Remarks by Chris Jennison
2nd Circuit Governor of the ABA Law Student Division
Syracuse University College of Law
[redacted]

Good afternoon. Thank you for allowing me to speak today. Adopting the Uniform Bar Exam is important for the State of New York, and carefully studying the implications of adopting the exam is essential.

(My name is Christopher Jennison, and) I am a 2nd year student at Syracuse University's College of Law. Even though I am not reflecting official policy of the American Bar Association, I would like to note that I am currently the 2nd Circuit Governor of the ABA's Law Student Division, where I represent all New York state law students in ABA related matters. I also serve on the Law Student Division Board of Governors, which is composed of 23 law students, of varying geographic and demographic backgrounds, each of whom are elected by our approximately 35,000 law student members. It is the task of this group to create and suggest policy and initiatives on behalf of law students nationally.

After speaking to many law students within New York on the subject, I drafted a resolution that urged all jurisdictions to expeditiously adopt the Uniform Bar Exam. In October 2014, the resolution passed unanimously in the ABA Law Student Division Board of Governors.

I urge New York to adopt the Uniform Bar Exam as soon as possible. New York's pre-eminence in the legal field requires that this committee and this judiciary consider not only the implications in New York for current attorneys, but implications for the entire legal profession, including future attorneys.

In August 2002, the ABA's Commission on Multijurisdictional Practice found "that geography no longer dictates the substantive law a lawyer practices, nor the location in which that practice takes place."[1] That was ***13*** years ago; the need for a portable law license for multijurisdictional practice has only grown.

Though I currently attend law school in New York, I grew up in Maryland, and attended graduate school at the University of Pennsylvania. As you know, most jurisdictions require an individual to have practiced for more than five years before admission through motion. Even still, as a result of reciprocity rules, admission after 5 years isn't guaranteed; New York is not a reciprocal state with Maryland, where my family resides, and as such I couldn't move for admission after five years of practice in New York. As a result of this tangled web, and as Chief Judge Lippman has noted, law students who take the exam in one state, such as New York, but must move to another state for employment or other reasons, "must study for, pay for, wait for, and take multiple bar exams with uncertain results."[2] Lippman continues saying, the "employment rate for fresh law graduates has fallen for the sixth year in a row… [and] dependable avenues of post-graduate employment have continued to erode in the face of economic

---

[1] Rebecca S. Thiem, *The Uniform Bar Exam: Change We Can Believe In*, B. Examiner, Feb. 2009, at 12, 13.

[2] Jonathan Lippman, *Uniform Bar Exam: A Template for New York?*, N.Y.L.J. (Jan. 26, 2015), http://www.newyorklawjournal.com/id=1202715677092/Uniform-Bar-Exam-A-Template-for-New-York.

pressures." While I may have a preference and an idea of where I hope to be employed after law school, the reality for law students today is that we go where the market demands, or suffer from decreased job prospects. Administering duplicative exams serves to increase the expense of a test taken mostly by ***recent*** law school graduates, already saddled with student loans, facing poor hiring prospects.[3] Adopting the Uniform Bar Exam allows current law students and future lawyers the flexibility to go where their circumstances dictate.

I understand the desire to protect the value of a New York law license and, ultimately, to protect clients. The UBE allows each state to set the passing score for their own jurisdiction. In the current proposal, New York would set the passing score at 266, a score lower than 10 of the 14 current UBE jurisdictions. I understand the need to maintain the quality of attorneys in New York, I really do; if that is the concern, New York has flexibility: set the passing score at 276 as in Colorado, or 280, as in Idaho. Setting a higher pass score than other UBE jurisdictions would allow those who sit for and pass the UBE in New York to transfer their scores elsewhere. Through a higher pass score, a state-specific multiple-choice component and continuing legal education, New York can maintain rigorous licensure requirements.

The adoption of the UBE in New York would set the legal profession on a course towards a uniform licensing structure while maintaining attorney quality. At the same time, it would also provide better options for law students who face an unprecedented legal employment market. I urge this committee and the judiciary as a whole to consider the benefits of the Uniform Bar Exam for current and future law students, and to adopt the UBE as quickly as possible.

