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How to Break the American Bar Association's Accreditation Monopoly

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KEY TAKEAWAYS

The ABA has used its position as sole national law school accreditor to push a radical ideological agenda to the detriment of lawyers, law students, and our country.

The Texas Supreme Court and Florida Supreme Court have recently begun to reconsider their ABA accreditation requirements; other states should follow suit.

Congress and (currently) the U.S. Department of Education should ease the pathway for another accreditor other than the ABA to enter the market.

The American Bar Association (ABA) has been politicized. It is no longer a neutral organization designed solely to set good professional and ethical standards for American lawyers and law students. Instead, it has become an activist group pushing hard-left policies. The ABA says it is "committed to its mission of defending liberty and pursuing justice,"[1] but it holds a very particular—and very partisan—idea of what that phrase means.

For example, the ABA uses its influence to undermine conservative judicial nominees by ranking them as less qualified than liberal ones even when they have the same qualifications.[2] It fights in favor of the progressive culture war by filing briefs with the Supreme Court of the United States that defend nationwide abortion, support race discrimination at Harvard, oppose Second Amendment rights, and attack states that refuse to let children cut off their genitals if they feel that they were

born in the wrong body.[3] Additionally, the ABA's public statements, panels, events, commentary, and publications consistently skew hard-left. The ABA absurdly argued, for example, that the controversial Equal Rights Amendment had been ratified and had in fact become the 28th Amendment to our Constitution—a position so radical that even the Biden-appointed archivist of the United States rejected it.[4] The ABA is, of course, free to make itself an activist organization for the progressive wing of the Democratic Party, but having done so, it cannot be trusted to wield power fairly over the entire legal profession, which it seeks to do either directly or indirectly.

Most problematically, the ABA has used its power as the sole federally recognized law school accreditor to force schools to embrace a skin-deep view of "diversity" and to discriminate against students on the basis of race and other characteristics.[5] The ABA holds a monopoly on law school accreditation, which (even setting aside the partisan way that it has wielded that power) does not serve law schools, law students, or the legal profession well.[6]

Although law schools provide the training ground for America's lawyers, the American Bar Association sets the terms of legal education through its accreditation arm, the Council of the Section of Legal Education and Admissions to the Bar.[7] At the federal level and in many states, the Council is the only recognized law school accreditor.[8] It is meant to function as a "reliable authority" regarding the "quality of education" that law schools provide,[9] but because law schools depend on accreditation to carry out essential functions, the ABA uses its monopoly on accreditation to dictate the terms of legal education.

This power is not new: The ABA has set standards for law school education for more than a century. In 1921, it adopted an initial set of standards and began to issue lists of approved schools.[10] In 1952, it received federal recognition as an accreditor.[11] This coincided with the passage of the G.I. Bill, which produced an influx of new law students who chose overwhelmingly to attend accredited schools.[12] During this time, the ABA used its influence over law schools to impose stricter requirements on legal education, such as requiring three rather than two years of undergraduate study before law school.[13] Since 1952, the ABA has maintained its status as the only federally recognized law school accreditor and has continued to influence legal education.[14]

Today, the ABA's power as a federal accreditor is somewhat limited. At the federal level, accreditation generally allows colleges and universities to provide federal financial aid such as Pell grants and direct loans,[15] but only 16 law schools depend on ABA accreditation for this purpose.[16] The majority of law schools are affiliated with a university.[17] For affiliated schools, the university's overall accreditation—not the law school's ABA

accreditation—allows law students to receive federal financial aid.[18] Thus, if the U.S. Department of Education stripped the ABA of its status as a federal accreditor, only 16 schools would need to turn to other university accreditors to be eligible to receive federal resources.

At the state level, however, the ABA holds the keys to the kingdom because in many states, it controls access to the bar examination. While the authority to set rules governing bar eligibility rests with state courts,[19] many states give the ABA unique authority under those rules. At least 17 states directly restrict bar eligibility to graduates of an ABA-accredited school, and even states without this blanket restriction often make it difficult for graduates of unaccredited schools to take the bar.[20] For example, in Missouri, among other states, graduates of schools that are not accredited by the ABA must complete additional hours or a master of laws degree program at an ABA-accredited school.[21] State mandates like these increase the need for law schools to maintain ABA accreditation because without it, their graduates may be unable to practice law.

