No. _____

In the
Supreme Court of the United States

IN RE: ALEXANDER KEELY

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

ALEXANDER D. KEELY
Petitioner Pro Se
704 Cresson Drive
Chambersburg, PA 17202
(202) 905-2098
akeely@empowermentlaw.com

January 20, 2026

QUESTIONS PRESENTED

Shortly after the Civil Rights Act of 1964, when most American Bar Association (ABA) law schools had not yet admitted Black students or minorities, Pennsylvania created rules that prohibited all historically qualified applicants from obtaining standard admission to the bar unless they had graduated from an ABA-accredited law school. As in *Dent* and *Douglas*, professional licensing limitations throughout relevant ratification periods were always specific to an individual's "knowledge and skill" and did not ever authorize bare rational basis deference.

In *Heller*, *McDonald*, and *Bruen,* this Court restored fundamental core protections of Second Amendment rights by holding that restrictions inconsistent with America's historical tradition of regulation are unconstitutional. Since ABA's inception and persistent racial discrimination began in 1878, states have been divided on whether the fundamental right to earn a living could be legitimately restricted by an accreditation monopoly.

The questions presented are:

1. Whether Pennsylvania's ABA monopoly within professional licensing qualifications exceeds the limits of *Bruen's* text, history, and traditions test in violation of the Fourteenth Amendment.
2. Whether Pennsylvania's ABA monopoly survives strict scrutiny or invidiously discriminates against Blacks in violation of the Equal Protection Clause of the Fourteenth Amendment.
3. Whether procedural due process rights of the Fourteenth Amendment are violated by Pennsylvania's failure to assess an individual's similar educational qualifications for licensing.

PARTIES TO THE PROCEEDING

Petitioner Alexander David Keely was the petitioner in the case before the Supreme Court of Pennsylvania, an action utilizing the court's original jurisdiction over the Pennsylvania judicial system and bar admissions rules.

Respondent is the Pennsylvania Board of Law Examiners (PBLE), a board of the Supreme Court of Pennsylvania. Respondents were the respondents in the original Supreme Court of Pennsylvania case.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceeding to the Supreme Court of Pennsylvania:

- *In re: Alexander Keely*, 89 MM 2025 (Pa. Oct. 27, 2025), Petition denied.

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania.

OPINIONS BELOW

This action generated an order from the Supreme Court of Pennsylvania denying the relief sought in the petition. The order of the highest state court to review the merits appears at App.1 to the petition.

JURISDICTION

The Supreme Court of Pennsylvania entered its final judgment on October 27, 2025. A copy of that decision appears at App.1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

Pertinent portions of the Fourteenth Amendment to the United States Constitution and the Pennsylvania Bar Admissions Rules (Pa.B.A.R.) are reproduced at App.2-4.

The Fourteenth Amendment to the United States Constitution provides in relevant part that

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV. The relevant portion of the Supreme Court of Pennsylvania's bar admission rule 206(b)(2) Admission by Bar Examination Score

Transfer requires applicants "[s]atisfy the requirements of Paragraphs (a), (b)(2) and (b)(3) of Rule 203." Pa.B.A.R. 206. Rule 203(a)(2)(i) demands "completion of the study of law at and receipt without exception of an earned Bachelor of Laws or Juris Doctor degree from a law school that was an accredited law school at the time the applicant matriculated or graduated." Pa.B.A.R. 203. Rule 102 defines the term "Accredited law school" as "[a] law school accredited by the American Bar Association." Pa.B.A.R. 102.

STATEMENT OF THE CASE

A. Factual Background

After the Civil Rights Act of 1866 and the ratification of Reconstruction Amendments in 1870, Pennsylvania law school deans and professors became founding members of the ABA and the Association of American Law Schools (AALS), which banned women, Blacks, Jews, and other minorities from membership and enrollment. *See* George B. Shepherd, *No African-American Lawyers Allowed: The Inefficient Racism of the ABA's Accreditation of Law Schools*, 53 J. Legal Educ. 103, 109-13 (2003). When open gender and minority discrimination eventually became disfavored among the elite, these organizations transitioned to covert strategies to prevent minorities from gaining access to the legal profession. *Id.* at 110. These tactics included increasing tuition, admission difficulty, and procedures that would quietly purge underprivileged minorities from attendance before they started. *Id.* at 112. This resulted in most ABA law schools not admitting a single Black student from the 1950s through the early 1970s. William C. Kidder, *The*

Struggle for Access from Sweatt to Grutter: A History of African American, Latino, and American Indian Law School Admission, 1950-2000, 19 Harvard Blackletter L. J. 1, 5 (2003).

Following the enactment of the Civil Rights Act of 1964, in addition to traditional and legitimate professional licensing qualifications regarding an individual's knowledge, skill, and character, the Supreme Court of Pennsylvania created an exclusive education monopoly in bar admission rules in 1971 that required applicants to have graduated from an ABA law school. *Modern Bar Examination*, PBLE (June 24, 2023), https://www.pabarexam .org/board_ information/history/modern.htm.

As petitioner, a Pennsylvania resident of Bajan, Irish, and Western European descent, was precluded from sitting for the Pennsylvania bar exam by this artificial limitation, he took the Uniform Bar Exam (UBE) in Connecticut, earning a passing score for all jurisdictions. Pet'r's Appl. for Extraordinary Relief, at 32. Petitioner also satisfies all legitimate and equivalent Pennsylvania bar admission requirements of a background assessment, a passing Multistate Professional Responsibility Examination (MPRE) score, and an undergraduate degree. *Id*.

Petitioner graduated from Purdue Global Law School ("Purdue Law"), which is accredited by the Committee of Bar Examiners of the State Bar of California and the Higher Learning Commission, recognized as an institutional accreditor by the U.S. Department of Education. *Id.* at 28. In addition to California, at least five other state supreme courts or boards of law examiners have held that Purdue Law's program is substantially equivalent to ABA-accredited programs. *Id.* at 29. While most Purdue

Law professors are graduates who have taught or continue to teach at ABA law schools, *Purdue Global Law School Faculty: Distinguished and Responsive*, Purdue L., https://www.purduegloballawschool.edu/about/faculty, the ABA refuses to accredit fully online law schools that lack a physical brick-and-mortar presence. *See A Guide to ABA Approved Distance Education,* A.B.A. (Dec. 19, 2024), https://www.americanbar.org/groups/legal_education/resources/distance_education/.

Pennsylvania's rules still require that applicants seeking to sit for the bar exam or transfer their out-of-state scores have graduated from an ABA-accredited law school. PBLE, *supra*. The PBLE explicitly states that current rules do not provide any option for waiving an individual's educational qualifications, thereby making it impossible for all traditionally qualified applicants to obtain standard admission to the bar by examination or exam score transfer. *Waiver Statement*, PBLE (Apr. 11, 2025), https://www.pabarexam.org/bar_admission_rules/waiverstatement.htm.

