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

Office of Policy Planning
Bureau of Competition

U.S. Department of Justice, Antitrust Division
U.S. Attorney's Office for the Middle District of Tennessee

April 30, 2026

Supreme Court of Tennessee
401 Seventh Avenue North
Nashville, TN 37219-1407
(615) 253-1470
By email

Re: Potential Regulatory Reforms to Increase Access to Quality Legal Representation

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

We are the Directors of the Federal Trade Commission's (FTC or Commission) Office of Policy Planning and Bureau of Competition,[1] the United States Attorney (USAO) for the Middle District of Tennessee, and Deputy Assistant Attorneys General at the U.S. Department of Justice's Antitrust Division (DOJ Antitrust Division or the Division).[2] 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 and the DOJ Antitrust Division enforce 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 Tennessee Supreme Court's ("Court") September 16, 2025 Order ("Order") soliciting public comments to inform its effort to "reassess[] its approach to regulation of the legal profession," including the Court's reliance on American Bar Association (ABA) law school accreditation.[3] The Commission has substantial experience evaluating the competitive effects of professional licensing and related

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[1] This comment expresses the views of staff of the FTC's Office of Policy Planning and Bureau of Competition. It does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission has, however, voted to authorize the submission of this comment.
[2] The U.S. Attorney's Office for the Middle District of Tennessee and the U.S. Department of Justice's Antitrust Division sign this letter in support of the positions the Federal Trade Commission articulates herein.
[3] In Re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation, at 4, Dkt. No. ADM2025-01403 (Tenn. Sup. Ct. Sept. 16, 2025) [hereinafter Order].

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] The Commission has also brought enforcement actions in this realm, in one of which the U.S. Supreme Court affirmed that the antitrust laws limit the ability of market incumbents to suppress competition through professional boards.[8]

The USAO for the Middle District of Tennessee is the chief federal law enforcement agency where the Tennessee Supreme Court is located.[9] Although also responsible for the prosecution of federal crimes, the USAO represents the federal government in actions that arise in the jurisdiction, including as plaintiff in potential antitrust actions.[10] U.S. Attorneys collaborate with other federal agencies such as the FTC, as well as divisions in the main office of the Department of Justice, to enforce federal law in the district. The United States Attorney for the Middle District has written at great length on the history of government-backed monopolies and antitrust law in the State of Tennessee.[11]

The DOJ Antitrust Division, similar to the FTC, regularly engages in advocacy regarding occupational licensing requirements and accreditation standards.[12] The Division recently filed a

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

[9] Middle District of Tennessee, Department of Justice, https://www.justice.gov/usao-mdtn.

[10] Offices of the United States Attorney, Department of Justice, https://www.justice.gov/usao.

[11] Braden H. Boucek*, Reclaiming the Genius of a Free State, Tennessee's Forgotten Anti-Monopolies Clause*, 13 BELMONT L. REV. 1 (2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6198398.

[12] *See, e.g.*, Letter from Robert Potter, Chief, Legal Pol'y Sec., Antitrust Div., U.S. Dep't of Justice, to Hon. Peter MacGregor, Mich. State Senate (Nov. 29, 2016), https://www.justice.gov/atr/page/file/913866/dl?inline (encouraging

statement of interest in a private lawsuit, affirming that professional associations are subject to the antitrust laws when establishing accreditation standards and assessing compliance with those standards. In its statement, the Division explained that accreditation societies cannot impose barriers that limit the number of entrants into a profession.[13] The Division also encouraged a state legislature to consider the competitive benefits of expanding scope-of-practice laws in a joint letter with the FTC.[14]

Further, the DOJ Antitrust Division brought an enforcement action to prevent gatekeeping in professional licensing. That action sought to prevent the ABA from engaging in anticompetitive practices, which restrained competition among ABA-accredited law schools and between ABA- and non-ABA accredited law schools.[15] That action resulted in a ten-year consent decree.

Based on this experience, we laud the Court's decision to revisit the fact that it "has come to rely heavily on accreditation by the [ABA] in establishing minimum educational requirements for applicants to the Bar."[16] Allowing the ABA to monopolize the determination of the education requirements for taking the bar examination and practicing law in Tennessee is inimical to the principles on which competition law rests. The ABA is dominated by practicing attorneys, 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, Tennessee's 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 Tennessee bar.

