



Oct. 6, 2020

Honorable Nathan L. Hecht
President, Conference of Chief Justices
c/o Association and Conference Services
300 Newport Avenue
Williamsburg, VA 23185-4147

Re: Civil Rights Concerns with Administration of
Bar Examinations

Dear Chief Justice Hecht:

The undersigned members and allies of the Consortium for Citizens with Disabilities (CCD) Rights Task Force, along with the Lawyers' Committee for Civil Rights Under Law, write to urge you to develop a bar admissions response to the coronavirus epidemic that ensures the equitable treatment of people of color and people with disabilities. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The Lawyers' Committee for Civil Rights Under Law is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination and the resulting inequality of opportunity – work that continues to be vital today.

We write in relation to the administration of various state bar exams in the coming months. As you are aware, in the first week of October, twenty jurisdictions will be administering online exams;¹ others will be administering online exams later in October;² Puerto Rico will be administering an

¹ Arizona, California, Connecticut, District of Columbia, Georgia, Idaho, Illinois, Kentucky, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania (three-day exam, Oct. 5-7), Tennessee, Texas, Vermont, Virgin Islands. *July 2020 Bar Exam Status by Jurisdiction*, National Conference of Bar Examiners (Sept. 18, 2020), <https://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information/status-table/>.

² Florida (Oct. 13), Louisiana (Oct. 10). *July 2020 Bar Exam Status by Jurisdiction*, National Conference of Bar Examiners (Sept. 18, 2020), <https://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information/status-table/>.

in-person exam in November.³ It remains unclear what format the February 2021 exams will take. We are concerned that the administration of these exams, whether in-person or online, will impose unfair disadvantages on people of color and people with disabilities.

We ask that you endorse the widespread adoption of temporary diploma privilege for the duration of the crisis—the only fair and safe method of bar admission under current conditions. This will facilitate the economic security of recent law graduates and make the bar admissions process more equitable. Furthermore, it will be an important step toward mitigating the underrepresentation of people of color and people with disabilities in our profession.

We understand that moving toward a temporary diploma privilege framework may not be feasible prior to the currently-scheduled exams in the first week of October, or that some states will be resistant to it. Even so, much can still be done to reduce the harm to examinees of color and examinees with disabilities. States declining to implement a temporary diploma privilege must implement a flexible approach that allows for either an open-book examination with accessible software and sufficient lead time for accommodation requests to be addressed. As discussed below, these changes will ameliorate, albeit not eliminate, the discriminatory impact that the use of facial recognition technology and unreasonable limitations on examinee behavior—such as prohibiting bathroom breaks—will have.

Moving forward without making any changes will be inequitable, discriminatory, and may expose state bars to liability under the Americans with Disabilities Act and relevant state anti-discrimination laws.⁴

I. In-Person and Online Exams will disproportionately limit access for People of Color and People with Disabilities

The alternatives to temporary diploma privilege—i.e., in-person or online bar exams—introduce unacceptable risks and create barriers that will disproportionately exclude people of color and people with disabilities from the legal profession. At a time when our country is dealing with an economic recession disproportionately impacting communities of color and other underrepresented groups, it is especially incumbent upon the leaders of the legal profession to consider how their responses may exacerbate existing and longstanding inequities in our legal profession. Black Americans, for example, are strikingly underrepresented within the legal profession: a 2019 survey of 238 large law firms revealed that Black lawyers made up less than 5 percent of associates and less than 2 percent of equity partners.⁵ People with disabilities are likewise underrepresented in the legal profession: while people with disabilities constituted about

³ *July 2020 Bar Exam Status by Jurisdiction*, National Conference of Bar Examiners (Sept. 18, 2020), <https://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information/status-table/>.

⁴ *See, e.g.*, Brandon Lowrey, *Calif. State Bar Sued Over Exam Accommodations*, Law360.com (September 15, 2020), <https://www.law360.com/articles/1310499/calif-state-bar-sued-over-exam-accommodations>.