The ABA's Abuses of Power

The importance of accreditation today gives the ABA leverage over law schools that it uses to force them to comply with discriminatory and arbitrary accreditation requirements—some of which probably violate federal and state laws.

Aggressive Demands for DEI. The ABA has a long history of pressuring schools to comply with discriminatory diversity requirements.[22] In 2000, the ABA targeted George Mason University's law school because its admissions department refused to use racial preferences in admissions. Although George Mason actively recruited minority applicants, the ABA threatened to revoke its accreditation unless those applicants were accorded preferential treatment.

Faced with this threat, George Mason lowered admissions standards for minorities to raise their proportion in its incoming classes. This was not enough for the ABA, and after it issued additional threats, George Mason also increased outreach funding, appointed a minority coordinator, and established a "Minority Outreach Council." Even these efforts did not satisfy the ABA. It took two more years for the ABA to notify George Mason of its reaccreditation, and the ABA continued to pressure George Mason to increase "diversity" during its next reaccreditation cycle—even though George Mason's dean pointed out that racial preferences were "victimizing" the very students they were intended to help by causing disproportionate rates of academic failure among students who had been admitted under the lower admissions standards.[23]

The ABA's aggressive demands for diversity continued in 2016 when it adopted a rule mandating that Continuing Legal Education (CLE) panels must have specific numbers of "diverse members" and barring CLE accreditation for panels that did not comply with this system.[24] The ABA backed down from this discriminatory rule only after the Florida Supreme Court prohibited the Florida Bar from awarding CLE credit for programs that used such quotas to select panelists.[25] Although the ABA tried to deny that its CLE requirements constituted a quota system,[26] it tried with this rule to produce superficial racial and gender diversity on CLE panels through discriminatory selection processes and at the expense of intellectual diversity.

Most recently, the ABA's belligerent response to the U.S. Supreme Court's decision ending racial preferences in higher education reveals its commitment to discrimination. The crux of this commitment is the ABA's Standard 206 accreditation requirement. This standard required law schools to "demonstrate by concrete action a commitment to diversity and inclusion."[27] In its interpretation of the rule, the Council explicitly urged schools to implement racial preferences in their admissions practices, stating that a commitment to diversity and inclusion "typically includes a special concern for determining the potential of these applicants through the admissions process, special recruitment efforts, and programs that assist in meeting [their] academic and financial needs."[28]

Even after the Supreme Court held that race-based admissions programs were unconstitutional,[29] the Council shockingly continued to demand that schools comply with Standard 206. It instructed that "[t]he requirement of a constitutional provision or statute that purports to prohibit consideration of race, color, ethnicity, religion, national origin, gender, gender identity or expression, sexual orientation, age, disability, or military status in admission or employment decisions is not a justification for a school's noncompliance with [Standard 206]."[30]

In other words, the Council required law schools to follow a standard that conflicts with the Constitution of the United States.

In February 2025, the ABA backed down temporarily. In response to executive orders issued by President Donald Trump[31] and a "Dear Colleague" letter from the Department of Education,[32] the Council reviewed, revised, and suspended (but did not repeal) Standard 206.[33] After this temporary suspension, the Attorney General of the United States urged the ABA to repeal Standard 206 entirely,[34] but the Council refused. Instead, in May 2025, the Council voted to extend the suspension of the standard until August 2026.[35] The ABA likely hopes to run out the clock until political circumstances have changed.[36]

When it first announced the suspension, the Council maintained that its motivation to ensure the availability of a legal education for those "historically excluded from the legal profession...ha[d] not changed."[37] Furthermore, the ABA still requires that law schools "provide education to law students on bias, cross-cultural competency, and racism."[38] Even after suspending Standard 206, the ABA has remained committed to a divisive, race-obsessed ideology, operating what has been called a "diversity cartel"[39] that forces law schools to discriminate in favor the ABA's preferred minority applicants.