The stakes are real. The Court correctly observed that "the current supply of legal services in the United States is insufficient to meet the needs of many Americans," with particular harm to low income and rural residents.[17] The ABA's incentive to impose overly onerous law school accreditation requirements only makes the problem worse. We encourage the Court to reduce its reliance on the ABA and collaborate with other states that are working towards opening up law school accreditation to competition.

I. The Court wisely questioned whether its heavy reliance on ABA accreditation unnecessarily limits the supply of legal services in Tennessee and increases costs.

The Order explained that the Court "is interested in reassessing its approach to regulation

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a state legislature to consider the competitive effects of restrictive regulations that reduced the delivery of professional services); Letter from Robert Potter, Antitrust Div., U.S. Dep't of Justice, to Hon. Dan K. Morhaim, Md. House of Dels. (Sept. 10, 2018), https://www.justice.gov/archives/atr/page/file/1092791/dl?inline (recommending expanding the list of state-approved certifying bodies that can serve as competitive alternatives to the dominant certifying organization).

[13] Statement of Interest of the United States, Lincoln Mem. Univ. v. Am. Veterinary Medical Ass'n, No. 3:25-cv-00282 (Dec. 15, 2025), https://www.justice.gov/atr/media/1420886/dl?inline.

[14] Letter from Marina Lao, Dir., Office of Pol'y Planning, Fed. Trade Comm'n, & Robert Potter, Antitrust Div., U.S. Dep't of Justice, to Hon. Bradley H. Jones, Jr., Mass. House of Representatives (Feb. 18, 2016), https://www.justice.gov/archives/opa/file/826371/dl.

[15] *See* Compl., United States v. Am. Bar Ass'n, No. 95-cv-01211 (D.D.C. filed 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. filed July 14, 1995), https://www.justice.gov/atr/case-document/file/485691/dl.

[16] Order, *supra* note 3, at 1.

[17] *Id.* at 2, 3.

of the legal profession to ensure that all Tennesseans have access to affordable quality legal services."[18] The Court recognized that "requirements for admission to practice law established by the Court . . . necessarily limit the supply of legal services and increase their cost."[19] It solicited comment on seven issues,[20] including two involving its reliance on ABA accreditation. The Court noted that "[c]omments should take into consideration the Court's goals of lowering barriers to entry into the legal profession and ensuring the availability of affordable legal services to Tennesseans, while also ensuring the competency of Tennessee's attorneys and safeguarding the public."[21]

Currently, pursuant to its "inherent power 'to regulate and supervise the practice of law' " in Tennessee,[22] the Court permits any person who "graduated with a J.D. Degree from a law school accredited by the ABA" to take the Tennessee bar examination.[23] The Court also authorizes the Tennessee Board of Law Examiners to approve unaccredited Tennessee law schools—but not law schools located in other states—so that their graduates may take the Tennessee bar examination.[24] The rule directs the Board to approve unaccredited Tennessee schools, in part, based on whether they "meet[] educational standards similar to those defined in the ABA Standards."[25] Only one law school, Nashville School of Law, currently has such approval.[26] So the Court does indeed "rely heavily on accreditation by the [ABA] in establishing minimum education requirements for applicants to the [Tennessee] Bar."[27]

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.[28] 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 the library and other facilities.[29] It also determines whether law schools have complied with these standards and warrant

