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

Office of Policy Planning
Bureau of Competition

March 31, 2026

Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1925
By electronic submission

Re: Amendment to Rule 4-13.2 of the Florida Supreme Court's Rules Relating to Admissions to the Bar

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

We are the Directors of the Federal Trade Commission's (FTC or Commission) Office of Policy Planning and Bureau of Competition.[1] The 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 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 Florida Supreme Court's ("Court") invitation for comment on its January 15, 2026 Order ("Order") amending Rule 4-13.2 of the Florida Supreme Court's Rules Relating to Admissions to the Bar ("Amendment").[2] The Commission has substantial experience evaluating the competitive effects of professional licensing and related restrictions across the U.S. economy.[3] Through its advocacy program, the Commission regularly advises states and localities regarding the competitive effects of various professional and occupational licensing requirements.[4] The Commission's prior advocacies highlight the risks of

[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] In Re: Amendments to Rules Regulating the Florida Bar and Rules of the Supreme Court Relating to Admissions to the Bar, at 1, Docket No. SC2025-2064 (Fla. Sup. Ct. Jan. 15, 2026) [hereinafter Order]. The Order also adopted conforming amendments to other relevant rules regulating the Florida Bar. *Id*. at 1–2.

[3] *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.

[4] *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

entrusting market participants to act as gatekeepers for their profession or to set the terms on which they and their fellow competitors may compete.[5] A recent advocacy letter supported the Texas Supreme Court's effort to end its reliance on ABA accreditation of law schools.[6]

Based on this experience, we endorse the Amendment and commend the Court's decision "to end the rule's reliance on the American Bar Association (ABA) as the sole accrediting agency for law schools whose graduates are eligible to sit for [Florida's] General Bar Examination."[7] The Court correctly 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.[8] Such control by the ABA 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, the prior rule raised serious competitive risks by broadly delegating to the ABA the state's authority to set eligibility requirements for admission to the Florida Bar.

Following the Amendment, the state no longer protects the ABA's longstanding monopoly over law school accreditation for schools that serve aspiring Florida lawyers. This wise action is an important step, but it cannot produce true competition for law school accreditation by itself. We applaud the Court for "creat[ing] the opportunity for additional entities to carry out an accrediting and gatekeeping function" and its efforts to promote the recognition of new accreditors.[9] We urge potential new accreditors to seize this opportunity to end the ABA's law school accreditation monopoly.

I. The Amendment ends the state's express delegation that has enabled the ABA's monopoly control over whether a Florida bar applicant's legal education is sufficient for admission.

The Amendment revokes the Court's former mandate that the ABA dictate the education required to take the bar exam and practice law in Florida. 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.[10] The ABA's Council of the Section of Legal Education and Admissions to the Bar ("ABA Council") establishes the standards

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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).

[5] *See* Ohlhausen Senate Statement, *supra* note 4, 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.").

[6] 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.

[7] Order, *supra* note 2, at 1.

[8] Order, *supra* note 2, at 2.

[9] Order, *supra* note 2, at 2, 7–8.

[10] *Consumer FAQs*, A.B.A., https://www.americanbar.org/groups/professional_responsibility/resources/resources_for_the_public/consumer_faqs/ (last visited Mar. 25, 2026).

that law schools must meet to become accredited, covering areas such as faculty, admissions, curriculum, governance, and library and other facilities.[11] It also determines whether law schools have complied with these standards and warrant ABA accreditation.[12] 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.[13] These ABA Council members are selected by an ABA Section largely composed of law school faculty and administrators.[14] Thus, ABA accreditation is controlled by entities whose members have strong incentives to use their power over accreditation to serve anticompetitive ends.[15]

The Florida Constitution grants the Florida Supreme Court "exclusive jurisdiction to regulate the admission of persons to the practice of law."[16] To be eligible to take the Florida Bar examination, an applicant must obtain a law degree from "an accredited law school."[17] Former Florida Supreme Court Rule 4-13.2 defined "accredited law school" as a "law school approved or provisionally approved by the American Bar Association."[18] This express delegation ensured that the ABA could force law schools seeking to serve students interested in practicing law in Florida

[11] 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 Mar. 25, 2026).

[12] ABA, *Schools Seeking Council Approval,* https://www.americanbar.org/groups/legal_education/accreditation/ (last visited Mar. 25, 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. *Id*.

