



September 15, 2020

The Honorable Janet DiFiore  
Chief Judge  
Court of Appeals of the State of New York  
20 Eagle Street  
Albany, NY 12247

Dear Chief Judge DiFiore:

We write to you as elected representatives of law school graduates from across New York State to share our serious concerns about the planned online administration of the bar exam in October, and to respectfully urge the Court of Appeals to provide law graduates with an alternate pathway to permanent admission to practice law due to the unprecedented challenges caused by the COVID-19 pandemic.

As you are aware, the pandemic has already necessitated the postponement of the July bar exam to September, the cancellation of the September bar exam, and the subsequent scheduling of an online bar exam in October. While we recognize and appreciate the logistical challenges this has caused the Court and the Board of Law Examiners, the toll that these uncertainties have taken on many law graduates is ongoing and immeasurable.

Our offices have collectively heard from thousands of law school graduates detailing the hardships they are facing amid the COVID-19 pandemic while trying to prepare for a bar exam with shifting dates and formats. Bar exam preparation is essentially a full-time obligation, and the cumulative impact of New York's bar exam delay means that virtually all law school graduates have had to scramble to accommodate an additional two and a half months of exam preparation -- a situation that has been particularly taxing for parents, caregivers, people with disabilities, and the economically insecure.

At a legislative roundtable held last month by Senator Hoylman and Assembly Member Simon, recent law school graduates and law school administrators and faculty shared heartbreakingly stories of aspiring attorneys who are unable to find employment or lost job opportunities, cannot afford basic necessities such as rent, have foregone medical appointments or E.R. visits due to a lack of employer-provided health insurance, and are drowning in student loan debt.

While the online bar exam is currently scheduled to proceed on October 5 and 6, we remain gravely concerned about several aspects of the online administration of the exam. Approximately one month before the Court announced the online exam, Associate Judge Michael J. Garcia explained in a letter addressed to the Deans of all 15 accredited New York law schools that:

“Inevitably, any remote exam will be accompanied by security risks that cannot be completely mitigated. [...] And the greater the number of test-takers, the greater the security challenges. Those difficulties are only compounded by equitable issues pertaining to accommodations, privacy, and access.”

We concur with the concerns raised by Associate Judge Garcia, particularly around accommodations for people with disabilities, privacy, and access, and are unconvinced that these issues have been sufficiently addressed or mitigated. We have also heard concerns from prospective online examinees about software issues and non-responsive customer support from ExamSoft, the company that will be used to administer the October exam. These concerns, compounded by troubling reports with online exam administration in Michigan, Florida and Indiana<sup>1</sup>, give us considerable pause about the ability of New York to conduct its bar exam online.<sup>2</sup>

For all of these reasons, we ask that you offer aspiring attorneys an equitable and expedient path to admission as an alternative to the online bar exam in October. To date, Washington, Oregon, Utah and Louisiana have all extended some form of diploma privilege for law graduates seeking admission to practice law in those states.

There are a number of ways to tailor an acceptable alternative path to admission, including the practice-based approach proposed by S.8827-A (Hoyleman) / A.10846 (Simon), which would grant applicants for admission with a temporary license to practice law upon the successful completion of the New York Law Course, the New York Law Examination, and the Multistate Professional Responsibility Examination and provide permanent admission for candidates who complete at least 100 hours of practice under the supervision of an admitted attorney. Such an approach would allow law graduates to immediately start their careers, while conditioning permanent admission upon a more accurate demonstration of professional competency than the Uniform Bar Examination.

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<sup>1</sup> After Indiana's attempts to run mock test crashed twice, it decided to offer an open book bar exam instead.

<sup>2</sup> The Surveillance Technology Oversight Project wrote to the Court of Appeals on September 3, 2020 pointing out how the on-line proctoring software significantly violates constitutionally protected rights, such as 4<sup>th</sup> Amendment protections against warrantless searches.

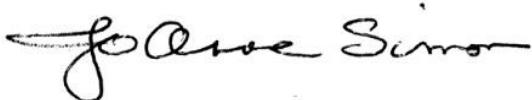
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Thank you for your consideration of our request, and we look forward to your response.

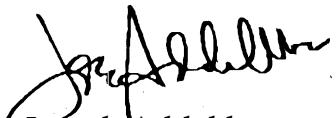
Sincerely,



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State Senator



Jo Anne Simon  
State Assemblymember



Joseph Addabbo  
State Senator



Harry Bronson  
State Assemblymember



Alessandra Biaggi  
State Senator



Robert C. Carroll  
State Assemblymember



Leroy Comrie  
State Senator



Anthony D'Urso  
State Assemblymember



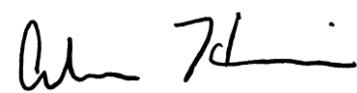
James Gaughan  
State Senator



Steve Englebright  
State Assemblymember



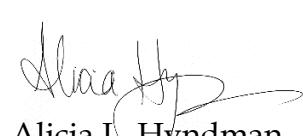
Michael Gianaris  
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Andrew D. Hevesi  
State Assemblymember



Andrew Gounardes  
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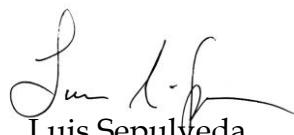
Zellnor Myrie  
State Senator



Gustavo Rivera  
State Senator



Julia Salazar  
State Senator



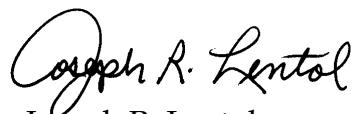
Luis Sepulveda  
State Senator



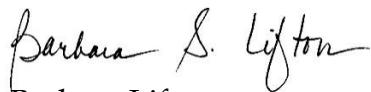
Toby Ann Stavisky  
State Senator



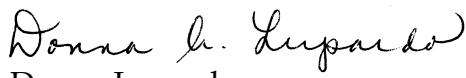
Mark Johns  
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