



Submitted via e-mail

March 16, 2026

James Hivner, Clerk
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1307

Re: Defending Education’s Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation (No. ADM2025-01403)

Dear Mr. Hivner,

Defending Education (DE) is a nationwide grassroots organization whose members include students, educators, professionals, and concerned citizens. DE’s mission is to prevent—through advocacy, legislation, and, if necessary, litigation—the politicization of America’s education system. DE submits this letter in response to the Tennessee Supreme Court’s call for comments on potential reforms to the rules governing admission to the Tennessee bar, including whether the Court should “reduce” or “eliminate its reliance on [American Bar Association] accreditation in setting minimum educational requirements for applicants to the Tennessee Bar.” Order at 4.

Simply put, the ABA should have no role in accrediting law schools. Though it claims to speak for the legal profession as a whole, the ABA is an ideologically motivated activist organization that regularly endorses and litigates on behalf of divisive political causes. And that activism bleeds into the ABA’s accreditation standards, which are designed to promote the Association’s ideological goals rather than ensure academic quality. Indeed, the ABA has compelled American law schools—under threat of losing their accreditation—to adopt discriminatory admissions and hiring practices and parrot the Association’s views on issues of diversity and so-called bias in the legal profession.

But activism has no place in accreditation, which is why at least two states have already revoked the ABA’s monopoly on accrediting law schools. Other jurisdictions appear poised to follow suit. The Tennessee Supreme Court should do the same and end the ABA’s role as “an unaccountable” and ideologically slanted “arbiter of legal education.” Lindsay, *Ditching the ABA Monopoly: A Call for Competition among Texas Law Schools*, Texas Public Policy Foundation (Sept. 16, 2025), perma.cc/JYT7-HG75.

I. The ABA is an activist political organization.

States and members of the public have a strong interest in “ensuring that those who enter into legal practice do so with an adequate baseline of preparation.” Chesney, *Comment re proposed changes to the Rules Governing Admission to the Bar of Texas* at 5 (June 30, 2025), perma.cc/3SP3-KJVJ. To achieve that goal, accreditation must focus on academic quality. But the ABA is not a neutral, merit-focused body. It is an ideologically motivated organization that abuses its prestige and accrediting power to promote partisan goals.

The ABA makes no effort to disguise its partisanship. It regularly engages in left-wing advocacy, taking controversial stances on policy issues that have little if any unique connection to the legal profession. See *Policy & Positions*, ABA (visited Mar. 12, 2026), bit.ly/3Np3EFg. The Association, for example, frequently issues statements supporting stricter gun control, liberal immigration policies, loose abortion access, and drastic climate policies. See, e.g., *Gun Violence Policy*, ABA (visited Mar. 12, 2026), bit.ly/4llxUNS; *Immigration*, ABA (visited Mar. 12, 2026), bit.ly/40Ys77B; Robert, *ABA House reaffirms longstanding support for reproductive rights*, ABA (Aug. 9, 2022), bit.ly/4segupk; *Climate Change Takes Center Stage*, ABA (Oct. 17, 2019), bit.ly/3OXgV8L.

And the ABA doesn’t just push those positions in the public square. It consistently files amicus briefs supporting left-leaning causes in litigation. (And often finds itself on the losing side.) The ABA has filed briefs defending the use of race in college admissions, encouraging broad abortion rights and strict gun control, supporting transgender bathroom access, and opposing the First Amendment rights of small business owners. See, e.g., *SFFA v. Harvard*, 20-1199 (U.S. filed Aug. 1, 2022); *Dobbs v. Jackson Women’s Health Organization*, 19-1392 (U.S. filed Sept. 20, 2021); *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 20-843 (U.S. filed Sept. 21, 2021); *G.G. v. Gloucester County School Board*, 15-2056 (4th Cir. filed May 15, 2017); *Masterpiece Cakeshop v. CCRC*, 16-111 (U.S. filed Oct. 30, 2017).