Cartel-Like Activity and Arbitrary Requirements. The ABA's cartel-like imposition of this toxic ideology would be reason enough to reduce its influence, but its abuse of power runs deeper. The ABA also operates as a cartel in other ways to serve its own interest and keep legal education exclusive, expensive, and stagnant.[40]

Like its focus on race, the ABA's self-interested behavior is not new. In 1995, the Antitrust Division of the Department of Justice sued the ABA because of its efforts to inflate law school faculties' salaries artificially and require schools to comply with other costly accreditation requirements.[41] The parties settled, and the ABA was forced to agree to a 10-year consent decree that imposed changes in its accreditation requirements, but the ABA resisted this limit on its power and was fined in 2006 for violating the terms of the decree.[42]

In the late 1990s, the Massachusetts School of Law at Andover (MSL) brought an unsuccessful antitrust suit against the ABA that drew attention to the ABA's enforcement of anticompetitive accreditation criteria. When MSL applied for accreditation, the ABA denied its application, citing (among other reasons) MSL's "high student/faculty ratio, over reliance on part-time faculty, the heavy teaching load of full-time faculty, the lack of adequate sabbaticals for faculty, the use of a for-credit bar review class, the failure to limit the hours students may be employed, and the failure to use the LSAT."[43] These policies supported MSL's goals to "provid[e] low-cost but high quality legal education" and attract "mid-life, working class, and minority students,"[44] but they did not fulfill the ABA's narrow, prescriptive accreditation criteria.

The ABA's current accreditation requirements still include criteria that make law school more costly and less accessible without providing a clear educational benefit.[45] Many of the ABA's accreditation requirements are irrelevant. For example, an entire chapter of the standards is devoted to extensive law library requirements at a time when virtually all legal research is done online. The ABA mandates that a law library "formulate and periodically update a written plan for development of the collection"

and requires law schools to appoint library directors with "security of position reasonably similar to tenure."[46] Other requirements serve the interest of ABA members while increasing costs for students. For example, the ABA requires that full-time faculty teach "substantially all" of a law school's first-year coursework and states that faculty members who actively practice law are presumptively not full-time faculty.[47] This rule prevents law schools from adopting education models that use part-time faculty to reduce the cost and provide students with practical training.[48]

By including requirements like these in its accreditation standard, the ABA oversteps its responsibility to provide a basic guarantee of law school quality. Instead, the ABA uses its accreditation standards to infringe on law schools' autonomy in ways that serve its own interests rather than the interests of students.

Federal and State Strategies to Reduce the ABA's Power

To combat the ABA's discriminatory and self-serving accreditation requirements, both the federal and state governments should act to reduce its influence over law schools.

Federal Accreditation. The federal executive branch has already begun an attempt to reduce the ABA's authority. On April 23, 2025, President Trump issued an executive order to combat the role of accreditation agencies in perpetuating discriminatory admissions policies.[49] He specifically described the Council's diversity requirements as "unlawful mandates" that "blatantly violat[e]" Supreme Court precedent and federal law. The President instructed the Attorney General and Secretary of Education to "investigate" and "terminate" any "unlawful discrimination by American law schools that is advanced by the Council" and directed the Secretary of Education to recognize new accreditors and ensure that accreditation requires institutions to support intellectual diversity. The instructions in the President's executive order can guide both the Department of Education and Congress in limiting the ABA's authority.

- **The Department of Education: Designating New Accreditors.** The Secretary of the Department of Education holds the authority to recognize new accreditors within current statutory guidelines.[50] While the most straightforward way to reduce the ABA's influence would be for the Secretary to recognize a new accreditor, this route is complicated by current regulations that create a substantial barrier to entry for new accreditors.

An agency interested in being recognized by the federal government as an accreditor must contact the Department of Education's Accreditation Group.[51] To receive initial recognition, the agency must provide extensive documentation demonstrating that it provides a link to federal funding programs, conducts accrediting activities in a state or region, and has granted accreditation to at least one qualifying institution and conducted accrediting activities for two years.[52] These regulations reduce the incentive for new accreditors to enter the market because they create a catch-22: To receive recognition as a new accreditor, a would-be accreditor must show that it has been accrediting for two years. This means that during those two years, any new law school accrediting body would likely have to accredit law schools alongside the ABA—and given the two-year history required to become federally recognized, such an entity should begin its activities immediately. Thankfully, however, any of the extant university accreditors qualify. They need only build out a law school–specific model for the 16 schools that are not already covered by them.

