officials are associated with members of the industries" it regulates.[25]

The potential for competitive harm increases when state legislation or regulation gives the force of law to restrictions on competition advanced by professional or trade associations. Antitrust law respects the authority of states to promote their policy goals through regulation, even when such actions inhibit competition. It thus affords immunity from antitrust liability when two conditions are met: (1) the challenged restraint must be "clearly articulated and affirmatively expressed as state policy," and (2) "the policy must be 'actively supervised' by the State itself."[26] There is a particular danger of competitive harm when a state professional board is composed of unsupervised industry competitors. In *North Carolina State Board of Dental Examiners v. FTC*, for example, the Supreme Court refused to extend immunity to the decision of a state board dominated by licensed dentists to adopt a regulation prohibiting dental hygienists from offering teeth whitening services.[27]

The Commission has emphasized harm to competition arising when "entrants are effectively required to obtain permission from incumbent competitors to enter or expand within a particular market."[28] These harms from "unnecessary occupational regulation" include "dampening incentives for innovation in products, services, and business models" and "creating barriers to entry or repositioning by providers."[29] Legal scholars agree, stressing that boards composed largely of incumbent members of the profession can serve as "cartels by another name" that are "deputized to regulate and to outright exclude their own competition."[30] This "inherent conflict of interest and a risk of anticompetitive abuse" arises "in any accreditation program where market participants wield the power to exclude"—"for even the most selfless and well-intentioned decision makers" may be influenced when decisions "direct[ly] implicat[e] their own status . . .

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[23] Allied Tube & Conduit Corp. v. Indian Head, Inc., 486 U.S. 492, 501 (1988) (quoting Am. Soc'y of Mech. Eng'rs v. Hydrolevel Corp., 456 U.S. 556, 572 (1982)); *see also* Ohlhausen Senate Statement, *supra* note 5, at 1 (stating that the Commission "recognize[s] that occupational licensing can offer many important benefits," such as "protect[ing] consumers from health and safety risks").
[24] *See, e.g.*, *Allied Tube*, 486 U.S. at 500–01.
[25] *Hydrolevel*, 456 U.S. at 571.
[26] Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97, 105 (1980) (quoting City of Lafayette v. La. Power & Light Co., 435 U.S. 389, 410 (1978) (Brennan, J.) (footnote omitted)).
[27] 574 U.S. 494, 507 (2015).
[28] *See* Maureen K. Ohlhausen & Gregory P. Luib, *Brother, May I?: The Challenge of Competitor Control over Market Entry*, 4 JOURNAL OF ANTITRUST ENF'T 111, 111 (2016), https://doi.org/10.1093/jaenfo/jnv028; Ohlhausen House Statement, *supra* note 4, at 3 ("Occupational regulation can be especially problematic when regulatory authority is delegated to a board controlled by active market participants," since "there is a risk that the board's decisions will serve the private economic interests of its members, not the policies of the state or the well-being of its citizens.").
[29] Ohlhausen Senate Statement, *supra* note 5, at 1.
[30] Aaron Edlin & Rebecca Haw, *Cartels by Another Name: Should Licensed Occupations Face Antitrust Scrutiny?*, 162 U. PA. L. REV. 1093, 1093–94 (2014). The authors contend that "[l]icensing boards are largely dominated by active members of their respective industries who meet to agree on ways to limit the entry of new competitors." *Id*. at 1095–96.

and well-being."[31]

In engaging with state officials regarding occupational licensing, the Commission "ask[s] that they consider whether: (1) any licensing regulations are likely to have a significant adverse effect on competition; (2) those restrictions are targeted to address actual risks of consumer harm; and (3) the restrictions are narrowly tailored to minimize burdens on competition, or whether less restrictive alternatives are available."[32] This inquiry is designed to "help alleviate unnecessary licensing burdens" that harm competition.[33] When professional licensing restrictions fall short of these principles, they may not serve the public interest—they may instead further the anticompetitive goals of market participants who influence and set the standards. Based on these principles, the Commission has argued against restrictions that would undermine competition by imposing certification or educational requirements on suppliers beyond what is needed to properly perform the service. For example, the Commission has frequently advised against restrictions on those permitted to provide medical or dental services that would exclude qualified suppliers.[34] The Commission has also recommended caution in imposing costly educational requirements to qualify for professional licensure.[35]

III. The ABA's monopoly control over law school accreditation and bar eligibility may stifle competition among law schools and among lawyers in the United States.

As it stands, the ABA has a monopoly on the accreditation of American law schools.[36] It

