

**The American Bar Association's Radical Record:
Its Monopolistic Status as a Law School Accreditor Must End**

**Testimony
Task Force on Defending Constitutional Rights and Exposing
Institutional Abuses
Committee on Oversight and Government Reform
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INTRODUCTION

The American Bar Association has abandoned its mission to provide best practices for the legal profession.¹ Instead, it has opted to push a

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¹ See, e.g., GianCarlo Canaparo & Zack Smith, How to Break the American Bar Association's Accreditation Monopoly, Leg. Mem. 378, The Heritage Foundation (Jul. 15,

partisan program full of radical policies.² For example, the ABA has weighed in on hot-button cultural issues by supporting nationwide abortion and racial discrimination at American universities.³ It has opposed Second Amendment rights and has attacked “states that refuse to let children cut off their genitals if they feel they were born in the wrong body.”⁴ Even more egregiously for an organization supposedly dedicated to the rule of law, it has taken the absurd—and patently incorrect—position that our Constitution has 28 instead of 27 amendments.⁵ This position that the misnamed Equal Rights Amendment has become part of our Constitution is so egregious that even the Biden-appointed archivist of the United States—the official that certifies newly enacted constitutional amendments—rejected it out of hand.⁶

As a private organization, the ABA is free to adopt almost any policy it wishes. But the federal government recognizes the ABA’s Council of the Section of Legal Education and Admissions to the Bar as the sole federally recognized law school accreditor. And when this entity, which is nominally under the auspices of the ABA, exercises government-sanctioned authority, it must comport with the Constitution. But it doesn’t.

In fact, current ABA President Michelle A. Behnke made clear in a February 2026 speech that the ABA “will not abandon [its] commitment to diversity, equity, and inclusion” because “now is not the time to take

2025), <https://www.heritage.org/conservatism/report/how-break-the-american-bar-as-sociations-accreditation-monopoly>.

² See, e.g., Sarah Perry & Zack Smith, The American Bar Association’s “Diversity” Agenda Endangers the Integrity of the Legal Profession, Leg. Mem. 299, The Heritage Foundation (Mar. 31, 2022), <https://www.heritage.org/courts/report/the-american-bar-associations-diversity-agenda-endangers-the-integrity-the-legal>.

³ ABA files Supreme Court Briefs in Abortion, Gun Cases, The American Bar Association, <https://www.americanbar.org/news/abanews/aba-news-archives/2021/09/aba-amicus-briefs/> (last visited Jul. 19, 2026); ABA Seeks to Continue Race as Factor in College Admissions, The American Bar Association (Aug. 8, 2022), <https://www.americanbar.org/news/abanews/aba-news-archives/2022/08/aba-seeks-to-continue-race-as-factor/>.

⁴ Canaparo & Smith, *supra* note 1, at 1.

⁵ Statement from President Joe Biden on the Equal Rights Amendment, WH.gov (Jan. 17, 2025) (stating that “The American Bar Association (ABA) has recognized that the Equal Rights Amendment has cleared all necessary hurdles to be formally added to the Constitution as the 28th Amendment”), <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2025/01/17/statement-from-president-joe-biden-on-the-equal-rights-amendment/>.

⁶ Annie Karni, *National Archivist Rejects Bid to Certify the Equal Rights Amendment*, N.Y. TIMES (Dec. 17, 2024) (noting that “the archivist, Colleen Shogan, and her deputy William J. Bosanko, issued a statement saying that the Equal Rights Amendment ‘cannot be certified as part of the Constitution due to established legal, judicial and procedural decisions’”), <https://www.nytimes.com/2024/12/17/us/politics/equal-rights-amendment-constitution.html>.