[13] *Section of Legal Education and Admissions to the Bar Leadership*, ABA, https://www.americanbar.org/groups/legal_education/about/leadership/ (last visited Mar. 25, 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).

[14] The ABA's Section of Legal Education and Admissions to the Bar has over 17,000 members, including practicing lawyers, judges, and legal educators. ABA, *About the Section of Legal Education and Admissions to the Bar*, https://www.americanbar.org/groups/legal_education/about/ (last visited Mar. 25, 2026); ABA, *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").

[15] In another forum, the ABA has argued that the ABA Council is "independent" of the main ABA and that this "independence" insulates the ABA Council's accreditation standards from the broader ABA's interests. *See* Letter from the Council of the American Bar Association Section of Legal Education and Admissions to the Bar to Supreme Court of Texas, at 9–10 (June 30, 2025) (on file with Fed. Trade Comm'n). 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 interested parties—higher education faculty, their trade association, and practicing lawyers—and is also subject to influence by the attorneys who dominate the ABA.

[16] Fla. Const. art. V, § 15.

[17] FLA. BAR ADMISS. R. 4-13.1(a)(1). In addition, graduates of non-accredited schools may sit for the bar if they meet additional requirements, such as having practiced law for five years or more in another jurisdiction. *See* Rule 4-13.4(a).

[18] Order, *supra* note 2, at 17.

to meet the dictates of the ABA's standards. It does not appear that the Court actively supervised the ABA's exercise of this delegated authority.[19]

On March 12, 2025, the Court established a Workgroup to aid in its reconsideration of the ABA's delegated role.[20] On October 27, 2025, the Workgroup submitted a report analyzing the arguments for and against continuing the Court's express reliance on ABA accreditation, along with alternatives for consideration.[21] On January 15, 2026, the Court adopted the Amendment, terminating Rule 4-13.2's designation of the ABA as the sole accrediting body recognized by the Court, effective October 1, 2026.[22] Revised Rule 4-13.2 now defines "accredited law school" as "any law school approved or provisionally approved by (1) a programmatic accrediting agency recognized by the United States Department of Education to accredit programs in legal education that lead to the first professional degree in law or (2) an institutional accrediting agency recognized by the United States Department of Education to accredit institutions of higher education, provided the institutional accrediting agency is also approved by the Court."[23]

We applaud the Amendment. These important efforts surely make the ABA's monopoly less secure. However, as discussed *infra* in Section IV, the revised rule will not slay the ABA's law school accreditation monopoly in the short term. Consistent with the Amendment's design and the Court's intent,[24] new accrediting competitors must emerge to challenge the ABA's chokehold.

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."[25] Professional and trade associations

[19] In order for conduct to qualify for state action immunity from antitrust liability, state officials must actively supervise the allegedly anticompetitive actions. *See infra* Part II.

[20] 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).

[21] Final Report of the Workgroup on the Role of the American Bar Association in Bar Admission Requirements (Oct. 27, 2025) [hereinafter 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.

[22] Order, *supra* note 2, at 2–3, 8.

[23] *Id.* at 5–6; *see also id*. at 17–18 (setting forth revised Rule 4-13.2).

[24] The Amendment is designed "to expand the accrediting agencies" that can approve law schools, Order, *supra* note 2, at 2–3, 6, and the Court noted its intent to encourage the entry of new accreditors to introduce much-needed competition, *id*. at 7–8.

[25] 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).

thus have often been found to violate the antitrust laws when they enter into agreements restricting competition among themselves,[26] or interfering with the ability of others to compete.[27]

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."[28] Voluntary industry standards are therefore generally assessed under the rule of reason, which weighs a restraint's procompetitive and anticompetitive effects.[29] 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.[30]

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."[31] 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.[32]

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."[33] These harms from "unnecessary occupational regulation" include

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[26] *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).

[27] *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).

[28] 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 4, 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").

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

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

[31] 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)).

[32] 574 U.S. 494, 507 (2015).

[33] *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 3, 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.").

"dampening incentives for innovation in products, services, and business models" and "creating barriers to entry or repositioning by providers."[34] 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."[35] 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."[36]

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."[37] This inquiry is designed to "help alleviate unnecessary licensing burdens" that harm competition.[38] 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.[39] The Commission has also recommended caution in imposing costly educational requirements to qualify for professional licensure.[40]

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[34] Ohlhausen Senate Statement, *supra* note 4, at 1.

[35] 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.