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[31] Marina Lao, *Discrediting Accreditation?: Antitrust and Legal Education*, 79 WASH. U. L. Q. 1035, 1036–37 (2001).
[32] Ohlhausen House Statement, *supra* note 4, at 4.
[33] Maureen Ohlhausen, Acting Chairman, Fed. Trade Comm'n, Transcript of the Economic Liberty Taskforce Roundtable: The Effects of Occupational Licensure on Competition, Consumers and the Workforce: Empirical Research and Results 4 (Nov. 7, 2017), https://www.ftc.gov/system/files/documents/public_events/1252903/11_07_2017_the_effects_of_occupational_licensure_transcripts.pdf.
[34] *See, e.g.*, FED. TRADE COMM'N, POLICY PERSPECTIVES: COMPETITION AND THE REGULATION OF ADVANCED PRACTICE NURSES (2014), https://www.ftc.gov/system/files/documents/reports/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolicypaper.pdf (cautioning against restricting the scope of practice of advanced practice registered nurses or subjecting them to excessive physician supervision); Fed. Trade Comm'n, FTC Staff Comment Letter on Likely Competitive Impact of House Bill 684 to Amend GA Code § 43-11-74 (Jan. 29, 2016), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-georgia-state-senator-valencia-seay-concerning-georgia-house-bill-684/160201gadentaladvocacy.pdf (supporting a bill permitting dental hygienists to provide certain services without the direct supervision of a dentist).
[35] Fed. Trade Comm'n, FTC Staff Comment Letter on Washington Administrative Code 4-25-710, § IV (Mar. 18, 1996), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-honorable-jean-silver-concerning-washington-administrative-code-4-25-710-require/v960006.pdf (cautioning that requiring 150 hours of undergraduate coursework to sit for the CPA examination could "increase the cost of entry and may raise prices to consumers of CPA services," and recommending that the state "seek persuasive evidence that, notwithstanding these concerns, the net effect of the amendment on consumers would be positive").
[36] *See* George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091, 2198 (1998) ("The ABA accreditation system creates almost complete monopoly control over each of the three markets for hiring law faculty, for legal training, and for legal services."); WORKGROUP ON THE ROLE OF THE AMERICAN BAR ASSOCIATION IN BAR ADMISSION REQUIREMENTS: FINAL REPORT 16 (Oct. 27, 2025) [hereinafter Florida Workgroup Report], https://www-media.floridabar.org/uploads/2025/10/Final-Report-of-the-Workgroup-on-the-Role-of-the-ABA-in-Bar-Admission-Requirements.pdf ("[T]he [ABA], through its Council, holds a near monopoly over legal education accreditation in the United States."). The Florida Supreme Court established the Workgroup to study Florida's reliance on ABA accreditation in determining eligibility to take the Florida bar examination. *See id*. at 5; In Re: Workgroup on the Role of the American Bar Association in Bar Admission Requirements, Docket. No. AOSC25-15 (Fla. Sup. Ct. Mar. 12, 2025).

is the sole law school accreditor currently recognized by the Department of Education and the only one to operate on a national level across multiple states. Law schools therefore lack alternatives to ABA accreditation through which to signal quality or obtain access to federal student-loan funding. This monopoly power is protected by rules and regulations in most states that make eligibility for their respective bars depend either entirely or heavily on graduation from an ABA-accredited law school.[37]

The ABA, unfortunately, has a long history of using its law school accreditation monopoly to harm competition. Thirty years ago, the United States Department of Justice (DOJ) brought a Sherman Act complaint against the ABA and challenged conduct that dated back to 1973.[38] The DOJ alleged that the ABA allowed "[l]egal educators" to capture the accreditation process, "at times act[ing] as a guild that protected the interests of professional law school personnel."[39] The complaint stated that ABA "salary standards and their application . . . unreasonably restricted competition in the law school labor market and" forced accredited schools to "ratchet[] up law school salaries."[40] According to the DOJ, other restrictions "deterr[ed] effective competition from [non-ABA-accredited] law schools."[41] The ABA settled, resolving the lawsuit through a consent decree.[42] In 2006, the U.S. District Court for the District of Columbia found that "on multiple occasions the ABA ha[d] violated clear and unambiguous provisions" of that consent decree; it ordered the ABA to comply and pay $185,000 to compensate the DOJ for the costs of the investigation.[43]

Nonetheless, the ABA continues to wield its law school accreditation monopoly in a manner that harms competition. When it strikes the right balance, accreditation can be procompetitive and serve the state's interest in "safeguard[ing] a baseline of legal educational quality and support."[44] The ABA fails to do so. It forces every law school to follow its preferred

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[37] *See, e.g.*, *Comprehensive Guide to Bar Admission Requirements*, NAT'L CONFERENCE OF BAR EXAM'RS, https://reports.ncbex.org/comp-guide/charts/chart-3/ (last visited July 7, 2026) (summarizing the requirements in each state); Florida Workgroup Report, *supra* note 36, attach. B: Chart of Educational Requirement to Sit for the Bar Examination in the United States (same).

[38] See Compl., *United States v. Am. Bar Ass'n*, No. 95-cv-01211 (D.D.C. June 27, 1995), https://www.justice.gov/atr/case-document/file/485696/dl; Competitive Impact Statement, *United States v. Am. Bar Ass'n*, No. 95-cv-01211 (D.D.C. July 14, 1995), https://www.justice.gov/atr/case-document/file/485691/dl.

[39] Competitive Impact Statement, *supra* note 38, at 2, 4.

[40] Compl., *supra* note 4038, ¶ 16.

[41] Competitive Impact Statement, *supra* note 38, at 6–7.

[42] The consent decree prohibited standards relating to compensation paid to law school faculty and administrators, restricted the collection and dissemination of information regarding compensation, and eliminated certain restrictions on accepting transfer credits from state-accredited law schools or enrolling graduates of such schools in post-J.D. programs. It also included structural provisions designed to insulate the ABA Council's conduct from influence by interested parties such as legal educators. *See* United States v. Am. Bar Ass'n, 934 F. Supp. 435, 436–37 (D.D.C. 1996). The decree was modified in 2001 to limit the role of the ABA House of Delegates in reviewing Council decisions, in order to conform with Department of Education regulations. United States v. Am. Bar Ass'n, 135 F. Supp. 2d 28, 30, 32 (D.D.C. 2001).

[43] United States v. Am. Bar Ass'n, No. 95-cv-1211, 2006 U.S. Dist. LEXIS 42645, at *2 (D.D.C. June 26, 2006); Petition by the United States for an Order to Show Cause Why Defendant ABA Should Not Be Found in Civil Contempt ¶¶ 11–17, United States v. Am. Bar Ass'n, No. 95-cv-1211 (D.D.C. June 23, 2006), Dkt. No. 101.

