

June 15, 2020

VIA ELECTRONIC MAIL

Oregon Supreme Court
1163 State Street
Salem, OR 97301

Re: Diploma Privilege Request

Dear Chief Justice Walters & Justices of the Oregon Supreme Court:

We are the deans of Oregon’s three law schools, and we are writing to request that the Oregon Supreme Court, under its inherent authority to regulate the practice of law, institute a one-time emergency “diploma privilege” to practice in Oregon for any person who timely filed an application for the July Oregon bar exam and is otherwise qualified for admission, notwithstanding the COVID-related space limitations. We are deeply appreciative of the efforts of the Oregon State Bar (OSB) and the Board of Bar Examiners (BBX) to administer the July exam at multiple sites—including our law schools—in order to try to socially distance the applicants from each other in light of COVID-19. But as the number of new confirmed and presumptive COVID-19 cases continues to increase steadily in our state, this plan becomes more imprudent.¹ Indeed, COVID-19 cases have spiked this past week in Oregon to their highest level yet, causing Governor Kate Brown just last Thursday to pause reopening the state. Authorizing a diploma privilege is the more prudent and equitable option for our state.

We are not alone in our concern about holding a bar exam during a global pandemic. The Court is no doubt aware that the Washington Supreme Court, reversing its own May decision on this issue, announced on Friday that applicants registered to take the July bar exam in the State of Washington would be “granted the option of receiving a diploma privilege to practice in Washington.” The order of the Washington Supreme Court is attached. Washington is not an outlier; indeed, a number of other states have either adopted diploma privilege or are pursuing non-traditional bar exams, including remote administration.

Apart from administration of the bar exam itself, there are very real concerns for our graduates in preparing for the exam. All students in our three law schools had to finish their law school careers remotely, sometimes under dire home circumstances due to COVID-19. While finishing law school

¹ June 15, 2020 saw 184 new confirmed and presumptive COVID-19 cases, bringing the statewide total to 5,820, which includes 180 deaths. News Release, *Oregon reports 184 new confirmed and presumptive COVID-19 cases, 4 new deaths*, OREGON.GOV (June 15, 2020), <https://www.oregon.gov/oha/ERD/Pages/Oregon-reports-184-new-confirmed-and-presumptive-COVID-19-cases-4-new-deaths.aspx>.

some students home-schooled their children; others suffered job loss; and still others coped with family members who fell ill, became unemployed, or even died. And, because our three campuses were closed to students during the latter part of the spring semester, many of our students could not find a quiet place to study, as some struggled to find sufficient internet connections to even attend class. These same struggles will only be amplified in preparation for this ultimate, high-stakes test.

Until June 13, the Governor's Executive Orders governing higher education kept all three law school campuses closed and, thus, unable to provide printing services, quiet study spaces, quality internet access, in-person workshops or counseling with faculty members, or other resources that are routinely provided to our bar studiers. Graduates of color, who are disproportionately at risk of contracting the virus and suffering adverse consequences, are perhaps the most challenged in their bar preparation due to the increased health risks and inequality of access.

Only this week has Governor Brown issued a new order and the Oregon Health Authority (OHA) issued guidance to allow us to begin opening our campuses to students. However, under this guidance, our graduates still may not make widespread use of our facilities for bar preparation. Many bar applicants, particularly those of limited means, must continue to study at home with roommates or family members, including children. Further, Multnomah County has not yet been approved for phase one reopening. That status could potentially impact the ability of Lewis & Clark Law School or the Red Lion to host a July examination.

In addition to the extreme stresses of this unprecedented pandemic, our state and nation are also reeling from the senseless and outrageous killings of George Floyd, Ahmaud Arbery, Breonna Taylor, Tony McDade and, most recently, Rayshard Brooks—to name but a few who are the most recent victims of ingrained racism and violence toward people of color in our country. Those killings have prompted a massive ongoing effort to force a reckoning with the reality of structural racism in America, including eighteen straight days of protest here in Oregon. The profound impacts of the protests, and the tragedies that led to them, do not fall equally upon all members of our community. As the Court rightly observed in its letter to OSB members on June 5, 2020: “Those deaths have had a tremendous impact on all of us, but especially on our colleagues, family, and friends from communities of color, who experienced them on a very personal level.”