[36] Marina Lao, *Discrediting Accreditation?: Antitrust and Legal Education*, 79 WASH. U. L.Q. 1035, 1036–37 (2001).

[37] Ohlhausen House Statement, *supra* note 3, at 4.

[38] 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/news-events/events/2017/11/effects-occupational-licensure-competition-consumers-workforce-empirical-research-results.

[39] *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); 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).

[40] FTC Staff Comment Letter on Washington Administrative Code 4-25-710, § IV (Mar. 18, 1996), https://www.ftc.gov/sites/default/files/documents/advo___cacy_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 exam 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").

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

The Workgroup recognized that "the [ABA], through its Council, holds a near monopoly over legal education accreditation in the United States," as the sole law school accreditor recognized by the Department of Education and the only one to operate across multiple states.[41] This monopoly power is enhanced by rules and regulations in most states that, like former Rule 4-13.2, require that applicants graduate from an ABA-accredited school to be eligible to take their respective bar examinations. Florida Attorney General Uthmeier emphasized that such provisions entrenching the ABA's monopoly give it "enormous power" "to fix prices, punish outsiders, raise barriers to entry, and stifle innovation," and to effectively "destroy any law school in Florida."[42]

The ABA, unfortunately, has a long history of using its law school accreditation monopoly to harm competition. Thirty years ago, the Department of Justice (DOJ) brought a Sherman Act complaint against the ABA and challenged conduct that dated back to 1973.[43] 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."[44] 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."[45] According to the DOJ, other restrictions "deterr[ed] effective competition from [non-ABA-accredited] law schools."[46] The ABA settled, resolving the lawsuit through a consent decree.[47] 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.[48]

Nonetheless, the ABA continues to wield its law school accreditation monopoly in a manner that harms competition in other ways, such as imposing overly rigid and costly requirements. When it strikes the right balance, accreditation can be procompetitive and serve the

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[41] Workgroup Report, *supra* note 21, at 16.

[42] Fla. Att'y Gen. James Uthmeier, *Public Comment to Working Group No. AOSC25-15*, *In re Workgroup on the Role of the American Bar Association in Bar Admission Requirements*, 2, 9 (July 30, 2025) [hereinafter Uthmeier Comment].

[43] Complaint ¶ 35, United States v. Am. Bar Ass'n, No. 95-cv-1211 (D.D.C. June 27, 1995), Dkt. No. 1, https://www.justice.gov/atr/case-document/file/485696/dl.

[44] Competitive Impact Statement at 2, 4, United States v. Am. Bar Ass'n, No. 95-cv-1211, (D.D.C. June 27, 1995), Dkt. No. 4, https://www.justice.gov/atr/case-document/file/485691/dl.

[45] Complaint, *supra* note 43, ¶ 16.

[46] Competitive Impact Statement, *supra* note 44, at 6–7.

[47] 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).

[48] United States v. Am. Bar Ass'n, No. 95-cv-1211, 2006 U.S. Dist. LEXIS 42645, at *2 (D.D.C. 2006); Petition by the U.S. 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.

state's interest in "safeguard[ing] a baseline of legal educational quality and support."[49] The ABA takes a different approach. It forces every law school to follow its preferred costly, elitist model of legal education.[50] 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."[51] Secure in its state-protected monopoly position, the ABA brushed off such concerns and, in recent years, doubled down on its anticompetitive dictates.

The Workgroup recognized concerns that the burdensome and lengthy ABA accreditation process increases the costs and risks for a law school seeking accreditation, thereby impeding entry.[52] The excesses of ABA accreditation take various forms. For example, the Workgroup cited longstanding concerns that the ABA's standards "focus on inputs" that unnecessarily increase costs, including standards for a schools' physical facilities and limits on the use of part-time faculty.[53] Such unnecessary edicts can also "stifle competition and innovation" and "result in 'stagnation in the law school model.'"[54]

A better approach would focus standards on "educational outputs" to ensure that schools deliver a solid product, while allowing schools flexibility to develop innovative programs that lower costs and boost the supply of law school seats.[55] The ABA has repeatedly failed to heed calls for a commonsense approach setting minimum baseline requirements.[56] It instead insists on excessive restrictions that unnecessarily "drive up the cost for law schools"[57] and protect the interests of incumbent higher education institutions and their faculty.[58] By increasing the costs of

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[49] Workgroup Report, *supra* note 21, at 17 (footnote omitted).