[44] Florida Workgroup Report, *supra* note 36, at 17 (footnote omitted).

costly, elitist model of legal education.[45] Over twenty years ago, Professor Marina Lao scrutinized the ABA's accreditation standards. She concluded that they were "unreasonable and, therefore, anticompetitive," because they "reflect the profession's preference for the elite-model law school," and exclude schools providing a "nonelite legal education [that] is perfectly adequate for many types of legal practice."[46]

Secure in its state-protected monopoly position, the ABA Council has brushed off such calls for a commonsense approach that sets baseline requirements to ensure a law school's graduates are competent to practice law. While the Council claims to set "minimum standards for ensuring a quality legal education,"[47] its leaders instead assert that its standards embody "the gold standard for quality."[48] Council leaders also suggest that if states desire baseline standards tailored to ensure that a law school's graduates can provide adequate legal representation, the states should "create [such] alternatives" themselves.[49] Far from being a "gold standard," the ABA's standards impose excessive restrictions that unnecessarily "drive up costs for law schools"[50] and protect the interests of incumbent higher education institutions and their faculty.[51] By increasing the costs of legal education, the ABA's excessive accreditation standards may also limit the supply of new lawyers.[52] With fewer lawyers available, consumers may struggle to access legal services and pay

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[45] *See, e.g.*, Letter from Robert Chesney, Dean of the University of Texas School of Law, to the Honorable Chief Justice and Justices of the Supreme Court of Texas § 2 (June 30, 2025) (on file with FTC). *See also* Shepherd & Shepherd, *supra* note 36, at 2114 ("The present accreditation system arose out of successful efforts during the Great Depression by a combination of elite law professors, elite law schools, and elite lawyers to limit competition in each of the three related markets for law faculty, legal training, and legal services.").

[46] Lao, *supra* note 31, at 1102. *See also* Shepherd & Shepherd, *supra* note 36, at 2103 ("Formal study at an elite-style law school is certainly one way to train lawyers. But it is not necessarily the best or most cost-effective method for all potential lawyers.").

[47] A.B.A. SECTION ON LEGAL EDUC. AND ADMISSIONS TO THE BAR, CORE PRINCIPLES AND VALUES OF LAW SCHOOL ACCREDITATION 1 (Aug. 2025), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2025/core-principles-and-values-of-law-school-accreditation.pdf (last visited July 7, 2026).

[48] Julianne Hill, *Grads of Non-ABA-Accredited Law School Can Sit for Washington State Bar Exam*, A.B.A. J. (May 22, 2026) [hereinafter Hill, *Grads of Non-ABA-Accredited Law School*], https://www.abajournal.com/news/article/grads-of-non-aba-accredited-law-school-can-sit-for-washington-state-bar-exam (quoting Jennifer Rosato Perea, Managing Director of the Section on Legal Education and Admissions to the Bar). *See also* Letter from Daniel Thies, Council Chair, and Jennifer Rosato Perea, Managing Dir., A.B.A. Section of Legal Educ. and Admissions to the Bar, to Jeffrey S. Bivins, C.J., Tenn. Sup. Ct., at 2 (Mar. 16, 2026) [hereinafter ABA Council Tennessee Comment], *in* Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation - ADM2025-01403 (PART 2 of 6) 111, https://www.tncourts.gov/rules/proposed/comments-potential-regulatory-reforms-increase-access-quality-legal-representation-0; Julianne Hill, *Ohio Proposes Steps to Expand Law School Accreditation Beyond ABA*, A.B.A. J. (May 29, 2026), https://www.abajournal.com/web/article/ohio-proposes-steps-to-expand-law-school-accreditation-beyond-the-aba (quoting Daniel Thies, Chair of the Council, stating that "[t]he council has been and will remain the gold standard for law school accreditation").

[49] *See* ABA Council Tennessee Comment, *supra* note 48, at 2 (suggesting that states "create alternatives in addition to, not instead of, Council accreditation" based on "minimum educational requirements"); Hill, *Grads of Non-ABA-Accredited Law School*, *supra* note 48 (quoting Jennifer Rosato Perea suggesting that states "recogniz[e] other law schools or educational pathways that serve the state's needs").

[50] Florida Workgroup Report, *supra* note 36, at 21.

[51] *See* Shepherd & Shepherd, *supra* note 36, at 2096 (explaining that "faculty control the law schools, and, consciously or not, they operate them to maximize benefits for faculty"). Moreover, ABA Council members from colleges or universities without law schools have an interest in the ABA's insistence that law school students obtain an undergraduate degree prior to starting law school.

[52] *See, e.g.*, FTC Staff Comment Letter on Washington Administrative Code 4-25-710, *supra* note 35, § III (explaining that an increase in the course work hours required for CPA exam eligibility can increase the costs of entry into the

more dearly when they do. Thus, ABA accreditation serves the interests of lawyers and law school faculty who dominate the ABA and Council, while potentially injuring consumers of legal services and saddling law students with high costs.[53]

The excesses of ABA accreditation take various forms. There are longstanding concerns that the ABA standards "focus on inputs" that increase costs more than "educational outputs" that ensure the schools provided actual educational benefits.[54] For example, critics question the ABA's requirements for physical libraries, demands for full-time (rather than adjunct) faculty, strict limits on faculty teaching loads, and emphasis on faculty research.[55] While these dictates clearly promote the interests of certain faculty members, they impose high costs without clear indication that they are necessary to ensure educational quality. ABA standards also severely limit online courses and programs that could provide lower cost educations, especially for rural students.[56] In addition, ABA standards require that a law school's course of study include a minimum of 83 credits to graduate,[57] with the result that nearly all ABA-accredited law schools require three years of study.

Moreover, in recent years, the ABA has even dictated that law schools enact measures that conform to controversial ideological views prevalent among legal elitists, notwithstanding public opposition and the measures' irrelevance to ensuring a baseline level of legal education. These actions are recent additions to a long list that have buried the antiquated "perception that [the ABA]

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profession, and therefore serve the "economic self-interest" of incumbent suppliers); Press Release, Fed. Trade Comm'n, *FTC Announces Investigation of American Medical Association* (Apr. 13, 1976) (on file with Fed. Trade Comm'n) (announcing that the FTC had "commenced an investigation to determine whether the American Medical Association may have illegally restrained the supply of physicians and health care services through activities relating to . . . accreditation of medical schools and graduate programs").

