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August 19, 2025
Robert W. Horner, III
Chairman of the Advisory Committee to Review
the Law School Accreditation Process
Supreme Court of Ohio
65 S. Front Street
Columbus, OH 43215-3431

Sent Via U.S. Mail

Re: The American Bar Association must play no role in the law school accreditation process

Dear Mr. Horner:

We write with a simple message: the American Bar Association, or “ABA,” should play no role in the process of accrediting Ohio law schools. The Advisory Committee to Review the Law School Accreditation Process should say so.

There are many justifications for this conclusion. Among them, the ABA is a highly partisan organization that cannot be trusted to fairly wield what amounts to governmental power.¹ It is also a fundamentally unserious organization. To take but one example, the ABA recently announced that the long-since-rejected Equal Rights Amendment was validly ratified—even though the deadline for ratification passed decades ago.² The Ninth Circuit has rejected that position as “meritless.”³

This letter, however, focuses on another troubling fact about the ABA: the organization has actively encouraged law schools—including at least one Ohio-based school—to violate state and federal anti-discrimination laws. Indeed, as applied to state

¹ Letter from Attorney General Pamela Bondi to William R. Bay, President of the ABA (May 29, 2025) (informing ABA that it will no longer be given a formal role in the judicial-nomination process because of its partisan nature), <https://perma.cc/DQ6X-KQBW>; see also GianCarlo Canaparo and Zach Smith, *How to Break the American Bar Association’s Accreditation Monopoly*, THE HERITAGE FOUNDATION (July 15, 2025) (criticizing the ABA’s turn toward political activism), <https://perma.cc/HBC4-MBEM>; *Obergefell v. Hodges*, 576 U.S. 644, 718 n.18 (2015) (Scalia, J., dissenting) (noting that the ABA filed a brief supporting the creation of a right to same-sex marriage).

² ABA Resolution 601 (2024), <https://perma.cc/Q49E-W7E8>.

³ *Valame v. Trump*, No. 24-369, 2025 WL 1983954, at *1 (9th Cir. July 17, 2025).

institutions, the ABA’s diversity-based standards require conduct that violates the Equal Protection Clause. We write to share this information—some of which has long been public, and some of which became public in our recent litigation—and to offer ideas for uncovering more such information.

To preview our conclusion on this latter point, this committee should:

1. Require the law-school deans on the Ohio Advisory Committee to Review Law School Accreditation to produce all of their schools’ accreditation-related communications with the ABA over the past decade, allowing the Committee a chance to see how the ABA operates;
2. Demand that the ABA produce all of its accreditation-related communications with Ohio-based schools over the past decade so that the committee may discover the full scale of the ABA’s misconduct; and
3. Demand that all Ohio schools produce their accreditation-related communications with the ABA over the past decade, for the same reason.

BACKGROUND ON ANTI-DISCRIMINATION PRINCIPLES

Ohio and federal law both forbid employers from considering race, sex, ethnicity, or other protected traits in deciding whom to hire, fire, or promote.⁴ These laws recognize the meritocratic ideal at the heart of the American experiment. People should be treated *as individuals*—not as parts of racial or other groups defined by often-irrelevant characteristics. In America, everyone has the right to succeed or fail based on his own merit. When properly enforced, these laws protect individuals from discrimination based on their membership in disfavored identity groups. These laws also protect members of minority groups from having their accomplishments doubted: by prohibiting employers from considering race (for example), these laws protect racial minorities from being “tarred as undeserving” beneficiaries of supposedly benign, race-based preferences.⁵

Government employers, including state-run law schools, are *constitutionally* barred from discriminating in many instances. That is especially true with respect to race. “In the wake of the Civil War, the country focused its attention on restoring the Union and establishing the legal status of newly freed slaves.”⁶ To this end, the “Constitution was amended to abolish slavery and proclaim that all persons born in the United States are citizens, entitled to the privileges or immunities of citizenship and the equal protection of the laws. Because of that second founding, ‘our Constitution is color-blind, and neither knows nor tolerates classes among citizens.’”⁷ That guarantee brooks no exception for well-intended race-based classifications.

⁴ R.C. 4112.02; 42 U.S.C. §2000e(2), *et seq.*

⁵ *Grutter v. Bollinger*, 539 U.S. 306, 373 (2003) (Thomas, J., concurring in part and dissenting in part).