Thank you for your time.

---

[3] Ill. State Bar Ass'n, Final Report, Findings & Recommendations On The Impact Of Law School Debt On The Delivery Of Legal Services (2013), available at http://www.isba.org/sites/default/files/committees/Law%20School%20Debt%20Report%20-%203-8-13.pdf.

Appendix A: Column written by Chris Jennison for the March 2015 issue of The Student Lawyer, the publication of the ABA's Law Student Division.

The Uniform Bar Exam: An Idea Past Due?

Soon-to-be law school graduates are getting ready to gear up for the bar exam in just a few months and younger law students are beginning to focus on what state or region they may want to practice in. While you do so, it's important to note that the Uniform Bar Examination (UBE) may soon be coming to a jurisdiction near you, as several states weigh adoption of the portable law test.

The majority of new law graduates currently have to choose a single state in which to apply for admission to the bar, even if those graduates have not yet obtained employment in that state. In most situations, if they later move to another state, they must retake the bar exam at an additional cost. If fortunate, they may be able to weave a solution through reciprocity agreements, though in the majority of states, that option is mostly available to seasoned lawyers with five or more years of experience.

The UBE seeks to fix this portability problem. It is composed of the Multistate Essay Examination (MEE), Multistate Performance Examination (MPE), and the Multistate Bar Examination (MBE). The UBE is uniformly graded, offering test-takers a portable score, something that would prove beneficial to law students and recent graduates. Jurisdictions that use the UBE still set their own guidelines for various issues, including setting their own passing scores and determining how long incoming UBE scores will be accepted.

It has been more than four years since the UBE was first administered, and it is now offered in 14 states. On October 7, 2014, the New York state judiciary circulated a proposal to adopt the UBE; should this take place, New York would be the largest state to date to administer the test, having examined 15,200 candidates in 2014. It is long overdue for other states and territories to adopt this UBE.

Administering duplicative exams throughout the United States is wasteful and serves only to increase the expense of a test taken mostly by recent law school graduates already saddled with considerable student loan. A uniform bar exam would test legal proficiency at an equivalent level as most individual state bar exams today, and would still allow each state or territory to ensure that bar admission candidates have adequate knowledge of law through setting passing scores in the respective state or territory. States that desire to ensure that candidates have knowledge of local law can meet this need in various ways; for example, states could also ensure a basic level of competency through "bridge the gap" CLE programs, which many states offer anyway.

The UBE is an idea whose time has come, and the Law Student Division recognized this in fall 2014 when it supported a resolution urging all US jurisdictions to adopt the UBE expeditiously. Such an exam would better reflect the multijurisdictional practice of law today, while at the same time ensuring a level of competency for all lawyers throughout the United States. Such an exam would greatly assist law school graduates facing tremendous challenges finding employment while at the same time reducing inefficiency and expense by eliminating the duplication of efforts among state bar examiners. Because most states are already, in essence, administering a uniform bar exam, formally accepting the UBE as the standard is the obvious next logical step.

Appendix B: Resolution 14/10-01 passed unanimously, as written below, in the ABA Law Student Division Board of Governors on October 25, 2014.

AMERICAN BAR ASSOCIATION
LAW STUDENT DIVISION
BOARD OF GOVERNORS

RESOLUTION
URGING ADOPTION OF THE UNIFORM BAR EXAMINATION (UBE)

RECOMMENDATION

WHEREAS, the market for new lawyers has been increasingly competitive in recent years, resulting in significant unemployment of law school graduates in the state in which they sit for the bar; and

WHEREAS, the restriction of recent law graduates to the state in which they sit for the bar contradicts the American Bar Association's aim to address the access to justice gap; and

WHEREAS, law is the only major profession that has geographically-restricted licensing exams, restricting the mobility of law students and lawyers;

WHEREAS, the Conference of Chief Justices adopted a resolution on July 28, 2010, urging "the bar admission authorities in each state and territory to consider participating in the development and implementation of a uniform bar examination;" and