back the progress that we have made.”⁷ And she delivered introductory remarks at the ABA’s 2026 Equity Summit, which the ABA Diversity, Equity and Inclusion Center hosted “in coordination with the ABA’s DEI Advisory Council.”⁸ The Summit included panels with titles like “Disparate-Impact Liability: An Old Innovation that Remains Advantageous,” “Beyond Rainbow Logos: Centering LGBTQ+ Voices Who Fuel Innovation, Equity, and Better Lawyering,” and “Professional Conduct in a Fractured Climate: Model Rule 8.4(g), DEI Challenges and Ethical Lawyering.”⁹ For those unfamiliar with the ABA’s Model Rule 8.4(g), it’s a chilling speech code put forward by the ABA under the guise of policing the professionalism of lawyers. But it has drawn condemnation from across the political spectrum for the chilling effect it will have on First Amendment–protected speech.¹⁰ And one Pennsylvania federal court found Pennsylvania’s version of this professional conduct rule, which was based on the ABA’s model, to be unconstitutional.¹¹

I. THE ABA’S ROLE IN LEGAL EDUCATION

The ABA first began to set law school standards over a century ago in 1921. It set initial standards and published a list of schools that met those standards. But it didn’t receive recognition as a federal accreditor until 1952. As I have explained elsewhere, “[t]his 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 And since 1952,

⁷ “Now is not the time to walk back the progress that we have made,” ABA President Michelle A. Behnke says at Midyear Meeting, The American Bar Association (Feb. 9, 2026), <https://www.americanbar.org/news/abanews/aba-news-archives/2026/02/mid-year-hod-speakers/>.

⁸ ABA President Michelle A. Behnke calls Equity Summit 2026 “a step towards action,” The American Bar Association (Jun. 15, 2026), <https://www.americanbar.org/news/abanews/aba-news-archives/2026/06/president-behnke-equity-summit-2026/>.

⁹ Agenda, ABA Equity Summit 2026 (last visited Jul. 19, 2026), <https://events.americanbar.org/event/915f8b55-b2ac-487b-8f98-87cbab08eac2/agenda>.

¹⁰ See, e.g., Eugene Volokh, *Texas AG: Lawyer Speech Code Proposed by American Bar Association Would Violate the First Amendment*, WASH. POST (Dec. 20, 2016), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/12/20/texas-ag-lawyer-speech-code-proposed-by-american-bar-association-would-violate-the-first-amendment/>.

¹¹ See Eugene Volokh, *Lawyer Speech Code Blocked on First Amendment Grounds*, Volokh Conspiracy (Dec. 8, 2020), <https://reason.com/volokh/2020/12/08/lawyer-speech-code-blocked-on-first-amendment-grounds/>; see also *Greenberg v. Lehocky*, Hamilton Lincoln Law Institute (last visited Jul. 19, 2026) (detailing the subsequent history of the case, including the Third Circuit’s decision that the plaintiff lacked standing to challenge a revised version of the Pennsylvania rule), <https://hlli.org/greenberg-v-lehocky/>.

¹² Canaparo & Smith, *supra* note 1, at 2.

the ABA has remained as the only federally recognized law school accreditor. The primary payoff for this federal recognition is that “accreditation generally allows colleges and universities to provide federal financial aid such as Pell grants and direct loans,” among other forms of aid.¹³

A. VERY FEW LAW SCHOOLS WOULD BE IMPACTED IF THE FEDERAL GOVERNMENT CEASED TO RECOGNIZE THE ABA AS A LAW SCHOOL ACCREDITOR

But here’s the not-so-dirty secret the ABA doesn’t want anyone to know:

[O]nly 16 law schools depend on ABA accreditation for this purpose. The majority of law schools are affiliated with a university. For affiliated schools, the university’s overall accreditation—not the law school’s ABA accreditation—allows law students to receive federal financial aid. Thus, if the U.S. Department of Education [or other appropriate federal entity] 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.¹⁴

And, of course, the federal government could turn to other existing accreditors to help fill this gap.