⁵ *Analysis: Black Workers Are Under-Represented in Legal Industry*, Bloomberg Law (June 11, 2020), <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-black-workers-are-under-represented-in-legal-industry>.

20 percent of the general population in 2010, only 0.54 percent of attorneys at law firms, 6.87 percent of ABA members, and about 2.5 to 3.5 percent of law school graduates self identify as having a disability.⁶ The actual number of disabled law school graduates is higher.⁷

If the leadership of our profession fails to act, these disparities are likely to worsen in light of the fact that the economic fallout of the coronavirus pandemic has hit people of color and people with disabilities hardest. For example, Labor Department data show that unemployment among Black Americans increased from 6.1 percent in the second quarter of 2019 to 16.1 percent in the second quarter of 2020; by contrast, unemployment among white Americans rose to 12 percent.⁸

A. In-Person Bar Exams Likely Will Spread Coronavirus and Especially Harm People of Color and People with Disabilities

In-person bar exams will likely result in the further spread of the virus because they involve large numbers of people traveling significant distances to be in a single location for an extended period of time. According to the CDC, the risk of spreading coronavirus is highest at “[l]arge in-person gatherings where it is difficult for individuals to remain spaced at least 6 feet apart and attendees travel from outside the local area.”⁹ We have already begun to see the harmful results from this approach. For example, at least one person who sat for the in-person Colorado bar exam in July tested positive for COVID-19 shortly after the exam was administered.¹⁰ Twenty other people shared a room with her for approximately 16 hours.¹¹

People with disabilities are especially at risk under such conditions. People with cancer, a variety of heart conditions, an immune system disorder, chronic kidney disease, and other conditions are

⁶ Angela Morris, *Are law firms committed to disability diversity? A handful of firms have taken action*, ABA Journal (Oct. 24, 2018), https://www.abajournal.com/news/article/law_firms_disability_diversity; National Association for Law Placement, Inc. (NALP), *2019 Report on Diversity in U.S. Law Firms* 8, 30, & Table 11, https://www.nalp.org/uploads/2019_DiversityReport.pdf; ABA Disability Statistics Report (2011), https://www.americanbar.org/content/dam/aba/administrative/market_research/20110314_aba_disability_statistics_report.pdf.

⁷ Among law school graduates taking the California bar exam in October 2020, 6.5 percent were approved for disability-related testing accommodations. *Gordon v. State Bar of California*, 3:20-cv-06442-LB, ECF 44-1 (Hershkowitz Declaration), ¶¶ 49, 51 (Sept. 22, 2020) (657 of 10,043 were approved for testing accommodations). The number of disabled law school graduates is likely higher than 6.5 percent, as many disabled law graduates do not need testing accommodations.

⁸ *Labor Force Statistics from the Current Population Survey*, U.S. Bureau of Labor Statistics (July 2, 2020), https://www.bls.gov/web/empsit/cpsee_e16.htm.

⁹ *Considerations for Events & Gatherings*, Centers for Disease Control and Prevention (July 7, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>.

¹⁰ Elizabeth Hernandez, *Person who took bar exam at University of Denver tests positive for COVID-19 following contested test*, Denver Post (July 30, 2020), <https://www.denverpost.com/2020/07/30/colorado-bar-exam-coronavirus-du/>.

