

July 16, 2020

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

We are a coalition of recent graduates from New York State law schools who organized an April letter to the Court of Appeals in which 1,500 NYS law students asked the Court to consider alternatives to the traditional Bar exam in the wake of the Covid-19 pandemic. (Please find it attached.) We write now to express our deep concerns about the planned September Bar exam in New York and ask you to join us in supporting emergency diploma privilege for the Class of 2020 and other applicants for admission to the New York Bar.

As you may know, the Board of Law Examiners plans to administer an in-person Bar exam on September 9th and 10th. As cases of Covid-19 and hospitalizations surge throughout the country, an in-person exam drawing thousands of test takers back to New York State would be highly irresponsible. Not only will hosting an in-person administration result in gatherings of 500 test takers per each test site, it will also draw hundreds of test takers from outside of New York State, including from states like Texas and Florida with surging cases. As Dr. Anthony Fauci testified on June 30, “when you have an outbreak in one part of the country, even though in other parts of the country they’re doing well, they are vulnerable . . . It puts the entire country at risk.” During this public health crisis, encouraging travel and large gatherings are the last things we should do. The proposed exam gatherings fly in the face of executive orders that limit non-essential gatherings to twenty-five or fewer individuals. In all likelihood, such restrictions will need to remain in place through September 10th, if not beyond. The 14-day mandatory quarantine for out-of-state travelers also raises additional, unprecedented financial burdens on applicants traveling into New York.

Granting diploma privilege under these trying times would remove the uncertainty graduates face, particularly in regard to employment and health insurance, and especially in light of the disparate impact that the pandemic and associated restrictions are having on Bar exam study for many individuals.

The New York Board of Law Examiners has suggested they may need to cancel the September exam, which would push Fall 2020 applicants’ first opportunity for licensure to February 2021. While we agree that canceling the September exam is a prudent decision, a February 2021 exam is not the solution. Although the Court of Appeals instituted a temporary practice order which allows recent graduates to sit for their first bar exam as late as July 2021, this is an impractical solution that assumes first, the possibility that 2021 exams will be safe to administer; and second, that employers will allow and/or pay their employees to take time off to study for the exam at a later date.

Making recent graduates wait until February 2021 will impose serious financial hardship, require graduates to study for the exam while working full-time, and most importantly delay the legal assistance that many organizations and individuals in New York desperately need during this time. Several employers have already delayed the start dates of new hires until after the bar examination or an admission to the bar. Some employers may rescind employment offers entirely. Further delay will assuredly be detrimental for graduates already financially strained and needing to begin the student

loan repayment process. Moreover, further delay would also create a serious health insurance problem for recent graduates, whose student health insurance coverage ends this summer. Because COBRA does not cover the loss of student health insurance and many cannot seek refuge on their parents' or partners' plans, recent graduates will either have to find an individual health plan and pay steep premiums or risk being uninsured in a pandemic.

Given the unpredictability of this evolving situation, we have no idea what February 2021 will bring. CDC Director Robert Redfield has been widely quoted, expressing his concern and expectation that, "the fall and the winter of 2020 and 2021 is probably going to be one of the most difficult times that we've experienced in American public health." Governor, you worked tirelessly with dedicated medical and public service professionals and essential workers to get New York to its current state. We do not want to risk the steady progress that has been made and shudder at the prospect of igniting a second wave of this pandemic. Recently you stated that, "we're not going to use our children as guinea pigs," in outlining New York's school reopening plan. Exam takers should not be used as guinea pigs either. An in-person exam will put the health of test takers, our families, test proctors, and other New Yorkers at serious risk, and only exacerbate the uncertainty around when recent graduates may begin their legal careers.

While some states have opted to administer their Bar exam online, this option only creates a host of other issues, the paramount concern being that of equity. The effect of an online examination will be particularly damning to test takers in multi-member households, those of modest means, and those without reliable internet. An online exam will require test takers to find a separate, quiet space in which to sit for the exam uninterrupted. That would prove difficult for many even before the crisis, but as we spend more time in our homes to slow the spread of Covid-19, this task of finding a secluded space is impossible for test takers living with young children, and/or family members, partners, or roommates who are also working from home.

An online exam will also require reliable internet access. Those with even the best internet packages experience service outages, and many test takers live in homes or areas without reliable connections. This discrimination will fall most heavily on applicants of color, non-traditional graduates, and first-generation law school graduates—those from the marginalized communities most harshly impacted by Covid-19; those who already face barriers in pursuit of their legal careers. Additionally, an online bar exam which leans on facial recognition software as a security checkpoint, as California intends to do, will show bias against women and applicants of color.