B. Procedural History

On June 27, 2025, petitioner brought an original jurisdiction action to the Supreme Court of Pennsylvania with the following relevant claims:

1. Limitations on the fundamental right to earn a living outside of historical factors for determining an individual's qualifications for professional licensing are unconstitutional;
2. Pennsylvania's creation of an ABA monopoly in legal education providers is an illegitimate historical qualification;

3. Pennsylvania's ABA monopoly violates strict scrutiny requirements and invidiously discriminates against Blacks by improperly impeding their entry into the legal profession in violation of the Fourteenth Amendment; and
4. Procedural due process requires the evaluation of legitimate individual qualifications before depriving applicants of their ability to practice law. *See* Pet'r's Appl. for Extraordinary Relief.

Although petitioner sought to have the court eliminate its ABA monopoly in education providers, the court denied the application for relief without explanation. App.1. The court denied petitioner access to the bar, not because he didn't meet legitimate and traditional knowledge and skill qualifications, but only because he attended an accredited law school outside of the ABA monopoly.

REASONS FOR GRANTING THE PETITION

I. Pennsylvania's ABA Monopoly Violates the Text, History, and Tradition of the Fundamental Right to Earn a Living

A. The Common Law Right to Earn a Living was Relied Upon During Our Founding and Reconstruction as Essential for Other Liberties

As in recent Second Amendment cases, this Court's correction is essential to ensure that lower courts recognize the God-given and fundamental right to earn a living and consider the nature of any restriction on that right and the corresponding legal analysis they must employ to adjudicate challenges.

As *Bruen* rejected means-end-scrutiny for unenumerated Second Amendment rights, this Court

should also apply the text, history, and tradition test to the right to earn a living in review of Pennsylvania's ABA monopoly. *Bruen* held that when the plain text encompasses an individual right, including a "core protection" as in *Heller*, the government bears the burden of demonstrating that the regulation is consistent with our historical tradition. *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2126, 2131 (2022). A regulation burdening that right is not required to be a "historical twin," but must be "consistent with the principles that underpin our regulatory tradition." *United States v. Rahimi*, 602 U.S. 680, 703-04 (2024). Violations of the text or principles are prima facie evidence of an infringement of that right, and the government must justify any exceptions. J. Joel Alicea, *Bruen and the Founding-Era Conception of Rights* (July 28, 2025), 101 Notre Dame L. Rev. (forthcoming 2026), at 19. A thorough review of the constitutional text and detailed historical analysis is necessary to fully capture the precise meanings of the documented rights, ensuring that the referenced natural right is understood in light of any potential modifications at the time of its establishment. *Id*.

While the fundamental right to earn a living is not enumerated in the Fourteenth Amendment, for centuries prior, it was inextricably encapsulated within due process rights by our founders as a core protection of that text, as the natural rights of the Second Amendment were in *McDonald*, *Heller*, and *Bruen*. In *Glucksberg*, the Court began its fundamental rights analysis by explaining that a right's meaning should be reflected in the historical tradition our founders understood from their view of natural rights and the Common Law. *Dobbs v.*

Jackson Women's Health Org., 597 U.S. 215, 237 (2022) (citing *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). Ultimately, this Court must recognize unenumerated rights that are "'deeply rooted in [our] history and tradition' and … essential to this Nation's 'scheme of ordered liberty.'" *Id.*

The right to earn a living is vital to liberty, as without the ability to work, control earnings, or shape one's future, the American dream is unattainable. *See* Jack Brown, *The Right to Earn a Living Is a Fundamental Right*, Pac. Legal Found. (Feb. 22, 2023), https://pacificlegal.org/right-to-earn-living-is-fundamental/. In a cogently insistent yet yielding deferral to Supreme Court precedent, Fifth Circuit Judge James C. Ho's comprehensive analysis of the fundamental right to earn a living in *Golden Glow Tanning Salon, Inc. v. City of Columbus* references current and historical works from Elizabeth I to the Reconstruction era that unequivocally prove the right's meaning and existence. *See generally* 52 F.4th 974 (2022) (Ho, J., concurring). Judge Ho appropriately concludes, "it's not surprising that various scholars have determined that the right to earn a living is deeply rooted in our Nation's history and tradition—and should thus be protected under our jurisprudence of unenumerated rights." *Id.* at 984.

During pre-colonial and colonial times, Lord Chief Justice of England Edward Coke's records confirm that the freedom to earn a living was directly tied to liberty and property rights, when he wrote, "at the Common Law no man might be forbidden to work in any lawful Trade… whereof they might gather the fruit in their old age." *The Case of the Tailors, &c. of Ipswich*, 77 Eng. Rep. 1218, 1219 (K.B. 1615). These

early cases focused on the abolition of monopolies, indicating that "the common law abhors all monopolies, which prohibit any from working in any lawful trade." *Id*. Blackstone's works document that even a century later, the right was still upheld as "[a]t common law every man might use what trade he pleased." *Golden Glow*, 52 F.4th at 982 (citing 1 William Blackstone, *Commentaries* 415 (1765)). The right to earn a living was protected at Common Law since the Magna Carta (1215), until recent judicial activism after the New Deal and the *Lochner* era, which grounded the crippling of this foundational individual right in an "ahistorical reading of the law." Timothy Sandefur, *The Common Law Right to Earn a Living*, 7 Indep. Rev. 69, 70 (2002).

Revolution-era writings our founders often referenced underscored the importance of property rights and their connection to one's freedom to earn a living. "[T]he property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable." *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746, 765–66 (1884) (Field, J., concurring) (citing Adam Smith, *Wealth of Nations*, bk. 1, ch. 10, pt. 2, at 138 (1776)). Before the ratification of the Bill of Rights, Madison endorsed this view when he wrote that "diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to an uniformity of interests. The protection of these faculties is the first object of government." The Federalist No. 10, at 78–79 (James Madison) (Clinton Rossiter ed., 1961). Benjamin Franklin not only agreed with the right but affirmed its importance by writing that "[t]here cannot be a stronger natural right than that of a man's making the best profit he

can of the natural produce of his lands." *Golden Glow*, 52 F.4th at 982 (citing *Causes of the American Discontents before 1768*, in Benjamin Franklin: Writings 613 (Lemay ed., 1987)).

After the Civil War, Reconstruction efforts led by Congressman John Bingham and Senator Lyman Trumbull sought to permanently restore rights to newly freed Blacks by placing safeguards in an amendment beyond the reach of ordinary politics. Randy E. Barnett & Evan D. Bernick, *The Original Meaning of the Fourteenth Amendment: Its Letter and Spirit* 222-23 (2021). Before and after ratification, proponents of the Fourteenth Amendment incorporated unenumerated protections specifically mentioned in *Corfield* and the Civil Rights Act of 1866. *Id.* at 257. *Corfield* identified well-recognized privileges and immunities deemed fundamental in nature, including the rights: to life, to liberty, to acquire property, and to conduct professional pursuits. *Id.* at 62 (citing *Corfield v. Coryell*, 6 F. Cas. 546, 551-52 (C.C.E.D. Pa. 1823) (No. 3,230)). The Civil Rights Act of 1866 was a "direct response to the Black Codes" of states that put Blacks into forced labor, bound them to employers at unfair wages, and excluded them from or dismantled poor relief, schools, or other public programs to force them into subordination. *Id.* at 118-19. The act and subsequent amendment sought to secure the right of freed Blacks to earn a living by ending slavery and involuntary servitude, to create and enforce contracts for reasonable wages, and to protect Black property rights by securing the fruits of their labor. *Id.* at 119.