Wading into contentious policy debates and litigation is bad enough. But the ABA does so even when the positions it takes are unpopular among its own members and even when those positions are squarely foreclosed by caselaw. When the ABA endorsed expansive abortion access, for example, more than 3,000 members resigned from the Association in protest. See Hager, *Lawyers Quit ABA Over Abortion Stand*, LA Times (Nov. 4, 1992), perma.cc/D2TR-SG3J. The ABA, those members explained, had “become more political” and “less professional than it should be.” *Id.* When the Supreme Court ultimately recognized that abortion is an issue left to the political branches, the ABA accused the Court of “deny[ing] millions of people” their rights and endangering women’s “physical and mental health.” *Statement of ABA President Reginald Turner Re: Reproductive Access and the Dobbs Decision*, ABA (June 24, 2022), bit.ly/4lqX9yx. When the

Court recognized a historically rooted right to bear arms in public, the ABA called the decision “disturb[ing].” *Statement of ABA President Reginald Turner Re: Gun violence and the Bruen decision*, ABA (June 23, 2022), bit.ly/40sN1vr. More recently, the ABA incorrectly insisted that the so-called Equal Rights Amendment was ratified even though the deadline for ratification had long since passed, *see ABA Resolution 601*, ABA (Aug. 6, 2024), perma.cc/8Y9A-7VMZ, a position the Ninth Circuit has described as “meritless,” *Valame v. Trump*, 2025 WL 1983954, at *1 (9th Cir. July 17, 2025).

The ABA also targets elected officials when it disagrees with their political priorities. When President Trump followed through on his promise to rein in federal spending by eliminating wasteful grant programs, the ABA accused him of “wide-scale affronts to the rule of law.” *The ABA supports the rule of law*, ABA (Feb. 10, 2025), bit.ly/4cFhJJb. Notably, the ABA’s statement failed to disclose that the Association had a financial interest in the grant programs shuttered by the Trump Administration. *See* Letter from Chairman Andrew Ferguson to FTC Staff at 1 (Feb. 14, 2025), perma.cc/BFE6-GFDW. And the ABA later joined other left-wing groups to file multiple lawsuits challenging the Administration’s funding decisions. *See ABA lawsuits over halt in federal funding*, ABA (Apr. 28, 2025), bit.ly/4b7uDhW. The ABA has also criticized President Trump’s treatment of federal judges, but its defense of the judiciary is conspicuously one-sided. The Association neglected, for example, to condemn the leak of a draft of the Supreme Court’s *Dobbs* decision or offer any comment on the attempted murder of Justice Brett Kavanaugh. *See* Steurer, *North Dakota judge says American Bar Association is too liberal*, *North Dakota Monitor* (June 17, 2025), bit.ly/4bibqbZ.

The ABA’s partisan attacks extend to judicial nominees as well. “Peer-reviewed studies have shown the ABA,” which until recently enjoyed a privileged role in rating federal judicial nominees, “evaluates nominees of Republican presidents more harshly than those of Democratic presidents.” Williams, *The Myth of the Unqualified Trump Judge*, *National Review* (June 23, 2020), bit.ly/4b5lFBL. That includes “exceptionally distinguished” jurists like Justices Robert Bork and Clarence Thomas and Judges Richard Posner and Frank Easterbrook, who all received “curious” mixed ratings from the ABA, with several evaluators calling them “unqualified.” Liptak, *Legal Group’s Neutrality is Challenged*, *NY Times* (Mar. 30, 2009), bit.ly/4bpVp40. In the ABA’s eyes, “just being nominated by a Democrat” instead of “a Republican” is “better than any other credential or than all other credentials put together.” Williams, *supra*.

Given the ABA’s emphasis on partisanship over professionalism—and its insistence on staking out controversial and legally untenable positions—it is no wonder that the Association’s membership is on the decline. Indeed, although it presents itself as the voice of the legal profession, in reality the ABA counts only a small fraction of practicing attorneys among its members. And that number continues to drop even as the number

of lawyers in America grows. In 1979, for example, roughly half of America’s lawyers were members of the ABA; today, that number is only 17%. Turley, *The rise and fall of the American Bar Association*, The Hill (Dec. 6, 2025), bit.ly/47wtGNN.

The ABA is free to promote any message and file any brief that it likes. But it cannot operate as a left-wing activist organization while holding itself out as a neutral representative of the legal profession. It certainly cannot be trusted to wield semi-governmental authority over the entire legal profession as the sole accreditor for law schools.

II. The ABA uses accreditation standards to push its ideological agenda.

The ABA is an activist organization. As such, rather than craft accreditation standards with an eye towards guaranteeing academic quality, the ABA has used its accreditation power to promote its ideological agenda. It has imposed standards that compel law schools to parrot the Association’s view on controversial issues. And it has used those standards to force law schools to discriminate against applicants based on race.