Traditional "equalizers" available pre-pandemic are no longer available. Students cannot escape to public or university libraries or other study spaces in order to take the Bar exam in peace—or adequately prepare for it—for that matter. As law school deans in Texas recently noted, "[i]f we give a bar exam this summer, we are not testing competency, we are testing access to resources." A truism of legal study is that it requires diligent concentration. The students that would be marginalized by an online exam, are also those facing the most challenges in their ability to adequately prepare. Students of color are particularly grappling with issues inherent to our national reckoning on race and social justice. Although summer camps were allowed to open, many have not, leaving parent-applicants to tend to their children at the expense of their exam study. While the juggling of legal study and family or other responsibilities and concerns during Bar exam prep has been the norm for some time, never before has any class been asked to prepare under these circumstances and without the resources that every class before us has enjoyed.

An online bar exam may seem an attractive solution, but this option will ultimately create more anxiety for *all* test takers whose admission would be hinged on the mercy of an internet connection and will create a disproportionate burden on test takers already seriously underrepresented in the legal profession and otherwise impacted by the pandemic.

Diploma privilege addresses both the public health concerns as well as the disparate impact that either an in-person or online exam would have on test takers who do not have access to a quiet, safe study or test taking space, reliable internet access, or childcare during the 12-hour exam. Given the current climate in the U.S. and the urgent need for racial and social justice reform, it would be deeply problematic to create and uphold such a barrier to entry to the legal profession. Today's law students are more diverse in experience and background than ever before, and any solution to this crisis must reflect that shift.

New York would not be alone in making this accommodation: other states have already done so, including Washington, Oregon, and Utah. New Hampshire allows University of New Hampshire graduates who meet certain requirements to be admitted as lawyers without examination. Wisconsin has offered a form of diploma privilege for over 150 years, and both the current head of the National Conference of Bar Examiners and her predecessor are beneficiaries of Wisconsin's diploma privilege system. Moreover, the New York State Bar Association could require a period of supervised practice and a number of Continuing Legal Education credits for full admission, ensuring minimum competency for newly admitted attorneys. The implementation of diploma privilege via supervised practice is unanimously supported by all 15 deans of accredited New York law schools.

In short, current circumstances have made bar exam study an unprecedented challenge for test takers in multi-person homes; an in-person bar exam at any time during this pandemic puts us and the entire state at serious risk; an online bar exam will have an unfair disparate impact on applicants from traditionally marginalized communities; and further postponement to February 2021 will delay our admittance to the profession we've worked diligently to join and limit our ability to serve those most affected by the Covid-19 pandemic. The only equitable path forward is Diploma Privilege for those who planned on taking the New York bar exam this year.

Respectfully Governor, you have consistently reminded us that New York is the "progressive capital of the nation." Diploma privilege is not only the singular equitable response to this extraordinary and unprecedented crisis, it is the mindful, innovative, and humane one. We hope you will use your authority to push for a cancellation of the in-person September exam and the implementation of an emergency diploma privilege for applicants to the New York State Bar.

Sincerely,
New York State Law Grad Coalition

CC: Attorney General Letitia James,
Comptroller Thomas P. DiNapoli,
Health Commissioner Dr. Howard A. Zucker,
Assembly Speaker Carl E. Heastie

Att: April 2020 Letter to Court of Appeals

April 3, 2020

Chief Judge Janet DiFiore
New York State Court of Appeals
20 Eagle Street
Albany, NY 12207

CC:
Associate Judges, New York State Court of Appeals

RE: Student Response to the Postponement of the July 2020 Bar Examination

Chief Judge DiFiore and Associate Judges,

We the undersigned individuals, members of the class of 2020 from all 15 New York law schools, humbly ask this Court to put forth an expeditious decision on alternatives to an early fall bar exam. While we understand the complexities this public health crisis presents, we share in the Chief Judge’s sentiments that “pause does not mean stand idle.”¹ Sadly, delaying the bar exam to a date uncertain forces graduates to do exactly that.