Before the ratification of the Fourteenth Amendment, this Court recognized robust individual liberties that states could not readily infringe upon,

reflecting our deep reliance on those protections. Justice Field concluded in *Cummings v. Missouri* that

> [t]he theory upon which our political institutions rest is, that all men have certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; and that, in the pursuit of happiness, all avocations, all honors, all positions are alike open to everyone, and that in the protection of these rights all are equal before the law.

71 U.S. 277, 321 (1867). Equality before the law in the ability to earn a living has always been the foundation for derivative liberty and property rights. After the Lincoln-Douglas debates' inclusion of the right, this Court echoed similar sentiments noting that "[t]he right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure." *Golden Glow*, 52 F.4th at 983-84 (citing *Truax v. Raich*, 239 U.S. 33, 41 (1915)). Shortly after, this Court noted that some liberty guarantees have been "definitely stated" including the right "to engage in any of the common occupations of life… to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

The text, historical evidence, and our tradition during pre-colonial, colonial, Revolutionary, and Reconstruction periods regarding the right to earn a living demonstrate that it was more than just deeply rooted; it has always been one that, if sacrificed, "neither liberty nor justice would exist." *See*

Glucksberg, 521 U.S. at 720-21 (citing *Palko v. Connecticut*, 302 U.S. 319, 325-26 (1937)).

B. An ABA Monopoly in Legal Education Providers Lacks a Historical Analog

Following *Bruen's* direction, Pennsylvania Bar Admission Rules that create an ABA monopoly in education providers must presumptively violate the Fourteenth Amendment rights of all Pennsylvanians unless the state proves that the rule is consistent with American historical tradition. As with other fundamental rights, they are "enshrined with the scope they were understood to have when the people adopted them." *Bruen*, 142 S.Ct. at 2136 (citing *District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008)).

Sir Coke's report on *The Case of Monopolies* "became the accepted rule of the common law," directly influencing and shaping our Founders' belief in "the right to be free of monopolies." Steven G. Calabresi & Larissa C. Leibowitz, *Monopolies and the Constitution: A History of Crony Capitalism*, 36 Harv. J.L. & Pub. Pol'y 983, 996 (2013). Rooted in the recognition of individual rights against the sovereign, the King's Bench invalidated the Queen's monopolies in existing occupations limited to a favored elite as contrary to the liberty and freedom of subjects as secured by the Magna Carta. *The Case of Monopolies*, 77 Eng. Rep. 1260, 1265 (K.B. 1602). Monopolies conflicted with Common Law, Civil Law, and the "equity of the law of God" as in Deuteronomy 24:6 "you shall not take in pledge the nether and upper millstone, for that is his life; by which it appears, that every man's trade maintains his life, and therefore he ought not to be deprived or dispossessed of it, no more than of his life." *Id.* at 1263.

From that experience and understanding at our founding, the great majority of lawyers in the American colonies learned the profession through apprenticeships or clerkships associated with any lawyer or judge, never a fixed monopoly of providers. *See* Susan Katcher, *Legal Training in the United States: A Brief History*, 24 Wis. L. Rev. 335, 339 (2006). While the ABA's overt discrimination against minorities persisted after the Fourteenth Amendment, experiential learning and licensing methods continued, as no state required law school graduation until the late 1920s. Shepherd*, supra*, at 112. Until the AALS and ABA's covert strategy of discrimination against minorities began in legal education in the 1920s, learning was open from all providers but subject to more formal individual assessments, ranging from oral questioning in 1783 to written examinations beginning in the mid-1800s. *See* Katlin Kiefer, *The History of the U.S. Bar Exam, Part I – The Law's Gatekeeper*, Libr. of Cong. (Feb. 13, 2024), https://blogs.loc.gov/law/2024/02/the-history-of-the-u-s-bar-exam-part-i-the-laws-gatekeeper/.

Over the last century, selective reading, misinterpretation, and discrimination have enabled judicial activism to expand state powers, thereby undermining the right to earn a living. Broad restrictions considered valid if reasonable and generally related to the profession directly contradict an honest and comprehensive understanding of our history, *Dent,* and *Douglas*, which underscore the importance of this right. This expansive view is devoid of significant historical context and substantive meaning regarding the right and its traditionally accepted and targeted restrictions. Our history and these precedents convey a very narrow

focus on states' restrictive powers, limiting professional licensing to assessments of an individual's knowledge, skill, and character.

The same author of *Cummings*, Justice Field, began *Dent* with "[i]t is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession he may choose, subject only to such restrictions as are imposed upon all persons." *Dent v. West Virginia*, 129 U.S. 114, 121 (1889). Before detailing the limits of the state's power, he wrote that those vocations are open to all on the condition of an individual's "*study and great learning* for their successful prosecution." *Id.* at 122 (emphasis added). These individual learning qualifications were specifically tied to the state's powers in restricting the right to "combat consequences of ignorance and incapacity, as well as of deception and fraud, and to fulfill the government's responsibility, from time immemorial, to exact in many pursuits a certain degree of *skill and learning* upon which the community may confidently rely." *Id.* (emphasis added).

The government's limited ability to restrict this right was based on an individual's satisfaction of qualifications *for these historical purposes alone*, not just general reasonableness or arbitrary standards. The opinion continued by immediately explaining the types of acceptable qualifications to such an extent that Justice Field repeatedly emphasized these specific limitations, which must correspond to *an individual's degree of learning and abilities*.

1. Applicants should have "no objection to their validity because of the *stringency* or *difficulty*" of the required individual qualifications. *Id.*

2. Qualifications attainable "by such reasonable *study* and *application*" (mentioned twice). *Id.*
3. "Few can judge of the qualifications of *learning* and *skill* which he possesses." *Id.* at 122-23.
4. "No one has the right to practice medicine without having the necessary qualifications *of learning and skill*" (mentioned six times in the opinion). *Id.* at 123 (emphasis added).

Justice Field concluded the relevant analysis by indicating that the state's restrictions were reasonable when it focused on an individual's learning and skill by permitting licensure either by 1) a diploma from a reputable college, or without a diploma, 2) prior practice, or 3) an examination. *Id.* at 124-25. While reasonableness and arbitrary restrictions were used in general, acceptable licensing qualifications, not just any, but those of an individual's "learning and skill," and the law's flexibility in methods for licensure, not discriminatory monopolies, resound.

Thirty-four years later, in *Douglas v. Noble*, Justice Brandeis specifically referenced *Dent* and continued to explain, not expand, the sole question regarding limits of the state's powers relating to professional licensing and the rights within the Due Process Clause of the Fourteenth Amendment. Similarly, Justice Brandeis started with state power that must not be exercised in an arbitrary manner or lack relation to an "applicant's qualifications to practice." *Douglas v. Noble*, 261 U.S. 165, 168 (1923). As in *Dent*, the opinion *immediately* details the specific nature of permissible restrictions on the right that satisfy constitutional requirements using four subsequent examples. Possessing qualifications is a

question of fact to determine "first, what the *knowledge and skill* is which fits one to practice the profession; the second, whether the applicant possesses that *knowledge and skill*. The latter finding is necessarily an *individual* one. The former is ordinarily one of general application." *Id.* at 169 (emphasis added).