WHEREAS the Council of the Section of Legal Education and Admissions to the Bar adopted a resolution on August 6, 2010, urging "the bar admission authorities in each state and territory to consider participating in the development and implementation of a uniform bar examination;"

WHEREAS the American Bar Association Task Force on the Future of Legal Education's final report, issued January 24, 2014, recommends that state Supreme Courts, state Bar Associations and other regulators of lawyers and law practice "establish uniform national standards for admission to practice as a lawyer, including adoption of the Uniform Bar Examination;"

NOW, THEREFORE BE IT RESOLVED that the Law Student Division (the "Division"), by and through its Board of Governors, hereby supports the positions taken in 2010 by the Conference of Chief Justices and by the Section of Legal Education and Admissions to the Bar;

BE IT FURTHER RESOLVED, that the Law Student Division encourages these and other entities to renew examination of a Universal Bar Exam since four years have passed since their previous resolutions and fourteen jurisdictions now administer the Uniform Bar Examination; and

BE IT FURTHER RESOLVED, and that the Law Student Division is committed to working with these groups in such a re-examination; and

BE IT FURTHER RESOLVED, the Law Student Division urges States and Territories to expeditiously adopt the Uniform Bar Examination.

REPORT

Introduction

As it currently stands, the majority of new law graduates have to choose a single state in which to apply for admission to the bar, even if those graduates have not yet obtained employment in that state. In most situations, if they later move to another state, they must retake the bar exam at an additional cost. If fortunate, they may be able to weave a solution through reciprocity agreements, though in the majority of states, that option is mostly available to seasoned lawyers with five or more years of experience.

Additionally, as well discussed by the American Bar Association and its entities, there exists an access to justice gap. As outlined in Resolution 108 of the Legal Access Job Corps Task Force:

> most states have substantial rural areas and some of them have an aging lawyer population. As a result, many communities are now without lawyers. For example, in one South Dakota community, the nearest lawyer is 120 miles away. State bars faced with this challenge are creating rural placement projects designed to encourage and give incentives for recently admitted lawyers to set up or assume practices in these communities.

Wider adoption of the Uniform Bar Examination ("UBE") will address both the problems of recent graduate unemployment and lack of access to legal services in certain places. This resolution urges all states and jurisdictions to remedy this deficit by adopting the Universal Bar Examination, providing portability to law school graduates.

The Bar Examination: A Brief History

Although many consider the written bar exam an institution, its history is actually shorter than many realize and it has been in a state of flux for much of its existence. Massachusetts was the first state to permanently institute a written bar exam in 1876. Other states soon followed suit, but some kept an oral component to the exam well into the Twentieth Century.

In the late 1960s, the National Conference of Bar Examiners (NCBE) began a concerted effort to examine proposals to improve state bar examinations. Although early proposals to address duplication of effort among states included a "National Bar Examination," those were rejected as they implied a loss of local control, and the committee settled on a "Multistate Bar Examination" (MBE) – a voluntary, uniform, multiple-choice exam offered twice a year that state bar examiners could adopt. The MBE was first offered in 1972 and is now offered in 48 states. Later, the NCBE

developed supplemental exams, including: the Multistate Professional Responsibility Examination (MPRE), first offered in 1980 and now used in all states and territories, except Maryland, Wisconsin and Puerto Rico; the Multistate Essay Examination (MEE), first offered in 1988 and now used in 31 states and territories; and the Multistate Performance Test (MPT), first used in 1997 and now used in 41 states and territories (see Appendix A).

The Uniform Bar Examination

The idea for a uniform bar examination has been in discussion for most of the past decade. In August 2002, the American Bar Association's Commission on Multijurisdictional Practice "recognized that geography no longer dictated the substantive law a lawyer would practice, nor the location in which that practice would take place."

The UBE is composed of the MEE, MPT, and the MBE. The increased testing on lawyering skills encapsulated in these three components of the UBE will address the call by bar associations for legal education to incorporate more practical skills training.The UBE is uniformly graded, offering test-takers a portable score, something that would prove beneficial to law students and recent graduates. Jurisdictions that use the UBE still set their own guidelines for various issues, including: setting their own passing scores; determining how long incoming UBE scores will be accepted; and deciding who may sit for the bar exam and who will be admitted into practice.