We request this Court recognize the severe and lasting impacts that this crisis presents and give serious consideration to a “Diploma Privilege-Plus” path to licensure should the proposed September exam fail to materialize in the wake of this pandemic. But at minimum, we request this Court provisionally license 2020 graduates with the condition that we take the bar exam within two years.²

As students living in the current epicenter of the pandemic, we worry about our health and safety, face widespread uncertainty, and fear for our communities. We shoulder significant financial, familial, mental, and emotional burdens that will remain unaddressed should an early September exam fail to occur. Our concern over this possibility is well-founded as both epidemiologists and legal scholars note that “it is impossible to predict a time in 2020 when any jurisdiction could safely schedule an exam administered to large groups of people.”³

Certain groups—the immunocompromised, those that contract the virus, students who have significant family obligations, students of limited means, and those historically underrepresented

¹ *Message from Chief Judge DiFiore on Coronavirus Emergency*, N.Y. CT. APPEALS (Mar. 23, 2020), <http://www.nycourts.gov/whatsnew/pdf/Message323-v6.pdf> [<https://perma.cc/E4D7-ZDF8>].

² We suggest measuring two years from the date of the original July 2020 bar exam (Jul. 28-29, 2020) thereby permitting graduates to take the February and July exams in 2021 and 2022 without losing their temporary practice privileges.

³ Mike Setz, *The bar exam and COVID-19: The need for immediate action*, THE NAT’L JURIST (Mar. 23, 2020), <http://nationaljurist.com/national-jurist-magazine/bar-exam-and-covid-19-need-immediate-action>.

in the legal profession—feel the impact of this pandemic deeply and disproportionately. Moreover, delayed entry into the profession at a time when client demand will be at an all-time high is a disservice to clients in need, as it denies our local communities access to a cadre of eager and civic-minded legal professionals who would otherwise stand ready to help those gravely harmed by this crisis.⁴

Just as this Court temporarily adapted its procedures and policies to keep the justice system intact, so should it temporarily adapt attorney licensing procedures and policies to ensure access to that justice system. Put plainly, we want to get to work. Delaying the bar exam pushes the start of our working life months beyond the original test date. Our ability to practice law turns on licensure, which itself turns on taking the bar exam under the existing rules.⁵ Consequently, a decision to postpone the bar exam means that after three years of law school and all its attendant experiences, sacrifices, and expenses, we cannot *be lawyers*.

I. Effects on the Graduating Class of 2020

The COVID-19 pandemic and the rescheduling of the July exam places extraordinary financial burdens upon law students who only prepared for a two-month period of bar exam study, followed by prospective employment immediately after. Postponing the bar exam means postponing our livelihoods. We scramble to determine the path our careers will take upon graduation and confront a frequently changing job market while our law school debt looms ominously in the background. A continued postponement of licensure does not merely veer us in a different direction, it quite literally opens a sinkhole in the only road we have available.

a. Financial Burden

We cannot afford to take a subsequent bar exam if the proposed September exam is not feasible. By then, the well will have run dry. Most of us depend upon school loans to fulfill our financial obligations.⁶ Students relied upon part-time jobs to pay for food and shelter while studying for the bar. This source of income evaporated the moment this quasi-quarantine began. Bar study stipends, grants, and scholarships that sustain students through July will, at best, be strained come early September and will be fully exhausted for any exam administered thereafter, if they are even still available. The students that did not and could not work during law school now do not qualify for unemployment benefits.

⁴ Sara Randazzo, *New Lawyers Are Swimming in Debt*, WALL ST. J. (Nov. 27, 2019) <https://www.wsj.com/articles/new-lawYERS-are-swimming-in-debt-11574890294>.

⁵ See Rules of Ct. App. 22 NYCRR § 520.

⁶ Randazzo, *supra* note 4.

As of 2019, students graduate from New York law schools with an average of \$124,018 in *law school-related* student debt.⁷ While interest on certain federal student loans has been suspended for a preliminary period of sixty days,⁸ that waiver is temporary, excludes private, Federal Family Education loans, and some Perkins loans, and is unlikely to extend to the point at which graduates would be admitted to practice.⁹ Even if interest stops accruing, a delayed bar exam forces graduates to enter repayment with limited or no income, likely resulting in delinquency and default. For convenience, we lay out each school’s average debt burden here:¹⁰

Law School	Average Indebtedness	Percent of Graduates with Debt
Albany	\$95,996	76%
Brooklyn	\$96,458	73%
Buffalo	\$93,056	79%
Cardozo	\$118,304	62%
Columbia	\$172,656	65%
Cornell	\$154,195	66%
CUNY	\$80,270	71%
Fordham	\$142,326	57%
Hofstra	\$152,758	77%
NYU	\$168,745	64%
New York Law School	\$135,557	74%
Pace	\$105,274	77%
St. John’s	\$111,515	69%
Syracuse	\$109,138	76%
Touro	\$142,941	83%

While graduating students can receive housing extensions, most of these leases end in July. Many students are already displaced due to school closures. The severe burden of housing costs across the state compounds these issues. The chart below shows the 2019 average rent in areas located near New York State law schools:

⁷ See generally *Which Law School Graduates Have the Most Debt?*, U.S. NEWS & WORLD REP., <https://www.usnews.com/best-graduate-schools/top-law-schools/grad-debt-rankings?location=New%20York> [<https://perma.cc/U4AU-7PLF>].

