

THE SUPREME COURT *of* OHIO

REPORT & RECOMMENDATIONS *of*  
THE SUPREME COURT *of* OHIO

Task Force  
*on the Ohio Bar Examination*



MAY 2018



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REPORT & RECOMMENDATIONS OF THE

Task Force on the Ohio Bar Examination

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Dear Chief Justice O'Connor:

Enclosed please find the final report and recommendations of the Supreme Court Task Force on the Ohio Bar Examination. We were charged with evaluating the efficacy and effectiveness of implementing the Uniform Bar Examination (“UBE”) as an alternative to the current Ohio Bar Examination in light of the fact that an increasing number of states and territories have moved to adopt the UBE. It is our hope that our report satisfactorily fulfills the charge we were given.

I thank the members of the Task Force for their hard work, dedication, and collegiality. I personally learned a great deal from each of the task force members, and I appreciated the group’s ability to have constructive discussions of sometimes complex and difficult issues. I also thank John S. VanNorman, Senior Policy and Research Counsel from the Office of the Chief Legal Counsel of the Supreme Court, and the rest of the outstanding Supreme Court staff for their help in developing and finalizing this report. This report simply would not have been possible without their hard work and expertise.

On behalf of the members of the Task Force, I thank you for the opportunity to serve, participate, and offer our recommendations on these important issues.

Dean D. Benjamin Barros

## **TABLE OF CONTENTS**

<b>TASK FORCE OVERVIEW</b> .....	1
<b>INTRODUCTION</b> .....	2
<b>Overview</b> .....	2
<b>Current Ohio Bar Examination</b> .....	4
<b>Uniform Bar Examination</b> .....	5
<b>SUMMARY OF RECOMMENDATIONS</b> .....	12
<b>REPORT AND RECOMMENDATIONS</b> .....	13
<b>I. Adoption of Uniform Bar Examination</b> .....	13
<b>II. Adoption of Ohio-Specific Component</b> .....	25
<b>III. Implementation of Uniform Bar Examination Reciprocity</b> .....	27
<b>APPENDIX A: Uniform Bar Examination Survey</b> .....	29
<b>APPENDIX B: Impact Studies</b> .....	57

## TASK FORCE OVERVIEW

In August of 2017, Supreme Court of Ohio Chief Justice Maureen O'Connor established the Task Force on the Ohio Bar Examination. The Task Force is comprised of 18 members from diverse backgrounds and experiences, including a Supreme Court justice and staff, law school deans and staff, a representative of the Ohio State Bar Association, and a court of common pleas judge and attorneys involved in the administration of the Ohio Bar Examination. The Chief Justice charged the Task Force with evaluating the efficacy and effectiveness of implementing the Uniform Bar Examination (“UBE”) as an alternative to the current Ohio Bar Examination in light of the fact that an increasing number of states and territories have moved to adopt the UBE.

Since its creation, the Task Force has worked to meet its charge. To accomplish this goal, it established the following three workgroups:

- **Survey/Public Education.** This workgroup collaborated with Supreme Court staff to develop two surveys consisting of UBE-related adoption and implementation questions. The surveys, which were distributed to Ohio law school faculty, staff, and students and all active Ohio attorneys, inquired about the interest in and perceived advantages and disadvantages of adopting the UBE. Copies of the surveys and a Supreme Court staff analysis of the results of each are attached as **Appendix A**.
- **Impact upon Distinct Demographic Groups.** This workgroup collaborated with Supreme Court staff to study whether and how implementing the UBE, which would require a change in the weighting of the bar examination components, could impact the passage rates of distinct demographic groups, in particular race and gender. Copies of two analyses conducted for the workgroup are attached as **Appendix B**.
- **Ohio Component.** This workgroup addressed whether, as part of the adoption of the UBE, Ohio should include an additional component focusing upon state law and, if so, what form it should take (e.g., an additional test, a pre- or post-examination course, additional continuing legal education requirements, etc.).

Having completed its work, the Task Force now submits its final report and recommendations.

## INTRODUCTION

### OVERVIEW

Each state and territory in the nation is responsible for regulating the admission to the practice of law in its respective jurisdiction. In Ohio, this authority resides exclusively with the Supreme Court pursuant to Article IV, Sec. 2(B)(1)(g) of the Ohio Constitution as part of its original jurisdiction.

