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

Office of Policy Planning
Bureau of Competition

December 1, 2025

Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711
*By electronic submission*

**Re: Proposed Amendment to Rule 1 of the Rules Governing Admission to the Bar of Texas**

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

We are the Directors of the Federal Trade Commission's (FTC or Commission) Office of Policy Planning and Bureau of Competition. 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, and improving quality and 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 unfair monopolies, or otherwise restrain the competitive economy is key to achieving these goals.

We write this letter to advance those objectives[1] and respond to the Texas Supreme Court's ("Court") invitation for comment on the proposed amendments to Rule 1 of the Rules Governing Admission to the Bar of Texas ("Proposed 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 entrusting market

[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] Preliminary Approval of Amendments to Rule 1 of the Rules Governing Admission to the Bar of Texas, Misc. Docket No. 25-9070, 2025 LX 489157, ¶ 4 (Tex. Sup. Ct. Sep. 26, 2025) [hereinafter Proposed Amendment]; Order Inviting Comments on the Law School Accreditation Component of Texas's Bar Admission Requirements ¶ 1, Misc. Docket No. 25-9018, 2025 LX 215452 (Tex. Sup. Ct. Apr. 4, 2025) [hereinafter Order Inviting Comments].

[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 (Sep. 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,

participants to act as gatekeepers for their profession or to set the terms on which they and their fellow competitors may compete.[5]

Based on this experience, we endorse the Proposed Amendment and commend that it would eliminate the current rule's delegation of authority to the American Bar Association (ABA). The ABA should not serve as a gatekeeper to a critical aspect of admission to the legal profession. Such control by the ABA is inimical to the principles on which competition law rest. The ABA is dominated by practicing attorneys, who have strong interests in limiting competition for legal services. As such, the current rule raises serious competitive risks by so broadly delegating to the ABA the state's authority to set eligibility requirements for admission to the Texas bar. It effectively gives the ABA, an organization that has previously flouted the rule of law it purports to promote, the ability to exclude market participants who would compete with its members. We encourage the Court to reclaim its authority to expand opportunities for qualified individuals to provide legal services to the Texas public as envisioned by the Proposed Amendment.

## I. The Proposed Amendment would end the ABA's monopoly control over whether a Texas bar applicant's legal education is sufficient for admission.

The Proposed Amendment revokes the power of the ABA and its Council of the Section of Legal Education and Admissions to the Bar ("ABA Council") to dictate the education required to take the bar exam and practice law in Texas. The ABA is the largest voluntary professional organization in the world, with its "mission . . . [as] the national representative of the legal profession," serving a membership predominantly consisting of practicing attorneys.[6] The ABA Council has twenty-one members and is dominated by 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.[7]

The Texas Legislature authorized the Texas Supreme Court to adopt rules on eligibility for a license to practice law, including requiring study at an "approved law school."[8] In line with this direction, the Texas Bar Admission Rules require that an applicant obtain a degree from an

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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).

[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] *Consumer FAQs*, A.B.A., https://www.americanbar.org/groups/professional_responsibility/resources/resources_for_the_public/consumer_faqs/ (last visited Nov. 29, 2025).

[7] *Section of Legal Education and Admissions to the Bar Leadership*, A.B.A., https://www.americanbar.org/groups/legal_education/about/leadership/ (last visited Nov. 26, 2025) (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). 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*, A.B.A., https://www.americanbar.org/groups/legal_education/about/ (last visited Nov. 26, 2025).

[8] *See* TEX. GOV'T CODE ANN. §§ 82.022–82.024 (West 2025).