⁸ U.S. Dep’t of Educ., *Coronavirus and Forbearance Info for Students, Borrowers, and Parents*, FED. STUDENT AID, <https://studentaid.gov/announcements-events/coronavirus> [<https://perma.cc/3AHG-J879>].

⁹ Meghan Lustig, *Coronavirus Stimulus: 5 Things Student Loan Borrowers Should Know*, U.S. NEWS & WORLD REP. (Mar. 31, 2020), <https://www.usnews.com/education/blogs/student-loan-ranger/articles/coronavirus-stimulus-things-student-loan-borrowers-should-know>.

¹⁰ *Which Law School Graduates Have the Most Debt?*, *supra* note 7.

School Location	Average Rent
Albany (Albany Law School)	\$1,279 ¹¹
Brooklyn (Brooklyn Law School)	\$3,000 ¹²
Buffalo (University at Buffalo School of Law)	\$950 ¹³
Central Islip (Touro Law Center)	\$1,520 ¹⁴
Hempstead (Maurice A. Deane School of Law at Hofstra University)	\$1,809 ¹⁵
Manhattan (Cardozo School of Law, Columbia School of Law, Fordham Law, New York Law School, NYU School of Law)	\$3,000 ¹⁶
Ithaca (Cornell School of Law)	\$1,893 ¹⁷
Queens (CUNY School of Law, St. John's School of Law)	\$2,202 ¹⁸
Syracuse (Syracuse University College of Law)	\$970 ¹⁹
White Plains (Pace Law School)	\$3,199 ²⁰

¹¹ *Rent Data Trend in Albany, New York: Albany Average Rent*, RENT JUNGLE (Jan. 2020), <https://www.rentjungle.com/average-rent-in-albany-ny-rent-trends/>.

¹² Libertina Brandt, *In the 1940s, you could rent a Brooklyn apartment for \$20 a month. Today, the median rent has skyrocketed to \$3,000*, BUSINESS INSIDER (Aug 22, 2019) <https://www.businessinsider.com/brooklyn-median-rent-increase-3000-a-month-2019-8>.

¹³ *Rent Data Trend in Buffalo, New York: Buffalo Average Rent*, RENT JUNGLE (Jan. 2020), <https://www.rentjungle.com/average-rent-in-buffalo-rent-trends/>.

¹⁴ See, e.g., *Central Islip, NY Listings*, AREAVIBES, <https://www.areavibes.com/central+islip-ny/apartments-for-rent/>, (last visited Apr. 2, 2020).

¹⁵ *Rent Data Trend in Hempstead, New York: Hempstead Average Rent*, RENT JUNGLE (Jan. 2020), <https://www.rentjungle.com/average-rent-in-hempstead-rent-trends/>.

¹⁶ *It Has Never Been This Expensive to Rent in Some Parts of New York City: Report*, NBC N.Y (Nov. 25, 2019), <https://www.nbcnewyork.com/news/local/it-has-never-been-this-expensive-to-rent-in-new-york-city-report/2212193/>.

¹⁷ Libertina Brandt, *The monthly median rent for a studio in Manhattan this summer hit an astonishing 11-year high, and the city's prices are driving people away in drove*, BUSINESS INSIDER (Sep 12, 2019), <https://www.businessinsider.com/cost-of-studio-in-manhattan-hits-eleven-year-high-2019-9>.

¹⁸ *It Has Never Been This Expensive to Rent in Some Parts of New York City: Report*, NBC NEW YORK, (Nov. 25, 2019) <https://www.nbcnewyork.com/news/local/it-has-never-been-this-expensive-to-rent-in-new-york-city-report/2212193/>

¹⁹ Geoff Herbert, *Report: Syracuse Sees Rent Prices Increase 10 Percent from Last Year*, SYRACUSE.COM (Jun. 3, 2019), <https://www.syracuse.com/news/2019/06/report-syracuse-sees-rent-prices-increase-10-percent-from-last-year.html>.