Consider “Standard 206.” First imposed in 2006, this provision requires law schools seeking accreditation to “demonstrate by concrete action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.” Standard 206(a), *Standards and Rules of Procedure for Approval of Law Schools 2025-2026*, ABA, at 17 (2025), perma.cc/DCS4-QZT3. Likewise, in faculty hiring, it requires schools to “demonstrate by concrete action a commitment to diversity and inclusion by having a faculty and staff that are diverse with respect to gender, race, and ethnicity.” *Id.* (Standard 206(b)).

In other words, Standard 206 pressures law schools to discriminate on the basis of race, sex, and ethnicity in admissions and hiring. To create, through “concrete action,” a student body and faculty *defined* by their “gender, race, and ethnicity” means law schools must *consider* those characteristics when making decisions about which students to admit and which faculty to hire. Indeed, the ABA’s own interpretation of Standard 206 encourages schools to “use race and ethnicity in its admissions process to promote diversity and inclusion.” *Id.* (Interpretation 206-2). And law schools subject to the requirement understand it to require straightforward race-, ethnicity-, and sex-based decisionmaking. *See* Styrsky et al., *Unconstitutional Accreditation Pressures Force Law Schools to Discriminate Against Faculty and Students*, Pacific Legal Foundation, at 4 (July 2025), perma.cc/KDZ3-BU9S.

Needless to say, this requirement violates federal law. Educational institutions cannot discriminate based on sex, and no institution receiving federal funds can discriminate based on race or ethnicity. *See* 20 U.S.C. §1681; 42 U.S.C. §2000d; *SFFA v. Harvard*, 600 U.S. 181, 198 n.2 (2023). That is doubly true for state-run law schools, which are *constitutionally* barred from discrimination in admissions and hiring. *See* U.S. Const. amend. XIV, §1; *SFFA*, 600 U.S. at 198 n.2, 230. Even the ABA’s own rules of professional conduct bar lawyers from engaging in “discrimination on the basis of race, sex,” or “ethnicity” in their legal practice. ABA Model R. of Prof’l Conduct 8.4(g). And that principle “contains no carveout for ‘diversity’” initiatives that “turn on the consideration of impermissible characteristics like ... race.” Order, *Judicial Complaint No. 11-25-90043* (11th Cir. Mar. 20, 2025), perma.cc/SD8T-XVLL.

Standard 206’s blatant discrimination mandate is no longer tenable following the Supreme Court’s decision in *SFFA v. Harvard*. In a “zero-sum” process like admissions or hiring, law schools cannot “conside[r]” race, sex, or any other immutable trait without penalizing individuals who don’t belong to a preferred group. 600 U.S. at 218-29. That’s why the ABA, under scrutiny from state and federal governments, was forced to temporarily suspend the rule and is seemingly on the path to repealing it. *See* Letter from U.S. Att’y Gen. Pam Bondi to ABA Council of the Section of Legal Education (Feb. 28, 2025), perma.cc/L4GL-RRP4; Letter from 21 State Att’y’s Gen. to ABA Council of the Section of Legal Education (June 3, 2024), perma.cc/M3FN-QNUP; *Council of the ABA Section of Legal Education Extends Standard 206 Suspension to 2026*, ABA (May 9, 2025), bit.ly/40qK1Qm; *Matters for Notice and Comment: Standard 206*, ABA (Feb. 26, 2026), bit.ly/4sZYoHF.

But the fact that the ABA imposed this discrimination mandate on law schools in the first place and maintained it for almost two decades in the name of “diversity” and “inclusion” is reason enough to revoke the ABA’s role as the sole accrediting body for Tennessee law schools. Plus, although it is retreating from Standard 206, the ABA insists that its “commitment” to preferences for those who, in the ABA’s eyes, “have been historically excluded from the legal profession ... has not changed.” *American Bar Association statement Re: Standard 206*, ABA (Feb. 22, 2025), bit.ly/4s7yvFN.

Standard 206, moreover, is simply one example of how the ABA uses its accreditation power to impose its preferred ideology on law schools. In 2022, for instance, the ABA instituted a new rule—Standard 303(c)—requiring law schools to “provide education to law students on bias, cross-cultural competency, and racism.” *Standards and Rules of Procedure for Approval of Law Schools 2025-2026*, ABA, at 23 (2025), perma.cc/DCS4-QZT3. The rule does not define “bias,” “cross-cultural competency,” or “racism,” but insists upon the “importance” of educating law students on these topics and their “obligation” to “eliminate racism in the legal profession.” *Id.* at 24 (Interpretation 303-6).