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[18] *Id.* at 4.
[19] *Id.* at 2.
[20] *Id.* at 4–5.
[21] *Id.* at 5.
[22] *Id.* at 1 (quoting Manookian v. Bd. of Pro. Resp., 685 S.W.3d 744, 801 (Tenn. 2024)).
[23] Tenn. Sup. Ct. R. 7, § 2.02(a).
[24] *Id*. In addition, the rules identify limited circumstances in which applicants can take the Tennessee bar examination without meeting either of these education requirements. *See* Tenn. Sup. Ct. R. 7, § 2.02(d).
[25] Tenn. Sup. Ct. R. 7, § 17.02(a). Other provisions require law schools to adopt a mission statement and an independent governing board and cover the school's (a) organization and administration, (b) faculty, (c) facilities, (d) library, (e) curriculum and admissions standards, and (f) publication of certain information. *See id*. at 17.02(b).
[26] In Re: Tennessee-Approved Law Schools, Dkt. No. ADM2025-01335 (Tenn. Sup. Ct. Sept. 4, 2025) (renewing approval of Nashville School of Law); E-mail from Tenn. Bd. of Law Exam'rs Admin. to Austin King, Attorney Advisor, Fed. Trade Comm'n (Apr. 10, 2026, 4:00 p.m. ET) (stating that Nashville School of Law is the only law school currently approved by the Tennessee Board of Law Examiners) (on file with FTC).
[27] Order, *supra* note 3, at 1.
[28] *Consumer FAQs*, ABA, https://www.americanbar.org/groups/professional_responsibility/resources/resources_for_the_public/consumer_faqs/ (last visited Apr. 24, 2026).
[29] *See* ABA Section of Legal Education and Admissions to the Bar, *Standards and Rules of Procedure for Approval of Law Schools—2025–2026*, https://www.americanbar.org/groups/legal_education/accreditation/standards/standards-rules (last visited Apr. 24, 2026) [hereinafter ABA Standards].

ABA accreditation.[30] 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 universities' interests.[31] These ABA Council members are selected by an ABA Section largely composed of law school faculty and administrators.[32]

The Court sought public comment on two questions specifically related to its reliance on ABA accreditation. The first asked, "[w]hether the Court should modify, reduce, or eliminate its reliance on ABA accreditation in setting minimum educational requirements for applicants to the Tennessee Bar."[33] Yes, the Court should reduce its reliance on ABA accreditation. Allowing the ABA to monopolize the determination of the education requirements for taking the bar examination and practicing law in Tennessee effectively delegates state power to private actors with potential anticompetitive interests. As described in Section III below, the attorneys who dominate the ABA have strong incentives to limit the supply of lawyers who compete with them to provide legal services.[34] And the law school and university faculty and administrators who dominate the ABA's accreditation group have strong incentives to thwart lower cost alternatives to the legal education they provide. Therefore, Tennessee's reliance on ABA accreditation raises serious competitive risks by broadly delegating the state's authority to set education requirements for admission to the Tennessee bar to bodies controlled by individuals with anticompetitive incentives.

The second question posed by the Court asked, "[w]hether there are any practicable alternatives to ABA accreditation that the Court should consider."[35] Addressing this question is complicated by the current strength of the ABA accreditation monopoly. However, as discussed in Section IV below, there are steps the Court could take to reduce its reliance on ABA accreditation and open up the accreditation market to competition. The Court already enables the

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[30] *Schools Seeking Council Approval*, ABA, https://www.americanbar.org/groups/legal_education/accreditation/ (last visited Apr. 24, 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*.

[31] *Section of Legal Education and Admissions to the Bar Leadership*, ABA, https://www.americanbar.org/groups/legal_education/about/leadership/ (last visited Apr. 24, 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).

[32] The ABA's Section of Legal Education and Admissions to the Bar has over 17,000 members, including practicing lawyers, judges, and legal educators. *About the Section of Legal Education and Admissions to the Bar*, ABA, https://www.americanbar.org/groups/legal_education/about/ (last visited Apr. 24, 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").

[33] Order, *supra* note 3, at 4.

[34] In its comment, the ABA Council argues that its "work in accreditation matters . . . is separate and independent from the general ABA." *See* Comment, Council of the American Bar Association Section of Legal Education and Admissions to the Bar to the Tennessee Supreme Court, In re: Comments on Law School Accreditation Component of Tennessee's Bar Admission Requirements 9 (Mar. 16, 2026). However, the broader ABA House of Delegates still has the authority to review Council decisions and remand for further consideration, though it must accept ABA Council decisions after two remands. *See* United States v. Am. Bar Ass'n, 135 F. Supp. 2d 28 (D.D.C. 2001); Part III, *infra*. Further, the ABA Council is dominated by other interested parties—higher education faculty, their trade association, and practicing lawyers—and is also subject to influence by the attorneys who dominate the ABA.

[35] Order, *supra* note 3, at 4.

Board of Law Examiners to approve unaccredited Tennessee law schools, so that its graduates may apply for admission to the Tennessee Bar.[36] The Court could open this process to schools located outside of Tennessee, and it could eliminate its direction that the Board utilize educational standards similar to the ABA. The Court could also work with other states and the federal government to promote the entry of new law school accreditors to compete with the ABA and provide options to schools that balk at the ABA's costly mandates.

