

**A Letter to the Texas Supreme Court and the Board of Law Examiners from the
University of Houston Law Center Class of 2020**

June 30, 2020

Mr. Chief Justice, Associate Justices of the Texas Supreme Court, and members of the Texas Board of Law Examiners,

We, as 2020 graduates of the University of Houston Law Center, are writing to echo the letters sent by the ten Texas law school deans and the graduating classes from the University of Texas School of Law and the SMU Dedman School of Law, and to express our serious concerns about administering the Texas Bar Exam in person this coming July and September. In each of Texas’s major cities, COVID-19 has escalated from a concern to a full blown crisis. We believe in-person administration in July and September is unsafe and unwise because of the unavoidable risk of death and serious, long-term injury. Injury that is compounded by our lack of complete understanding about this disease, its transmission, and its prevalence in our community. In place of in-person administration we believe that some version of diploma privilege outlined in the joint deans’ letter is the best option. Alternatively, we advocate for some type of remote administration as soon as practicable but recognize immense drawbacks to this approach.

Although Texas was largely spared the fate of other COVID-19 hotspots across the nation in April, the state, and especially the Houston area, has gained national focus in the past weeks as an emerging epicenter of the disease.¹ Harris County Judge Lina Hidalgo recently issued a second “Stay Home, Work Safe” advisory urging all Harris County residents to not leave their homes unless absolutely necessary. Governor Abbott has paused, and in some cases rolled back, the plan in place for reopening the state and has banned most outdoor gatherings of 100 people or more. The state of the COVID-19 pandemic is not what it was in May or even early June when accommodations were made to the Texas Bar Exam to promote examinee safety. Not only has the incidence of the disease increased at alarming rates across our community, but the profile of those infected has changed dramatically. Where the virus appeared to affect mostly older persons in April, current trends show an increased prevalence in people in their 20s and 30s—the age range of a majority of people taking the bar exam.²

While the Supreme Court and the Board of Law Examiners (BLE) have taken measures demonstrating their commitment to examinee safety (masks, distancing, hand sanitizer), measures like these merely attempt to mitigate instead of eliminate the risk—a risk that we obviously do not

¹ See, e.g., Juan Pablo Garnham, *Officials in Texas’ Big Cities Say Their Public Testing Sites Are Being Strained. Austin Has Begun to Limit Who Can Be Tested*, The Texas Tribune (June 29, 2020), https://www.texastribune.org/2020/06/29/coronavirus-testing-austin-dallas-houston/?utm_campaign=trib-social&utm_content=1593478458&utm_medium=social&utm_source=twitter.

² See Kevin Stankiewicz, *CEO of Major Hospital in Epicenter of Texas’ Coronavirus Surge Issues a Warning to Young Adults*, CNBC (last updated June 29, 2020), <https://www.cnn.com/2020/06/29/houston-methodist-ceo-on-rising-coronavirus-cases-among-young-people.html>. It is also likely that our numbers are severely underreported, with a federal study suggesting that as many as 10 times the number of people have contracted the virus. This may seem like good news, and to an extent it is, but it also means that there are ten times as many vectors for transmission. Joel Achenbach & Lena Sun, *CDC Chief Says Coronavirus Cases May be 10 Times Higher Than Reported*, Wash. Post (June 25, 2020), <https://www.washingtonpost.com/health/2020/06/25/coronavirus-cases-10-times-larger/>.

fully understand. Several of our graduates have tested positive or have been in contact with positive individuals. The CDC continues to add to the list of groups at an increased risk, and many of our graduates fit in these categories: older adults, pregnant women, diabetic persons, and those who are immunocompromised.³ There is little incentive for asymptomatic, mildly sick, or high-risk individuals to stay home and prevent the spread, given that this exam is offered only twice a year, and job offers depend on being licensed. We must assume there will be infected individuals taking the exam, and we must assume examinees will contract the disease while taking the exam.

Even accepting that the bar exam adequately protects the public from incompetent lawyers, testing in July and September could not and would not accurately and fairly achieve this goal for a number of reasons. First, the increased stress of studying and taking a multi-day test surrounded by other people during a pandemic speaks for itself. Our classmates who contracted COVID-19 lost weeks of valuable study time while being bedridden. Students are confined to their homes, in some cases with family or even healthcare workers who are actively seeing COVID-19 patients, and are expected to study as efficiently and effectively as past examinees who had access to libraries or other secluded study spots. Where other applicants in past years could devote eight or more hours a day to studying, that is infeasible for most examinees, and particularly for UH Law Center graduates. The Law Center is proud to have a diverse student body with high numbers of non-traditional students and other minorities. Graduates that are balancing family duties feel the weight of quarantine and the pandemic even more harshly than the average student. Many of us must balance studying, looking after children who are stuck at home inside, and the added stress of economic uncertainty of a partner's job or our own employment prospects. Some have had to find work after family members were laid off because of the pandemic, cutting into their study time. Minorities are especially burdened by the pandemic; data shows that COVID-19 is disproportionately hospitalizing and killing people of color across the country.⁴ Administering the bar exam to students who are afraid to leave their homes or are forced to choose their family's safety over good study habits is anything but a fair and accurate representation of ability. All graduates sitting for the bar exam have completed arguably the most difficult part of becoming an attorney: completing all law school courses with passing grades.