²⁰ *Rent Data Trend in White Plains, New York*, RENT JUNGLE (Jan. 2020), <https://www.rentjungle.com/average-rent-in-white-plains-rent-trends/>.

Because it is not within this Court's jurisdiction to alter the payment structure of our federal loans or offer direct financial relief to May 2020 graduates, we are asking this Court to provide relief that *is* within its jurisdiction.

b. Employment Uncertainty

Just as the uncertainty of the bar looms over us, the uncertainty of post-graduate work in a time of indeterminate social distancing and profound economic upheaval looms even larger. The economic turmoil wrought by COVID-19 shutdowns will compel employers to rethink their hiring for the class of 2020. Some employers may rescind offers, while others may require graduates to begin work while they study for their respective bar exam. This is the likely reality for those of us who accepted offers to begin our careers in August. No matter the myriad of possibilities, we are all at a significant disadvantage, which is only amplified by not being able to be admitted to the profession we have worked tirelessly for. Notably, these disadvantages will hinder the efforts to diversify the profession. The financial and professional difficulties that New York bar candidates now face cannot be understated; in each of the potential scenarios, the graduate is at a detriment.

We are already running out of money, accruing debt, losing jobs and housing, and aching over our uncertain futures after what were the three most demanding years of our lives. Starting a career under these circumstances could disadvantage a candidate's "character and fitness" application due to the unique role that financial management plays in determining whether a candidate for licensure is fit to be admitted in New York State.

c. Toll on Students' Physical and Mental Health

Law students in New York are uniquely situated because we experience the effects of the COVID-19 pandemic directly. We hear the constant call of sirens and hold our loved ones a little closer as we stress over the health and safety of the vulnerable within our families, communities, and our profession. Some students have contracted the virus, while others have family members in the hospital. These same students and families are reliant on health coverage given by their law school or their future employer, the latter of which could be lost due to this crisis. We impress upon the Court the multitude of situations playing out across the city and state, and how these events fall disproportionately on a pool of candidates that represent the diverse face of the New York legal community in 2020, including students who have significant family obligations, students of limited means, and those historically underrepresented in the profession.

II. Effects on the Community at Large

The impact of the COVID-19 pandemic will leave an imprint in the landscape of New York State long after the apex passes.²¹ Despite the shuttering of businesses and courts around the state, demand for lawyers remains high as clients address new challenges in the wake of the COVID-19 pandemic.²² In fact, New York State Bar Association (NYSBA) President Henry M. Greenberg believes the “pent-up demand for legal services will be enormous,” and that institutional legal service providers and public interest organizations will be overwhelmed with “requests for legal services to handle claims by creditors and potential eviction proceedings and you name it.”²³ Any exam administered after September will dually burden graduates with the obligation to serve our clients during some of our State’s most desperate times, while simultaneously undertaking extensive studies to pass the bar.

Yet, we 2020 graduates have knowledge and skills that will be particularly needed. In addition to our three years of legal education, we are fully equipped to function online, should social distancing protocols continue. We urge this Court to tap our critical skills to serve the legal needs of New York State. Although we are not medical students, we applaud the efforts of New York medical schools that have graduated classes early to join the front lines during this pandemic.²⁴ While medicine and law differ, we similarly recognize our calling to serve our communities.

III. An Early Fall Exam is Not a Guarantee

The trajectory of this public health crisis indicates that administering a fall exam may not be possible. Governor Cuomo warns that the COVID-19 health crisis “is not going to get better soon.”²⁵ The federal government’s existing COVID-19 Response Plan assumes “[a] pandemic will last 18 months or longer.”²⁶

²¹ See generally Claudia Angelos et al., *The Bar Exam and the COVID-19 Pandemic: The Need for Immediate Action* (Ohio State Univ., Moritz Coll. of Law, Ctr. for Interdisciplinary Law & Policy Studies, Legal Studies Working Paper Series No. 537, Mar. 22, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3559060.

²² Paula L. Green, *Despite Crisis, Demand Soars for Many Lawyers’ Expertise*, NYSBA (Mar. 25, 2020), <https://nysba.org/despite-crisis-demand-soars-for-many-lawyers-expertise/>.