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. 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."[37] Professional and trade associations thus have often been found to violate the antitrust laws when they enter into agreements restricting competition among themselves,[38] or interfering with the ability of others to compete.[39]

Some conduct by professional associations can generate important benefits. For example, the adoption of voluntary standards governing product safety or professional qualifications, promulgated with "meaningful safeguards" around the process for developing such standards, can have "significant procompetitive advantages."[40] Voluntary industry standards are therefore generally assessed under the rule of reason, which weighs a restraint's procompetitive and anticompetitive effects.[41] 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.[42]

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

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[36] Tenn. Sup. Ct. R. 7, § 2.02(a).

[37] 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).

[38] *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).

[39] *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).

[40] 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").

[41] *See, e.g.*, *Allied Tube*, 486 U.S. at 500–01.

[42] *Hydrolevel*, 456 U.S. at 571.

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."[43] 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.[44]

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."[45] 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."[46] 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."[47] 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 . . . and well-being."[48]

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."[49] This inquiry is designed to "help alleviate unnecessary licensing burdens" that harm competition.[50] 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

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[43] 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)).
[44] 574 U.S. 494, 507 (2015).
[45] *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.").
[46] Ohlhausen Senate Statement, *supra* note 5, at 1.
[47] 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.
[48] Marina Lao, *Discrediting Accreditation?: Antitrust and Legal Education*, 79 WASH. U. L. Q. 1035, 1036–37 (2001).
[49] Ohlhausen House Statement, *supra* note 4, at 4.
[50] 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.

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.[51] The Commission has also recommended caution in imposing costly educational requirements to qualify for professional licensure.[52]

III. The Tennessee Supreme Court's heavy reliance on ABA accreditation to determine eligibility to take the Tennessee bar examination may stifle competition among law schools and among lawyers.

As it stands, the ABA has a monopoly on the accreditation of American law schools.[53] It 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. 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 school.[54]

The ABA, unfortunately, has a long history of using its law school accreditation monopoly to harm competition. As mentioned previously, thirty years ago, the DOJ Antitrust Division brought a Sherman Act complaint against the ABA and challenged conduct that dated back to 1973.[55] The Division 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."[56] The complaint stated that ABA "salary standards and their application . . . unreasonably restricted competition in the law school labor market and" forced accredited schools

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[51] *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).

[52] 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").

[53] *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], ("the [ABA], through its Council, holds a near monopoly over legal education accreditation in the United States"), https://www-media.floridabar.org/uploads/2025/10/Final-Report-of-the-Workgroup-on-the-Role-of-the-ABA-in-Bar-Admission-Requirements.pdf. 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.

[54] *See, e.g.*, Nat'l Conference of Bar Exam'rs, Comprehensive Guide to Bar Admission Requirements, https://reports.ncbex.org/comp-guide/charts/chart-3/ (last visited Apr. 24, 2026) (summarizing the requirements in each state); Florida Workgroup Report, *supra* note 53, Attachment B: Chart of Educational Requirement to Sit for the Bar Examination in the United States (same).

[55] See Compl., *supra*, note 15, ¶ 35.

[56] Competitive Impact Statement, *supra* note 15, at 2, 4.

to "ratchet[] up law school salaries."[57] According to the Division, other restrictions "deterr[ed] effective competition from [non-ABA-accredited] law schools."[58] The ABA settled, resolving the lawsuit through a consent decree.[59] 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 Antitrust Division for the costs of the investigation.[60]

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."[61] The ABA takes a different approach. It forces every law school to follow its preferred costly, elitist model of legal education.[62] 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."[63]

Secure in its state-protected monopoly position, the ABA has brushed off such calls for a commonsense approach that sets baseline requirements.[64] It instead insists on excessive restrictions that unnecessarily "drive up costs for law schools"[65] and protect the interests of

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[57] Compl., *supra* note 15, ¶ 16.

[58] Competitive Impact Statement, *supra* note 15, at 6–7.

[59] 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 ability of the ABA House of Delegates to overrule ABA 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).

[60] 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. filed June 23, 2006), Dkt. No. 101.