¹¹ *Id.*

at “increased risk of severe illness from COVID-19.”¹² Furthermore, several other categories of people with disabilities may be at increased risk of contracting COVID-19, such as people with limited mobility who have difficulty avoiding contact with others who are infected, or practicing preventive measures (e.g., hand washing).¹³

These risks are especially alarming for people of color who, because of longstanding racial inequities in access to healthcare, are more likely to have CDC-identified underlying conditions, such as diabetes and chronic obstructive pulmonary disease, that make them more susceptible to complications from COVID-19. Blacks are 4.7 times more likely to require hospitalization and 2.1 times more likely to die from COVID-19 than were their white counterparts; likewise, Native Americans were 5.3 times more likely to require hospitalization and 1.4 times more likely to die from COVID-19; Latinos were 4.6 times more likely to require hospitalization and 1.1 times more likely to die from COVID-19.¹⁴

For many bar applicants, waiting until the pandemic is “over” to sit for the exam is no choice at all, as for many their job prospects are entirely contingent upon their ability to become licensed to practice.¹⁵ The lack of meaningful choice is especially pronounced among applicants of color, who disproportionately have more debt and less money saved.¹⁶

It is fundamentally unfair to force bar applicants to choose between risking their life by sitting for an in-person bar exam on the one hand and losing job offers and income on the other hand.¹⁷ This is especially the case when those burdens will fall on those most likely to already be struggling as a result of the pandemic.

B. Online Bar Exams will Disproportionately Disadvantage People of Color and People with Disabilities

¹² *People with Certain Medical Conditions*, Centers for Disease Control and Prevention (Sept. 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

¹³ *People with Disabilities*, Centers for Disease Control and Prevention (Sept. 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html>.

¹⁴ *COVID-19 Hospitalization and Death by Race/Ethnicity*, Centers for Disease Control and Prevention (Aug. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

¹⁵ Julie Merow, *Why a delayed bar exam is a financial and legal disaster*, ABA for Law Students (April 10, 2020), <https://abaforlawstudents.com/2020/04/10/why-a-delayed-bar-exam-is-a-financial-and-legal-disaster/>.

¹⁶ See Sharmila Choudhury, *Racial and Ethnic Differences in Wealth and Asset Choices*, Social Security Bulletin (2002), <https://www.ssa.gov/policy/docs/ssb/v64n4/v64n4p1.html>; Liz Smith, *Here's how much Americans have in their savings accounts*, Business Insider (February 8, 2020), <https://www.businessinsider.com/how-much-the-average-american-has-in-their-savings-account-2018-2>; Gita Z. Wilder, *Law School Debt Among New Lawyers*, National Association for Law Placement (2007), https://www.nalp.org/assets/645_ajddebtmonograph2007final.pdf.

¹⁷ E.g., Ellie Melero, *Oklahoma law professors, grads express concerns over July bar exam*, The Oklahoman (July 10, 2020), <https://oklahoman.com/article/5666430/oklahoma-law-professors-grads-express-concerns-over-july-bar-exam>.

Some states have implemented online exams in lieu of in-person exams. However, online exams will also likely create discriminatory outcomes for people of color and people with disabilities, for a variety of reasons. Some of these problems are fundamental to the format—for example, the requirement of Internet access and a quiet place in which to take the exam, which disproportionately people of color and people with disabilities do not have. Others are the product of deeply flawed software and discriminatory policies used to implement the online exams.

- i. *Online exams disadvantage people without reliable Internet access, who are disproportionately people of color and people with disabilities*

Online bar examinations also pose grave concerns to the communities we serve that have long faced barriers to seamless online access. A reliable and fast Internet connection is especially important in jurisdictions where the bar exam software is designed to monitor the examinee’s behavior via webcam. People of color and people with disabilities are less likely than their white counterparts to have access to stable Internet. For example, one study revealed that “[w]hile 81 percent of Whites and 83 percent of Asians have home internet, only 70 percent of Hispanics, 68 percent of Blacks, 72 percent of American Indian/Alaska Natives, and 68 percent of Native Hawaiian/Pacific Islanders are connected at home.”¹⁸ People with disabilities face similar disparities. Only one in four disabled adults reports having high-speed internet at home, a smartphone, a desktop or laptop computer *and* a tablet, compared with 42% of non-disabled adults.¹⁹ Disabled adults are also less likely than people without disabilities to have a high level of confidence in their ability to use the internet and other communication devices to keep up with information (39% vs. 65%).²⁰ Accordingly, when access to fast and stable Internet becomes a prerequisite to sit for the bar exam, it is disproportionately people of color and people with disabilities who suffer.