In addition to those assessments, Justice Brandeis wrote that the law is not arbitrary when it permits an administrative board to "determine the *subjects* of which one must have *knowledge*…, the *extent of knowledge* in each *subject*, the *degree of skill* requisite, and the procedure to be followed in conducting the examination." *Id.* at 169-70 (emphasis added). These explanations of acceptable limitations on licensing for individual qualifications were purposeful and specific. These holdings demonstrate a pattern of careful thought and context, reflecting our American tradition around professional licensing that must not be ignored in the review of this individual right.

Pennsylvania cannot escape the text, history, and tradition of the fundamental right to earn a living, which is the root of many other liberty and property rights. Our founders established American rights with a clear understanding of the harmful effects monopolies have on freedom. Without the right to earn a living, Americans could not achieve their dreams through individual hard work, experience, or learning. This Court reflected that sentiment again when it stated that the "practice of law is not a matter of grace, but of right for one who is qualified *by his learning* and his moral character." *Baird v. State Bar of Ariz.*, 401 U.S. 1, 8 (1971) (emphasis added). Educational qualifications in our history and

tradition were not simply general in nature but specifically limited to an individual's knowledge, as this Court repeatedly emphasized before, during, and after Reconstruction.

Pennsylvania cannot demonstrate that a "historical analog" of education-provider monopolies existed during the relevant periods of Fifth or Fourteenth Amendment ratification, because the opposite was true for centuries before and after our founding. Therefore, because Pennsylvania cannot show that its restriction on the fundamental right to earn a living is consistent with American historical tradition, the legal education monopoly in ABA law schools is unconstitutional. Logic, our history, and Americans' God-given individual rights cannot tolerate the substitution of one monopoly in the legal profession for another in legal education.

II. Pennsylvania's Repeated Acts Preventing Blacks from Accessing the Bar and Existing Standards Indicate the Rule's Discriminatory and Unreasonable Purpose

The Pennsylvania Supreme Court's denial of petitioner's Equal Protection Clause challenge disregarded uncontroverted historical evidence demonstrating that Pennsylvania's 1971 adoption of the ABA monopoly—a facially neutral licensing requirement—constituted intentional racial discrimination against Black applicants and other minorities, warranting strict scrutiny under *Yick Wo v. Hopkins* (1886), and its progeny.

A. PBLE's History of Discrimination and the ABA Monopoly's Disproportionate Impact on Blacks

Facially neutral laws are subject to strict scrutiny when shown to have a disproportionate impact and a racially discriminatory purpose or motivation. *Washington v. Davis*, 426 U.S. 229, 242-45 (1976). Pennsylvania's 1971 implementation of an ABA law school monopoly ensured that Black matriculation and graduation at its six law schools (historically White) would remain low to maintain the status quo in the state's legal profession.

As members and leaders of the ABA and its Section on Legal Education, Pennsylvania was aware of the ABA's long-term practices to ban or limit Blacks, women, Jews, and other minorities from the legal profession and law schools. ABA's practices harmed Blacks disproportionately by excluding minority friendly and accessible schools, increasing law school tuition, and demanding additional law school entry requirements. Shepherd, *supra*, at 109-13. ABA schools began limiting entry to those who could score well on the Law School Admissions Test (LSAT), which severely limited diversity and was deemed a "device to exclude [B]lacks from law schools" by the Black Caucus of Law Teachers, who strongly opposed the LSAT in favor of more fair and generally applicable admissions criteria. *Proceedings of the Annual Meeting (AALS)* 146-47 (1969).

In 1970, one year before Pennsylvania's implementation of the ABA monopoly, the Liacouras Commission examined the PBLE and its bar-admission process. The commission concluded that the PBLE utilized racial identification practices during the prior 32 bar examinations from 1955 to

1970 to discriminate against Blacks. Liacouras Report, *Racial Discrimination in Administration of the Pennsylvania Bar Examination*, 44 Temp. L.Q. 141, 149, 172 (1971). The commission summarized "[s]tatistical evidence demonstrates that a grossly disproportionate percentage of Blacks fail each examination and there is lacking any available hypothesis other than race by which to explain these proportions." *Id.* at 149. Pennsylvania was independently found to have acted with "the strongest presumption that Blacks are indeed discriminated against under procedures used by the State Board of Law Examiners." *Id.* Overall, these so-called "higher" standards in ABA-led law school admission, course examination, and bar examination processes were "not race neutral and had a clear, negative impact on the number of Black Americans who received a law degree with a stark decline beginning in 1923." Scott DeVito, Kelsey Hample, and Erin Lain, *Onerous Disabilities And Burdens: An Empirical Study Of The Bar Examination's Disparate Impact On Applicants From Communities Of Color*, 43 Pace L. Rev. 205, 213 (2023). Not coincidentally, this decline started the same year the ABA began accrediting law schools.

Despite "affirmative action" efforts in the late 1960s that purported to improve minority attendance, the ABA monopoly continued to severely limit Black access to the legal profession. The ABA monopoly ensured that racially discriminatory gatekeepers were not just obvious at the end of the line at the bar exam but hidden along the way before and throughout legal education. In the late 1970s, scholars indicated that ABA law schools still had a severe need for "racially specific" affirmative action, as the percentage of Black lawyers remained low and the

schools were "the only practical means for entry into the legal profession." Henry Ramsey, Jr., *Affirmative Action at American Bar Association Approved Law Schools: 1979-1980*, 30 J. Legal Educ. 377, 413 (1980).

Increases in the relative numbers of Blacks attending ABA law schools following past complete bans may have been touted as significant from the late 1960s to the 1970s, but the actual number of admissions remained staggeringly low compared to the student population. References to "hundred-fold" increases in ABA law school overall admissions of Black students were metrics that failed to tell the true story of the ABA's lingering racial segregation and discrimination. Reports suggested significant progress after ABA schools doubled the number of Black students from 2,128 in 1969 to 5,257 in 1979. *Id.* at 378-80. Yet, with total law students rising from 68,386 (1969) to 117,297 (1979), *Law School Enrollment Trends, 1963–2024*, LawHub, https://www.lawhub.org/trends/enrollment, the percentage of Black total attendance actually increased only from 3.1% to 4.5%. Ramsey*, supra*, at 380.

Furthermore, these numbers fail to indicate the segregated realities about historically Black and White law schools, which persisted for decades. In 1968, only 141 Black law students attended historically White law schools, or 0.2%, as the significant majority attended historically Black law schools. Ramsey, *supra*, at 378 n.14. Only schools able to pass the multiple entry barriers and maintain ABA accreditation, the four historically Black law schools remaining, would continue to educate the majority of Black lawyers for the next decade. Harold R. Washington, *History and Role of Black Law Schools*, 5 N.C. Cent. L. Rev. 158, 159 (1974). No traditionally

minority-friendly or historically Black law schools remained in Pennsylvania, which never changed because of the imposition of the ABA monopoly.