[61] Florida Workgroup Report, *supra* note 53, at 17 (footnote omitted).

[62] *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, *supra* note 53, 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.").

[63] Lao, *supra* note 48, at 1102. *See also* Shepherd, *supra* note 53, 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.").

[64] Despite its contrary actions, the ABA this past August claimed that its "Standards are minimum standards for ensuring a quality legal education, but law schools should seek to exceed the Standards consistent with their mission and goals." *Core Principles and Values of Law School Accreditation*, ABA, 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 Apr. 24, 2026).

[65] Florida Workgroup Report, *supra* note 53, at 21.

incumbent higher education institutions and their faculty.[66] By increasing the costs of legal education, the ABA's excessive accreditation standards may also limit the supply of new lawyers.[67] With fewer lawyers available, consumers may struggle to access legal services and pay 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.[68]

The excesses of ABA accreditation take various forms. There are longstanding concerns that the ABA standards "focus on inputs" that increase costs " 'rather than educational outputs' " that ensure the schools provided actual educational benefits.[69] For example, the ABA requires physical libraries that offer limited value to students preparing for contemporary legal practice that relies on online research.[70] ABA standards also severely limit online courses and programs that could provide lower cost education to rural consumers.[71] In addition, critics have questioned the ABA's demands for full-time (rather than adjunct) law faculty, strict limits on faculty teaching loads, and the emphasis on faculty research.[72] While these dictates clearly promote the interests of

[66] *See* Shepherd, *supra* note 53, 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.

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

[68] 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 more flexible accreditation standards that could lower costs of legal education in the future. Indeed, current law students expect to soon become lawyers who may reap the benefits from the reduced competition in the supply of legal services resulting from the ABA's costly standards. This dynamic likely makes student representation on accreditation bodies insufficient to incentivize downward pressure on costs. Rather than current students, the harm from excessive accreditation standards may be concentrated on potential future students, particularly those prospective students who might only go to law school if unnecessary accreditation standards did not raise tuition or impose barriers limiting the availability of legal education (*e.g.*, through restrictions on online education or requirements for extensive library facilities).

[69] Florida Workgroup Report, *supra* note 53, 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 INSTITUTE (Mar. 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").

[70] Florida Workgroup Report, *supra* note 53, at 19.

[71] Generally, ABA accreditation requires that law schools offer no more than half their courses online. *See* ABA Standards, *supra* note 29, at 26–27 (Standard 306). Institutions seeking to exceed this threshold must obtain an acquiescence from the Council. *See id*. 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, 4–5, In re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation, No. ADM2025-01403 (Dec. 23, 2025).

[72] Florida Workgroup Report, *supra* note 53, at 18–21; Lao, *supra* note 48, 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*

certain faculty members, they impose high costs without clear indication that they are needed to ensure educational quality. Finally, ABA standards require that a law school's course of study include a minimum of 83 credits to graduate, with the result that nearly all ABA-accredited law schools require three years of study.[73] The Order recognized concerns that longer study requirements raise costs and sought comment on whether the "traditional three-year degree" is truly necessary.[74]

Moreover, in recent years, the ABA has even dictated that law schools enact measures that conform to controversial ideological views prevalent among the legal elitists, notwithstanding public opposition and the measures' irrelevance to ensuring a baseline level of legal education. Of particular concern is the ABA's imposition of DEI requirements on American law schools as a requirement of accreditation,[75] which the DOJ and Attorneys General of over 20 states (including Tennessee) 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).[76] Tennessee Attorney General Jonathan Skrmetti concluded that ABA Standard 206 "all but *compels* law schools to consider race in both the admissions and employment contexts" and thereby "to defy the Court's clear directive."[77] These actions are recent additions to a long list that have buried the antiquated "perception that [the ABA] is an impartial and objective professional association"[78] and fueled views that it has become "more of a political organization."[79]

Absent its monopoly bolstered by delegated state power, the ABA's insistence on an

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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").

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

[74] Order, *supra* note 3, at 4.

[75] *See* ABA Standards, *supra* note 29, at 17 (Standard 206).