[53] Many law students, as consumers of legal education, are likely injured by the ABA's costly and unnecessary standards. However, current law students are unlikely to experience the benefits of adopting more flexible accreditation standards that could lower costs of legal education in the future, and, moreover, expect to soon become lawyers who may reap the benefits from the reduced supply of legal services. Law student representatives on accreditation bodies thus likely have little incentive to promote standards that lower costs. The harm from excessive accreditation standards may be concentrated on potential students who are deterred from attending law school by the costs and other barriers resulting from ABA standards.

[54] Florida Workgroup Report, *supra* note 36, at 18 (quoting Benjamin M. Lepak, Breaking the ABA's Law School Cartel: A Proposal to Make Oklahoma Top-Ten in Innovative Lawyer Education, 1889 INST. (Mar. 25, 2020), https://1889institute.org/breaking-the-abas-law-school-cartel-a-proposal-to-make-oklahoma-top-ten-in-innovative-lawyer-education/); *id*. at 19 (including criticisms from a former ABA Accreditation Committee member that input requirements "have no real connection to the quality of education").

[55] Florida Workgroup Report, *supra* note 36, at 18–21; Lao, *supra* note 31, at 1040–43, 1074–78 (describing the wide range of law school operations covered by the ABA's "elite-style law school" standards and their anticompetitive impact); John S. Elson, *Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia*, 64 TENN. L. REV. 1135, 1141–42 (1997) (noting that these standards "keep out of the legal education market schools that would prefer to focus their resources on preparing students for practice").

[56] Generally, ABA accreditation requires that law schools offer no more than half their courses online. *See* ABA Standards, *supra* note 14, at 26–27 (Standard 306). Institutions seeking to exceed this threshold must obtain an acquiescence from the Council, which it has granted in some cases. *See id.;* ABA Council Tennessee Comment, *supra* note 48, at 8. The ABA announced plans to consider changing the standards to make fully online law schools eligible to receive accreditation two years ago, but it has not taken action. *See* Comment of Purdue Global Law School to the Honorable Justices of the Tennessee Supreme Court, *in* In Re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation 1–4, Dkt. No. ADM2025-01403 (Tenn. Sup. Ct. Dec. 23, 2025) (on file with Fed. Trade Comm'n).

[57] ABA Standards, *supra* note 14, at 29 (Standard 311).

is an impartial and objective professional association"[58] and fueled views that it has become "more of a political organization."[59] Of particular concern has been the ABA's imposition of DEI requirements on American law schools as a requirement of accreditation,[60] which the DOJ and Attorneys General of 21 states regard as illegal under the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).[61] The state Attorneys General concluded that ABA Standard 206, which set these DEI requirements, "all but *compel[ed]* law schools to consider race in both the admissions and employment contexts" and thereby "to defy the Court's clear directive."[62] In May 2026, the ABA Council voted to repeal Standard 206,[63] having previously suspended it in February 2025.[64] The Council's Standards Committee explained that "the Council's role as an accreditor [] would be imminently threatened if Standard 206 is not repealed," citing actions by the Department of Education.[65]

Absent its monopoly bolstered by delegated state power, the ABA's insistence on an expensive, ideologically biased legal education might not raise competitive concerns.[66] It could even offer a useful signal to prospective law students seeking such an experience. If other, differentiated law school accreditors existed, schools that wished to compete by offering a distinct, more affordable product could seek accreditation from those ABA alternatives. Competitive market forces could thus spur innovation in the stagnant market for legal education. And competition between accreditors could help to discipline attempts by the ABA to impose costs or ideological mandates that serve little educational purpose. Even the ABA's allies, including a former managing director for the ABA Council, recognize that alternative accreditors could offer valuable options to "[s]chools that think that the current ABA process is too expensive, too slow,

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[58] Florida Workgroup Report, *supra* note 36, at 25 (quoting Letter from William Barr, Att'y Gen., U.S. Department of Justice, to Talbot D'Alemberte, President, American Bar Association (Aug. 7, 1992)).
[59] Barry Currier, *Is the American Bar Association the Optimal Home Base for the Regulation of Legal Education?*, (June 13, 2025), https://barrycurrier.substack.com/p/is-the-american-bar-association-the; *see also* John S. Baker, *Seeking Competition in Law School Accreditation*," 11 TEX. REV. OF L. & POL. 385, 387, 388 (2007) (declaring that "[t]he fact is that the ABA is an ideological organization forcing its ideology into the standards on accreditation" and that due to "the lack of adequate competition" "the whole process has become very politicized").
[60] *See* ABA Standards, *supra* note 14, at 17 (Standard 206).
[61] *See* Letter from Pamela Bondi, Att'y Gen., U.S. Dep't of Justice, to David A. Brennen, Council Chair, A.B.A. Section of Legal Educ. and Admissions to the Bar, (Feb. 28, 2025), https://www.justice.gov/ag/media/1392081/dl?inline; Letter from State Attorneys General to David A. Brennen, Council Chair, A.B.A. Section of Legal Educ. and Admissions to the Bar (Jan. 6, 2025), https://www.scag.gov/media/ru4dwwfm/multistate-comment-re-standard-206-filed.pdf.
[62] Letter from State Attorneys General to David A. Brennen, *supra* note 61, at 2.
[63] Julianne Hill, *ABA Legal Ed Council Votes to Repeal Diversity and Inclusion Standard*, A.B.A. J. (May 15, 2026), https://www.abajournal.com/web/article/aba-legal-ed-council-votes-to-repeal-diversity-and-inclusion-standard. The action will be sent to the ABA House of Delegates for its concurrence at the ABA's August 2026 annual meeting. *Id.*
[64] Press Release, A.B.A., American Bar Association Statement Re: Standard 206 (Feb. 22, 2025), https://www.americanbar.org/news/abanews/aba-news-archives/2025/02/aba-statement-re-standard-206/; Memorandum from Daniel Thies, Council Chair, A.B.A. Section of Legal Educ. and Admissions to the Bar, to Interested Parties and Entities (Feb. 26, 2026), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2026/notice-comments/2026-february-standard-206-repeal-notice-comment-memo.pdf.
[65] Memorandum from the Standards Comm. to the Council of the A.B.A. Section on Legal Educ. and Admissions to the Bar (May 8, 2026), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2026/council-meeting/2026-may-standard-206-final-approval-memo.pdf.
[66] Whether the ABA's actions would still raise other concerns (e.g., constitutional, moral, etc.) is another question.