"approved law school."[9] Rule 1 currently defines "approved law school" to be "a law school approved by the American Bar Association."[10] Consequently, the current rules give the ABA control over whether a person may seek admission to the Texas bar. The Court does not appear to actively supervise the ABA's exercise of this delegated authority.[11]

The Proposed Amendment eliminates the reference to ABA approval in Rule 1, instead defining an "approved law school" to be "a law school approved by the Supreme Court."[12] The Court's action wrests away the ABA's control over bar eligibility, making the Court, rather than the ABA, the final arbiter of which law schools provide a legal education sufficient to qualify their graduates for admission to the Texas bar. In tentatively approving this amendment, the Court also promulgated a list of currently approved schools. Importantly, the Court declared that loss of ABA accreditation would not itself mandate removal from that list, and expressed its intent to develop an approach to consider approval of schools not accredited by the ABA.[13]

As it stands, the ABA has a monopoly on the accreditation of American law schools. It is the sole law school accreditor recognized by the Department of Education, and the only one to operate across multiple states. The ABA's monopoly power is entrenched by rules and regulations in over forty states that, like Rule 1 in Texas, rely on ABA accreditation to determine eligibility for their respective bars. Although some commenters have called for the Court to engage with the ABA in lieu of a rule change,[14] such efforts would fall well short of active supervision and would likely have little effect on the ABA's accreditation standards. The ABA Council, like many entrenched monopolists, is notoriously unresponsive to outside pressure.[15] And other states that rely on the ABA may oppose the Court's views on accreditation—though we are encouraged that, like Texas, other states are considering changes to reduce or eliminate their reliance on ABA accreditation.[16]

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[9] *See* TEX. R. GOV. BAR ADMIS. §§ 2(a)(4), 3(a) (2025).
[10] *Id.* § 1(a)(4). There is a limited exemption to the requirement of graduation from an ABA-approved law school for applicants who are admitted to the bar and have actively practiced law for three years in another state. *See id.* § 13.
[11] 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 III.
[12] Proposed Amendment, *supra* note 2, at 5.
[13] *Id.* ¶ 6(d)–(e).
[14] *See*, *e.g.*, 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 3 (June 23, 2025) [hereinafter Barry Currier Comment] (on file with Fed. Trade Comm'n) (in response to Order Inviting Comments, *supra* note 2).
[15] *See* Daniel B. Rodriguez, *ABA Accreditation Council Is Playing a Game of Chicken*, DANIEL B. RODRIGUEZ (Aug. 20, 2025), https://danielbrodriguez.substack.com/p/aba-accreditation-council-is-playing (noting the ABA "Council's effort to run roughshod over the diverse constituencies," including state bar authorities, "who have expressed doubts about the wisdom of this proposal, a proposal that will certainly impose burdens of time and treasure at a moment in which the state of legal education and the legal profession in the U.S. is in serious flux").
[16] *See* Jim Ash, *Court Workgroup Explores Alternatives to ABA Role in Bar Admissions*, FLA. BAR (Oct. 31, 2025), https://www.floridabar.org/the-florida-bar-news/court-workgroup-explores-alternatives-to-aba-role-in-bar-admissions/; *Supreme Court of Ohio Establishes Advisory Committee to Review Law School Accreditation Process*, COURT NEWS OHIO (July 17, 2015), https://www.courtnewsohio.gov/happening/2025/LawSchoolAccreditation_071725.asp.

## 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."[17] Professional and trade associations thus have often been found to violate the antitrust laws when they enter into agreements restricting competition among themselves,[18] or excluding others from competition.[19]

Some conduct by professional associations can provide 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."[20] Voluntary industry standards are therefore generally assessed under the rule of reason, which weighs a restraint's procompetitive and anticompetitive effects.[21] 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.[22]

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."[23] There is a particular danger of competitive harm when a state professional board is composed of unsupervised industry competitors. Thus, in *North Carolina State Board of Dental Examiners v. FTC*, the Supreme Court refused to extend immunity to the decision of a state board dominated by

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[17] 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)).

[18] *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).

[19] *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).

[20] 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").

[21] *See, e.g.*, *Allied Tube*, 486 U.S. at 500–01; Consol. Metal Prods., Inc. v. Am. Petroleum Inst., 846 F.2d 284 (5th Cir. 1988).