[76] *See* Letter from Pamela Bondi, Att'y Gen., U.S. Dep't of Justice, to David A. Brennen, Council Chair, ABA Section of Legal Education 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, ABA Section of Legal Education and Admissions to the Bar (Jan. 6, 2025), https://www.scag.gov/media/ru4dwwfm/multistatecomment-re-standard-206-filed.pdf. The ABA temporarily suspended Standard 206 pending review of its consistency with the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023). *See* Florida Workgroup Report, *supra* note 53, at 25. The Council has not withdrawn the standard, *see id*., although it recently recommended its repeal, *see* Memorandum from Daniel Thies, Council Chair, ABA Section of Legal Education and Admissions to the Bar (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.

[77] Letter of Jonathan Skrmetti, Att'y Gen., State of Tenn., to the Council of the American Bar Association 2 (June 3, 2024), https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2024/pr24-47-letter.pdf.

[78] Florida Workgroup Report, *supra* note 53, 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)).

[79] 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"); Comment of Jonathan Skrmetti, Att'y Gen., State of Tenn., to the Honorable Justices of the Tenn. Sup. Ct., In re: No. ADM2025-01403; Recommendation to Revise Rule 7, Article II to Eliminate Reliance on ABA Accreditation for Law Schools 3 (Mar. 16, 2026) [hereinafter Skrmetti Comment] (concluding that, due to its "ideological advocacy," the ABA has "forsak[en] its high responsibility as an objective professional accrediting body, and has, as a result, squandered its credibility as an accreditor").

expensive, ideologically biased legal education might not raise competitive concerns.[80] 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, too burdensome, or too intrusive on matters that should be left to schools to determine."[81] 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 may be shifting. The Supreme Courts of Texas and Florida recently recognized the harm of provisions that expressly granted the ABA the sole authority to set minimum standards for eligibility to take their bar examinations. Both states modified their rules accordingly. Last year, the Texas Supreme Court determined that "the ABA should no longer have the final say on whether a law school's graduates are eligible to sit for the Texas bar exam,"[82] and on January 6 issued an order "re-asserting its authority over the approval of law schools."[83] On January 15, the Florida Supreme Court similarly concluded that "it is not in Floridians' best interest for the ABA to be the sole gatekeeper deciding which law schools' graduates are eligible to sit" for the Florida bar examination, and it issued an order to encourage the entry of competing accreditors.[84]

This Court's Order showed that it is grappling with the same concerns. And it should come to the same conclusion. The ABA's standards for accreditation go beyond what is reasonably necessary to assure adequate preparation to practice law in Tennessee. Reliance on ABA accreditation likely causes Tennessee law schools to incur unnecessary expenses, which increases legal education costs and contributes to the Tennessee Bar admitting fewer qualified lawyers who could provide needed legal services to the public. The Court should act to reduce this reliance.

IV. We encourage the Court to expand the avenues for approval of non-ABA-accredited law schools and promote the entry of alternative accrediting agencies.

Today, there likely are, unfortunately, no practical options to *fully* eliminate the Court's reliance on ABA accreditation. There are over 200 law schools in the United States, and the ABA

[80] Whether the ABA's actions would still raise other concerns (e.g., constitutional, moral, etc.) is another question.

[81] 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.

[82] 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).

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

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

accredits over 80% of them.[85] It would be a substantial burden for the Court to replicate this work. Indeed, despite recognizing the excesses of ABA accreditation, the Supreme Courts of Florida and Texas reduced, but did not eliminate, their reliance on the ABA. In both states, ABA accreditation remains a sufficient condition for permitting a law school's graduates to take the bar examination. As an entrenched monopolist, the ABA currently has no meaningful competitors for the accreditation of most law schools.

There are, however, options for the Court to reduce its reliance on ABA accreditation and expand the opportunities for graduates of non-ABA-accredited law schools to take the Tennessee bar examination. The Court already enabled the Tennessee Board of Law Examiners to determine whether the education provided by unaccredited Tennessee law schools is sufficient to enable graduates to take the bar examination.[86] Currently, only one school has such approval.[87] The Court could potentially modify this program to make it easier for other law schools to obtain approval. In particular, the Court could enable the Board to grant approval to law schools without ABA accreditation located outside of Tennessee. And the Court could eliminate its direction that the Tennessee Board of Law Examiners utilize educational standards similar to the ABA.[88]

The Court might benefit from processes that other states have implemented to approve unaccredited law schools. Several other states have rules or statutes that allow for approval of non-ABA-accredited law schools, including Alabama, California, Connecticut, Massachusetts, and Texas.[89] The Court could leverage these states' work to reduce its burden and expedite its approval process.[90]