too burdensome, or too intrusive on matters that should be left to schools to determine."[67] But no other law school accreditors exist, and the ABA's monopoly remains secure—shielded from competition, in part, by many states' delegations of authority to it.

Thankfully, the tide is shifting. States increasingly recognize the harms from granting the ABA sole authority to determine the minimum legal education required for a prospective lawyer to be eligible to take their bar examinations. In response, several states recently took steps to reduce their reliance on ABA accreditation. Each such step helps weaken the ABA's law school accreditation monopoly.

IV. We applaud the Proposed Amendment's effort to reduce Ohio's reliance on ABA accreditation and promote alternative accreditation paths.

Today, there are, unfortunately, no practical options to *fully* eliminate a state's reliance on ABA accreditation of law schools. There are over 200 law schools in the United States, and the ABA accredits over 80% of them.[68] As an entrenched monopolist, the ABA charges law schools for accreditation. Currently, it would be a substantial burden for states to replicate this work themselves.[69] Recent developments, however, increasingly allow states to reduce their reliance on ABA accreditation. The Proposed Amendment would wisely build on this growing opportunity.

In January, the Supreme Courts of Texas and Florida amended their rules to eliminate the ABA's status as the "sole gatekeeper"[70] with "final say"[71] on the education requirements that applicants must meet to be eligible for their respective bar exams. The Texas Supreme Court committed to "develop[ing] . . . a deliberative approach" for considering "requests from law schools not currently accredited by the ABA" to be added to its list of approved law schools.[72] The Florida Supreme Court amended its rules to allow bar exam eligibility for graduates of any law school accredited by an agency recognized by the Department of Education.[73] While the ABA Council is currently the only such accreditor, the Florida Supreme Court designed its amendments to "create the opportunity for additional entities to carry out an accrediting and gatekeeping

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[67] Letter from Barry Currier to Justices of the Tx. Sup. Ct., Comments on the Court's Reliance on the ABA Law School Accreditation System 4 (June 23, 2025) (on file with Fed. Trade Comm'n). Mr. Currier "wr[o]te as the former Managing Director of Legal Education and Accreditation at the American Bar Association (2012–2020), which manages the law school regulatory process for the Council." *Id*. at 1.

[68] *See Council-Approved Law Schools*, A.B.A. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, https://www.americanbar.org/groups/legal_education/accreditation/approved-law-schools (last visited July 7, 2026) (reporting that 198 law schools have ABA accreditation); *Other Law Schools*, L. SCH. ADMISSION COUNCIL, https://www.lsac.org/choosing-law-school/find-lawschool/other-law-schools (last visited July 7, 2026) (listing 32 non-ABA-accredited law schools in the United States).

[69] As discussed below, the Supreme Courts of Florida, Texas, and Alabama, and the Washington state bar, have reduced, but not eliminated, reliance on ABA accreditation. In all four states, ABA accreditation remains a sufficient condition for permitting a law school's graduates to take the bar examination. No non-ABA-accredited law schools have obtained approval yet, although when the amendments adopted in Alabama and Washington state become effective, approval may be extended to approximately 20 such schools.

[70] In Re: Amendments to Rules Regulating the Fla. Bar and Rules of the Supreme Court Relating to Admissions to the Bar 2, Dkt. No. SC2025-2064, 2026 LX 27933 (Fla. Sup. Ct. Jan. 15, 2026) [hereinafter Fla. Sup. Ct. Order].

[71] Preliminary Approval of Amendments to Rule 1 of the Rules Governing Admission to the Bar of Tx., ¶ 2, Misc. Dkt. No. 25-9070, 2025 LX 489157 (Tex. Sup. Ct. Sept. 26, 2025).

[72] Final Approval of Amendments to Rule 1 of the Rules Governing Admission to the Bar of Tx., ¶ 6(d), Misc. Dkt. No. 26-9002, 2026 LX 95888 (Tex. Sup. Ct. Jan. 6, 2026) [hereinafter Tx. Sup. Ct. Order].

[73] Fla. Sup. Ct. Order, *supra* note 70, at 5–6.

function."[74] The Texas Supreme Court expressed interest in utilizing "a multistate accrediting entity other than the ABA should a suitable entity become available."[75] And the Tennessee Supreme Court is considering ways to "modify, reduce, or eliminate its reliance on ABA accreditation."[76]

Alabama and Washington recently reduced their reliance on ABA accreditation by leveraging accreditation efforts by other states. On April 30, 2026, the Alabama Supreme Court extended eligibility to take the Alabama bar to graduates of unaccredited law schools, provided that graduates of those schools are permitted to take the bar exam in the state where the school is located.[77] In May, the Board of Governors of the Washington State Bar Association similarly modified its rules governing bar examination eligibility.[78] As detailed in Part IV.B *infra*, these actions could quickly expand eligibility for the Alabama and Washington bars to graduates of approximately 20 law schools without ABA accreditation.