It has been more than three years since the UBE was first administered, beginning with Missouri and North Dakota in February 2011; it is now offered in fourteen states (See Appendix B). On October 7, 2014, the New York state judiciary circulated a proposal to adopt the UBE; should this take place, New York would be the largest state to date to administer the test, having examined 15,200 candidates in 2014. It is long overdue for other states and territories to adopt this UBE.

Administering duplicative exams throughout the United States is wasteful and serves only to increase the expense of a test taken mostly by recent law school graduates already saddled with considerable student loan debt (up to $200,000 in some cases). A uniform bar exam would test legal proficiency at an equivalent level as most individual state bar exams today, and would still allow each state or territory to ensure that bar admission candidates have adequate knowledge of law through setting passing scores in the respective state or territory. In reality, though, as it exists in most states and territories, the bar exam is essentially a uniform exam, given that it tests the same general issues of law with little to no emphasis on local variation. Formally adopting a uniform examination is simply the next logical step.

States that desire to ensure that candidates have knowledge of local law can meet this need in various ways; for example, states could also ensure a basic level of competency through "bridge the gap" CLE programs, which many states offer anyway. Most states are not testing local law to any considerable degree on current bar examinations, and candidates can pass most bar examinations by studying a core set of subjects, paying little to no attention to local variation in the law. Additionally, it is possible that states could maintain a section specific to state law; in New York, for example, the State Board of Law Examiners has recommended the inclusion of a component to New York state law.

Summary

The UBE is an idea whose time has come. Such an exam would better reflect the multijurisdictional practice of law today while at the same time ensuring a level of competency for all lawyers throughout the United States. Such an exam would greatly assist law school graduates facing tremendous challenges finding employment while at the same time reducing inefficiency and expense by eliminating the duplication of efforts among state bar examiners. Finally, because most states are already, in essence, administering a uniform bar exam, formally accepting the UBE as the standard is the obvious next logical step.

FINANCIAL REPORT

The adoption of this resolution entails no financial expense for the American Bar Examination, or its Law Student Division. The financial impacts in each state would vary but would be minimal, as many states are already administering NCBE test portions of the UBE (MBE, MEE, and/or the MPT).

Respectfully submitted,
Christopher Jennison
Primary Sponsor
2nd Circuit Governor, Law Student Division
J.D. Candidate, 2016 | Syracuse University College of Law
M.P.A., 2014 | University of Pennsylvania
chris.s.jennison@gmail.com

[redacted]

From: Berch, Rebecca <[redacted]
Sent: Wednesday, January 28, 2015 5:14 PM
To: Uniform Bar
Subject: UBE Testimony

I would appreciate the opportunity to address the Advisory Committee about the UBE at your February 26 meeting in Rochester. I have arrived at my position strongly favoring adoption of the UBE as a result of much study and thought resulting from several positions in have held or now hold.