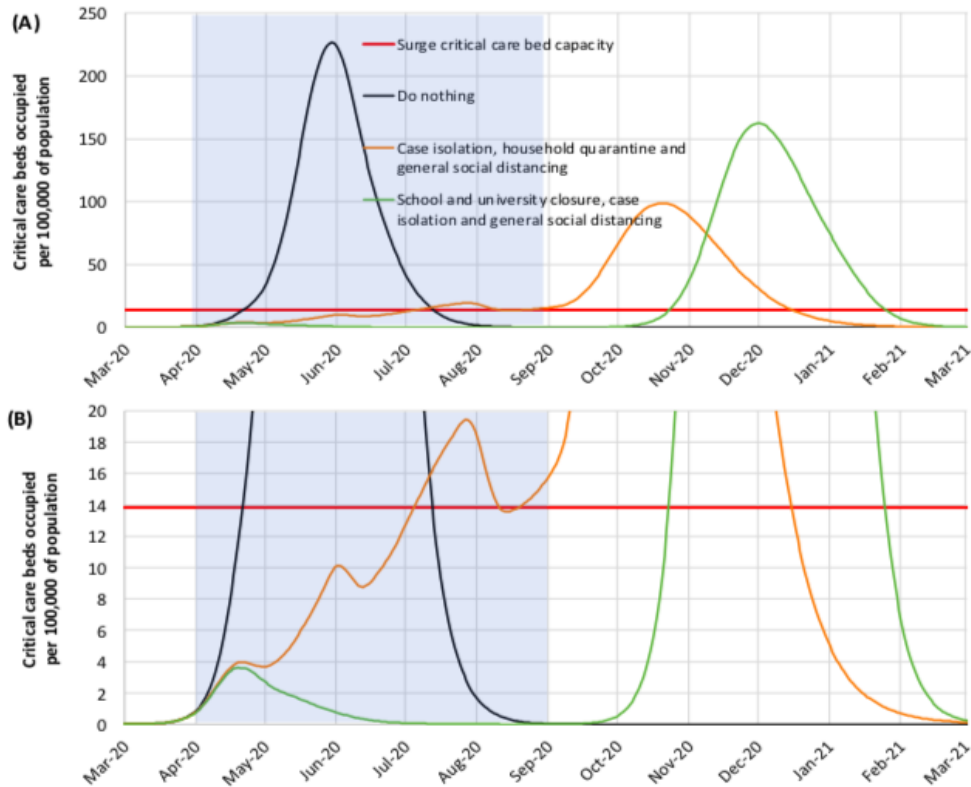
²³ Jane Wester, *NY State Bar Association, Courts to Launch Pro Bono Network to Help With Pandemic Response*, LAW.COM (Mar. 29, 2020), <https://www.law.com/newyorklawjournal/2020/03/29/ny-state-bar-association-courts-to-launch-pro-bono-network-to-help-with-pandemic-response/>.

²⁴ Emma Goldberg, *Early Graduation Could Send Medical Students to Virus Front Lines*, THE NEW YORK TIMES Mar. 26, 2020, <https://www.nytimes.com/2020/03/26/health/coronavirus-medical-students-graduation.html>.

²⁵ Lisette Voytko, *Cuomo Extends New York Social Distancing To After Easter, Trump’s Preferred End Date*, FORBES (Mar. 29, 2020 12:45PM), <https://www.forbes.com/sites/lisettevoytko/2020/03/29/cuomo-extends-new-york-social-distancing-guidelines-to-april-15-after-easter-trumps-preferred-end-date/> [https://perma.cc/KLU2-7BZK].

²⁶ See U.S. DEP’T OF HEALTH & HUMAN SERVS., PANCAP ADAPTED U.S. GOVERNMENT COVID-19 RESPONSE PLAN at 4, Mar. 13, 2020), <https://int.nyt.com/data/documenthelper/6819-covid-19-response-plan/d367f758bec47cad361f/optimized/full.pdf> [https://perma.cc/Z3VP-ESXH].

Figure A1: Suppression strategy scenarios for US showing ICU bed requirements. The black line shows the unmitigated epidemic. Green shows a suppression strategy incorporating closure of schools and universities, case isolation and population-wide social distancing beginning in late March 2020. The orange line shows a containment strategy incorporating case isolation, household quarantine and population-wide social distancing. The red line is the estimated surge ICU bed capacity in US. The blue shading shows the 5-month period in which these interventions are assumed to remain in place. (B) shows the same data as in panel (A) but zoomed in on the lower levels of the graph.



These non-uniform responses prove it may take much longer to begin returning to normal than the Court’s recent decision to postpone the bar exam implies.²⁷ Additionally, scientific models project that this virus will have multiple spikes, similar to the 1918-19 Spanish Flu Pandemic.²⁸ If New York’s restrictions on gatherings and movement have not continued through those spikes, their reinstatement will almost certainly follow. Since the timeline of this virus is impossible to predict, it is impossible to ensure a traditional administration of the exam in the fall.