Even for those who do have Internet access, online bar exams present difficulties that will disproportionately fall on people of color and people with disabilities. For example, there are similar disparities in access to suitable online exam locations. The ability to sit for an online exam alone in a quiet place is essential, as examinees may be disqualified for “cheating” if they interact with others.²¹ Yet, while only 37 percent of white applicants reported having a “quiet place” to take an online bar exam, even fewer – less than 25 percent - of Black, Asian, and Latinx applicants

¹⁸ S. Derek Turner, *Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption*, Free Press, at 4 (December 2016), https://www.freepress.net/sites/default/files/legacy-policy/digital_denied_free_press_report_december_2016.pdf; see also Rep. G.K. Butterfield, *Race and the digital divide: Why broadband access is more than an urban vs rural issue*, The Hill (May 13, 2019), <https://thehill.com/blogs/congress-blog/technology/443336-race-and-the-digital-divide-why-broadband-access-is-more-than>.

¹⁹ Monica Anderson and Andrew Perrin, Pew Research Center, *Disabled Americans are less likely to use technology* (Apr. 7, 2017), <https://www.pewresearch.org/fact-tank/2017/04/07/disabled-americans-are-less-likely-to-use-technology/>.

²⁰ *Id.*

²¹ See Claire Newsome and Catherine Perrone, *The Inequity and Technology Behind an Online Bar Exam*, Jurist.org (July 18, 2020), <https://www.jurist.org/commentary/2020/07/newsome-perrone-online-bar-exams/>.

said they do.²² In short, online bar exams exacerbate existing inequalities, creating unnecessary barriers to admission to the bar.

- ii. *The exam software is flawed because it is incompatible with accessibility devices and inaccurate in identifying people of color*

ExamSoft and ISG, the software most often used by state bars for administering the exam, themselves raise serious concerns about discrimination. Both present serious accessibility problems for many individuals with disabilities. They require applicants to disable JAWS,²³ a screen reader that assists individuals with visual impairments by providing speech and braille output. Examsoft similarly is incompatible with speech recognition software, which many people with disabilities need to operate a computer.²⁴

Many online exams propose to use facial recognition technology (FRT) in lieu of human proctoring, which may harm people of color. Although little information about this particular FRT is available—because the October exams will be among the first to use it and because the companies responsible have not provided the public with relevant information—all available information suggests that FRT will have a discriminatory effect.

Of particular concern is that FRT is imperfect and is disproportionately inaccurate in recognizing the faces of people of color. The *New York Times* recently covered the experiences of bar examinees of color who have already experienced problems with the bar exam’s facial recognition software, which claims not to recognize them due to “poor lighting”—even when they sit directly in front of a lamp.²⁵ Their experiences comport with extensive research on FRT, which shows that FRT works well at identifying white men, is somewhat inaccurate at identifying white women, is inaccurate at identifying men of color, and is extremely inaccurate at identifying women of color. For example, a 2019 study by the American Civil Liberties Union revealed a FRT error rate of 20 percent in correctly identifying people of color.²⁶ Another recent study conducted by NIST found that Asian and African American people were frequently misidentified as much as 100 times more than white men.²⁷ Another study from MIT found that light-skinned men were correctly identified

²² Claire Newsome and Catherine Perrone, *The Inequity and Technology Behind an Online Bar Exam*, Jurist.org (July 18, 2020), <https://www.jurist.org/commentary/2020/07/newsome-perrone-online-bar-exams/>.

²³ *October 2020 Bar Exam FAQs*, The State Bar of California, <https://www.calbar.ca.gov/Portals/0/documents/admissions/Examinations/October-2020-Bar-Exam-FAQs.pdf>.