[50] Workgroup Report, *supra* note 21, at 18 (noting the ABA's imposition of its "conception of best practices and desirable educational policies" (quoting 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(a) (June 30, 2025) (Attachment C to the Workgroup Report))). *See also* George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091, 2114 (1998) ("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.").

[51] Lao, *supra* note 36, at 1102; *see also* Shepherd, *supra* note 50, at 2103 (1998) ("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.").

[52] Workgroup Report, *supra* note 21, at 20.

[53] *Id.* at 18–19.

[54] *Id.* (quoting Uthmeier Comment, *supra* note 42, at 10).

[55] *Id*. 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/).

[56] 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." ABA, *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 Mar. 26, 2026).

[57] Workgroup Report, *supra* note 21, at 21.

[58] *See* Shepherd, *supra* note 50, 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.

legal education, the ABA's excessive accreditation standards also limit the supply of new lawyers.[59] 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 injuring consumers of legal services and saddling law students with high costs.[60]

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. The Workgroup Report describes concerns that ABA standards include "ideological mandate[s]," to "us[e] 'law schools as vehicles for broader political or social change.'"[61] Of particular concern is the ABA's imposition of DEI requirements on American law schools as a condition of accreditation,[62] which the Attorney General of the United States and Attorneys General of over 20 states (including Florida) regard as illegal.[63] These actions "endanger the perception that [the ABA] is an impartial and objective professional association"[64] and fuel views that it has become "more of a political organization."[65] Citing such concerns, Florida's Attorney General concluded that the ABA "cannot be expected to act as a neutral gatekeeper for law school accreditation."[66]

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[59] *See, e.g.*, FTC Staff Comment Letter, *supra* note 40, § 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").

[60] 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).

[61] Workgroup Report, *supra* note 21, at 22 (quoting Tarlika Nunez-Navarro, *Evaluation of the ABA as an Accreditation Body – Strengths and Limitations, Public Comment, In re Workgroup on the Role of the American Bar Association in Bar Admission Requirements* (May 5, 2025)).

[62] *See id.* at 22–25.

[63] *Id.* at 23–24. The ABA has 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), but has not withdrawn the standard. Workgroup Report, *supra* note 21, at 25. Moreover, in Interpretation 206-1, the ABA warned that "a constitutional provision or statute that purports to prohibit consideration of . . . race . . . in admissions or employment decisions is *not* a justification for a school's non-compliance with Standard 206." *Id.* at 24 (emphasis added) (quoting ABA Section of Legal Education and Admissions to the Bar, *supra* note 11, at 17).

[64] *Id.* at 25 (quoting Letter from William Barr, Attorney General, United States Department of Justice, to Talbot D'Alemberte, President, American Bar Association (Aug. 7, 1992)).

[65] *Id.* at 26 (quoting *Is the American Bar Association the Optimal Home Base for the Regulation of Legal Education?*, Barry Currier (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").

[66] Uthmeier Comment *supra* note 42, at 5.

Absent its monopoly bolstered by delegated state power, the ABA's insistence on an expensive, ideologically tainted legal education might not raise competitive concerns. 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 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 discipline any 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."[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.

IV. We commend the Florida Supreme Court efforts to promote the entry of alternative accrediting agencies.

The Court and Workgroup recognized that the ABA's anticompetitive actions flow from its protected monopoly position for law school accreditation. The Amendment therefore deftly attacks this monopoly position by actively encouraging new competitors. The Court designed its rule change to "create the opportunity for additional entities to carry out an accrediting and gatekeeping function on behalf of the Court."[68] The new rule grants such authority to any accreditor that is either "(1) a programmatic accrediting agency recognized by the United States Department of Education to accredit programs in legal education that lead to the first professional degree in law or (2) an institutional accrediting agency recognized by the United States Department of Education to accredit institutions of higher education, provided the accrediting agency is also approved by the Court."[69]

In his dissent, Justice Labarga appears to misunderstand these changes.[70] The Court has not "divest[ed]" the ABA of its authority as an accreditor of Florida law schools, nor has it "replac[ed]" the ABA "with an unknown alternative" accreditor.[71] Instead, the Amendment merely creates neutral requirements that may allow for additional accreditors to emerge. Currently, the ABA is the only accreditor that meets either of the Amendment's requirements. No other programmatic agencies exist that accredit law schools in Florida.[72] Nor, to our knowledge, have

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[67] Letter from Barry Currier to Justices of the Supreme Court of Texas, 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] Order, *supra* note 2, at 2.