⁶ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 231 (2023) (*Harvard*) (Thomas, J., concurring).

⁷ *Id.* (quoting *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting)(cleaned up)).

And for good reason: “to pursue the concept of racial entitlement—even for the most admirable and benign of purposes—is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of government, we are just one race here. It is American.”⁸ State employers, therefore, violate the Constitution when they consult race *at all* in the hiring process.⁹

These same constitutional restrictions apply to admissions at state-run institutions: the Equal Protection Clause forbids state-run schools from giving *any* weight to an applicant’s race during the application process.¹⁰ Title VI imposes identical restrictions on private institutions that accept federal funding.¹¹

THE ABA’S ACCREDITATION STANDARDS DEMAND CIVIL RIGHTS VIOLATIONS

1. The ABA has used its accreditation power to undermine these principles and to pressure the schools it accredits—many of which are state-run—to discriminate based on race, sex, and ethnicity.

Begin with “Standard 206.” This accreditation standard demands the following from law schools:

(a) Consistent with sound legal education policy and the Standards, a law school shall demonstrate by concrete action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and *a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.*

(b) Consistent with sound educational policy and the Standards, a law school shall demonstrate by concrete action a commitment to diversity and inclusion by *having a faculty and staff that are diverse with respect to gender, race, and ethnicity.*¹²

These commandments require schools to violate the just-discussed state and federal laws as a condition for ABA accreditation. This follows, as night the day, from an uncontroversial premise: committing to a goal defined by demographic characteristics requires *considering* those characteristics. Schools cannot plausibly pursue a “commitment to having a student body that is diverse with respect to gender, race, and ethnicity” while blinding themselves to gender, race, and ethnicity during the admissions process. Similarly, without illegally considering gender, race, and ethnicity in

⁸ *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 239 (1995) (Scalia, J., concurring in part and concurring in the judgment).

⁹ *Id.* at 235 (O’Connor, J., for the court).

¹⁰ *Harvard*, 600 U.S. at 230.

¹¹ *Id.* at 198 n.2.

¹² ABA, *Standards and Rules of Procedure for Approval of Law Schools* 2024-2025, p.15 (2024-2025 ed.), <https://perma.cc/K3Q2-D7P5> (emphasis added).

hiring, schools cannot plausibly take “concrete action[s]” to obtain “a faculty and staff that are diverse with respect to gender, race, and ethnicity.” That race-, sex-, and ethnicity-conscious approach to admissions and hiring is flatly illegal, yet the ABA’s standards demand it.

All this is bolstered by the ABA’s own interpretation of Standard 206, which states: “The requirement of a constitutional provision or statute that purports to prohibit consideration of gender, race, ethnicity, or national origin in admissions or employment decisions is *not a justification* for a school’s non-compliance with Standard 206.”¹³ According to the ABA, a “law school that is subject to such constitutional or statutory provisions would have to demonstrate the commitment required by Standard 206 by means other than those prohibited by the applicable constitutional or statutory provisions.”¹⁴ But there is no other means; as noted above, a school cannot pursue race-, sex-, and ethnicity-based goals while blinding itself to race, sex, and ethnicity as the law requires. Thus, the ABA’s reference to “means other than those prohibited by” law is a poorly disguised effort to give schools cover to break the law while claiming not to. It is also a fundamentally odd concept to stress to institutions that are supposed to be teaching individuals how to become ethical members of the bar.

The ABA’s interpretations contain other troubling statements. For example, Interpretation 206-2 announces that “a law school may use race and ethnicity in its admissions process to promote diversity and inclusion” if doing so is “consistent with applicable law.”¹⁵ Of course, doing so is never consistent with the law, at least not for public schools or schools that accept federal funds. It then hints—incorrectly—that the law permits race- and ethnicity-based scholarships, even though these scholarships violate the Equal Protection Clause and Title VI for exactly the same reason as race- and ethnicity-based admissions policies.¹⁶ Specifically, the ABA advises that the “commitment to providing full educational opportunities for members of underrepresented groups typically includes ... programs that assist in meeting the academic and financial needs of many of *these students* and that create a favorable environment for students *from underrepresented groups*.”¹⁷

The ABA recently agreed to suspend these standards based on pressure from the Trump Administration.¹⁸ However, that should have no bearing on the Committee’s recommendations. For one thing, the standards are suspended, not abolished, and

¹³ *Id.* (Interpretation 206-1) (emphasis added).