As the current epicenter of the COVID-19 pandemic, New York is uniquely positioned to affect the country’s plans and adapt its attorney licensing procedures to meet the moment. Many students looked to this exam as the only constant in a world of uncertainties. The physical toll that

²⁷ See, e.g., Neil M. Ferguson et al., *Impact of Non-Pharmaceutical Interventions (NPIs) to Reduce COVID-19 Mortality and Healthcare Demand*, IMPERIAL C. LONDON (Mar. 16, 2020), <https://spiral.imperial.ac.uk:8443/handle/10044/1/77482> [<https://perma.cc/P3JY-QFHD>].

²⁸ *Id.*

indefinitely delaying the bar exam will have on our study habits endangers an entire class of new attorneys. The lack of access to schools, libraries, and public places for studying purposes will disadvantage test-takers who are sheltering in unfavorable situations.²⁹ In addition, removing the opportunity to sit for the exam without any real plan as to the future has already impacted, and will continue to impact, the mental health of countless students. Therefore, we urge this Court to consider the unexpected consequences of this decision, as our livelihoods hang in the balance.

IV. Feasible Alternatives Should an Early Fall Exam Not Take Place

We acknowledge the recent notice sent from the Court of Appeals announcing its intention to have the bar exam administered during the first weekend of September.³⁰ We agree that an early September exam would be an equitable solution given the circumstances, notwithstanding financial inconveniences to students. However, we request that, should a September exam take place, this Court work with the appropriate officials to ensure the grading process is expedited. Doing so will guarantee that there is no delay between law school graduation and licenses being distributed, which would allow employment timelines to continue uninterrupted. Nonetheless, based on the ever-changing data surrounding this virus and the fact that a decision on this matter must be met with urgency, we believe any guarantee of a traditional administration of the exam in the fall will be impossible to make. Therefore, in conjunction with the letter submitted by the fifteen New York Deans on April 1, 2020, we request you consider the following alternatives when determining how best to proceed.³¹

a. *“Diploma Privilege - Plus”*

We are cognizant of the concerns surrounding a decision to forego the bar exam, should it become impossible to administer the exam in early September. However, we impress upon detractors the fact that we are squarely denied the opportunity to sit for the bar exam at the expected time and without significant distraction. We do not merely seek a “free pass.” This pandemic is unprecedented, and as such, we seek an accommodation that enables us to move forward with our careers and our lives.

NYSBA argues an estimated fifteen percent of bar takers do not pass the bar exam, and because law schools shifted to a pass/fail grading system this semester, some students may not show a

²⁹ Stephen Maugeri, *Coronavirus Precautionary Protocols Put victims of Domestic Violence at Risk*, CBS6 NEWS (Mar. 23, 2020), <https://cbs6albany.com/news/coronavirus/coronavirus-precautionary-protocols-put-victims-of-domestic-violence-at-risk>.

³⁰ Update on Rescheduling of July 2020 New York State Bar Exam, N.Y. CT. OF APPEALS (Mar. 31, 2020), <https://www.nycourts.gov/ctapps/>.

³¹ Letter from the Deans of the Fifteen Accredited Law Schools of the State of New York, to Hon. Janet DiFiore, Chief Judge of the New York Court of Appeals (Apr. 1, 2020) (on file with the New York Court of Appeals).

“minimum degree of competency.”³² The latter concern rings hollow as students have attended classes for at least half of the semester before the switch to pass/fail and shelter-in-place. Furthermore, for 2020 graduates, the pass/fail system applies only to our very last semester of grades. By this time, graduating students everywhere have taken all required doctrinal courses and most heavy elective courses as well. We see no reason why the shift to pass/fail would have any significant impact on the competency of the 2020 graduates at any law school anywhere. In terms of the fifteen percent of students who are annually denied admission to the bar due to their comparative performance on the bar exam, it is our contention that there are numerous, and perhaps more equitable contingencies, to ensure that Spring 2020 candidates are fit for practice in an enhanced Emergency Diploma Privilege-Plus model.

In fact, the class of 2020 is in a better position than previous years in regard to preparedness. The Courts’ pathways requirements and the ABA’s experiential education requirements that are currently mandated for licensure give us an advantage in entering the field of law. Therefore, we see no issue in the competency of these students and with this proposed method with contingencies, it would be comparable to the system currently in place.