(1) I am a supreme court justice, so appreciate the special concerns each state has about potential incursions into the state's autonomy. Because the UBE simply provides a portable score on a well-conceived, vetted, and executed standardized exam, many of these concerns are alleviated. States maintain the right to require a state-law component, enforce character and fitness standards, and set forth other considerations important to the admitting jurisdiction.
(2) Arizona adopted the UBE during my term as Chief Justice. I will share my court's endorsement of the exam and our experience creating an Arizona Law component.
(3) I currently serve as chair-elect of the Council of the ABA Section of Legal Education and Admissions to the Bar. During my term as a Council member, the Council approved a resolution encouraging jurisdictions to consider adoption of the UBE.
(4) During my term as Chief Justice of Arizona, I served on the Conference of Chief Justices, which adopted a similar resolution encouraging states to consider adoption of the UBE. (I recall that no-one voted against it, but that is subject to verification.)
(5) I served as a bar examiner for seven years in Arizona, so am familiar with exam writing/procuring and exam grading. From that experience, I can avow that NCBE has more resources and produces a better exam than any jurisdiction could possibly produce (though we thought we did a pretty good job at the time). I am also aware that an applicant for admission could miss every Arizona-law nuance in our home-produced essays, yet still pass the Arizona bar exam. With the required Arizona Law Course, we ensure that all applicants for admission to the Arizona Bar have at least passing familiarity with important aspects of Arizona law – even if those aspects (such as the requirement of filing the annual continuing legal education affidavit) are too minor to ever have been included on a bar exam.
(6) I serve on the Board of Trustees of the National Conference of Bar Examiners and on the Conference's Uniform Bar Examinations Committee, so I am familiar with the quality of the individual exam products produced by the NCBE and also with the UBE and the policies surrounding its administration and grading.
(7) I served on the faculty at Arizona State University College of Law (now the Sandra Day O'Connor College of Law) from 1986-1995. During that time, I taught (among other courses) the academic support program and special classes on exam writing. I am sensitive to concerns about the impact of uniform exams on diverse candidates. I am also aware that most law schools teach from law books produced by national vendors, such as Thompson/West, Foundation, and Little Brown, which do not focus on the law of any one jurisdiction. With very rare exception, the schools teach Federal Rules, Uniform Laws, and Model Rules and Laws, rather than the laws of any local jurisdiction. As a result, in-state schools usually don't teach local law; they teach law applicable

pretty much throughout the country. Given that, it seems unproductive to require recent law graduates and new lawyers to take essentially the same test, based on national rules, in each jurisdiction in which they wish to practice.

In short, from this background, I have become convinced that a more uniform approach to bar examinations nationwide serves the public both from the perspective of making access to justice more readily available, and protection of the public through administration of a high-quality, uniform exam to test the knowledge a new lawyer should possess. The UBE serves law students and new lawyers by allowing them to take an exam score earned in one jurisdiction an move it to another jurisdiction, while they remain responsible for satisfying local criteria for admission, such as a state-law program, pro bono requirements, and C&F. Law schools should also embrace the UBE, as it provides students with mobility. Given the difficult market for law-related jobs, schools should embrace programs that assist their students with placement. Finally, high courts or supervisory bodies can be assured that the test given is of the highest quality and the administrative requirements embody best practices, helping to alleviate concern regarding the giving of a high-stakes gatekeeping examination.

I hope you will consider my request. Thank you, and good luck with your inquiry.

Rebecca White Berch
Justice
Supreme Court of Arizona
1501 W. Washington St.
Phoenix, Az. 85007-3231
[redacted]

Greg Murphy Law Firm
[redacted]

February 11, 2015

Via Email Attachment

The Advisory Committee on the Uniform Bar Examination
New York Board of Law Examiners
Corporate Plaza, Building 3
254 Washington Avenue Extension
Albany, N.Y. 12203-5195

Dear Advisory Committee:

In accordance with your kind invitation and the procedures you have adopted for your public hearings, please accept this as an outline of the testimony I expect to give at your hearing in Rochester, New York on February 26, 2015.

I. Introduction—Greg Murphy
   A. Vice-Chair, Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association. (Former Chair, Law School Accreditation Committee.)
   B. Co-Chair, Special Committee on the Uniform Bar Examination, National Conference of Bar Examiners.
   C. 30-years experience in bar admissions
      1. Former Chair, Montana Board of Bar Examiners.
      2. Former Chair, National Conference of Bar Examiners.
      3. Former Chair, Multistate Bar Examination Committee.
      4. Former member, Multistate Performance Test Drafting Committee.
   D. Distinguished Practitioner in Residence, Cornell University Law School (Fall term 2015).

II. Why the Uniform Bar Examination?
   A. Multistate Bar Examination employed in 49 states, District of Columbia, U.S. Territories.
   B. Multistate Performance Test, 37 states, the District of Columbia, three U.S. territories.
   E. Multistate Essay Examination, 28 states, the District of Columbia, and three U.S. territories.
   F. Communality of Testing Components; why not a transferable score.