¹⁴ *Id.*

¹⁵ *Id.* (Interpretation 206-2).

¹⁶ Letter from Dave Yost, Attorney General of Ohio, to University and College Colleagues (June 30, 2023), <https://perma.cc/TJ2Y-NV4C>.

¹⁷ *Standards and Rules of Procedure for Approval of Law Schools* at 15 (Interpretation 206-2) (emphasis added).

¹⁸ Julianne Hill, *ABA Legal Ed council suspends accreditation standard focused on diversity*, ABA JOURNAL (Feb. 21, 2025), <https://perma.cc/5LRS-X2PX>.

the suspension ends on August 31, 2026.¹⁹ For another, the fact that the ABA so recently imposed these requirements that flagrantly contradict civil-rights laws and the Constitution is reason enough to exclude it from the accreditation process. No institution that worked to undermine meritocracy, and to demand that schools pursue racial-, sex-, and ethnic-diversity goals in violation of statutory and constitutional law, should be permitted to wield any quasi- or actual governmental power. Nor can an organization so devoted to worshipping at the DEI altar be trusted to change its behavior; *even if* the ABA ultimately abandons the standards, and *even if* it declines to re-adopt those standards upon a shift in the political winds, it still may impose the same requirements through other, less explicit means.

EVIDENCE UNCOVERED IN LITIGATION SHOWS THAT THE ABA USES ITS STANDARDS TO COMMAND OR ENCOURAGE RACE-, SEX-, AND ETHNICITY-FOCUSED HIRING

It is true, but irrelevant, that the Standards never *expressly* require schools to show that they consider race, sex, and ethnicity at the admissions stage.

For one thing, as just explained, the Standards *function* to require race-, sex-, and ethnicity-conscious hiring and admissions decisions. When schools *must* achieve (or at least pursue) racial, sex, and ethnic diversity, they cannot make hiring and admission decisions based exclusively on merit, as that *could* produce insufficiently “diverse” outcomes. A requirement that schools pursue racial, sex, and ethnic diversity is a requirement that they consider the traits (race, sex, and ethnicity) that make a student body or faculty “diverse” in the relevant sense—just as a requirement that schools assemble a competent faculty²⁰ requires considering evidence of prospective faculty members’ competence.

Additionally, American law schools subject to the ABA’s oversight understand Standard 206 to require race-, sex-, and ethnicity-conscious decisionmaking. This is apparent from evidence—communications between Ohio Northern University and the ABA—that we obtained in recent litigation.²¹

Follow-up Inspection Report. Consider first the “Follow-Up Inspection Report,” which we will provide to you in an appendix we are submitting alongside our letter. The report was completed in March 2022 by an outside evaluator. And it contains various “school responses” to information bearing on accreditation. Of particular importance here, the Report addresses the law school’s compliance with Standard 206.

First, in connection with Standard 206(a)—the provision dealing with student-body diversity—the ABA demanded the following of Ohio Northern University:

¹⁹ *Id.*; see also *Standards and Rules of Procedure for Approval of Law Schools* 2024-2025 at 15, <https://perma.cc/K3Q2-D7P5> (noting that Standard 206 is “SUSPENDED UNTIL 8/31/25”); *Standards and Rules of Procedure for Approval of Law Schools* 2025-26 at 17, <https://perma.cc/Q4YV-WTNY> (noting that Standard 206 is “SUSPENDED UNTIL 8/31/26.”)

²⁰ ABA, *Standards and Rules of Procedure for Approval of Law Schools* 2024-2025 at 31, <https://perma.cc/K3Q2-D7P5> (Standard 401).

²¹ *Gerber v. Ohio Northern University*, No. 2023-1107 (Hardin Cnty. C.P.).