Again, however, things get complicated because of state requirements that law students attend an ABA-accredited school in order to take the bar exam. There is even less incentive for a new accreditor to attempt to compete because the ABA's long-term accrediting monopoly and the rules and regulations throughout all 50 states make competition extremely difficult. Furthermore, if state recognition requirements remain unchanged, it would take at least two years for a new accreditor to be eligible to apply for federal recognition. For these reasons, a new federally recognized law school accreditor is not likely to happen overnight, but it is an endeavor worth pursuing.

- **Congress: Changing Requirements for Accreditors.** Even if the ABA retains its accreditation monopoly, Congress could still reduce the ABA's power over law schools by explicitly rendering federally recognized accreditors unable to make DEI requirements a condition of accreditation. This would require changing the requirements for accreditors under the U.S. Code.

  In a letter outlining the need for legislation on accreditation abuses, two members of the U.S. Commission on Civil Rights suggested that Congress alter 20 U.S.C. §1099b(a) to prohibit the recognition of

accreditors that impose DEI requirements. They offered potential language for a new subsection in the legislation that would accomplish this goal:

> No accrediting agency or association may be determined to be a reliable authority as to the quality of education or training offered for the purposes of this chapter or for other federal purposes, if the accrediting agency or association imposes requirements concerning student body, faculty or staff diversity on the basis of race, sex, or national origin; establishes standards for student body, faculty or staff diversity on the basis of race, sex, or national origin; conducts investigations into student body, faculty or staff diversity on the basis of race, sex, or national origin; or makes recommendations regarding student body, faculty or staff diversity on the basis of race, sex, or national origin. An accrediting agency or association may only be determined to be a reliable authority as to the quality of education or training offered for the purposes of this chapter or for other federal purposes if it permits each and every college and university that it accredits (and each and every component or subpart of the colleges and universities that it accredits) to adopt any lawful policy on student body, faculty or staff diversity on the basis of race, sex, or national origin notwithstanding the particular mission of the particular college or university (or component or subpart thereof).[53]

A similar provision was proposed during the 118th Congress in the End Woke Higher Education Act, which was passed in the House but not in the Senate. This act would have prohibited accreditors from imposing standards that "require, encourage, or coerce any institution to…support, oppose, or commit to supporting or opposing…a specific partisan, political, or ideological viewpoint or…support or commit to supporting the disparate treatment of any individual or group of individuals on the basis of any protected class."[54] Even if the ABA retained its monopoly on accreditation, adding such language to existing regulations would curb its ability to coerce law schools to adopt its preferred (but unconstitutional) policies. Provisions like these are still sadly necessary after the Supreme Court's decision in *Students for Fair Admissions v. Harvard*,[55] which prohibits schools from doing what the ABA has long required them to do: use unlawful race preferences. Because the ABA cannot be trusted to follow the Court's decision on its own, Congress should force it to comply.

State Accreditation. In most states, the state supreme court promulgates the state's bar admission requirements,[56] but in most states, the state supreme

court also has the authority to remove graduation from an ABA-accredited school as a requirement for admission to the bar. These requirements create a self-reinforcing cycle: Because most states require bar applicants to have graduated from an ABA-accredited school, attending an ABA-accredited school ensures that bar applicants will be eligible to take the bar in every state. This puts graduates from unaccredited schools at a distinct disadvantage and makes states reluctant to remove ABA-accreditation requirements. Yet the cycle will end only if most states provide alternate pathways of eligibility.