Relative and overall Black law school enrollment numbers were also artificially promoted metrics that had little meaning when the control of the future of Black lawyers remained in the hands of the ABA monopoly. At those ABA law schools, like Temple Law School in Philadelphia, faculty permitted some Black students to enroll while uniquely imposing "fictitious" standards to subsequently drop them for "poor scholarship." *Id.* at 177. "Large" increases in the late 1960s in the number of Black students enrolled did not translate into the profession, as the "weeding out" process began with ABA law schools and resulted in the percent of Black attorneys increasing minimally from 1.2% in 1970 to 1.325% in 1973. *Id.* The closing of minority and Black-friendly schools because of the ABA monopoly also created a lack of available space within ABA law schools that prevented Blacks and other qualified applicants in general from attending. Edward J. Littlejohn & Leonard S. Rubinowitz, *Black Enrollment in Law Schools: Forward to the Past*, 12 T. Marshall L. Rev. 415, 438 (1987).

In higher education, Black undergraduate enrollment increased from 9% to 13% from 1980-2020, whereas Black law school enrollment remained relatively stable until the mid-1980s and then increased slowly before stagnating at approximately 8% from the 1990s to the present. *See* Jane Nam & Jessica Bryant, *Diversity in Higher Education: Facts and Statistics*, BestColleges (May 28, 2025), https://www.bestcolleges.com/research/diversity-in-higher-education-facts-statistics/*;* Littlejohn & Rubinowitz*, supra,* at 415; *Law School Enrollment by*

Race & Ethnicity (2024), Enjuris, https://www.enjuris.com/students/law-school-enrollment-by-race-ethnicity-2024/.

While law school enrollment of Blacks slightly declined in the past decade, ABA law schools are around two times more likely to drop Black students in non-transfer attrition. Kylie Thomas & Tiffane Cochran, *ABA Data Reveals Minority Students Are Disproportionately Represented in Attrition Figures*, AccessLex Inst. (Sept. 18, 2018), https://www.accesslex.org/xblog/aba-data-reveals-minority-students-are-disproportionately-represented-in-attrition-figures. Ultimately, the ABA monopoly has resulted in Black lawyer percentages remaining stagnant over the past decade, at 5% of lawyers nationwide from 2014 to 2024, 64% below the Black U.S. population (13.7%). *See Profile of the Legal Profession 2024: Demographics*, A.B.A. (Nov. 2024), https://www.americanbar.org/news/profile-legal-profession/demographics/.

Pennsylvania's bar membership relative to the overall population is similar, with only 5.5% of the bar comprising Black lawyers. Christina Kristofic, *Tribune Special Report: Why the Blackout in Philly's Big Law*, Phila. Trib. (June 17, 2024), https://www.phillytrib.com/news/local_news/tribune-special-report-why-the-blackout-in-phillys-big-law/article_c1f2f72f-38e1-5fd6-af4a-0688842656d6.html. In the two largest cities in Pennsylvania, Black lawyers remain in dire need, with Philadelphia being approximately 39% percent Black, *Philadelphia, PA (2023)*, Data USA, https://datausa.io/profile/geo/philadelphia-pa, having only 2.64% Black law partners, and Pittsburgh at approximately 22% Black, *Pittsburgh, PA (2023)*, Data USA, https://datausa.io/profile/geo

/pittsburgh-pa, with only 2% Black law partners (84% lower than the population), the lowest rate for a metropolitan area in the entire country. A.B.A., *supra*.

Many factors outside of ABA admissions continue to discriminate against Blacks and other minorities today, including the inflated tuition, lack of fully online options, and test preparation costs. Limited availability of schools in Pennsylvania, tuition nearly three times that of Purdue Law (and many other non-ABA law schools), and work and family obligations were significant factors preventing petitioner from attending ABA law schools. Pet'r's Appl. for Extraordinary Relief, at 52. Blacks and other minorities, including petitioner, are forced to find ways outside of the ABA to attend law school; otherwise, they may never attend. In 2019, 40% of law students currently enrolled in non-ABA law schools were Black or Hispanic. *2019 Law School Diversity Report: JD Enrollment by Race & Ethnicity*, Enjuris, https://www.enjuris.com/students/law-school-race-2019/. These alternative programs offer a way for Blacks to learn the knowledge and skills needed to practice law and present another reason why Pennsylvania's ABA monopoly in legal education disproportionately impacts Blacks.

Repeating the pattern Pennsylvania followed after the Fourteenth Amendment and the Civil Rights Act of 1866 in helping to form and lead the racially discriminatory ABA and AALS, its purposeful implementation of an ABA monopoly in legal education was a defiant act against the Civil Rights Act of 1964, *Sweatt*, and *Brown* integration efforts. Persistent and multi-decade racial gaps are treated as probative of a discriminatory impact because

> the idea behind the rule of exclusion is not at all complex. If a disparity is sufficiently large, then it is unlikely that it is due solely to chance or accident, and, in the absence of evidence to the contrary, one must conclude that racial or other class-related factors entered into the selection process.

Castaneda v. Partida, 430 U.S. 482, 494 n.13 (1977). The ongoing 64% statistical disparity between the Black population and Black lawyers creates a presumption of discrimination under *Castaneda*. The proven historical and statistically discriminatory impacts of Pennsylvania's ABA monopoly are the latest results of the state's intentional acts and severely harmful rules that continue to disproportionally prevent Blacks from becoming lawyers.

B. Pennsylvania's Implementation of an ABA Monopoly Purposefully Prevented Blacks from Bar Admission

Arlington Heights holds that plaintiffs do not need to prove sole reliance on "racially discriminatory purposes," or their dominant or primary motive. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977). Although a justified purpose could be found in laws with multiple motivations, when any discriminatory purpose exists in a law's intent, "judicial deference is no longer justified." *Id.* at 265-66. Establishing discrimination as a motivating factor requires an examination of the totality of the circumstances. *Id.* at 266. Racially discriminatory intent can be shown through factors of 1) disproportionate impact, 2) historical background of the state action, 3) prior events, or 4) departure from

normal or reasonable procedures. *Id.* at 266-68 (citing *Davis*, 426 U.S. at 242).

Pennsylvania's ABA monopoly must be subject to strict scrutiny because it independently satisfies having 1) a stark pattern of racial discrimination that is unexplainable on grounds other than race, and 2) an invidious purpose. As the severe disproportionate impact on Blacks, historical events, and surrounding actions have already been reviewed, Pennsylvania's departure from normal or reasonable actions and invidious discrimination will be discussed.

Prior to Pennsylvania's adoption of the ABA monopoly, its rules already permitted the development of knowledge and skill through multiple pathways, including reading the law, apprenticeships, or education. In addition, Pennsylvania has long required bar examinations and a character and fitness review, which it maintains was "designed to ensure that the standards accurately reflect the level of minimum competency necessary to practice law." *Modern Bar Examination*, *supra*. Instead of utilizing a direct and reasonable option of increasing the requirements for knowledge and skill on the bar exam, Pennsylvania chose to implement the most unnecessary, expensive, and difficult path for Blacks and other minorities to become lawyers–the ABA monopoly. Only historically White law schools remained in Pennsylvania in the late 1960s and 1970s, and the shift to the ABA monopoly ensured that minority-friendly and focused law schools and their graduates would not be able to gain a foothold in the state after enactment of the Civil Rights Act of 1964 and another round of reforms began nationwide.