For the foregoing reasons, we request that the Texas Supreme Court grant some form of diploma privilege for 2020 graduates of Texas law schools (including students registered to take the UBE elsewhere) and any other individuals currently registered to take the July or September exam. As the deans' letter pointed out, diploma privilege is not unprecedented in Texas—and even if it was, COVID-19 is an unprecedented issue that requires unprecedented solutions. Pragmatically, granting diploma privilege will not materially change which members of the class of 2020 will be licensed. Over 90% of graduates from Texas law schools go on to be licensed within two years. Surely it is not worth the risk to human life to go forward with a test that will yield nearly identical results to an option that carries with it no risk to human life. To balance the interests of the public, we also support the modified diploma privilege concepts put forth in the deans' letter. As they noted, the average law student devotes somewhere between 350 and 500 hours of studying for the bar, and many of us have already dedicated this amount of time

³ *People of Any Age with Underlying Medical Conditions*, CDC (June 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

⁴ *COVID-19 in Racial and Ethnic Minority Groups*, CDC (last updated June 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

or more. We also support an apprenticeship-style licensure contingent on meeting this number of hours of supervised practice within a set period of time. We also support full licensure contingent on the applicant having no allegations of misconduct or ethical violations filed against her.

Before considering the alternative of some delayed, remote administration, we would like to emphasize that we strongly and primarily support a plan for diploma privilege in accordance with the preceding paragraph. If such a plan is not possible or feasible, we would support some type of delayed and remote administration as soon as practicable, taking into account the needs of students.⁵ We believe that the prompt licensure and employment of current graduates is of the utmost importance. Indeed, the State of Texas has made it clear since the beginning of the pandemic that its goal was to allow people to work and support themselves as soon and as safely as possible. We also understand that there are challenges associated with moving a test to an online platform when it has never been administered in such a manner. That being said, we urge you to consider alternatives to moving the *entire* bar exam online. As the deans noted, a number of states have modified the contents of their respective exams, from reducing or eliminating essays to shortened or revised questions covering MBE topics. We also understand concern about exam security if offered online. The deans noted that lessons can be learned by looking to other jurisdictions and other tests that are offered online. We believe another way forward would be similar to the take home exams offered at the UH Law Center. Exams are only accessible for a certain amount of time, must be uploaded by a deadline, and are open-book. We believe this could be applicable here; while exams were open-book, time restraints and the volume of material tested generally separates people who actually know the law from people who do not. The ability for our graduates to promptly demonstrate their competence and receive their licenses warrants an abbreviated and remote examination, if it must be given at all and must be delayed.

To that end, we would also like to emphasize the impracticality of waiting for an October administration, or even worse, a February administration of the UBE. Many of us are depending on prompt licensure to begin our careers. Students have expressed concerns over the future of their JAG commissions if they are not timely licensed or the thought of studying for the bar while also pursuing an LL.M. in the coming academic year. Graduates who are also parents would have to juggle being a homeschool teacher and studying for the bar, as it is unlikely schools will fully reopen. As we noted above, studying for the bar often involves a commitment to roughly two months of dedicated study. If the bar exam were to be moved to October, we would be forced to restart our studying in August, would go another three or more months without an income, and would not be able to work in the meantime because of the rigorous study schedule required.

The outlook for a February UBE would be even worse. Many of our firms have already deferred employment, and more would likely join them (or rescind offers altogether) if we were not able to work until February. While the provisional license schema in Texas has been modified to address these concerns, a modification we are deeply appreciative of, we worry it still falls short. Should we all be moved to the February UBE, we have serious doubts about our interim employability. Even if we were employed, we would have to withdraw from employment for two or more months to study for a completely different test than the one we are studying for now. Full-time employers are hesitant to allow interim legal employment at other firms because of the

⁵ Particularly, we would like to bring your attention to students who do not live in homes conducive to test-taking, students without the appropriate technology, and students with disabilities.

potential for conflicts of interest to arise. Those who could not find interim legal employment would not likely be able to look outside of the legal market either—every other job market is also experiencing layoffs, furloughs, and general turmoil. Many of us have budgeted just enough to get us to our start dates. A significant delay in licensure or examination would unduly burden the class of 2020, and would negatively affect the trajectory of our careers.

We understand and respect that your decision is not easy. We are asking you to go against years of tradition in a state and field that prides itself on adhering to such. But if even one person could die—if just one person could be hospitalized and saddled with life altering hospital bills and lifelong repercussions of this awful disease—we feel you must grant diploma privilege. We are not trying to get out of studying for the bar exam or trying to take advantage of a national tragedy; many of us are already seven or more weeks into studying. But we do not think that we should be required to risk our lives to practice in the profession to which we have already demonstrated our commitment by graduating from law school. No other class of graduates or examinees has been asked to do the things that we have been, and are being, asked to do. We have done what was asked and made the adjustments to take the Bar Exam, but we can no longer be silent while staring down an inevitable outbreak of COVID-19. We ask that you grant emergency diploma privilege as the preferable and equitable solution to this problem. BLE employees have been allowed to opt-out of administration, and examinees have an equal or greater risk of exposure. At this juncture, we believe the path forward is clear.

Sincerely,

2020 Graduates of the University of Houston Law Center
Individual Signatures Follow the Testimonials, as of 4 p.m. June 30, 2020