The Court could potentially rely on these other states to quickly expand the supply of applicants eligible to take the Tennessee bar, while ensuring that they received an adequate legal education. For example, the Court could amend its rules to allow graduates of an unaccredited law school to take the Tennessee bar if the school is (1) approved by another state supreme court and

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[85] *See* ABA, Section of Legal Education and Admissions to the Bar, Council-Approved Law Schools (reporting that 198 law schools have ABA accreditation), https://www.americanbar.org/groups/legal_education/accreditation/approved-law-schools (last visited Apr. 24, 2026); Law School Admission Council, Other Law Schools (listing 32 non-ABA accredited law schools in the United States), https://www.lsac.org/choosing-law-school/find-law-school/other-law-schools) (last visited Apr. 24, 2026).

[86] Tenn. Sup. Ct. R. 7, §17.

[87] *See supra*, note 26.

[88] Tenn. Sup. Ct. R. 7, § 17.02(a).

[89] *See* Ala. Code § 34-3-2.1; Cal. Bus. & Prof. Code § 6060(e)(1); Tx. Sup. Ct., Order, *supra* note 83; 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 Apr. 27, 2026); Mass. Bd of Higher Educ., Academic Program Approval: Independent, New in Massachusetts, and Out-Of-State Institutions (describing authority to grant approval to institutions of higher education in Massachusetts), https://www.mass.edu/foradmin/academic/independentprogramapproval.asp (last visited Apr. 27, 2026).

[90] For example, like Tennessee, the California Committee of Bar Examiners can approve in-state schools, and graduates of these schools may sit for the bar exam. The California State Bar Board of Trustees has adopted standards for accreditation and rules governing this process. The State Bar of Cal., Rules of the State Bar, Title 4. Admissions And Educational Standards, Division 2, Accredited Law School Rules, https://www.calbar.ca.gov/legal-professionals/rules/rules-state-bar/title-4-admissions-and-educational-standards/division-2-accredited-law-school-rules (last visited Apr. 24, 2026). Currently nearly 20 non-ABA-accredited law schools have obtained this accreditation, accounting for approximately one-quarter of the students in California law schools. *See* The State Bar of Cal., California Law Schools: An Overview, https://publications.calbar.ca.gov/law-school-profile/overview-california-law-schools (last visited Apr. 27, 2026).

(2) has an adequate bar passage rate in that state.[91] Other state supreme courts may follow with similar reciprocity and provide a more efficient pathway for unaccredited law schools to qualify their graduates for bar admission in multiple states.

Separately, in the longer run, new law school accreditation agencies might emerge to enhance competition by challenging the ABA's monopoly. The Court could look for ways to facilitate market entry. The Florida Supreme Court recently amended its rules to "create the opportunity for additional entities to carry out an accrediting and gatekeeping function."[92] The Tennessee Court could consider similar steps or offer other encouragement to potential new accreditors.[93] For example, the Texas Supreme Court expressed interest in utilizing "a multistate accrediting entity other than the ABA should a suitable entity become available."[94] As more states choose to reduce their reliance on ABA accreditation, new law school accreditors may seize the opportunity to enter and challenge the ABA's monopoly.

Other recent developments may enhance the odds that a new law school accreditor enters. 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."[95] EO 14279 specifically 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."[96]

The Department of Education has taken a series of actions to implement Executive Order 14279 and promote competition among accreditors. In May 2025, the Department issued a "Dear Colleagues" letter to higher education institutions that "re-establishe[d] a simple process" for switching accreditors, "that will remove unnecessary requirements and barriers to institutional innovation."[97] In late 2025, the Department of Education identified "Supporting the Creation of New Accrediting Agencies" and "Supporting Institutions in Changing Accrediting Agencies" as two "Absolute Priorities" for its grantmaking.[98] It awarded $14.5 million to fund new accreditors seeking recognition and institutions seeking to switch accreditors.[99] In February, the Department reexamined its regulation requiring that "an agency seeking initial recognition . . . must have

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[91] The Court could retain the right to disallow any school, effectively providing a veto if it disagrees with the accreditation decision by another state or the ABA. *See* Purdue Global Comment, *supra* note 71, at 11.