Along with being unreasonable and unnecessary, the ABA monopoly was invidiously discriminatory against Blacks because the rule directly targeted Black legal education. At the time the ABA-monopoly was adopted, Black law schools were often referred to as the "non-ABA accredited" schools. Washington, *supra*, at 159 n.5. Pennsylvania cannot escape the fact that the state's powers in professional licensing do not authorize it to covertly discriminate by eliminating all other methods of legal education previously used by a significant number of Blacks and other minorities, including accredited non-ABA schools, experiential learning apprenticeships, or reading the law, which have been proven effective for the past three centuries.

Once a discriminatory purpose is shown, Pennsylvania has the burden of demonstrating that there were significant reasons for implementing these restrictions, absent an improper motive. *Arlington Heights*, 429 U.S. at 270 n.21. This is a burden Pennsylvania cannot satisfy, as the rule would not have been implemented without racial discrimination at its core. Pennsylvania cannot provide evidence of an alternative basis for implementing the ABA monopoly that would eliminate the rule's racially discriminatory impetus. Therefore, it cannot satisfy strict scrutiny requirements under the Equal Protection Clause of the Fourteenth Amendment.

C. The ABA Monopoly Cannot Satisfy Rational Basis Due to Proven Alternatives, Targeting Blacks, and Existing Preventive Measures

The ABA monopoly also cannot withstand rational basis scrutiny under the Equal Protection Clause because Pennsylvania's bar-admission rules

were implemented with an irrational and discriminatory basis, and existing rules already included reasonable fraud and competency protections. In *Moreno*, this Court held that a Food Stamp Act amendment violated the Equal Protection Clause when it excluded eligibility of any household containing an unrelated individual because of its 1) irrelevance to core objectives of the act, 2) impermissible targeting of unpopular groups, and 3) existing anti-fraud provisions in the law. *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 535 (1973).

First, this Court held that there was no legitimate relation of an "unrelated person" to the government's interest in the act's goals of improving nutrition, protecting public health, or supporting the economy, *id.* at 533-34, similar to the lack of a legitimate reason for a monopoly in legal education accreditation. While petitioner concedes that ABA law schools were a strong method of satisfying educational needs to succeed on the bar exam and practice law, Pennsylvania has no evidence showing that attorneys *who passed bar examinations* after apprenticeships, clerkships, reading the law, or attending ABA or non-ABA law schools had any significant difference in their minimum competency or ethical practice of law. In evaluating the ethical complaints against attorneys from both ABA and non-ABA-accredited law schools, the Utah Supreme Court recently found no significant difference in its 2025 examination of disciplinary records. *Labrum v. Utah State Bar*, 2024 UT 24, ¶ 31 (Utah 2024).

Second, the impermissible targeting of unrelated persons, or "hippies," in *Moreno*, 413 U.S. at 534, is similar to Pennsylvania's unacceptable targeting of Blacks with the ABA monopoly. Like those in the

lower economic class in *Moreno*, the rule harms Blacks who cannot afford the more expensive LSAT test preparation, relocation, or substantially higher ABA tuition, while it continues to allow those who can already work around those constraints to attend ABA monopoly schools. *Id.* at 538.

Third, in *Moreno*, the law already contained multiple provisions to prevent fraud and to criminalize harmful conduct. *Id.* at 535-37. Pennsylvania already utilized provisions to prevent fraud and to ensure competency, including experiential learning verification, background checks, ethics reviews, and the bar examination, which it expressly claimed ensured the minimum level of competency to practice law. *Modern Bar Examination*, *supra*. As in *Moreno*, the ABA monopoly has a significantly negative impact on aspiring Black lawyers, without evidence that existing methods to prevent fraud and ensure competency are ineffective.

Given the surrounding circumstances and history, Pennsylvania's actions were motivated by purposeful discrimination and had foreseeable consequences. Pennsylvania implemented the ABA monopoly to prevent Blacks from becoming attorneys. "Becoming a lawyer who happens to be Black is tantamount to running a gantlet [sic] of faceless strangers, most of whom have the tolerance and wisdom of petty Olympian gods." Washington, *supra*, at 183. Not only were these targeted deviations from historical practices in testing applicants' knowledge and skill, but the ABA monopoly disproportionately impacted Blacks with a racially discriminatory purpose and cannot serve a compelling state interest or satisfy rational basis review.

III. Failing to Assess Similarly Qualifying Educational Requirements Violates Procedural Due Process Rights

Even without the fundamental right classification, this Court has already determined that "a claim of a present right to admission to the bar of a state and a denial of that right is a controversy." *Willner v. Comm. on Character & Fitness*, 373 U.S. 96, 102 (1963). *Schware* also requires that "procedural due process rights must be met before a state can exclude a person from practicing law." *Id.* (citing *Schware v. Bd. of Bar Exam'r*, 353 U.S. 232, 238-39 (1957). *Eldridge* demands that a court assess 1) the private interest affected by the state's action, 2) the risk of erroneous deprivation through existing procedures and the likely value of alternative safeguards, and 3) the state's interest or burdens of alternative safeguards. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Petitioner's private interest in retaining his liberty and property rights in being able to work in his chosen profession is significant considering the four years spent at Purdue Law, time to prepare for the bar exam, loans for tuition, bar preparation costs, examination fees, and time away from family and friends. The deprivation of one's ability to practice law has "grave consequences for a man who has spent years of study and a great deal of money in preparing to be a lawyer." *Konigsberg v. State Bar of California*, 353 U.S. 252, 258 (1957).

Erroneous deprivation is already occurring due to Pennsylvania's categorical denial and irrebuttable exclusion arising from petitioner's graduation from a non-ABA law school and the lack of individual consideration of alternative learning methods outside

the ABA monopoly. The purpose of the qualifications for bar admission is to ensure a minimum level of competence and to reduce fraud. *Dent*, 129 U.S. at 122. These educational requirements should demonstrate what an individual has learned or gained in knowledge and skill, as seen in *Dent*, *Douglas*, and *Schware*. As in *Konigsberg*, Pennsylvania's failure to provide an evidence-based assessment regarding whether petitioner's alternative education was equivalent violates due process. 353 U.S. at 262, 273.

In *Graves*, the practitioner did not attend a dentistry college, and this Court determined that the distinction between those with or without a degree was a "classification which has [a] real or substantial basis." *Graves v. Minnesota*, 272 U.S. 425, 429 (1926). Unlike *Graves*, petitioner earned an accredited Juris Doctor from Purdue Law, which California and five other states' supreme courts or boards of law examiners have already evaluated as substantially equivalent or similar to ABA law schools. *See Labrum*, 2024 UT at ¶ 32; *In the Matter of Scott Warren Anderson's Request for Waiver under Rule 105(a) to sit on Wyoming Bar Exam*, (Wyo. Apr. 8, 2025), at 1; *Waiver of Requirements in Rules 3 and 13 of the Rules Governing Admission to the Bar for Nelson Locke*, No. 25-9024 (Tex. May 6, 2025), at 1; *Order Amending Admission and Discipline Rules*, No. 24S-MS-1 (Ind. Feb. 15, 2024), https://www.in.gov/courts/files/order-rules-2024-0701-admin.pdf.; *Frequently Asked Questions*, Conn. Bar Examining Comm., https://ctbaradmissions.jud.ct.gov/faq. Furthermore, in the February 2025 bar exam, Purdue Law graduates exceeded the average pass rate in every state in which the school's graduates sat for the

exam (CA, IN, CT, and UT). *Spring 2025 Alumni Newsletter*, Purdue L., May 2025, at 2. Ultimately, Pennsylvania has effectively placed another covert discriminatory tactic in its bar admissions process by prohibiting all graduates of non-ABA law schools from standard admission, due to its unwillingness to conduct individual assessments of similar or equivalent educational qualifications.