The Ohio Supreme Court now adds its voice to the expanding chorus of states seeking to reduce reliance on ABA accreditation. If adopted, the Proposed Amendment would eliminate the current express requirement that applicants for admission to the Ohio bar must "[h]ave earned a . . . degree from a law school that was approved by the American Bar Association."[79] Instead, it specifies two types of accreditors whose approval of a law school will enable its graduates to qualify for admission to the Ohio bar: (1) accreditors recognized by the Department of Education and (2) accrediting agencies of other states.[80] The first prong closely resembles the approach adopted by the Florida Supreme Court in January. The second prong is very similar to the recent actions by the Alabama Supreme Court and the Washington State Bar. Parts IV.A and IV.B discuss the respective merits of these two avenues for accreditation.

A. Accreditation by "an accrediting agency recognized by the United States Department of Education."[81]

The Proposed Amendment's first prong extends authority to any law school accreditor recognized by the Department of Education (Department). While the ABA is currently the only accreditor recognized by the Department, the Court's action makes its monopoly position less secure by allowing for new accreditors to enter. Potential competitors could threaten the ABA's monopoly position and dull the zeal with which it forces ideological, anticompetitive standards on

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[74] *Id*. at 2, 7
[75] Tx. Sup. Ct. Order, *supra* note 72, ¶ 6(f).
[76] Tenn. Sup. Ct. Order, *supra* note 8, at 4.
[77] *See* Ala. Sup. Ct. Order, app. B, R. IV.B(2) (Apr. 30, 2026), https://admissions.alabar.org/sc-order04302026 (effective Jan. 1, 2027). This provision also applies to U.S. law schools located in non-state jurisdictions, such as the District of Columbia. In addition, if the other jurisdiction "imposes any additional educational or examination requirements upon graduates of the law school" in order "to be eligible to take its bar examination," the order requires that a graduate of that law school "demonstrate that he or she has satisfied those additional requirements." *Id*. at app. B, R. IV.C(2). The amendment is effective January 1, 2027.
[78] WASH. STATE BAR ASS'N, BOARD OF GOVERNORS MEETING MAY 1-2, 2026 MEETING MATERIALS 153–72, https://www.wsba.org/docs/default-source/about-wsba/governance/bog-meeting-materials-2025-2026/may-1-2/board-of-governors-meeting-materials-may-1-2-2026.pdf?sfvrsn=a772e7f1_8 (last visited July 7, 2026) (effective Sept. 1, 2026); Hill, *Grads of Non-ABA-Accredited Law School*, *supra* note 48.
[79] Ohio Supreme Court Rules, *supra* note 11, R. I, § 1(C).
[80] Proposed Amendment, *supra* note 2, R. I, § 1(C). This approval is subject to guidelines the Court will establish. *Id.*
[81] *Id.*

law schools.[82] Moreover, while the ABA's accreditation monopoly is entrenched, recent federal and state developments provide hope that a new law school accreditor might enter and obtain Department of Education recognition.

Last April, President Trump issued Executive Order 14279, Reforming Accreditation to Strengthen Higher Education, to "reform our dysfunctional accreditation system so that colleges and universities focus on delivering high-quality academic programs at a reasonable price."[83] EO 14279 directed the Department of Education to "resume recognizing new accreditors to increase competition and accountability in promoting high-quality, high-value academic programs focused on student outcomes."[84] The Department responded with a series of actions to promote competition among accreditors. In May 2025, it "re-establishe[d] a simple process" for switching accreditors to "remove unnecessary requirements and barriers to institutional innovation."[85] In late 2025, the Department prioritized "Supporting the Creation of New Accrediting Agencies" and "Supporting Institutions in Changing Accrediting Agencies" for its grantmaking and subsequently awarded $14.5 million for these efforts.[86] This February, the Department clarified its interpretation of regulations around the recognition of new accreditors. It determined that the prior, "cumulative four-to-five year timeframe" for recognition "create[d] a significant barrier to entry for new institutional accrediting agencies" and substantially shortened the delay by recognizing a variety of "accrediting activities" as triggering the start of the two-year entry period before a new accreditor may seek Department recognition.[87] Finally, the Department initiated a broad negotiated rulemaking to "[s]implif[y] and streamlin[e] [its] regulations for [] recognition and review of accrediting agencies."[88] That rulemaking is ongoing, and we look forward to its results.

States are seizing the opportunity to promote accreditation competition. For example, in June 2025, a coalition of six state university systems founded a new accreditor, the Commission

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[82] U.S. Dep't of Just. & Fed. Trade Comm'n, *Merger Guidelines* § 2.4.B at 12 (2023) ("A perceived potential entrant can . . . prompt current market participants to make investments, expand output, raise wages, increase product quality, lower product prices, or take other procompetitive actions.").

[83] Exec. Order No. 14279, § 1, Reforming Accreditation to Strengthen Higher Education, 90 Fed. Reg. 17529, 17530 (Apr. 23, 2025). The first Trump Administration also made important changes to facilitate competition among university accreditors. In 2019, the Department of Education revised a rule to enable the big six regional accreditors—institutional accreditors with monopolies in their specific portions of the country—to compete with one another by expanding their operations nationwide without Department approval. U.S. Dep't of Educ., Student Assistance General Provisions, The Secretary's Recognition of Accrediting Agencies, The Secretary's Recognition Procedures for State Agencies, 84 Fed. Reg. 58834, 58852, 58893–94 (Nov. 1, 2019).

[84] Exec. Order No. 14279, *supra* note 83, § 3(b)(i).