Explain how the Law School has demonstrated by concrete action a commitment to providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and to having a student body that is diverse with respect to gender, race, and ethnicity.²²

The “School response” states that law school actively targets minority enrollment, not only by sending representatives to “events designed to encourage minority students to apply to Law School,” but also by providing “institutional grants in aid to students who represent racial and ethnic minorities.” In other words, the school reported offering race-based—and so race-conscious—aid. The answer continues by detailing the precise racial and gender makeups of various classes, noting that the “faculty and administration expect to restore a gender balance” in subsequent classes.²³ The document further stresses the law school’s support for, and intention to lead, a commission designed to help the University improve its “diversity, equity, and inclusion” efforts.²⁴

The “School response” to Standard 206(b) is similar. There, the ABA demanded that the University:

Describe the Law School’s concrete actions that demonstrate the Law School’s commitment to having a full-time faculty that is diverse with respect to gender, race, and ethnicity. Provide details of recruiting and hiring efforts for the current and previous two academic years (AALS interviews, campus or other interviews, etc., for tenured, tenure-track, and contract faculty).²⁵

The “School response” states:

In its recruiting procedures *and its hiring decisions*, the Law School is committed to recruiting a faculty that is diverse with respect to gender, race and ethnicity.²⁶

But “hiring decisions” are not supposed to reflect a commitment to racial, sex, or ethnic diversity. More nearly the opposite is true: antidiscrimination laws *forbid* employers to consider race, sex, and ethnicity in the hiring process, and permit employers to obtain racial, gender, and ethnic diversity only as the incidental result of pursuing other attributes (like skill or experience).

²² ABA, Follow-Up Inspection Report on Ohio Northern University Claude W. Petit College of Law, 30 (March 22, 2022) (Appendix Exhibit 3) (publicly available as Exhibit 13 to the Deposition of Dallen Flake, filed on November 13, 2024 in *Gerber*, No. 2023-1107 (Hardin Cnty. C.P.).

²³ *Id.*

²⁴ *Id.* at 31.

²⁵ *Id.* at 34.

²⁶ *Id.* (emphasis added).

The response goes on to provide remarkable detail on the racial makeup of individuals invited to campus for interviews and on the finalists—the latter group included all women, just two of whom were white.²⁷

One finds similar disclosures in response to the ABA’s demand for an explanation of how the law school “demonstrated by concrete action a commitment to having an adjunct/non-full-time faculty that is diverse with respect to gender, race, and ethnicity.”²⁸ The “School response” states:

In filling adjunct faculty positions that do arise, the associate dean *has sought* to recruit a faculty that is diverse with respect to gender, race and ethnicity.²⁹

Of course, racial, gender, and ethnic diversity is not supposed to be *pursued* (“sought”) as an end in itself.

All told, the Inspection Report’s emphasis on job applicants’ immutable and immaterial traits—and the degree to which the Report goes to stress the University’s commitment to diversifying the law faculty—shows that schools subject to the ABA accreditation processes understand that the ABA *does not want* a hiring process blind to race, sex, and ethnicity. The ABA thus encourages schools to adopt hiring processes that account for these traits. And it requires that law schools focus on job applicants’ immutable and immaterial traits in lieu of focusing on their ability to teach the law and contribute to the legal academy.

Letters regarding Standard 206. Two letters sent by Ohio Northern University to the ABA—one in March 2022 and the other in May 2022—further illustrate the ABA’s hand in subverting meritocracy. We will produce both of these letters alongside our own, in the previously-mentioned appendix.

The “March Letter,” which Ohio Northern sent to the ABA’s Managing Director of Accreditation and Legal Education, responds to the ABA’s request for more information regarding the law school’s compliance with Standard 206(b).³⁰

This March Letter reports that the law school satisfied the Standard with respect to *permanent* faculty by expanding the applicant pool and marketing jobs in fora designed to facilitate applications from “minority professors.”³¹ It goes on to lay out the demographic breakdown of the “pool of interviewees,” and describes the demographic

²⁷ *Id.*

²⁸ *Id.* at 36.

²⁹ *Id.* (emphasis added).

³⁰ Letter from Charles H. Rose III, Dean, Ohio Northern University, and Daniel DiBiasio, President, Ohio Northern University, to William E. Adams Jr., Managing Director of Accreditation and Legal Education, American Bar Association Section of Legal Education and Admissions to the Bar at 1 (March 31, 2022) (Appendix Exhibit 1) (publicly available as Exhibit 6 to the Affidavit of Julie E. Byrne in Opposition to the Defendants’ Motions for Summary Judgment, filed on July 15, 2024 in *Gerber*, No. 2023-1107 (Hardin Cnty. C.P.)).