²⁴ *Id.*

²⁵ Anushka Patil and Johnah Engel Bromwich, *How It Feels When Software Watches You Take Tests* (Sept. 29, 2020), <https://www.nytimes.com/2020/09/29/style/testing-schools-proctorio.html>.

²⁶ ACLU of Northern California, *Facial Recognition Technology Falsely Identifies 26 California Legislators with Mugshots* (Aug. 13, 2019), <https://www.aclunc.org/news/facial-recognition-technology-falsely-identifies-26-california-legislators-mugshots>.

²⁷ Patrick Grother, Mei Ngan & Kayee Hanaoka, *Face Recognition Vendor Test (FRVT), Part 3: Demographic Effects*, National Institute of Standards and Technology (Dec. 2019) <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>.

99% of the time, while only 65% of darker-skinned women were correctly classified.²⁸ Much of this disparity can be attributed to the fact that the data used to train facial recognition algorithms underrepresent darker-skinned people.²⁹ Moreover, this disparity could grow worse over time because accuracy decreases as the size of the database increases when attempting to match an individual to a database. Because FRT will be used up to four times per day per examinee to “verify” the identity of examinees,³⁰ and in many instances also used to monitor behavior during the exam,³¹ it is a statistical certainty that people of color will be impeded in their ability to sit for or complete online bar exams using FRT.

- iii. *Exam rules implemented to facilitate automated proctoring are unfair and unduly burdensome on people with disabilities.*

Exam policies for automated proctoring have also failed to consider their impact on people of color and people with disabilities. We have already seen how these rules can be burdensome on all examinees. In the United Kingdom, for example, similar rules—also linked to the use of FRT—created a situation in which law students were forced to “urinate in bottles and buckets – without looking away from their computer screens while doing so.”³²

These problems will be even worse for examinees with disabilities. As in the United Kingdom, some remote exams prohibit bathroom breaks during exam sessions; during these exams, students must wait until an official break, which happens approximately once every 90 minutes.³³ For examinees who are pregnant, who have gastrointestinal conditions, or who have irritable bowel syndrome, for example, it simply is not possible to take a multi-hour exam without taking any restroom breaks.³⁴ The policies will also interfere with the ability of examinees with disabilities, like Attention Deficit Hyperactivity Disorder, who are unable to sit still in one place without moving for 90 minutes.³⁵ Similarly, one student with Tourette Syndrome voiced concern on Facebook that he “couldn’t comply with any of these stay still requirements.”³⁶ Some applicants

²⁸ Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, 81 Proceedings of Machine Learning Research 1–15 (2018).

²⁹ *Id.*

³⁰ *E.g.*, *Remote Proctored Bar Exam Schedule*, The State Bar of California, <http://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/Bar-Exam-Schedule>

³¹ *E.g.*, David Jesse, *Michigan’s online bar exam testers worry software tracks eye movements, noises*, Detroit Free Press (July 28, 2020), available at <https://www.freep.com/story/news/education/2020/07/28/michigan-online-bar-test-michigan/5518279002/>

³² Staci Zaretsky, *Law Students Forced To Urinate While Being Watched By Proctors During Remote Ethics Exam*, Above the Law (Aug. 18, 2020), <https://abovethelaw.com/2020/08/law-students-forced-to-urinate-while-being-watched-by-proctors-during-remote-ethics-exam/>.

³³ *October Online Bar Exams Spark Technology, Privacy Concerns*, Bloomberg News (Aug. 18, 2020), <https://news.bloomberglaw.com/us-law-week/october-online-bar-exams-spark-technology-privacy-concerns>.

³⁴ *Id.*; *Report on Concerns Regarding Online Administration of Bar Exams*, National Disabled Law Students Association (July 29, 2020), https://ndlsa.org/wp-content/uploads/2020/08/NDLSA_Online-Exam-Concerns-Report1.pdf.