[85] Letter from James Bergeron, Deputy Under Sec'y and Acting Under Sec'y, U.S. Dep't of Educ., Off. of Postsecondary Educ., to Colleagues 3 (May 1, 2025), https://www.ed.gov/media/document/dear-colleague-letter-changes-approval-process-changing-accrediting-agencies-may-1-2025-109941.pdf.

[86] U.S. Dep't of Educ., Applications for New Awards; Fund for the Improvement of Postsecondary Education—Special Projects (FIPSE—SP), 90 Fed. Reg. 50861, 50864 (Nov. 12, 2025); Katherine Knott, *The Trump Admin. Put $169M Toward Its Priorities. Here's Where the Money Went*, INSIDE HIGHER ED (Jan. 6, 2026), https://www.insidehighered.com/news/government/2026/01/06/new-accreditors-civic-discourse-programs-win-fipse-grants.

[87] U.S. Dep't of Educ., Regulatory Guidance Relating to the Criteria and Process for Initial Recognition of an Accrediting Agency, 91 Fed. Reg. 9709, 9709–11 (Feb. 27, 2026) (quoting 34 C.F.R. § 602.12(a)).

[88] U.S. Dep't of Educ., Intent to Establish Negotiated Rulemaking Committee, 91 Fed. Reg. 3403, 3404 (Jan. 27, 2026). The revisions will "emphasiz[e] criteria and standards requirements that effectively focus on student achievement and outcomes, high educational quality, and high-value programs and remov[e] criteria that are anti-competitive, discriminatory, or which contribute to credential inflation and escalating tuition costs." *Id*.

for Public Higher Education (CPHE),[89] which plans to seek recognition as an institutional accreditor from the Department of Education.[90] Once approved, CPHE could begin to accredit law schools and ultimately challenge the ABA's accreditation monopoly. The Proposed Amendment and each analogous state effort would facilitate such entry by eliminating the states' prior insistence on ABA accreditation. We applaud these important changes and hope that they will lead to new accreditors that finally bring competition to law school accreditation.

B. Accreditation by "a state accrediting agency" of another state.[91]

The Proposed Amendment's second prong enables graduates of law schools accredited by other states to apply for admission to the Ohio bar. This largely mirrors recent actions by the Alabama Supreme Court and Washington State bar.[92] The change in the second prong can soon directly expand the pool of prospective Ohio attorneys.

State agencies in four states—California, Connecticut, Massachusetts, and Tennessee—have exercised their authority to accredit or approve law schools that lack ABA accreditation.[93] In these states, a board of bar examiners or another state board is responsible for approving or accrediting law schools, and state officials generally select the boards' members.[94] In addition, the

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[89] Press Release, Comm'n for Pub. Higher Educ., *Six Public University Systems Establish First-in-Kind Accreditor* (June 26, 2025), https://cphe.org/six-public-university-systems-establish-first-in-kind-accreditor/.

[90] *Frequently Asked Questions: Clarity on Accreditation for Institutions and the Public*, COMM'N FOR PUB. HIGHER EDUC., https://cphe.org/frequently-asked-questions/ (last visited July 7, 2026).

[91] Proposed Amendment, *supra* note 2, R. I, § 1(C).

[92] *See supra* notes 77–78 and accompanying text. One difference is that approval of schools recognized by other states appears automatic in Alabama and Washington, whereas the Proposed Amendment states that the Ohio Supreme Court will set guidelines for approval of state-accredited schools.

[93] *See* Cal. Bus. & Prof. Code § 6060(e)(1); STATE OF CONN. JUD. BRANCH, RULES & REGULATIONS OF THE CONNECTICUT BAR EXAMINING COMMITTEE, art. II-1(B), https://ctbaradmissions.jud.ct.gov/regulations (last visited July 7, 2026); *Academic Program Approval: Independent, New in Massachusetts, and Out-Of-State Institutions*, MASS. DEP'T OF HIGHER EDUC., https://www.mass.edu/foradmin/academic/independentprogramapproval.asp (last visited July 7, 2026) (describing authority to grant approval to institutions of higher education in Massachusetts); Tenn. Sup. Ct. R. 7, art. XVII, https://www.tncourts.gov/courts/supreme-court/rules/supreme-court-rules/rule-7-licensing-attorneys (last visited July 7, 2026). *See also* Florida Workgroup Report, *supra* note 36, attach. B, 1 n.4 (updated Sept. 10, 2025) (listing six states that "have established independent approval mechanisms for non-ABA-approved U.S. law schools," including those four).

[94] *See* JUD. BRANCH OF CAL., CALIFORNIA RULES OF COURT, R. 9.4(a) (2026), https://courts.ca.gov/cms/rules/index/nine/rule9_4 (last visited July 7, 2026) (providing that the California Supreme Court appoints the members of the Committee of Bar Examiners, at least one of whom must be a judicial officer and the remainder must be licensed to practice in California); Mass. Gen. Laws ch. 221, § 35, https://malegislature.gov/Laws/GeneralLaws/ (last visited July 7, 2026) (providing for the appointment of the board of bar examiners by the Massachusetts Supreme Judicial Court); *id.* ch. 15A, § 4 (providing that nine of the thirteen voting members of the Board of Higher Education are to be appointed by the governor, and that one member be the secretary of education or his or her designee); *Academic Program Approval: Independent, New in Massachusetts, and Out-Of-State Institutions*, MASS. DEP'T OF HIGHER EDUC., https://www.mass.edu/foradmin/academic/independentprogramapproval.asp (last visited July 7, 2026) (describing the Board of Higher Education's authority to grant approval to institutions of higher education in Massachusetts); Superior Court Rules and Rules of Appellate Procedure § 2-3 (providing that at least one member of the Connecticut Bar Examining Committee must be a superior court judge and the remainder must be attorneys residing in Connecticut), *in* State of Conn. Jud. Branch, 2026 Connecticut Practice Book 118, https://www.jud.ct.gov/publications/PracticeBook/PB.pdf (last visited July 7, 2026); Tenn. Code Ann. § 23-1-101 (2026) (providing that the members of the board of law examiners are appointed by the Tennessee Supreme Court and are members of the state bar). A fifth state, Alabama, has approved two in-state non-ABA-accredited law schools by