B. States Must Take Action Too to End the ABA’s Monopoly on Legal Education

The ABA’s monopoly as the sole federally recognized law school accreditor has endured for too long. But to truly break it, states will have to take action too since many states require that lawyers-to-be must have graduated from an ABA-accredited law school in order to sit for their state bar exams. Fortunately, some states like Texas, Florida, Alabama, Ohio, and others have taken steps to eliminate that require-

¹³ *Id.*

¹⁴ *Id.* (citations omitted).

ment.¹⁵ And Congress may need to step in and strip relevant funding from states that do not take such actions.¹⁶

II. THE ABA’S WEAPONIZATION OF THE ACCREDITATION PROCESS TO ENFORCE ITS RADICAL VIEWPOINTS

But why? Why have states taken steps to end the ABA’s status as the sole accreditor in their states, and why should the federal government take steps to end it at the federal level too? Put simply, it’s because the ABA has used its monopolistic power to push its radical views on faculty, staff, and students and threatened the accreditation status—and by implication the livelihoods—of those who resist.¹⁷ Two notorious examples of this are worth noting.

A. Two Examples of the ABA Weaponizing the Accreditation Process Against George Mason’s Law School and St. Thomas’s Law School

All the way back in 2000, the ABA threatened to pull its accreditation of George Mason University’s law school—now the Antonin Scalia Law School—because it refused to grant minority students preferential treatment in the admissions process.¹⁸ It didn’t matter to the ABA that George Mason officials actively recruited minority students. So what happened?

Faced with this threat [the loss of accreditation], George Mason lowered admissions standards for minorities to

¹⁵ Zack Smith, *Texas Ends ABA’s Accreditation Monopoly in the Lone Star State*, The Daily Signal (Oct. 7, 2025), <https://www.dailysignal.com/2025/10/07/texas-ends-abas-accreditation-monopoly-in-lone-star-state/>; see also Karen Sloan, *Alabama Sidelines ABA in Lawyer Admissions While Tennessee Weighs Similar Move*, Reuters (May 4, 2026), <https://www.reuters.com/legal/litigation/alabama-sidelines-aba-lawyer-admissions-while-tennessee-weighs-similar-move-2026-05-04/>; Karen Sloan, *State Bar, FTC Back Ohio Proposal to Limit ABA Role in Lawyer Admissions*, Reuters (Jul. 15, 2026), <https://www.reuters.com/legal/government/state-bar-ftc-back-ohio-proposal-limit-aba-role-lawyer-admissions-2026-07-15/>; Samadhi Jones, *Court Opens Door to New Law School Accreditors for Bar Admission*, Florida Bar News (Jan. 16, 2026), <https://www.floridabar.org/the-florida-bar-news/court-opens-door-to-new-law-school-accreditors-for-bar-admission/>.

¹⁶ See *infra* Section IV.

¹⁷ Zack Smith, *Leftist ABA Used Its Accrediting Power to Force Law Schools to Violate the Law*, The Daily Signal (Mar. 11, 2025), <https://www.dailysignal.com/2025/03/11/american-bar-association-keeps-forcing-dei-law-schools-should-lose-authority-accredit-them/>.

¹⁸ Canaparo & Smith, *supra* note 1, at 3.

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.¹⁹

Fast forward 25 years and not much has changed—except now the ABA appeared to threaten the accreditation of St. Thomas University College of Law for having the audacity to put forward standards the College viewed as consistent with its Catholic affiliation.²⁰ As Florida Attorney General James Uthmeier explained in his letter castigating the ABA’s decision, “After two separate site visits by the Council of the Section of Legal Education, the ABA determined STU Law was not in compliance with [nondiscrimination] Standard 205(c)—suggesting that the school’s (religious) values raised questions about whether student organizations with different views would be treated appropriately.”²¹ Uthmeier noted that “STU Law appears to be performing well academically and on other core metrics the ABA should rightfully care about.”²² But the “noncompliance finding did reveal one thing...the ABA’s animus toward religiously affiliated schools.”²³ Or at least to those that adhere to

¹⁹ *Id.*

²⁰ Julianne Hill, *St. Thomas College of Law Found out of ABA Accreditation Compliance*, ABA Journal (Sept. 23, 2025), <https://www.abajournal.com/web/article/st-thomas-college-of-law-out-of-aba-accreditation-compliance>; see also Council Decision, Notice of Finding of Noncompliance with Standard 205, St. Thomas University College of Law, August 2025 (Pub. Sept. 18, 2025), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/PublicNoticeAnnouncements/2025/2025-august-st-thomas-florida-11a4-public-notice.pdf.