Pennsylvania's burden of evaluating alternative education methods is substantially reduced when programs, like Purdue Law, are already accredited by third-party institutions. In addition to non-ABA-accredited law schools, Pennsylvania could restore apprenticeship and clerkship evaluations, as it maintained prior to the ABA monopoly, Walter C. Douglas, Jr., *Pennsylvania's New Requirements for Bar Admission*, 14 A.B.A. J. 669, 672-73 (1928), to document equivalent experiential learning or alternative paths, such as Artificial Intelligence (AI) learning methods, that can provide similar educational outcomes.

The risk of admitting unqualified attorneys would be minimal, with Pennsylvania's continued use of existing testing methods, including the bar examination, professional responsibility tests, and background checks. Beyond these tests, it is also unclear what Pennsylvania seeks from an ABA-accredited school that cannot be provided by alternative programs, such as Purdue Law, which is accredited by third parties and taught by a majority of ABA-accredited law school graduates and professors. Purdue L., *Distinguished and Responsive*, *supra*.

Sole reliance on the ABA monopoly undermines the bar's integrity by excluding qualified individuals

without justification, while educational evaluations can be conducted without a significant burden to Pennsylvania, which better serves the public interest and the judicial system. Unlike *Graves*, Pennsylvania's categorical denial of non-ABA law school graduates who have passed all necessary examinations and background checks, without assessing equivalent educational qualifications creates a classification without a real or substantial basis. This assessment failure violates procedural due process rights when less burdensome alternatives exist that would permit bar admission for all legitimately qualified applicants.

IV. Varying Tests to Assess Limits on the Right to Earn a Living Lack a Historical Basis and Divide Circuits and States

Unbounded judicial deference in professional licensing to any "legitimate state interest" under the rational basis standard harms both consumers and individuals seeking licenses, especially minorities with limited means. *See* Alexandra L. Klein, *The Freedom to Pursue a Common Calling*, 73 Wash. & Lee L. Rev. 411, 447-48 (2016). Lower circuit and state supreme courts are divided over these main issues: 1) whether the right to earn a living is a fundamental right that deserves more protection than rational basis alone, and 2) what procedural due process is due to an individual seeking a professional license who achieved similar education qualifications through alternative non-ABA monopoly means.

A. Federal Circuits Vary in Analyzing the Right to Earn a Living and Limits of Bare Economic Protectionism

Federal circuits are divided concerning the fundamental right to earn a living and when rational basis applies. Many of these cases involve pure economic protectionism by private actors, including professional licensing and the economic activity it entails. The Second and Tenth Circuits have permitted monopolies as a legitimate state interest, irrespective of their public welfare implications. Klein, *supra*, at 438; *See Sensational Smiles, LLC v. Mullen*, 793 F.3d 281, 287-88 (2d Cir. 2015); Judy Gedge, *Back to Basics: The Constitutionality of Naked Economic Protectionism*, 43 N. E. J. Legal Stud. 75, 90 (2023) (citing *Powers v. Harris*, 379 F.3d 1208 (10th Cir. 2004)). While other circuits, including the Fifth, Sixth, and Ninth, have held that a "bare desire to confer a monopoly on preferred private parties fails the 'legitimate state interest' prong of the rational basis test." *See Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002); *St. Joseph Abbey v. Castille*, 712 F.3d 215, 222 (5th Cir. 2013); *Merrifield v. Lockyer*, 547 F.3d 978, 991 n.15 (9th Cir. 2008); *Smith Setzer & Sons, Inc. v. S. Carolina Procurement Review Panel*, 20 F.3d 1311, 1321 (4th Cir. 1994); *Ranschburg v. Toan*, 709 F.2d 1207, 1211 (8th Cir. 1983); *Delaware River Basin Comm'n v. Bucks County Water & Sewer Auth.*, 641 F.2d 1087, 1099-1100 (3d Cir. 1981).

As these decisions pre-dated *Bruen*, the text, history, and traditions test should apply to challenges to restrictions concerning the fundamental right to earn a living in determining their validity. If those restrictions were inconsistent with our historical limitations, such as permitting private monopolies,

they would be unconstitutional regardless of the rational basis standard often applied to general economic regulations.

B. Some States Permit Alternative Bar Qualifications, While Others Restrict Legal Education to an ABA Monopoly

This case has a much narrower focus than general economic matters, for which this Court has determined that certain questions are appropriate for state legislatures, such as which types of economic conduct should be subject to regulation under professional licensing laws. Once a state decides that an economic activity must be licensed, the specific focus of this case centers on the barriers it may create. This includes whether professional licensing qualifications meet the constitutional requirements of the text, history, and traditions test applicable under the Fourteenth Amendment, or the procedural due process requirements for reasonable individual assessments.

The nationwide variation in the application of the right to earn a living concerns states that recognize educational methods that build knowledge and skill through alternatives outside the ABA monopoly and those that do not. The Federal Trade Commission (FTC) identified approximately forty states that currently maintain an ABA monopoly in legal education, while ten (and growing) are open to equivalent or similar alternatives. *See FTC Staff Comment to Texas Supreme Court*, FTC, at 9 (Dec. 2, 2025), https://www.ftc.gov/news-events/news/public-statements/ftc-staff-comment-texas-supreme-court-regarding-proposed-amendment-rule-1-rules-governing-admission. These concerns deepen as at least six states have already determined that

petitioner's education through Purdue Law satisfies similar or equivalent requirements to those of ABA-accredited schools.

While states may create different levels of knowledge and skill required for professions, the difference here between states concerns 1) whether the ABA monopoly is a legitimate qualification and 2) what procedural due process is required to prevent erroneous deprivation of the right to practice law for traditionally qualified applicants. In these specific areas, Americans' individual rights under the Fourteenth Amendment cannot vary by state.

V. Individual Rights, Access to Justice, and Minority Rights Disparities Demonstrate the Importance and Need for Clarity Concerning the Right to Earn a Living

This Court wrote in *Supreme Court of N.H. v. Piper*, that along with some other occupations, "the practice of law is important to the national economy … [and] should be considered a 'fundamental right.'" 470 U.S. 274, 281 (1985) (citing *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975)). Generally, the importance of the fundamental right to earn a living and occupational licensing is ever-growing because of the "rapid expansion" in state licensing that now covers "nearly one-third of the workforce." Klein, *supra*, at 458.