Finally, there is the additional prospect that our graduates are preparing for an exam that will not occur. Although the OHA may have given tacit approval of the OSB/BBX plan, the ability to administer the exam is still contingent upon the health conditions in the state at the end of July. That uncertain state of affairs only adds to the stress current bar applicants now face. Even if the bar exam goes forward, the applicants' ability to perform as well as possible will have been seriously undermined by the historic, disruptive circumstances under which our applicants are preparing, as well as the extraordinary (masked, socially distanced) conditions under which they will have to take the exam.²

² There are also potential issues where students are disadvantaged because of the health and safety measures. Consider, for example, the hearing-impaired student who cannot read lips when proctors wear masks.

Given the turmoil our nation has endured over the past three months, the continued disruptions in the daily lives of our graduates, and the recent resurgence of COVID-19 in Oregon, it is difficult to imagine how any bar examination administered in July could be considered either prudent or fair. At the same time, the prospect of being unable to practice law due to a postponed or canceled bar exam would no doubt be crippling to our graduates. Importantly, allowing our graduates to engage in limited supervised practice is an insufficient substitute. In addition to delaying the exam, many of our graduates will be unable to secure work until licensed. Even those who could secure work would be tasked with studying for a postponed examination while actively representing clients.

Under these unprecedented circumstances, we ask the Court grant an emergency, one-time diploma privilege to qualified applicants for the July Oregon bar exam, who have been reserved a seat and those who filed a timely application but were not reserved a seat due to COVID-related space limitations. Applicants who want to take the exam in order to have transfer privileges to other jurisdictions that accept a Uniform Bar Exam could still be permitted to do so.

The Court has the authority to admit applicants to the OSB. Although ORS § 9.220, governing general requirements for admission, requires a bar examination “by the judges or under their direction,” ORS § 9.006 explicitly states:

Nothing in ORS 9.005 to 9.757 affects the inherent authority of the Supreme Court to adopt rules for the operation of the courts, *including any rules relating to the regulation of the practice of law*, that are deemed necessary by the court.³ (emphasis added)

As Oregon law school deans, we are confident that our graduates are practice ready. Graduates today are required to engage in practical skills while in law school and many students exceed the American Bar Association (ABA) requirements for experiential learning in clinics, simulation and skills classes, externships and clerkships. In asking the Court to grant a diploma privilege, we recognize that graduates of Oregon law schools are not the only ones impacted by the current situation. We therefore request the Court to, on this one-time emergency basis, also admit graduates from all ABA-accredited and approved law schools who are registered for the Oregon bar exam.

Our state needs well-trained, compassionate lawyer-leaders—now. Each day that passes in this new reality uncovers a host of exacerbated and novel legal issues. Our graduates can assist on the front lines of helping to address the complex and evolving legal needs of Oregon’s citizens.

³ Similarly, in an earlier letter from Chief Justice Stephens of the Washington Supreme Court, in which that court directed that the July and September exams go forward (a decision reversed last Friday), she stated: “*The Court has inherent authority over the admission and licensing to practice law in Washington and over the WSBA’s administration of those functions.*”

Though the BBX may not have the authority to forgo an exam and admit applicants, the Court has the power to grant the option of receiving a diploma privilege to practice in Oregon. We implore the Court to exercise its inherent authority for this extraordinary time.

Very truly yours,

Marcilynn A. Burke



Dean
Dave Frohnmayer Chair in Leadership and Law
University of Oregon School of Law

Brian Gallini



Dean & Professor of Law
Willamette University College of Law

Jennifer J. Johnson



Dean
Erskine Wood Sr. Professor of Law
Lewis and Clark Law School

CC The Honorable Angela M. Franco Lucero, Chair, Oregon State Board of Bar Examiners
Joanna T. Perrini-Abbott, Vice-Chair, Oregon State Board of Bar Examiners
Troy Wood, Admissions Manager, Oregon State Bar



Appendix

June 15, 2020

The following faculty members of Lewis & Clark Law School support the request to the Oregon Supreme Court to grant a diploma privilege for our 2020 graduates as outlined in the Deans' letter dated June 15, 2020:

1. Allison LaPlante, Co-Director, Earthrise Law Center
2. Aliza Kaplan, Professor of Lawyering and Director, Criminal Justice Reform Clinic
3. Amy Bushaw, Professor of Law
4. Anne Villella, Professor of Lawyering
5. Bill Chin, Professor of Lawyering
6. Robert (Bob) Klonoff, Jordan D. Schnitzer Professor of Law
7. Brian Blum, Jeffrey Bain Faculty Scholar and Professor of Law
8. Chris Wold, Professor of Law and Counsel, International Environmental Law Project
9. Craig Johnston, Professor of Law
10. Dan Rohlf, Professor of Law and Of Counsel, Earthrise Law Center
11. Delci Winders, Assistant Clinical Professor & Director, Animal Law Litigation Clinic
12. Doug Newell, Edmund O. Belsheim Professor of Law
13. Erica Lyman, Clinical Professor of Law, International Environmental Law Project
14. George K. Foster, Professor of Law
15. Hadley Van Vactor Kroll, Assistant Professor of Lawyering
16. Henry Drummonds, Professor of Law
17. John (Jack) A. Bogdanski, Douglas K. Newell Faculty Scholar and Professor of Law
18. James N. Saul, Associate Clinical Professor of Law and Staff Attorney, Earthrise Law Center
19. Janet Steverson, Douglas K. Newell Professor of Teaching Excellence
20. Jennifer Johnson, Dean and Erskine Wood Sr. Professor of Law
21. Jim Oleske, Professor of Law
22. John Parry, Edward Brunet Professor of Law and Associate Dean of Faculty
23. Juliet Stumpf, Robert E. Jones Professor of Advocacy and Ethics
24. Kathy Hessler, Clinical Professor of Law and Animal Law Clinic Director
25. Lisa Benjamin, Assistant Professor of Law
26. Lydia Loren, Henry J. Casey Professor of Law
27. Meg Garvin, Executive Director, National Crime Victim Law Institute; Clinical Professor of Law, Crime Victim Litigation Clinic
28. Melissa Powers, Jeffrey Bain Faculty Scholar and Professor of Law; Director, Green Energy Institute



29. Michael (Mike) Blumm, Jeffrey Bain Faculty Scholar and Professor of Law
30. Ozan Varol, Professor of Law
31. Pamela (Pam) Frasch, Associate Dean of the Animal Law Program and the Brooks McCormick Jr. Scholar of Animal Law and Policy
32. Samir Parikh, Professor of Law, Editor-in-Chief, Bloomberg Law Bankruptcy Treatise
33. Sandy Patrick, Professor of Lawyering
34. Sarah Lora, Assistant Clinical Professor of Law, Low Income Tax Clinic
35. Steve Johansen, Professor of Law and Director, Lawyering Program
36. Susan Felstiner, Clinical Professor of Law
37. Susan Mandiberg, Lewis & Clark Distinguished Professor of Law
38. Thomas (Tom) Buchele, Clinical Professor of Law and Managing Attorney, Co-Director, Earthrise Law Center
39. Tung Yin, Professor of Law

*One faculty member expressed no view and one could not be reached.



UNIVERSITY OF OREGON SCHOOL OF LAW
APPENDIX

SARAH ADAMS-SCHOEN
Assistant Professor

ANGELA ADDAE
Assistant Professor

ADELL AMOS
Clayton R. Hess Professor of Law

KRISTEN BELL
Assistant Professor

CARL BJEERE
Wallace L. & Ellen A. Kaapcke Professor of Business
Law

JOHN BONINE
Bernard B. Kliks Professor of Law

MARCILYNN A. BURKE
Dean and Dave Frohnmayer Chair in
Leadership and Law

STUART CHINN
James O. & Alfred T. Goodwin Senior Faculty
Fellowship, Full Professor, Assoc Dean of Academic
Affairs, Faculty Director, PLP Program, Director of
Externships

ANDREA COLES-BJERRE
Associate Professor, Faculty Director, Business Law
Program

GREG DOTSON
Assistant Professor

MICHAEL FAKHRI
Associate Professor

CAROLINE FORELL
Professor Emerita

ELIZABETH FROST
LRW Senior Lecturer I, Galen Scholar in Legal
Writing

SUSAN GARY
Orlando John & Marian H. Hollis Professor of
Law

IBRAHIM GASSAMA
Frank E Nash Professor of Law

ERIK GIRVAN
Associate Professor, Master's Program in
Conflict and Dispute Resolution Faculty Co-
Director