G. 15 states have now officially adopted the UBE; in consideration in others.

II. Quality of Test Products
   A. Committee drafting and editing by content experts, legal academics, lawyers, and judges.
   B. Pretesting
   C. Scaling to the MBE and combining score; Best psychometric practice.
   D. Transferability of scores.
   E. Opportunities for addressing state-specific law and issues.
      a. 50-item New York test.
      b. Online test; the Missouri model.
      c. Online course; the Arizona model.
      d. In-person course; the Montana model.

III. Addressing questions and myths about the UBE.
   A. Not a revolutionary exam product, but a reasonable step to help bar applicants.
   B. Does not mean national admission or reciprocity.
   C. The "Gold Standard." New York would set its own minimum passing score. 29 jurisdictions now have a minimum passing score higher than New York's (calculated on a 200-point scale).
   D. Effect on disadvantaged minorities. No data has yet surfaced that minorities do worse than existing test products.
   E. Adopting the UBE does not mean New York forever bound.
   F. Who opposes the UBE and why?
      a. Some organized bar groups.
      b. Some law professors.
      c. Some bar examiners.

Sincerely,

Greg Murphy

Greg Murphy

Revised Testimony of Justin L. Vigdor Before the Advisory Committee Appointed by Chief Judge Jonathan Lippman to Study the Issues Related to the Proposed Adoption of the Uniform Bar Examination (UBE) in the State of New York

Dated: February 26, 2014

Good Afternoon Judge Rivera and members of the Committee:

I am Justin Vigdor. I am a past president of the New York State Bar and one of the five New York State Uniform Law Commissioners. I have served on the New York Commission for 26 years, and consequently, I normally am a strong supporter of uniformity among the states. I am grateful for the invitation to testify this afternoon and express my personal concerns regarding the UBE. I emphasize that I do not speak for the New York Commission.

I intend to be brief and simply express my reservations and my feeling that the UBE needs further study before its adoption.

I have read the report of the State Bar Association's Committee on Legal Education and Admission to the Bar and attended the meeting of the House of Delegates at which that report was received last November. That Committee's recommendation that the adoption of the UBE be delayed for further study was adopted by the Executive Committee and by the House of Delegates at its January meeting.

At the November meeting, again, speaking for myself and not for the Association or the Commission, I expressed my fear that given New York's record of non-adoption of a number of significant uniform laws, uniform laws are probably likely not being taught at New York law schools and students at those law schools would be prejudiced. As I understand it, the current five New York essays will be replaced with six essays,

not drafted by the New York Board of Law Examiners, that will test on uniform laws rather than the laws of New York. I assume that the multi-state essays will deal with important subjects of legal practice such as business entities, the Uniform Commercial Code, and a variety of other areas.

The New York Legislature, over the years, has been reluctant to adopt Uniform Acts, including some quite significant Uniform Acts and it would not seem that that is likely to change in the near future. Moreover, a number of the Uniform Acts that the Legislature has adopted contain a number of variations from the promulgated Uniform Acts and are, in that sense, not truly uniform.

Despite the fact that New York is a premier commercial state, it has lagged far behind the rest of the country in adopting certain modern versions of the Uniform Commercial Code. New York has never adopted the current versions of Article 3 dealing with negotiable instruments and Article 4 dealing with bank deposits and collections. Their adoption has been recommended as far back as 1990 by the Uniform Law Conference and the American Law Institute. Our versions of Articles 3 and 4 were adopted in the 1960's and ignore amendments adopted in 1990 and 2002, which virtually all states have adopted.

Just this past year, we adopted modern versions of Articles 1, 7 and 9. We were the last state to do so. However, the 2010 amendments to Article 9, which deals with secured transactions are not entirely uniform in certain respects and an effort will be made to convince the Legislature to consider amending those non uniform provisions. A significant departure from the Uniform version is the fact that we did not adopt the Uniform objective definition of good faith ("honesty in fact and the observance of

reasonable commercial standards of fair dealing"). Instead, we have preserved the subjective definition ("honesty in fact in the transaction or conduct concerned"). Another example is the removal from the uniform definition of "conspicuous" the safe harbor of a printed heading in capitals larger than the language in the body of the document. Our 2014 version contains a non-uniform Statute of Frauds provision with respect to sales of personal property and non-uniform provision on the law of accord and satisfaction.