As Sir Coke predicted, the ABA monopoly has harmed individual rights of all Americans, especially Blacks and other minorities, by 1) impeding their ability to acquire legal education, 2) lowering the quality of legal support for the public, 3) driving up consumer costs, and 4) lowering access to legal services. Americans seeking to become lawyers in

Pennsylvania and many other states lack the freedom to choose legal education outside the ABA monopoly. The FTC has raised numerous issues, including antitrust concerns, arising from the ABA's "inherent incentives to undermine competition." FTC, *supra*, at 4. The government notes that ABA-accreditation standards have been deemed "unreasonable" and "anti-competitive" for at least 20 years, mandating an "expensive, elitist model of legal education" that imposes high costs on new schools and law students. *Id.* at 7-8. Along with their uncompetitive nature, the quality of ABA law schools has also been called into question, stemming from the ABA's reliance on bar passage scores and the repeated reductions in bar cut scores by state supreme courts and boards of law examiners nationwide. *See* Julianne Hill, *Lowered bar pass scores better bar pass rates in 4 of 5 states*, A.B.A. J. (May 7, 2024), https://www.abajournal.com/web/article/lowered-bar-pass-scores-better-bar-pass-rates-in-4-of-5-states.

These general harms to society of an ABA monopoly impact Black and other minority communities disproportionately. A Supreme Court of Pennsylvania committee recently determined that the state faces an access-to-justice crisis, as state legal aid programs meet only an estimated 20% of actual need, likely due in part to the lack of available attorneys resulting from the ABA monopoly. *See* Pa. Interest on Lawyers Tr. Acct. Bd., *Documenting the Justice Gap in Pennsylvania* 2 (2017). Monopolies negatively impact "individuals seeking the right to practice and consumers who are harmed by the lack of market competition." Klein, *supra*, at 458.

The right also impacts Blacks and other minorities desperate for legal representation. Black

legal advocates are crucial to the exercise of Blacks' rights, as "[W]hite counsel often represent the wealthy [B]lacks who can afford their services," but Black practitioners have always been the ones to "represent the majority of Black people in the lower economic strata." Washington, *supra*, at 176. Prior Pennsylvania Supreme Court Justices summarized the ABA monopoly's negative impact on individual rights when they stated, "[t]he inequities of such an unconstitutional rule continue not only to deprive citizens the opportunity to practice in Pennsylvania but also deprive Pennsylvania consumers of competent legal services." *Appeal of Ferriman*, 487 Pa. 45, 47 (1979) (Manderino, J., dissenting opinion joined by Larsen and Flaherty, JJ.).

The AALS recently underscored the importance of maintaining the ABA monopoly over legal education providers nationwide. *See AALS Letter on National Accreditation of Law Schools* (Apr. 8, 2025), https://www.aals.org/wp-content/uploads/2025/04/AALS-Letter-on-ABA-Accreditation-4-8-25.pdf. The association sought to dissociate the ABA's Section on Legal Education from the ABA's broader organization, perhaps to be viewed independently of its discriminatory actions. *Id.* Where has this separation been while women, Blacks, Jews, and other minorities have been discriminated against at ABA and AALS law schools? Where were the objections to their discrimination against White students seeking law school admission, faculty positions, or clerkships, likely against this Court's holding in *Students for Fair Admissions*, as twenty-one state attorneys general and the Wisconsin Institute for Law & Liberty have raised? Pet'r's Appl. for Extraordinary Relief, at 16-17.

While it may now be convenient to attempt to create distance between the two entities, would anyone believe a Ku Klux Klan's (KKK) supposed separate "Section on Legal Education" would be devoid of racist ideology? The comparison of which organization has done more damage to minority populations in America between the KKK and the ABA is not even a befuddling question. What organization has been more effective at undermining the exercise of minority rights nationwide than the ABA, when for over a century, it created monumental barriers that continue to block minorities from becoming legal advocates for their communities?

Petitioner seeks certiorari for this Court's review and reversal of the Supreme Court of Pennsylvania's denial, which presents recurring due process issues that prevent petitioner and other legitimately qualified individuals who chose alternatives to the ABA monopoly from accessing the mandatory Pennsylvania state bar. Pennsylvania's categorical and irrebuttable exclusion of those not graduating from ABA law schools, absent any mechanism to assess substantial similarity reflecting an individual's actual knowledge, skill, or competence, is an unconstitutional bar admission regime. It is beyond time for this Court to restore the God-given fundamental right to earn a living and to correct the judicial activism that has gutted this core protection, which was established by the understanding that matters most of all—that of the people at the time they ratified this right.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari.

Respectfully submitted.

ALEXANDER D. KEELY
Petitioner Pro Se
704 Cresson Drive
Chambersburg, PA 17202
(202) 905-2098
akeely@empowermentlaw.com

January 20, 2026

TABLE OF APPENDICES

Appendix A

SUPREME COURT OF PENNSYLVANIA

No. 89 MM 2025

IN RE: ALEXANDER KEELY

Filed: June 27, 2025

Present: Debra Todd, *Chief Justice*. Christine Donohue, Kevin M. Dougherty, David N. Wecht, Sallie Updyke Mundy, P. Kevin Brobson, Daniel D. McCaffery, *Justices*.

ORDER

PER CURIAM

AND NOW, this 27th day of October, 2025, the "Application for Extraordinary Relief under this Court's General Powers and King's Bench Jurisdiction" is DENIED.

Appendix B

RELEVANT CONSTITUTIONAL PROVISIONS AND RULES

U.S. Const. Amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Pa.B.A.R. 102 Definitions

(a) General Rule. Subject to additional definitions contained in subsequent provisions of these rules which are applicable to specific provisions of these rules, the following words and phrases when used in these rules shall have, unless the context clearly indicates otherwise, the meanings given to them in this rule: "Accredited law school." A law school accredited by the American Bar Association.

Pa.B.A.R. 203 Admission by Bar Examination

(a) Bar Examination. The general requirements for permission to sit for the bar examination are:

(1) Receipt of an undergraduate degree from an accredited college or university or the receipt of an education which, in the opinion of the Board, is the equivalent of an undergraduate college or university education.

(2) (i) Except as provided in subparagraph 2(ii) of this Rule, completion of the study of law at and receipt without exception of an earned

Bachelor of Laws or Juris Doctor degree from a law school that was an accredited law school at the time the applicant matriculated or graduated.

(b) Admission to the Bar. The general requirements for admission to the bar of this Commonwealth are:

(1) satisfactory completion of the bar examination administered by or under the authority of the Board;

(2) absence of prior conduct by the applicant which in the opinion of the Board indicates character and general qualifications (other than scholastic) incompatible with the standards expected to be observed by members of the bar of this Commonwealth; and

(3) satisfactory completion of the Multistate Professional Responsibility Examination at the score determined by the Court which score shall be publicly posted.

Pa.B.A.R. 206 Admission by Bar Examination Score Transfer

Applicants may apply for admission to the bar of the courts of this Commonwealth using a Uniform Bar Examination (UBE) score earned in another jurisdiction provided that the applicant meets the requirements below.

(a) Score Requirements.

(1) The UBE score must meet or exceed that established by the Court as the minimum passing score for applicants sitting for the bar examination at the time of the UBE that resulted in the score the applicant seeks to transfer; and

(2) No more than 30 months have passed from the first day of the UBE that resulted in the score the applicant seeks to transfer.

(b) Applicant Requirements

(1) Provide supplemental documentation as the Board directs in support of the application for admission by UBE transfer within six months from the date of filing the application; and

(2) Satisfy the requirements of Paragraphs (a), (b)(2) and (b)(3) of Rule 203.