³⁵ *Id.*

³⁶ *Id.*

with diabetes have reported being actively discouraged by bar examiners from using the accommodations they were granted during a remote examination, such as blood glucose management tools and food and drink, as these would result in the test being flagged for review.³⁷

Also concerning is the practice in many states of demanding that examinees requiring testing accommodations instead take the exam in person. For reasons already explained, many people with disabilities are especially at risk with regard to COVID-19; demanding that they risk exposure simply because they require an accommodation for their disability is fundamentally unfair. According to one applicant: “I was told that if I got accommodations, I would have to take the test in person. I can’t afford to get sick so I had to make the decision to take the exam without accommodations because I can’t risk my life.”³⁸ It is unreasonable to force people with disabilities to make these choices simply for the sake of software—technology should work for us, not the other way around.

Because neither the in-person exam format nor the online exam format can be executed without disproportionately disadvantaging people of color and people with disabilities, the widespread adoption of temporary diploma privilege is the only acceptable method for the admission of new attorneys to the bar.

II. States Must Adopt Temporary Diploma Privilege or Take Immediate Steps to Mitigate the Harm their Coronavirus Response will Cause to People of Color and People with Disabilities

In light of the above, we believe that the best response to the coronavirus crisis—and the only response that would not disproportionately impact marginalized communities—is the immediate implementation of temporary diploma privilege for the duration of the epidemic. Temporary diploma privilege can be administered in a way that ensures the ample qualification of those invited to join the legal profession.

A. Diploma Privilege is Not Novel and can be Implemented without Adverse Effects

Implementation of temporary diploma privilege will not adversely affect the legal community. Wisconsin and New Hampshire have long offered diploma privilege to graduates of law schools within their states. No research, including disciplinary data in those states, suggests that diploma privilege results in a higher rate of attorney misconduct.³⁹ Accordingly, we support the implementation of temporary diploma privilege for the duration of the coronavirus crisis.

Diploma privilege has already been adopted in several states, to good effect. For example, in Washington, those eligible for admission through diploma privilege include individuals who

³⁷ Joe Patrice, *Bar Examiners Ask Applicants To Kindly Stop Being Diabetic For A Couple Days*, Above the Law (Sept. 3, 2020), <https://abovethelaw.com/2020/09/bar-examiners-ask-applicants-to-kindly-stop-being-diabetic-for-a-couple-days/>.

³⁸ See *Report on Concerns*, *supra* note 33.

³⁹ See Emily M. Croucher and Allysa M. G. Scheyer, *Diploma Privilege Is the Only and Humane Path to Licensure During the COVID-19 Crisis*, Jurist.com (Apr. 9, 2020), <https://www.jurist.org/commentary/2020/04/croucher-scheyer-diploma-privilege/>.

registered for the July or September 2020 exam and who have received a J.D. from an ABA accredited law school.⁴⁰ Meanwhile, both Louisiana and Utah have each adopted variations on diploma privilege, which involve supervised practice (Utah) or additional continuing legal education requirements (Louisiana).⁴¹ The District of Columbia recently joined the jurisdictions offering diploma privilege; like Utah, the District makes admission contingent upon supervision by a licensed attorney.⁴²

Each of these models would be a significant improvement over the status quo of in-person or online exams during a global pandemic, for the reasons outlined above.

B. States Declining to Adopt Diploma Privilege Must Take Steps to Mitigate the Impact their Policies Have on Marginalized Communities

We also ask that you encourage those states that refuse to adopt temporary diploma privilege to carefully consider changes to their bar exams and admissions process to mitigate the negative impact their procedures will have on marginalized communities, as outlined above. For example, three states have changed their bar exam format to open-book.⁴³ By doing so, they have eliminated the need to monitor students for cheating during the examination. This reduces the exam's reliance on FRT and is therefore less likely to produce discriminatory outcomes. Open-book formatting also frees people with disabilities to move freely within their space and reduces disparities arising from lack of a quiet, solitary location for test-taking.