³¹ *Id.* at 8.

composition of “initial interviewees and final hires” as “concrete steps expanding the diversity of the faculty in regards to both gender and race.”³² This detailed discussion of demographics lays bare what the ABA wanted to see: not equal *opportunity*, but rather an *outcome* defined by the faculty’s demographic makeup.

The March Letter’s comments regarding *adjunct* faculty discuss race-based hiring in even clearer terms. The discussion begins with an apology: “Unfortunately, the local bar in the 4 surrounding counties is overwhelmingly Caucasian and cannot serve as a reliable pipeline for diversity adjunct hires.”³³ From there, the letter declares that the “College of Law has taken *concrete steps* to develop a diverse adjunct faculty going forward by *targeting* qualified individuals within the broader community”; the letter later describes these targeted individuals to include two black attorneys and one other “diverse” person.³⁴ The school says this “will assist us in diversifying our adjunct faculty.”³⁵

This letter, much like the school responses in the site report, provides further evidence that law schools have felt compelled to persuade the ABA that they are considering race and sex in the hiring process.

The same goes for the “May Letter,” which addresses the law school’s compliance with Standard 206(a)—the standard governing student diversity.³⁶ The ABA had apparently demanded “detailed information demonstrating that the Law School is in compliance with Standard 206 in light of the Law School’s first year people of color enrollment decreasing from 11 to five students in 2021, despite an overall increase in enrollment....”³⁷ The ABA thus required ONU to specifically justify its drop in minority enrollment—merely being *open* to minorities on equal terms was not enough to satisfy the ABA. Alert to this, the law school again apologized for the fact that northwest Ohio “*suffers* from a paucity of diversity.”³⁸ It further addressed its compliance with the ABA’s unstated soft quota by noting that the “rural location makes it difficult to attract diverse faculty, staff, and students.”³⁹ But the letter goes on to stress the law school’s “hiring of a diverse faculty member, and the identification of two diverse adjunct faculty for future courses.” And it reports that the law school “monitor[s] scholarships ... and set[s] aside additional dollars when requested by diverse

³² *Id.*

³³ *Id.*

³⁴ *Id.* (emphasis added).

³⁵ *Id.*

³⁶ Letter from Charles H. Rose III, Dean, Ohio Northern University, to Stephanie Giggetts, Deputy Managing Director of Accreditation and Legal Education, American Bar Association Section of Legal Education and Admissions to the Bar, at 1 (May 31, 2022) (Appendix Exhibit 2) (publicly available as Exhibit 6 to the Affidavit of Julie E. Byrne in Opposition to the Defendants’ Motions for Summary Judgment, filed on July 15, 2024 in *Gerber*, No. 2023-1107 (Hardin Cnty. C.P.)).

³⁷ *Id.*

³⁸ *Id.* (emphasis added).

³⁹ *Id.*

applicants” it has “accepted,”⁴⁰ seemingly alluding to race-conscious scholarships that would help it satisfy the ABA’s diversification demands.

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Standard 206, on its face, commands schools to discriminate. The documents discussed in this section establish that schools received this message loud and clear: the ABA pressured them to pursue racial, sex, and ethnic diversity, including through the adoption of race-, sex-, and ethnicity-focused policies.

CONCLUDING THOUGHTS

The Committee should recommend ending the ABA’s role in accreditation. Section 206’s existence alone suffices to justify that conclusion. Other publicly available evidence of the ABA’s highly partisan, activist nature merely serves to gild the lily.

Still, we understand the Committee will wish to engage in due diligence. We thus conclude with some thoughts as to how this committee might proceed.

The documents discussed above relate to communications between the ABA and one small law school in Ohio. The ABA likely had similar conversations regarding diversity with every other Ohio law school. We thus recommend that the Committee take the following actions:

1. At bare minimum, the two law-school deans on the Committee should turn over all of their schools’ accreditation-related communications with the ABA over the past decade or so—if they are unwilling to do that, their obstructing the Committee’s ability to uncover the full scope of the ABA’s misdeeds should disqualify them from serving on the Committee.
2. The Committee should also demand the ABA produce these accreditation-related communications with all Ohio-based law schools. Transparency is essential for maintaining the trust of Ohioans and the integrity of the accreditation process. If the ABA opposes transparency in this regard, that is further evidence that it ought to play no role in the accreditation process.
3. The Committee should demand that Ohio-based law schools turn over the same communications so that it can be assured it received all relevant materials.

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⁴⁰ *Id.* at 2.