Like Standard 206, Standard 303(c) goes beyond an accreditor’s role in ensuring baseline academic quality. Instead, it mandates the specific content—and *viewpoint*—that students must be taught. Worse, it “presuppos[es] that some students are biased and racist and therefore need instruction euphemistically referenced as ‘cross-cultural competency.’” Ackerman et al., *Response to Notice re Proposed Revisions to Standards 205, 206, and 303* at 3 (June 23, 2021), perma.cc/F6VU-J786. And it undermines core “principles of academic freedom” *Id.* at 4. In fact, Standard 303(c) is so clearly inappropriate as an accreditation metric that an ideologically diverse collection of Yale Law School professors, including esteemed liberal scholars like Bruce Ackerman and Akhil Amar, wrote an open letter opposing the rule as a “particularly disturbing . . . attempt to institutionalize dogma” on matters “unrelated to any distinctively legal skill.” *Id.* at 3. Law schools, the professors explained, should “teach [students] skills” and allow them to “reach their own conclusions,” not require them “to adopt a specific world view.” *Id.* at 3-4.

The ABA’s efforts to impose ideological conformity go beyond written standards. The Association has a history of “pressur[ing] schools to engage in racial balancing and lower academic standards in favor of diversity.” Shapiro, *The ABA Deserves to Lose Its Accreditation Monopoly*, The Civitas Institute (June 10, 2025), perma.cc/23NP-ZHR6. In 2000, for example, the ABA “investigated George Mason University School of Law extensively” for “supposed violations of its diversity standards and only gave up after the school quietly lowered its admissions standards to satisfy the ABA’s demands.” Styrsky et al., *Unconstitutional Accreditation Pressures Force Law Schools to Discriminate Against Faculty and Students*, Pacific Legal Foundation, at 2 (July 2025), perma.cc/KDZ3-BU9S. The problem, to be clear, “was not lack of outreach” to minority students; rather, the ABA faulted George Mason for failing to adopt “significant preferential affirmative action” for minority applicants in the admissions process and failing to offer race-specific “scholarship grants.” Letter from U.S. Comm’n on Civil Rights Comm’rs Peter Kirsanow & Gail Heriot to U.S. Sen. Bill Cassidy at 10, 12 (Feb. 18, 2025), perma.cc/S4VT-9DWZ (emphasis omitted). Other law schools have likewise been forced to adjust their admission standards or adopt diversity programs under threat of losing their accreditation. *See id.* at 15-16; Styrsky, *supra* at 2.

In other words, as federal authorities have already determined, the American Bar Association has “not only failed in [its] responsibility” to “determine which institutions provide a quality education” and “therefore merit accreditation,” it has also “also abused [its] enormous authority” to “compel[] adoption of discriminatory ideology.” Exec. Order No. 14279 §1, *Reforming Accreditation to Strengthen Higher Education*, 90 Fed. Reg. 17529 (Apr. 23, 2025), perma.cc/Q6Z9-NHEB.

III. Tennessee should revoke the ABA’s monopoly, as other jurisdictions already have.

No one doubts the strong public interest in ensuring that new lawyers are qualified. But that interest is not well-served by giving a monopoly on accreditation power to an ideologically biased group like the ABA.

And make no mistake: the ABA’s role as the exclusive accreditor for our nation’s law schools *is* a monopoly. The Federal Trade Commission has said so. *Comment re: Proposed Amendment to Rule 1 of the Rules Governing Admission to the Bar of Texas*, FTC, at 3 (Dec. 1, 2025), perma.cc/NV5L-U72V. And the ABA uses that monopoly power to impose unnecessary requirements that are “irrelevan[t] to ensuring a baseline level of legal education,” which “harms competition” and increases costs. *Id.* at 6-7, 9. Indeed, the ABA “has a long history of” antitrust violations. *Id.* at 6. Thirty years ago, for example, the ABA entered into a consent decree prohibiting the Association from “using its law school accreditation monopoly to harm competition.” *Id.*; see *United States v. ABA*, 934 F. Supp. 435 (D.D.C. 1996). But in 2006, a federal court found that “on multiple occasions the ABA ha[d] violated” the decree’s “clear and unambiguous provisions.” *United States v. ABA*, 2006 WL 1737775 (D.D.C. June 26, 2006). Even the ABA itself has “acknowledged longstanding criticism that its” accreditation practices “drive up student costs.” Sloan, *FTC says ABA is a ‘law school accreditation monopoly*, Reuters (Dec. 2, 2025), bit.ly/3OVReFB.