²¹ Letter from Florida Attorney General James Uthmeier to Chairman of the Council of the Section of Legal Education Daniel R. Thies (Nov. 6, 2025), <https://www.myfloridalegal.com/sites/default/files/From%20the%20desk%20documents/110625-letter-to-aba.pdf>.

²² *Id.*

²³ *Id.*; see also Stephany Matat, *Florida Attorney General Accuses American Bar Association of Violating First Amendment*, TALLAHASSEE DEMOCRAT (Nov. 7, 2025), <https://www.tallahassee.com/story/news/local/state/2025/11/07/florida-clash-grows->

religious values that go against the ABA’s own radical orthodoxy. After the public pressure campaign, the ABA relented and found St. Thomas’s Law School to be in compliance with the relevant standards.²⁴

B. The ABA Now Seeks to Back Away from Its Most Egregious Efforts Now That It Faces Financial Pressures and an Existential Threat to its Accreditation Monopoly. And Yet, Its Own President Pledges to Maintain the ABA’s Commitment to Racial Discrimination.

Understanding the inevitable headwinds it now faces—largely because of its own actions—the Council has begrudgingly proposed several modest rollbacks of its most radical proposals. Take, for example, accreditation Standard 206.²⁵ That standard required law schools to “demonstrate by concrete action a commitment to diversity and inclusion,” which it broadly interpreted as requiring schools to treat some applicants better than others (and by implication some applicants worse than others) based on their race. In an especially egregious move, the Council demanded that law schools continue to comply with Standard 206 even after the U.S. Supreme Court made clear that schools violate the Constitution (or relevant statutory provisions for private schools) by continuing race-based programming.²⁶ The Council instructed schools 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].”²⁷ In other words, the Council said its rules trump the Constitution. Shocking.

[over-american-bar-association-and-catholic-law-school-james-un-thmeier/87131690007/](https://www.stu.edu/news/stu-college-of-law-welcomes-aba-council-determination-of-compliance/).

²⁴ STU College of Law Welcomes ABA Council Determination of Compliance, STU.edu (Dec. 11, 2025), <https://www.stu.edu/news/stu-college-of-law-welcomes-aba-council-determination-of-compliance/>.

²⁵ Sarah Perry & Zack Smith, *The American Bar Association’s “Diversity” Agenda Endangers the Integrity of the Legal Profession*, Leg. Mem. 299, The Heritage Foundation (Mar. 21, 2022), <https://www.heritage.org/courts/report/the-american-bar-associations-diversity-agenda-endangers-the-integrity-the-legal>.

²⁶ Canaparo & Smith, *supra* note 1, at 4; see also *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

²⁷ Canaparo & Smith, *supra* note 1 (citations omitted).

1. Rolling Back DEI Standards After Trying to Run out the Clock.

But after a series of executive orders by President Trump, “Dear Colleague Letters” from the Department of Education, and urging from then-Attorney General Pam Bondi, the ABA has belatedly moved away from Standard 206,²⁸ at first suspending it—likely hoping to wait out the political clock—and finally moving to repeal it completely. But lest anyone think the ABA has abandoned its ideologically divisive ways, the Council made clear that it wasn’t abandoning its DEI agenda. Its stated reason for moving away from Standard 206 was its own crass self-preservation as an accrediting entity; it explicitly recognized the institutional and legal risk posed by the continued implementation and enforcement of the policy.²⁹

The same two-step is taking place with other policies too. For example, the Council is considering repealing Standard 303(c), which controversially requires law schools to “provide education to law students on bias, cross-cultural competency, and racism.” While Standard 206 impacted a number of programs law schools offered, Standard 303(c) purports to reach into the classroom as a mandated curricular requirement. But even in its May 2026 notice to start the repeal process, the ABA makes clear that similar curricular requirements could be folded into a different standard (Standard 302) as a required learning outcome.³⁰

²⁸ See Smith, *supra* note 17.