Legal scholars offered several examples of requirements that would allow for an Emergency Diploma Privilege with additional substantive requirements to ensure competency in the areas tested by the bar exam. We reiterate some of those suggestions here (original footnotes are omitted):

- Completion of online courses or exams that the state has developed to supplement the UBE. Both the MPRE and NYLE serve as models for the administration of such a program.
- Affidavit from an employer or externship supervisor that the candidate possesses the knowledge and skills to practice law with minimum competence. Law schools have developed rubrics for externships and clinical courses that could be used to guide that assessment.
- Completion of CLE programs. New York could, if desired, specify programs in areas of particular client need and/or avoidance of common entry-level pitfalls.
- Completion of specified CALI lessons. The Center for Computer-Assisted Legal Instruction, “CALI,” maintains over 1,000 lessons on legal principles, including all subjects covered by most bar exams.

b. A Universal System of Provisional, Temporary Authorization

Should this Court deny our request for “Diploma Privilege - Plus,” we request that this Court license recent graduates to practice law with the condition that they take the bar exam within two

³² Karen Sloan, *Amid More Bar Exam Delays, Push for Diploma Privilege Grows*, LAW.COM (Mar. 30, 2020), https://www.law.com/2020/03/30/amid-more-bar-exam-delays-push-for-diploma-privilege-grows/?cmp=share_twitter&fbclid=IwAR3aiLxQ4R8T4rOyQ3HjLVULY6_KTUC3mitVjfywumN788B9uEZwgrSPDrc.

years.³³ Individuals could choose to take a Fall 2020 exam or any exam thereafter within the two-year window that best fits their circumstances, but could still practice law under the supervision of a licensed attorney while awaiting resolution of the COVID-19 crisis.

This Court could create that opportunity by first invoking its authority to waive the bar examination requirement for graduates of New York law schools contingent on sitting for the exam within two years.³⁴ For graduates of law schools outside of New York, we agree with NYSBA that this Court should seek a clarification or legislative fix to Judiciary Law sections 478 and 484 that expands temporary practice orders to students who have graduated from any law school but have not yet sat for the exam.³⁵ This expansion would allow graduates the opportunity to financially plan and establish themselves in the legal community at nearly the same pace as intended.

Creating pathways to provisional, temporary authorizations conditioned on sitting for the exam within a two-year window permits graduates to enter the legal workforce at roughly the same time they would have otherwise, staving off long-term financial uncertainty while preserving the exam's gatekeeping function.³⁶ Two years seems a reasonable amount of time to give graduates acutely affected by the pandemic the opportunity to regroup, and then study for and take the bar exam without sacrificing prospects, offers of employment, or pursuing further educational opportunities. Some graduates and employers would also be free to privately negotiate time off to prepare for and take the exam. And above all, this option sustains and expands access to justice in New York State and maintains, as closely as possible, the courses we set for our careers—our lives—no less than three years ago.

We note, however, that not all students will be well-positioned to negotiate the time off to study for the bar exam, putting them in the unenviable—perhaps impossible—predicament of preparing for the bar exam while working full-time. That disadvantage will likely fall heaviest on international graduates, as well as those employed by government, public interest organizations, and small law firms. Therefore, we repeat our call for this Court to adopt a diploma privilege plus rule to accommodate the qualified and hardworking members of the class of 2020 who would otherwise be left out in the cold.

³³ To reiterate, we suggest measuring two years from the date of the original July 2020 bar exam (Jul. 28-29, 2020) thereby permitting graduates to take the February and July exams in 2021 and 2022 without losing provisional licensure.

³⁴ See N.Y. JUD. LAW § 53(5).

³⁵ *Second Report of the Task Force on the New York Bar Examination: The Coronavirus and Bar Examination Administration*, NSYBA 9 (Mar. 30, 2020), <https://nysba.org/app/uploads/2020/03/Second-Report-of-the-Task-Force-on-the-New-York-Bar-Examination-April-2020.pdf> [<https://perma.cc/86E3-PL4H>].

³⁶ As NYSBA points out, emergency diploma privilege (without additional contingencies) would likely introduce inequities to the admission-by-examination procedure, most notably between recent unsuccessful exam takers and would-be July 2020 first-time takers. See *id.* at 18. A provisional temporary authorization to practice mitigates those concerns by requiring that all individuals eventually take and pass the bar exam.

III. Conclusion

We thank Your Honors for reading this letter and taking the perspective of those directly affected into serious consideration. Again, we urge this Court to acknowledge these times for what they are and to accommodate us appropriately, compassionately, with innovation and forward-thinking. With utmost respect, we ask that this unprecedented time be coupled with prompt, unprecedented action.

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