Combined with its ideological pressure on matters of diversity, the ABA’s monopoly power essentially creates “a ‘diversity cartel’ among law schools, effectively insulating schools that give large [race- and sex-based] preferences from competition on issues like bar passage rate with schools that would rather give smaller preferences or none at all.” Heriot, *Accreditation Overreach Part 2*, The Federalist Society (Oct. 23, 2015), perma.cc/3DAF-4V7X.

Fortunately, states like Tennessee do not have to suffer under the ABA’s monopoly. There are “practicable alternatives to ABA accreditation.” Order at 4. Most obviously, the Tennessee Supreme Court could approve law schools directly without using a separate accrediting body as an intermediary. A few states already have some version of this model, allowing graduates of law schools approved by the state supreme court or state bar—in addition to schools accredited by the ABA—to sit for the state’s bar exam. See Canaparo et al., *How to Break the American Bar Association’s Accreditation Monopoly*, The Heritage Foundation, at 9 (July 15, 2025), perma.cc/B7GC-B4DW. If Tennessee were to opt for this approach, it could approve schools based on a mixture of factors like bar passage rates, job placement rates, debt-to-income ratios for recent graduates, faculty qualifications, and curricular requirements. See Chandler, *Accrediting for Tomorrow: Law*

School Metrics and Interstate Compacts, The Civitas Institute (June 10, 2025), perma.cc/G4KJ-FZQN; Chesney, *supra* at 9. The Court could also presumptively allow graduates of state-run law schools to sit for the bar. And of course, Tennessee could recognize alternative accreditors as such entities become available.

To complement these approaches, Tennessee could also “join interstate compacts to ensure bar reciprocity.” Shapiro, *supra*. This would ensure that law degrees from Tennessee schools remain portable across the country, increase access to legal services in Tennessee by allowing graduates from other law schools to sit for the Tennessee bar, and make recognition from state high courts “effective enough to be able to supplant intermediaries like the ABA.” Muller, *How state bars could accredit law schools without the ABA or any other intermediary institution*, *Excess of Democracy* (Aug. 21, 2025), perma.cc/XDZ5-9ERB. Interstate compacts, moreover, are an increasingly feasible possibility as more and more states consider dropping the ABA as their sole law school accreditor.

Thankfully, regardless of which path it takes, Tennessee does not have to tread new ground. Two states—Texas and Florida—have already revoked ABA’s monopoly on accreditation. The Texas Supreme Court now approves law schools directly based on “simple, objective, and ideologically neutral criteria using metrics no more onerous than those currently required by the ABA.” *Final Approval of Amendments to Rule 1 of the Rules Governing Admission to the Bar of Texas*, Misc. Dkt. No. 26-9002, at 1 (Tex. Jan. 6, 2026), perma.cc/8BVC-DMAE. Florida, for its part, opened the door to alternative accreditors recognized by the U.S. Department of Education or the Florida Supreme Court. *In re: Amendments to Rules Regulating the Florida Bar and Rules of the Supreme Court Relating to Admissions to the Bar*, No. SC2025-2064, at 5-6 (Fla. Jan. 15, 2026), perma.cc/4RBY-CQ3H. At least one other state, Ohio, is considering a similar move. *See* Novak, *Ohio Supreme Court Advisory Committee Begins Evaluation of Law School Accreditation*, *JD Supra* (Nov. 7, 2025), perma.cc/CJ6V-DGB9.

These states are reclaiming their role in our federalist system. “They are remembering that ... it is states, not private ideological cartels, that regulate professions.” Mendenhall, *End the American Bar Association’s Grip on Law Schools*, The Heritage Foundation (Jan. 30, 2026), perma.cc/P78P-X78C. The federal government is doing the same: the White House has directed the Department of Education to reconsider the ABA’s status as a federally recognized accreditor for law schools, *see* Exec. Order No. 14279 §2, *Reforming Accreditation to Strengthen Higher Education*, 90 Fed. Reg. 17529 (Apr. 23, 2025), perma.cc/Q6Z9-NHEB, and the Department of Justice has eliminated the ABA’s privileged role in evaluating judicial nominees, *see* Letter from U.S. Att’y Gen. Pam Bondi to ABA President William R. Bay (May 29, 2025), perma.cc/8XJ5-CS3H.



As the rule changes adopted by Texas and Florida demonstrate, there is more than one path for reform. But the key point is that Tennessee, like other states, is not beholden to the ABA and its ideological bias. This Court is free to pursue alternative models for accrediting law schools that do not force schools to discriminate or violate academic freedom. DE encourages the Court to do so.

Respectfully submitted,

/s/ Sarah Parshall Perry
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Defending Education