[92] Fla. Sup. Ct. Order, *supra* note 84, at 2, 7.

[93] Attorney General Skrmetti suggests that the Court look to "new accrediting bodies, such as the Commission for Public Higher Education, [that] could expand their scope to include law schools." Skrmetti Comment, *supra* note 79, at 7.

[94] Tx. Sup. Ct. Order, *supra* note 83, ¶ 6(f).

[95] Exec. Order No. 14279, § 1, Reforming Accreditation to Strengthen Higher Education, 90 Fed. Reg. 17529, 17530 (Apr. 23, 2025).

[96] *Id*. § 3(b)(i).

[97] Dep't of Educ., Office of Postsecondary Education, Changes to the Approval Process for Changing Accrediting Agencies, at 3 (May 1, 2025), https://www.ed.gov/media/document/dear-colleague-letter-changes-approval-process-changing-accrediting-agencies-may-1-2025-109941.pdf.

[98] 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).

[99] 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.

‘[c]onducted accrediting activities . . . for at least two years prior to seeking recognition.’ ”[100] The Department explained that the resulting “cumulative four-to-five year timeframe” for recognition “creates a significant barrier to entry for new institutional accrediting agencies” and clarified that a variety of “accrediting activities” trigger the start of the two-year period to shorten the delay required for new entry.[101] Finally, and most notably, the Department initiated a broad negotiated rulemaking to “[s]implif[y] and streamlin[e] the Department’s regulations for [] recognition and review of accrediting agencies.”[102] That rulemaking is ongoing, and we look forward to its results.

We applaud these important changes and hope they lead to new accreditors that finally bring competition to law school accreditation. In the meantime, we encourage the Court to reduce its reliance on ABA accreditation and work with other states that recognize the harms that flow from the ABA’s monopoly control of the legal education requirements for aspiring lawyers.

V. Conclusion

The Court wisely recognized that “rely[ing] heavily on accreditation by the [ABA] in establishing minimum educational requirements for applicants to the Bar” may “limit the supply of legal services and increase their cost.”[103] While accreditation standards serve a purpose, the ABA goes far beyond what is reasonably necessary “to protect the public and to ensure competent representation.”[104] Instead, the ABA’s onerous requirements appear to protect the incumbent lawyers and university faculty who dominate the ABA and its accreditation body.

We urge the Court to take action to reduce its reliance on ABA accreditation and expand the pathways for law schools to obtain approval for their graduates to be eligible to take the Tennessee bar examination. The Court could, for example, change its rules to allow the Board of Law Examiners to approve unaccredited law schools located outside Tennessee. Or the Court could work with other states to encourage the entry of alternative law school accreditors. Such actions would help to undermine the ABA’s monopoly and 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 Antitrust Division stressed that the ABA’s power over law schools comes, in part, from state mandates: “ABA approval is critical to the successful operation of a law school” because the “bar admission rules in a large majority of states require graduation from an ABA-approved law school in order to satisfy the legal education requirement for taking the bar examination.”[105] We commend the Court for scrutinizing its reliance on ABA accreditation and its interest in alternatives. We encourage other states to take similar steps to weaken the ABA’s hold on its law school accreditation monopoly and bring us closer to genuine competition.

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[100] Dep’t of Educ., Regulatory Guidance Relating to the Criteria and Process for Initial Recognition of an Accrediting Agency, 91 Fed. Reg. 9709, 9709 (Feb. 27, 2026) (quoting 34 C.F.R. § 602.12(a)).
[101] *Id*. at 9709–11.
[102] 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*.
[103] Order, *supra* note 3, at 1, 2.
[104] *Id.* at 2.
[105] Competitive Impact Statement, *supra* note 15, at 2.

Sincerely,

/s/ Brendan Chestnut
Director
Office of Policy Planning
Federal Trade Commission

/s/ Daniel Guarnera
Director
Bureau of Competition
Federal Trade Commission

/s/ Dina Kallay
Deputy Assistant Attorney General
Antitrust Division
U.S. Department of Justice

/s/ G. Charles Beller
Deputy Assistant Attorney General
Antitrust Division
U.S. Department of Justice

/s/ Braden H. Boucek
United States Attorney
Middle District of Tennessee
U.S. Department of Justice