²⁹ Standards Committee, ABA Section of Legal Education and Admissions to the Bar, *Memorandum to the Council: Standard 206—Final Approval 1* (May 8, 2026), reproduced in May 2026 Council materials (stating that “Recent developments have led the Standards Committee to conclude that this national system of accreditation—and the Council’s role as an accreditor—would be imminently threatened if Standard 206 is not repealed”), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2026/council-meeting/2026-may-standard-206-final-approval-memo.pdf.

³⁰ ABA Section of Legal Education and Admissions to the Bar, *Matters for Notice and Comment: Standard 303(c)* (May 20, 2026) (stating that “further consideration will be given to how to incorporate this communication skill as a required learning outcome (in Standard 302) rather than as a curricular requirement”), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2026/notice-comments/2026-may-matters-notice-comment-standard-303c.pdf.

2. Prior Example of the ABA Abandoning Racial Quota Requirements—Which Have Always Been Blatantly Unconstitutional—Only After It Faced Financial Harm from Losing Access to Florida’s Lucrative Legal Market.

Of course, this isn’t the first time that the ABA had changed course and moved in a more moderate direction based on sheer self-preservation and its own financial interest.³¹ Several years ago, the ABA set quotas requiring a certain number of superficially “diverse” panelists for any Continuing Legal Education (CLE) programming it hosted. What is particularly troubling about this policy is that even before the U.S. Supreme Court’s *Students for Fair Admission* decision clarifying that our nation’s Constitution and civil rights statutes ban treating people differently based on race, it had long made clear in a series of decisions that racial quotas are particularly odious and thus prohibited. Yet that’s the policy the ABA chose to implement, and it relented only *after* the Supreme Court of Florida updated its rules refusing to recognize CLE from providers with policies like the ABA’s in place.³² In other words, only when faced with massive financial loss and access to the lucrative Florida legal market did the ABA reluctantly relent.

3. Even These Modest Moves Toward Equal Treatment for All Sparked Backlash from Current ABA President Michelle Behnke.

But that shouldn’t come as a surprise. Even these modest moves to the middle have sparked backlash from the ABA’s membership and leadership. Consider President Michelle Behnke’s remarks from February of this year at the ABA’s Midyear Meeting. She said that the “American Bar Association will continue to use its position to advocate for the legal profession and the judiciary,” meaning in large part that “we [the ABA]

³¹ See, e.g., Zack Smith, The American Bar Association’s Discriminatory Continuing Legal Education “Diversity” Policy, Leg. Mem. 302, The Heritage Foundation (Jun. 1, 2022), <https://www.heritage.org/sites/default/files/2022-06/LM302.pdf>; see also Comments of Zack Smith, Legal Fellow, The Heritage Foundation, available at https://efactssc-public.flcourts.org/casedocuments/2021/284/2021-284_response_56451_comments.pdf.

³² See In Re: Amendment to Rule Regulating The Florida Bar 6-10.3, No. SC21-284 (Fla. Apr. 15, 2021); In Re: Amendment to Rule Regulating The Florida Bar 6-10.3, No. SC21-284 (Fla. Dec. 16, 2021).

will not abandon our commitment to diversity, equity, and inclusion.”³³ She further exhorted the ABA leaders and members to realize that “now is not the time to walk back the progress that we have made”—after a brief detour to criticize some of the “problematic” language in the Declaration of Independence.³⁴ And staying true to her DEI commitment, Behnke delivered opening remarks at the ABA’s Equity Summit 2026, which the ABA Diversity, Equity and Inclusion Center hosted in coordination with the ABA’s DEI Advisory Council. Behnke called the Equity Summit “a step towards action and education to move” the ABA’s DEI goals forward.³⁵

III. Reasons to Question Just How “Independent” the Council of the ABA’s Section of Legal Education and Admission to the Bar (the Law School Accrediting Entity) Is from the Larger ABA’s Own Policy Positions.