[22] Am. Soc'y of Mech. Eng'rs v. Hydrolevel Corp., 456 U.S. 556, 571 (1982).

[23] 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) (opinion of Brennan, J.) (footnote omitted)).

licensed dentists to adopt a regulation prohibiting dental hygienists from offering teeth whitening services.[24]

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."[25] 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."[26] Legal scholars agree and stress the inherent dangers of delegating occupational licensing decisions to boards composed largely of incumbent members of the profession: these boards can serve as "cartels by another name" that are "deputized to regulate and to outright exclude their own competition."[27] 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."[28]

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."[29] This inquiry is designed to "help alleviate unnecessary licensing burdens" that harm competition.[30] 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.[31] The

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[24] 574 U.S. 494, 507 (2015).

[25] *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); 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.").

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

[27] 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.

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

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

[30] 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.

[31] *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, Comment Letter on Likely Competitive Impact of House Bill 684 to Amend GA Code § 43-11-74 (Jan. 29, 2016),

Commission has also recommended caution in imposing costly educational requirements to qualify for professional licensure.[32]

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

The above principles inform our strong support of the Court's Proposed Amendment, which eliminates the current problematic delegation of authority to the ABA to dictate which law schools adequately prepare their graduates to practice law in Texas. 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.[33] 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."[34] 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."[35] According to the DOJ, other restrictions "deterr[ed] effective competition from [non-ABA-accredited] law schools."[36] The ABA settled, resolving the lawsuit through a consent decree.[37] 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.[38]

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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).

[32] William J. Baer, Bureau of Competition Director, Fed. Trade Comm'n, 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 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").

[33] 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.

[34] 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.

[35] Complaint, *supra* note 33, ¶ 16.

[36] Competitive Impact Statement, *supra* note 34, at 6–7.

[37] 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).

[38] United States v. Am. Bar Ass'n, 2006 U.S. Dist. LEXIS 42645, at *2 (D.D.C. 2006); *see* 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.

Undeterred, the ABA nonetheless 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 state's interest in "ensur[ing] that new lawyers enter practice with a reasonable degree of preparation."[39] However, as Dean Chesney noted in his comment on the Proposed Amendment, although this balance requires solely that "law schools . . . be held to baseline quality standards," the ABA's excessive requirements instead "promot[e] . . . its conception of best practices and desirable educational policies."[40] This concern is not new. 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."[41] Most troubling is that in recent years, the ABA has even dictated that all 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.[42] One such example is the ABA's imposition of unlawful DEI requirements on American law schools as a requirement of accreditation.[43]

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 valuable signal to prospective law students seeking such an experience. If other law school accreditors existed, schools that wished to compete by offering a differentiated, more affordable product could try 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 manager of 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."[44] But no other law school accreditors exist, and the ABA's

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[39] 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) (on file with Fed. Trade Comm'n) (in response to Order Inviting Comments, *supra* note 2).

[40] *Id*. § 2(b). Despite its contrary actions, the ABA also professes to recognize that accreditation standards should only set a minimum baseline. Its first "Core Value" states: "The 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*, A.B.A. 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 Nov. 26, 2025).

[41] Lao, *supra* note 28, at 1102.

[42] *See, e.g.*, John O. McGinnis, *Deregulating Legal Education*, LAW & LIBERTY (Feb. 27, 2025), https://lawliberty.org/deregulating-legal-education/. This concern was echoed in many of the comments submitted in response to the Court's April 4, 2025 order. *See, e.g.*, Letter from Josh Blackman to Supreme Court of Texas (June 30, 2025) (on file with Fed. Trade Comm'n) (in response to Order Inviting Comments, *supra* note 2, attaching contributions to a symposium by himself, Derek T. Muller, and Ilya Shapiro addressing the issue); Letter from Jonathan R. Zell to Supreme Court of Texas (Apr. 16, 2025) (on file with Fed. Trade Comm'n) (in response to Order Inviting Comments, *supra* note 2).