With respect to Article 9 dealing with secured transactions, an important non-uniform provision we just enacted (among a number of others) is the failure to specify that the correct name to use when filing a security financing statement against an individual debtor is the debtor's name on the driver's license. All but seven of the 51 jurisdictions that adopted the new Article 9 amendments have chosen that rule.

I could go on about the commercial deficiencies but prefer to speak for a moment about New York's entity laws. We are still operating with a Partnership Act, originally adopted in 1914 and from time to time amended in non-material ways. The Uniform Law Conference promulgated a revised Uniform Partnership Act in 1994 and 1997 which has been adopted by over 40 states. Among other things, the revised Act clarifies the nature of a partnership by clearly defining it as an entity rather than as an aggregation of individuals as it is in New York. The N.Y. Limited Partnership Act dates back to 1916, whereas the Revised Uniform Limited Partnership Act was last amended by the Conference in 2013. That likewise, treats the Limited Partnership as an entity rather than an aggregation of individuals. It provides a full shield for partners against liability for entity obligations and it has self-contained provisions. Our Limited Partnership Act must refer to the Partnership Act itself to fill in coverage gaps.

LLCs, Limited Liability Companies, have become the country's most popular form of business entity being organized. New York's Limited Liability Company Law was enacted in 1994. The 2013 Revised Uniform Limited Liability Company Law is the product of a study by knowledgeable experts based on their experience with the current and prior generations of Limited Liability statutes. It is modern, flexible, user friendly, and is far more advanced than New York's 1994 Act. New York's law is out of sync with other states and therefore practitioners cannot rely on court cases which are decided elsewhere to clarify issues. We are the only state that still requires a publication for effectiveness of an LLC.

Because of our outdated commercial and entity laws, many practitioners are forming entities and closing important commercial agreements in Delaware or other states which are far more modern and hospitable. We, consequently, lose tax revenues in New York.

I could go on at length beyond commercial and entity matters but briefly, by way of example, despite efforts by the bars and by the Uniform Law Conference we have, for various reasons, not adopted the Uniform Arbitration Act, the Uniform Mediation Act, a Uniform Condominium Act, the Uniform Probate Code, the Uniform Real Property Transfer on Death Act, the Uniform Securities Act, the Uniform Trade Secrets Act, and so forth. If the substance of any of these Acts were to be tested on a Uniform Bar Examination, clearly New York students will be badly prejudiced unless law schools rapidly change their teaching materials and teach both the New York version and the Uniform version of Acts. Until this issue and some of the other issues which have been raised by the New York Committee on Legal Education and Admission to the Bar, such

as the disparate impacts on bar passage for minorities and the UBE's costs, have been studied, adoption of the UBE should be delayed.

Thank you for your attention and for affording me the opportunity to testify here today.

ADVISORY COMMITTEE ON THE UNIFORM BAR EXAM
TESTIMONY OF DAVID M. SCHRAVER ON BEHALF OF THE NEW YORK STATE BAR ASSOCIATION
February 26, 2015
Rochester, New York

Good afternoon. I am David Schraver, Immediate Past President of the New York State Bar Association. I have been asked to testify this afternoon on behalf of the Association. Thanks to you, Judge Rivera, and to the Committee for inviting me to testify at this public hearing. I am aware that David Miranda, Eileen Millett and Sarah Gold testified in Albany on February 3; and while I affirm their testimony, I do not intend to repeat it.

My testimony this afternoon will cover three topics:

- An update on the Association's activities in response to the Board of Law Examiners' request for comments regarding the January 2015 draft "Content Outline for the Proposed New York State Specific Law Examination: Significant Distinctions, Laws and Rules," and a few preliminary comments on the draft Content Outline;
- A brief summary of concerns expressed by the International Section of the State Bar about the proposed adoption of the UBE in New York; and
- The efforts the State Bar has made to ascertain whether there has been a disparate impact on minorities in states where the UBE has been adopted.