In some states, such pathways already exist because bar eligibility rules allow a state authority to provide alternatives to ABA accreditation. For example:

- Rule IV.B.(2)(b) of the state's Rules Governing Admission gives the **Alabama** State Bar the authority to recognize specific in-state schools that are not accredited by the ABA;

- The **California** State Bar's Committee of Bar Examiners accredits some of California's law schools;

- By statute of the Commonwealth, **Massachusetts** may authorize law schools that are not accredited by the ABA;

- The **Michigan** Board of Law Examiners may permit graduates of law schools that lack ABA accreditation to take the bar examination; and

- The **Tennessee** Board of Law Examiners approves some law schools that do not have ABA accreditation.[57]

Several states—such as Indiana, Michigan, and Maryland—allow graduates of law schools that are not accredited by the ABA to request a waiver to take the bar exam.[58] Yet even in states that have alternate paths or provide waivers, ABA accreditation remains the dominant pathway to bar eligibility. To ensure that the ABA's authority is truly reduced, states could make the prerequisite of a juris doctorate (J.D.) degree one path among several to bar eligibility. Washington State has done so already through its Law Clerk Program, an "alternative to law school" that qualifies graduates to take the bar examination after four years under the instruction of an "experienced lawyer or judge."[59] Other states could establish similar programs.

Diversifying the paths to bar eligibility could take many forms. Professor Derek Muller has suggested that states could use master of law

programs—which are not accredited by the ABA—as an alternate path to bar eligibility and evaluate these programs' success using bar passage rates.[60] Professor Seth Chandler suggests that states create a "safe harbor" for schools that "run[s] parallel" to ABA accreditation by allowing regulatory authorities to accredit law schools based on a small number of criteria such as bar passage rates and graduate outcomes.[61] Through reforms like these, states could develop routes to bar eligibility that are widely available, train future lawyers well, and do not depend on the ABA.

There is clearly interest in such reforms among some states. The Texas and Florida Supreme Courts have called for a reevaluation of whether graduation from an ABA-accredited law school should remain a prerequisite to sitting for the bar exams in their respective states. The answer seems to be, and should be, "no."

Conclusion

The ABA's insistence that law schools impose discriminatory DEI policies and follow cartel-like rules that serve the ABA's own interest make it imperative that its influence on legal education be reduced. Both the Texas Supreme Court[62] and the Florida Supreme Court[63] have recently started to reconsider their ABA accreditation requirements; other states should follow suit. Moreover, Congress and the Department of Education (or another federal agency that assumes responsibility for recognizing accreditors) should reduce red tape and ease the pathway for another accreditor besides the ABA to enter the market.

Regrettably, the ABA seems determined to continue on the perilous path of political activism instead of focusing on its core responsibilities: advocating for the legal profession and ensuring that the next generation of American lawyers are being appropriately trained. Instead, the ABA has used—and likely will continue to use—its position as the sole national law school accreditor to push its radical ideological agenda to the detriment of lawyers, law students, and our country. The status quo must change.

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56. In some states, the legislature also plays a role, and in a few others, the authority rests with a state superior court or court of appeals. *See Promulgation of Rules, Prelegal Education Requirements, Law Student Registration, and Bar Exam Eligibility Before Graduation*, Comprehensive Guide to Bar Admission Requirements, https://reports.ncbex.org/comp-guide/charts/chart-1/#1610142352111-e56b1dc2-06b5 (last visited June 10, 2025).

57. *Domestic Legal Education*, *supra* note 20.
58. *Id*.
59. *Law Clerk Program (APR 6)*, Wash. State Bar Ass'n, https://admissions.wsba.org/appinfo.action?id=9 (last accessed June 10, 2025).
60. Derek T. Muller, *New Paths for Legal Education Should Be Considered*, Civitas Outlook, https://www.civitasinstitute.org/research/new-paths-for-legal-education-should-be-considered (last visited June 10, 2025).
61. Chandler, *supra* note 47.
62. Karen Sloan, *Texas High Court Considers Dropping ABA Accreditation Requirement as a Requirement to Practice Law*, Reuters (Apr. 4, 2025), https://www.reuters.com/legal/government/texas-high-court-considers-dropping-aba-accreditation-requirement-practice-law-2025-04-04/.
63. Karen Sloan, *Florida Weighs in on Breaking with American Bar Association over DEI Rule*, Reuters (Mar. 12, 2025), https://www.reuters.com/legal/government/florida-weighs-breaking-with-american-bar-association-over-dei-rule-2025-03-12/.