[43] *See* McGinnis, *supra* note 42; Letter from Jonathan R. Zell to Supreme Court of Texas, *supra* note 42.

[44] Barry Currier Comment, *supra* note 14, at 4.

monopoly remains secure—shielded from competition, in part, by many states' delegations of authority to it.

The ABA's entrenched monopoly harms competition and consumers by mandating that every law school follow an expensive, elitist model of legal education. These burdensome restrictions serve the law school and university faculty and administrators on the ABA Council by limiting how law schools may compete with each other and by discouraging new competitors.[45] For example, the ABA's onerous mandates impose high costs on potential new law schools and may thwart their entry. They also inhibit the development and introduction of innovative new programs that could lower costs and boost the supply of law school seats. Additionally, the ABA's costly restrictions serve the interests of the practicing lawyers that largely comprise the ABA's membership. By increasing the costs of a legal education, the ABA's excessive accreditation standards limit the supply of new lawyers.[46] With fewer lawyers available, consumers may struggle to access legal services and pay more dearly when they do. Only the incumbent suppliers, the ABA's members,[47] benefit.

The members of the Court have been appointed to a high position of public trust, and their primary employment does not involve competing for the provision of legal services or legal education. Therefore, the state's delegation of authority over bar eligibility to the Court is appropriate and consistent with principles that apply when analyzing state action immunity.[48] It is the current rule's further delegation of responsibility to the ABA and the ABA Council to set educational requirements that creates clear, anticompetitive conflicts of interests.

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[45] 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.

[46] *See, e.g.*, Baer, *supra* note 32, § 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").

[47] The ABA and some commentators argue 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) (in response to Order Inviting Comments, *supra* note 2); Barry Currier Comment, *supra* note 14, at 2. The consent decree in *United States v. American Bar Association* did lead to some formal restrictions on how the ABA Council operates. However, the broader ABA House of Delegates still has a formal role overseeing the ABA Council. Under the decree as modified in 2001, the ABA House of Delegates has the authority to review Council decisions and remand for further consideration, though it must accept ABA Council decisions after two remands. *See generally* United States v. Am. Bar. Ass'n, 135 F. Supp. 2d 28 (D.D.C. 2001). Further, the ABA Council is dominated by interested parties—higher education faculty, their trade association, and practicing lawyers—and is also subject to capture by the attorneys who make up most of the ABA's Section of Legal Education and Admission to the Bar. *See supra* Part I.

[48] *See, e.g.,* Bates v. State Bar of Arizona, 433 U.S. 350, 359–360 (1977) (distinguishing *Goldfarb v. Va. State Bar*, 421 U.S. 773, 790 (1975), on grounds that *Goldfarb* involved activities of bar associations that were not required by Virginia Supreme Court rules whereas *Bates* involved challenged conduct that was the "affirmative command of the Arizona Supreme Court").

## IV. Conclusion

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."[49] The ABA's standards for accreditation appear to go far beyond what is reasonably necessary to assure adequate preparation for the practice of law in Texas, increasing the cost of a legal education. The current rule therefore likely causes Texas to forgo admitting many potentially qualified lawyers who could provide needed legal services to the Texas public.

The Proposed 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."[50] Thirty years later, little has changed yet. The Proposed Amendment is a laudable first step. We commend the Texas Supreme Court for its initiative to disrupt the anticompetitive status quo and encourage other states to take similar steps.

Sincerely,

/s/ *Clarke T. Edwards*
Clarke T. Edwards, Acting Director
Office of Policy Planning

/s/ *Daniel Guarnera*
Daniel Guarnera, Director
Bureau of Competition

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[49] Proposed Amendment, *supra* note 2, ¶ 2.
[50] Competitive Impact Statement, *supra* note 34, at 2.