Another important change is moving away from ExamSoft and ISG, which present serious accessibility problems for many individuals with disabilities. For example, both require applicants to disable JAWS, a screen reader that assists individuals with visual impairments by providing speech and braille output. Indiana, for example, decided to run its online bar exam via e-mail, thereby eliminating incompatibilities with software and accessories that people with disabilities need.

Furthermore, CCJ should recommend that state bar authorities develop and implement robust policies and procedures to receive and provide accommodations to test-takers with disabilities and underlying conditions who need accommodations. Reports from students around the country have indicated that jurisdictions have been slow to respond to requests for accommodation. Other

⁴⁰ See *Order No. 25700-B-630*, Wash. S. Ct. (June 12, 2020), <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Order%20Granting%20Diploma%20Privilege%20061220.pdf>. Oregon has also implemented a version of diploma privilege, albeit with more restrictive requirements. See *Frequently Asked Questions Diploma Privilege & October 2020 Bar Exam*, The Oregon State Bar (last visited Aug. 14, 2020), <https://www.osbar.org/docs/admissions/DiplomaPrivFAQ.pdf>.

⁴¹ See *Louisiana Supreme Court Announcement Regarding 2020 Bar Examination*, Louisiana Supreme Court (July 22, 2020), https://www.lasc.org/Press_Release?p=2020-20.; *Order*, Utah S. Ct. (Apr. 21, 2020), https://www.abajournal.com/files/Signed_2020.04.21_Bar_Waiver_Order_.pdf.

⁴² *Order No. M269-20*, D.C. Ct. App. (Sept. 24, 2020), https://www.dccourts.gov/sites/default/files/2020-09/ORD_269-20.pdf.

⁴³ Karen Sloan, *First-Ever Open Book, Online Bar Exam Set for July*, Law.com (May 26, 2020), <https://www.law.com/2020/05/26/first-ever-open-book-online-bar-exam-set-for-july/>

jurisdictions have provided unreasonable deadlines for accommodation requests – deadlines that occur before test-takers are given adequate notice about policies to decide whether or not they will need to request accommodations. At least one applicant with a disability did not receive a response from D.C. for at least three months after requesting accommodations. Because of the lack of response, the applicant felt compelled to register for the New York exam with accommodations as a backup. The CCJ should urge jurisdictions to give ample notice about policies and procedures related to any form of a bar examination so bar applicants can timely request and receive accommodations.

These changes will not wholly eliminate the disparate impact on people of color and people with disabilities. Nonetheless, some changes are better than nothing and can mean the difference between a career and unemployment for many.

III. Conclusion

Until the coronavirus pandemic has passed, temporary diploma privilege is the safest, most sensible, and fairest approach for applicants seeking admission to the bar during the pandemic. In-person exams and remote examinations would both exacerbate existing disparities and be fundamentally unfair to people of color and people with disabilities.

We recognize that, unfortunately, some jurisdictions will not entertain the possibility of temporary diploma privilege or supervised practice. These states must take steps to ensure that their examinations are administered in the most equitable manner possible, some of which we outlined above.

We urge the CCJ to exercise leadership on this issue and take steps to promote these policies among state bar authorities. It behooves us all to safeguard the health and wellbeing of bar applicants and eliminate practices that threaten the diversity and effectiveness of the legal profession.

Sincerely,

Lawyers' Committee for Civil Rights Under Law

American Council of the Blind

American Diabetes Association

Autistic Self Advocacy Network

Bazelon Center for Mental Health Law

Center for Public Representation

CommunicationFIRST

Council of Parent Attorneys and Advocates

Disability Rights Education and Defense Fund

Epilepsy Foundation

National Association of Councils on Developmental Disabilities

National Council on Independent Living

National Disability Rights Network

United Spinal Association

United States International Council on Disabilities