REBEKAH HANLEY
LRW Senior Lecturer II

LESLIE HARRIS
Professor Emerita

MARY ANN HYATT
Professor, Director, Law Library

ROBERT ILLIG
Dean's Distinguished Faculty Fellow,
Associate Professor

TOM LININGER
Orlando John and Marian H. Hollis Professor
of Law

MOHSEN MANESH
Associate Professor, Faculty Director, Portland
Program

ROBERTA MANN
Mr. and Mrs. L. L. Stewart Professor of
Business Law



MEGAN MCALPIN
Senior LRW Lecturer, Director of Academic Excellence

MICHELLE MCKINLEY
Bernard B. Kliks Professor

KATHRYN MOAKLEY
Domestic Violence Civil Clinic Supervisor

MICHAEL MOFFITT
Philip H. Knight Chair, Professor

MICHAEL MUSHENO
Professor

DOUG QUIRKE
Environmental and Natural Resources Research
Associate

JENNIFER REYNOLDS
Associate Professor, Associate Director of Programs and
Research, Faculty Director, ADR Center

JOAN ROCKLIN
LRW Senior Lecturer II

SUZANNE ROWE
James L. and Ilene R. Hershner Professor, Director,
LRW Program

ELIZABETH TIPPETT
Associate Professor, Master's Program in Conflict and
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DOM VETRI
Professor Emeritus

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Philip H. Knight Professor of Law

MARY WOOD
Philip H. Knight Professor of Law, Faculty Director,
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WILLAMETTE UNIVERSITY COLLEGE OF LAW

APPENDIX

LAURA I APPLEMAN
Associate Dean for Faculty Research and
Van Winkle Melton Professor of Law

W. WARREN H. BINFORD
Professor of Law and
Director, Clinical Law Program

CURTIS BRIDGEMAN
Outgoing Dean and Roderick & Carol
Wendt Chair in Business Law

VINCENT CHIAPPETTA
Professor of Law Emeritus

SUSAN P. COOK
Distinguished Professor from Practice

JEFFREY C. DOBBINS
Professor of Law and
Associate Dean for Academic Affairs

ITAI FIEGENBAUM
Visiting Assistant Professor of Law

DAVID A. FRIEDMAN
Professor of Law

BRIAN GALLINI
Dean and Professor of Law

KELLY GAMBLE
Instructor of Legal Research & Writing

ANDREW GILDEN
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Fred H. Paulus Professor of Law and
Director, Center for Religion, Law &
Democracy

BRUCE FREDERICK HOWELL
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the Certificate Program in International and
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KAREN E. SANDRIK
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DANIEL P. SANTOS
Retired Assoc. Dean for Student Affairs and
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Co-Director of Business lawyering Institute

SUSAN L. SMITH
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SYMEON C. SYMEONIDES
Alex L. Parks Distinguished Professor of
Law and Dean Emeritus

MIRIAM WERNER
Instructor of Legal Research & Writing



WILLAMETTE UNIVERSITY COLLEGE OF LAW
APPENDIX

NORMAN R. WILLIAMS
Ken & Claudia Peterson Professor of Law
and Director, Center for Constitutional
Government

THERESA L. (TERRY) WRIGHT
Director of Externships

ORDER GRANTING DIPLOMA PRIVILEGE AND TEMPORARILY MODIFYING
ADMISSION AND PRACTICE RULES
No. 25700-B-630

- Washington. The bar examinations in July and September 2020 will still be offered for those who do not qualify for the diploma privilege and those who wish to take the exam to receive a Uniform Bar Exam (UBE) score.
- 2) The diploma privilege option will be available to applicants currently registered to take the examinations who are taking the tests for the first time and those who are repeating the tests.
 - 3) The court delegates to WSBA the appropriate discretion to determine the timelines for eligible applicants to notify WSBA of their intent to receive the diploma privilege in lieu of taking an examination, and whether or to what extent any registration fees may be refunded.

DATED at Olympia, Washington this 12th day of June, 2020.

For the Court


CHIEF JUSTICE