[69] *Id.* at 6; *see also id*. at 17–18 (setting forth revised Rule 4-13.2).

[70] *See id.* at 9–12 (Labarga, J., dissenting). Justice Labarga's dissent also ignores the anticompetitive harms that flow from a state expressly protecting the monopoly of an unaccountable private organization, particularly one with the ABA's history of anticompetitive actions.

[71] *Id*. at 10, 12.

[72] "Programmatic accrediting agency" means "an agency that accredits specific educational programs, including those that prepare students in specific academic disciplines or for entry into a profession, occupation, or vocation." 34 C.F.R. § 602.3. Examples include the ABA, the Accreditation Council for Pharmacy Education, and the Midwifery Education Accreditation Council.

any institutional accreditors requested the Court's approval to accredit law schools.[73] So despite the Amendment, the ABA's law school monopoly endures, for now. Of course, as noted, the Court's actions surely make it less secure. This alone is a small victory. The threat of its monopoly position facing potential new competitors could dull the zeal with which the ABA forces ideological, anticompetitive standards on law schools.[74] While a new accreditor would face substantial challenges,[75] there is reason for hope.

Recent developments may enhance the odds that a new law school accreditor enters. The Amendment understandably requires that any new accreditor be recognized by the Department of Education, as the Department's process attempts to ensure that an accreditor provides legitimate oversight. 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." [76] 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."[77]

The Department of Education has taken a series of actions to implement Executive Order 14279 and promote competition among accreditors. Last May, 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."[78] 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.[79] It awarded $14.5 million to fund new accreditors seeking recognition and institutions seeking to switch accreditors.[80] In February, the Department reexamined its regulation requiring that "an agency seeking initial recognition . . . must have

[73] "Institutional accrediting agency" means "an agency that accredits institutions of higher education." *Id.* § 602.3. As the Workgroup Report explains, such an accreditor grants accreditation to an entire institution, which may offer either multiple educational programs or a single program. Workgroup Report, *supra* note 21, at 47 n. 162. Historically, the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) has accredited higher education institutions in Florida. *See* SACSCOC, www.sacscoc.org/ (last visited Mar. 26, 2026).

[74] 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.").

[75] Workgroup Report, *supra* note 21, at 15–17, 44; *see also id*. at 30–34, 43–44 (discussing various options through which the Florida Supreme Court might identify and approve alternative accreditors); Uthmeier Comment, *supra* note 42, at 11.

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

[77] *Id*. § 3(b)(i).

[78] Dep't of Education, 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.

[79] Dep't of Education, *Applications for New Awards; Fund for the Improvement of Postsecondary Education—Special Projects (FIPSE—SP)*, 90 Fed. Reg. 50861, 50864 (Nov. 12, 2025).

[80] 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.'"[81] 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.[82] 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."[83] That rulemaking is ongoing, and we look forward to its results.

We commend these important changes, which build on the first Trump Administration's efforts to make accreditation of higher education institutions more competitive. 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 approval from the Department.[84] The Department explained that this was intended to "introduce greater competition and innovation" and enable "an institution or program to select an accrediting agency that best aligns with the institution's mission, program offerings, and student population."[85] Thus, as things stand, any of those institutional accreditors could accredit Florida law schools, if they develop law-school-specific standards as contemplated by revised Rule 4-13.2.b.

Florida, and several other states, seized the opportunities created by the Department of Education's efforts to promote competition among accreditors. Florida has begun requiring its public colleges and universities to change accreditors at the end of their accreditation cycles.[86] By disrupting inertia and forcing its institutions to change accreditors, this action provides opportunities for new institutional accreditors to emerge. North Carolina has imposed a similar requirement on the University of North Carolina system.[87] In June 2025, a coalition of six state university systems, including Florida, founded a new accreditor, the Commission for Public Higher Education (CPHE). CPHE "will create a first-of-its-kind accreditation model for public higher

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[81] Dep't of Education, *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)).

[82] *Id*. at 9709–11. The Workgroup described the impediment posed by this regulation. Workgroup Report, *supra* note 21, at 44.

[83] Dep't of Education, *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*.

[84] Dep't of Education, *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). An accrediting agency is now merely required to report any expansion in its geographic scope to the Department and notify the public. *Id*. The Department recently issued a proposed rule in which it declared that the term "regional" in describing an accreditor may mislead regarding the quality of institutions accredited by such accreditors, and "strongly discourage[d]" any accrediting agency from referring to itself as "regional." Dep't of Education, *Clarification of the Appropriate Use of Terms "National" and "Regional" by Recognized Accrediting Agencies*, 91 Fed. Reg. 7199, 7202 (Feb. 17, 2026).