As you know, the Association has a number of significant concerns about the proposal to adopt the UBE in New York. Nevertheless, in response to the Board of Law Examiners' request for comments on the draft Content Outline, President Glenn Lau-Kee circulated Ms. Bosse's e-mail and the attached Content Outline to all Section and Committee chairs as well as our Committee on Legal Education and Admission to the Bar and asked that they consider the Board's request with respect to their areas of expertise, noting the short deadline for comments. As a preliminary matter, we note that the draft Content Outline is 12 pages covering 12 general subject areas, with varying numbers of sections and subsections in each area, and numerous case citations and a glossary of thirty state statutes and rules, all subject to the express caution that the outline is intended to "indicate, in summary fashion, the examination's potential scope of coverage" and that the citations to cases, statutes and rules "[do] not mean that the cited statute or court rule includes all of the relevant legal principles regarding that entry." The scope of the Content Outline reinforces the Association's concern that a one-hour, 50 multiple choice New York Law Exam is not adequate to test New York specific law, as well as the concern that New York specific law differs in a great many areas from Uniform Acts as indicated not only by the scope of the Content Outline but also by its subtitle: "Significant Distinctions, Laws and Rules." We also note that the draft Content Outline does not include some important topics such as the commercial divisions of the supreme court and their special practices and procedures or New York trade secret law, other areas in which New York law differs from Uniform Acts.

The New York State Legislature has been resistant to the adoption of Uniform Acts and has not adopted a very large number of significant Uniform Acts. and there is no indication that its attitude is likely to change. In fact, as one recent example of this attitude, while the Uniform Law Commission adopted a new Uniform Act on Fiduciary Access to Digital Assets in 2014, the

State Legislature has asked the State Bar Association to draft a New York-centric bill on the same subject. We urge the Advisory Committee to take the time to consider carefully how testing on Uniform Laws will serve the purposes of better preparing New York law students and other bar exam candidates to be more practice ready, or of testing for minimal competence to practice law in New York.

Second, I will briefly summarize the concerns of the State Bar's International Section in response to the reduction of New York law content on the bar exam if New York should adopt the UBE proposal. The Section is preparing a letter which will explain its concerns in more detail. In 2014, 4,813foreign-educated candidates took the New York bar exam, comprising over 31% of the 2014 candidate pool in New York. The trend is that both the number of foreign-educated candidates and the percentage of the pool of candidates they comprise are increasing. Foreign-educated candidates want to be able to hold themselves out as lawyers admitted in New York. They are not seeking portability. I have met with the Executive Committee of the International Section as they discussed their concern that the UBE proposal would, if adopted, lead to the admission of foreign-educated candidates who have an inadequate competency in New York law and, over time, would lessen the internationally recognized value of New York licensure and the primacy of New York law as the choice for international transactions and of New York as a forum for international dispute resolution.

Finally, the Association continues to be concerned that the adoption of the UBE proposal may have a disparate impact on minority candidates. Over the past couple of months, senior staff of the Association have surveyed the 14 UBE states and asked whether they have seen a disproportionate impact on minority bar exam candidates since adopting the UBE. The responses indicate that there are no meaningful data in these states regarding the impact on minority bar exam candidates. Relative to most of the states that have so far adopted the UBE, New York has a significantly larger and more diverse minority population and pool of minority bar exam candidates. Before the UBE proposal is adopted in New York, we urge that the potential impact on minority bar exam candidates be evaluated. To adopt the UBE without a meaningful effort to do so, and to plan to evaluate the impact on minority candidates after three years, is not a risk this state should take.

In conclusion, the issues that the New York State Bar Association has raised are serious issues based in large part on the fact that New York law and New York State are different from the states that have adopted the UBE. We urge the Advisory Committee and the Court of Appeals, in recognition of these differences, to consider these issues carefully and to delay any decision to adopt the UBE proposal until these issues have been thoroughly investigated and an informed decision can be made based on the best available information.

Thank you for the opportunity to testify here today.