Here, a brief note about the ABA’s relationship with the Council of the ABA Section of Legal Education and Admissions, which serves as the formal law school accrediting body. Both the ABA’s leadership and the Council’s leadership like to tout the Council’s required independence of the ABA.³⁶ In fact, Behnke released a statement highlighting that the “accreditation council is separate from the ABA”³⁷ and reiterated that “Its actions do not alter the ABA’s broader mission, values or ongoing commitment.”³⁸ But setting aside these bare assertions of the Council’s independence, what do the relevant governing documents say? In short, that there’s more overlap and input than either entity would want anyone to realize. For example, as Behnke explained in her statement:

The accreditation council’s decisions to adopt, revise, amend or repeal standards are submitted for consideration to

³³ “Now is not the time to walk back the progress that we have made,” ABA President Michelle A. Behnke says at Midyear Meeting, The American Bar Association (Feb. 9, 2026), <https://www.americanbar.org/news/abanews/aba-news-archives/2026/02/mid-year-hod-speakers/>.

³⁴ *Id.*

³⁵ ABA President Michelle A. Behnke calls Equity Summit 2026 “a step towards action,” The American Bar Association (Jun. 15, 2026), <https://www.americanbar.org/news/abanews/aba-news-archives/2026/06/president-behnke-equity-summit-2026/>.

³⁶ What the independent accreditation process means for the legal profession—and for the broader ABA, The American Bar Association (Jun. 1, 2026), <https://www.americanbar.org/news/abanews/aba-news-archives/2026/06/what-independent-accreditation-process-means/>.

³⁷ *Id.*

³⁸ *Id.*

the ABA House of Delegates, the policy-making body of the association. The House process affords members the opportunity to engage in civil discourse and debate about issues important to the profession...but the vote of the House does not control the ultimate decision on the issue.³⁹

Historically, the Council has given great consideration to the input of the House of Delegates, and the House traditionally has been able to send proposed revisions back to the Council multiple times if it disagreed with them.⁴⁰ Also, the bylaws of the ABA's Section of Legal Education and Admissions to the Bar specify that to be a member of the Section, someone must first be a member of the ABA.⁴¹ And the vaunted nominally independent Council is "vested with the powers and duties necessary for the administration of the business of the Section,"⁴² including having the "authority to conduct the business of the Section" between meetings of the membership.⁴³ It's a requirement that "Members of the Council (with the exception of public members) shall be members of the Section,"⁴⁴ and all Officers of the Section serve as voting members of the Council.⁴⁵ Moreover, the Chairman of the Section presides at meetings of the Council too.⁴⁶

³⁹ *Id.*

⁴⁰ Apparently recognizing its lack of independence, the Council itself has been pushing for changes to its relationship with the larger ABA. See, e.g., Christine Charnosky, ABA Accreditation Council Gains Traction in Becoming More Autonomous, Law.com (Feb. 10, 2026), <https://www.law.com/2026/02/10/aba-accreditation-council-gains-traction-in-becoming-more-autonomous/>.

⁴¹ Bylaws for the American Bar Association's Section of Legal Education and Admissions to the Bar (Effective Aug. 2, 2024) (last accessed on Jul. 19, 2026), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2025-2026/2025-2026-bylaws.pdf. Bylaws, Art. II, § 1(a) states: "Any member of the Association in good standing shall be a member of the Section upon request to the Secretary of the Association and the payment of the annual Section dues."

⁴² *Id.*, Art. IV, § 1(a) (stating that "The Council shall be vested with the powers and duties necessary for the administration of the business of the Section. It shall authorize all commitments for expenditures of Section monies").