[85] Dep't of Education, *Student Assistance General Provisions*, 84 Fed. Reg. at 58893.

[86] Fla. Dep't of Education, For College Administrators: Institutional Accreditation https://www.fldoe.org/schools/higher-ed/fl-college-system /administrators/inst-accr.stml (last visited Mar. 26, 2026).

[87] The Univ. of N.C. System, Accreditation, https://www.northcarolina.edu/offices-and-services/academic-affairs/accreditation/ (last visited Mar. 26, 2026).

education institutions."[88] It plans to seek recognition as an institutional accreditor from the Department of Education,[89] and has received letters from ten institutions stating their intention to seek accreditation by CPHE.[90] Once approved by the Department of Education, CPHE could seek the Court's approval to begin accrediting law schools and, potentially, bring to an end the ABA's monopoly control of the legal education requirements for aspiring Florida lawyers.

Florida is not alone in working to end its reliance on ABA accreditation to determine eligibility to take the state bar examination. The Texas Supreme Court recently amended its rules to eliminate a provision very similar to Florida's prior rule, and it is developing an approach through which it plans to approve non-ABA-accredited law schools.[91] That Court also expressed an interest in utilizing "a multistate accrediting entity other than the ABA should a suitable entity become available."[92] The Supreme Courts of Tennessee[93] and Ohio[94] have instituted proceedings to examine the issue as well. In addition, as the Workgroup Report describes, California already allows graduates of non-ABA-accredited law schools to sit for the bar examination, including graduates of California law schools accredited by the State Bar of California's Committee of Bar Examiners.[95] As more states choose to reduce their reliance on ABA accreditation to determine the adequacy of a bar applicant's educational qualifications, the opportunities for entry of new law school accreditors may expand. While it may be a long process, the Amendment and each analogous state effort weakens the ABA's hold on its law school accreditation monopoly and brings us a step closer to genuine competition.

V. Conclusion

The Court correctly concluded that the ABA should no longer "be the sole gatekeeper deciding which law schools' graduates are eligible to sit" for the Florida Bar examination.[96] The ABA's standards for accreditation appear to go far beyond what is reasonably necessary to assure adequate preparation to practice law in Florida. The current rule therefore likely causes Florida law schools to incur unnecessary expenses, which increases legal education costs and contributes to the Florida Bar admitting fewer qualified lawyers who could provide needed legal services to the public.

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[88] CPHE, Press Release, *Six Public University Systems Establish First-in-Kind Accreditor* (June 26, 2025), https://cphe.org/six-public-university-systems-establish-first-in-kind-accreditor/.
[89] CPHE, *Frequently Asked Questions, Operations and Timeline*, https://cphe.org/frequently-asked-questions/.
[90] Josh Moody, *10 Institutions Seek Recognition by New Accreditor*, INSIDE HIGHER ED. (Nov. 13, 2025), https://www.insidehighered.com/news/governance/accreditation/2025/11/13/10-universities-seek-recognition-new-accreditor.
[91] Final Approval of Amendments to Rule 1 of the Rules Governing Admission to the Bar of Texas, Misc. Docket No. 26-9002 (Tex. Sup. Ct. Jan. 6, 2026).
[92] *Id*. ¶ 6(f).
[93] In Re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation, Docket No. ADM2025-01403 (Tenn. Sup. Ct. Sept. 16, 2025).
[94] Staff Report, *Supreme Court of Ohio Establishes Advisory Committee to Review Law School Accreditation Process*, Court News Ohio (July17,2025), https://www.courtnewsohio.gov/happening/2025/LawSchoolAccreditation_071725.asp.
[95] Workgroup Report, *supra* note 21, at 11–12.
[96] Order, *supra* note 2, at 2.

The Amendment is an important step in weakening the ABA's enduring 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 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 over 40 states require graduation from an ABA-approved law school in order to satisfy the legal education requirement for taking the bar examination."[97] We commend the Florida Supreme Court for its initiative to disrupt the anticompetitive status quo and applaud its efforts to promote alternative accreditors for legal education in the United States. 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

[97] Competitive Impact Statement, *supra* note 44, at 2; *see also* Workgroup Report, *supra* note 21, at 10–11.