Texas Supreme Court will develop an approach for considering approval of non-ABA-accredited law schools.[95] California accounts for most state-accredited law schools. The California Committee of Bar Examiners accredits 16 non-ABA-accredited law schools, with some operating multiple campuses.[96] California-accredited law schools accounted for 4.2 percent of the applicants who passed the July 2025 California bar examination.[97] The four other states have collectively approved or accredited four additional non-ABA-accredited law schools, with one of these states also recognizing certain out-of-state non-ABA-accredited schools.[98] The state-approved law schools accounted for 4.4 percent of the applicants who passed the July 2025 bar examinations conducted in those four states.[99]

Accreditation by a state-appointed board provides an important alternative to ABA accreditation, particularly given the current absence of an alternative law school accreditor. By accrediting schools operating in their state and enabling the schools' graduates to take the bar exam, these states have increased the supply of legal services available to serve their citizens. We encourage other states to consider accrediting in-state law schools, while taking care to ensure that state officials monitor the state-appointed boards to guard against the same competition concerns that plague ABA accreditation.[100]

By adopting the Proposed Amendment, the Court would leverage these state accreditation efforts to potentially make graduates of law schools accredited by other states eligible to take the Ohio bar. The Court could quickly extend approval to most or all the schools currently approved by other states and rapidly expand the potential supply of applicants eligible for admission to the Ohio bar. This would be a low-cost option for expanding the potential supply of legal services to Ohio consumers. The Court's forthcoming guidelines could include provisions designed to protect Ohio consumers of legal services, such as requiring a minimum bar passage rate or retaining for itself the authority to selectively disapprove such law schools. As more states extend approval to law schools accredited by other states, state accreditation could become more valuable to state-accredited law schools and their graduates, and a more meaningful alternative to ABA

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statutory designation. *See* Ala. Code § 34-3-2.1 (2025), (authorizing graduates of the non-ABA-accredited schools Birmingham School of Law and Miles College School of Law to take the state bar exam).

[95] *See* Tx. Sup. Ct. Order, *supra* note 72.

[96] *See Law Schools Directory*, STATE BAR OF CAL., https://www.calbar.ca.gov/admissions/law-schools/law-schools-directory (last visited July 7, 2026).

[97] *See* STATE BAR OF CAL., OFFICE OF ADMISSIONS, GENERAL STATISTICS REPORT: JULY 2025 CALIFORNIA BAR EXAM 1 (2026), https://www.calbar.ca.gov/sites/default/files/2026-01/July-2025-CBX-Statistics.pdf (last visited July 7, 2026).

[98] These are: Alabama's Birmingham School of Law and Miles College School of Law, Massachusetts's Massachusetts School of Law, and Tennessee's Nashville School of Law. Connecticut also has approved the Massachusetts School of Law and Purdue Global Law School, neither of which is located in Connecticut.

[99] *See* ALA. STATE BAR, JULY 2025 BAR EXAM RESULTS, https://admissions.alabar.org/july-2025-combined-stats (last visited July 7, 2026); CONN. BAR EXAMINING COMM., JULY 2025 LAW SCHOOL PASS RATES, https://ctbaradmissions.jud.ct.gov/LawSchStats_July25 (last visited July 7, 2026); COMMONWEALTH OF MASS. BD. OF BAR EXAM'RS, JULY 2025 UNIFORM BAR EXAMINATION RESULTS BY LAW SCHOOL, https://www.mass.gov/doc/july-2025-ma-law-school-statistics-0/download (last visited July 7, 2026); Stacey S. Joslin, *July 2025 Bar Exam Results Now Available*, TENN. BAR ASS'N (Oct. 14, 2025), https://www.tba.org/?pg=Articles&blAction=showEntry&blogEntry=132609 (attachment).

[100] As discussed in Part II, state professional boards populated by members of the profession can harm competition. The actions of such boards are immune from antitrust scrutiny only if the strict requirements of the state action doctrine are met.

accreditation for law schools that balk at the ABA's mandates.

V. Conclusion

We heartily endorse the Court's proposal to end its requirement that applicants to the Ohio bar graduate from an ABA-accredited law school. This is an important step in weakening the ABA's enduring monopoly and its resulting power to impose costly, overly burdensome law school accreditation requirements. It is no coincidence that in its 1995 lawsuit challenging the ABA's anticompetitive conduct, the DOJ stressed that the ABA's power over law schools came, in part, from state mandates: "ABA approval is critical to the successful operation of a law school" because the "bar admission rules in over 40 states require graduation from an ABA-approved law school in order to satisfy the legal education requirement for taking the bar examination."[101]

We also commend the Court for its initiative to promote alternatives to the ABA's law school accreditation monopoly. While accreditation standards serve a purpose, the ABA's standards appear to go far beyond what is reasonably necessary to assure adequate preparation to practice law. ABA accreditation therefore likely causes law schools to incur unnecessary expenses that increase legal education costs and contribute to the Ohio bar admitting fewer qualified lawyers. Through the Proposed Amendment, the Court encourages alternative accreditors to emerge to challenge the ABA's monopoly. It also offers state-accredited law schools a potentially quicker path to make their graduates eligible to take the Ohio bar and provide needed legal services to Ohioans. We encourage other states to take similar steps.

Sincerely,

/s/ Brendan Chestnut
Brendan Chestnut
Director
Office of Policy Planning

/s/ Daniel Guarnera
Daniel Guarnera
Director
Bureau of Competition

[101] Competitive Impact Statement, *supra* note 38, at 2.