⁴³ *Id.*, Art. IV, § 1(d) (stating that "Between meetings of the membership, the Council shall have authority to conduct the business of the Section. The Council shall report to the membership of the Section at each annual meeting any actions taken pursuant to this subsection since the last meeting of the membership of the Section").

⁴⁴ *Id.*, Art. IV, § 2.

⁴⁵ *Id.*, Art. IV, § 3.

⁴⁶ *Id.*, Art. V, § 2(a).

IV. Congress, Federal Executive Branch Agencies, and the States Must All Act to End the ABA's Coercive (and Corrosive) Law School Accrediting Monopoly.

So what's to be done? Simply put, the ABA's Council of the Section of Legal Education and Admissions to the Bar must lose its monopoly on law school accreditation. To that end, state supreme courts in Florida, Texas, Ohio, Alabama, and other jurisdictions have changed their own policies so that someone sitting for the bar exam in those states no longer needs to have graduated from an ABA-accredited law school. If other states maintain the requirement that students must have graduated from an ABA-accredited law school (or from a school whose accreditor requires discriminatory policies), Congress should consider reducing or eliminating relevant federal funds to those states. While the Trump Administration has already taken laudable actions toward recognizing additional law school accreditors and prohibiting any accreditor from pushing policies requiring schools to treat people differently based on race, there are certain actions that Congress can—and should—take too. As I have previously explained and recommended:

Even if the ABA retains its accreditation monopoly, Congress could [and should] 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.⁴⁷

Specifically, Congress should amend 20 U.S.C. § 1099b(a) to prohibit the recognition of accreditors that impose DEI requirements.⁴⁸ Two members of the U.S. Commission on Civil Rights offered the following proposed subsection to be added to this provision:

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; conducts investigations into 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 diver-

⁴⁷ Canaparo & Smith, *supra* note 1, at 7.

⁴⁸ *Id.*

sity 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 its 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).⁴⁹

During the 118th Congress, the House passed the End Woke Higher Education Act, which would have accomplished many of these goals, but the legislation died in the Senate.⁵⁰ Sadly, statutory language like this is still needed to make clear that neither law schools nor their accreditor can require them to do what the Constitution and other civil rights laws prohibit: namely, treating students, staff, and faculty differently based on their race.

CONCLUSION

Justice John Marshall Harlan issued the lone dissent from the U.S. Supreme Court’s infamous *Plessy v. Ferguson* decision, which ushered in the “separate-but-equal” era of Constitutional law.⁵¹ While it would be a half-century until the Court recognized that race-based separation is inherently unequal,⁵² Justice Harlan had the foresight and fortitude to make clear that “Our constitution is colorblind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.”⁵³ More recently, the Supreme Court has confirmed that our Constitution is indeed—and must be—colorblind.⁵⁴

To that end, states and the federal government have passed laws and taken other actions to ensure that all Americans are treated equally, especially in higher education. But the ABA, using its accrediting authority, has sought to undermine these constitutional commitments to equal treatment regardless

⁴⁹ Peter Kirsanow & Gail Heriot, Letter on Need for Legislation on Accreditation Abuses Submitted to Senator Bill Cassidy, Chair of the Senate Comm. on Health, Educ., Labor, & Pensions, by Two Members of the U.S. Comm’n on Civil Rights (Feb. 18, 2025), <http://dx.doi.org/10.2139/ssrn.5157405>.

⁵⁰ Canaparo & Smith, *supra* note 1, at 8.

⁵¹ *Plessy v. Ferguson*, 163 U.S. 537, 552-64 (1896) (Harlan, J. dissenting).

⁵² *Brown v. Board of Education*, 347 U.S. 483, 495 (1954).

⁵³ *Plessy*, 163 U.S. at 559.

⁵⁴ See, e.g., *Allen v. Milligan*, No. 25A1315, 608 U.S. ____ (Jun. 2, 2026) (invoking “our colorblind Constitution”).

of race. As a result, the federal government and states must continue to take actions to end the ABA's monopolistic status as a law school accreditor.