Although the specific requirements may vary, in most states and territories the bar admission process generally includes steps such as an application procedure and a character and fitness review. Additionally, with the exception of Wisconsin,<sup>1</sup> all jurisdictions use some manner of examination as part of their bar admission process. The purpose of the bar examination is to determine whether a candidate's level of performance aligns with minimal competence and to distinguish competent candidates from those who could do harm to the public.

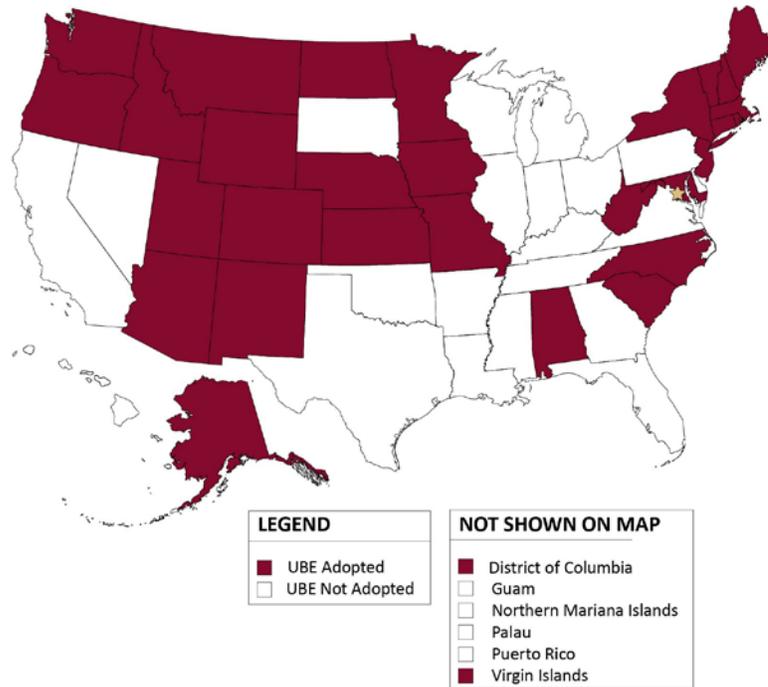
Early on, states and territories created and implemented their own bar examinations. In more recent decades, jurisdictions have utilized a combination of jurisdiction-generated and national testing organization-generated examination materials. To this end, and as noted in the following map, an increasing number of jurisdictions have adopted the UBE prepared by the National Conference of Bar Examiners ("NCBE").<sup>2</sup>

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<sup>1</sup> In Wisconsin, graduates of the University of Wisconsin Law School and Marquette University Law School who meet certain general qualifications and requirements are admitted to the practice of law without examination. However, applicants from out-of-state law schools must still take a bar examination. (S.C.R. Chapter 40).

<sup>2</sup> <http://www.ncbex.org/exams/ube/>

The states and territories that currently use or will be using the UBE are: Alabama, Alaska, Arizona, Colorado, Connecticut, the District of Columbia, Idaho, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, South Carolina, Tennessee, Utah, Vermont, the Virgin Islands, Washington, West Virginia, and Wyoming.



As discussed in further detail in this report, the UBE is comprised of three individual parts: (1) the Multistate Bar Examination, (2) the Multistate Performance Test, and (3) the Multistate Essay Examination.

For states and territories that do not use the UBE, which currently includes Ohio, the elements of the bar examination can vary, as each jurisdiction structures its examination to meet its needs.<sup>3</sup> For the majority of these jurisdictions, this includes using some, but not all, components of the UBE. For example, the Ohio Bar Examination is comprised of three parts: (1) the NCBE’s Multistate Bar Examination, (2) the NCBE’s Multistate Performance Test, and (3) 12 Ohio–prepared essay questions.

States and territories that do not use the UBE cite the need to focus upon their local laws. Those jurisdictions that utilize the UBE point to advantages such as the portability of test scores and the reduction of costs in preparing for and taking the bar examination in multiple jurisdictions.

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<sup>3</sup> The states and territories that do not use the UBE in its entirety are: Arkansas, California, Delaware, Florida, Georgia, Guam, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, the Northern Mariana Islands, Nevada, Ohio, Oklahoma, Palau, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Texas, Virginia, and Wisconsin.

## **CURRENT OHIO BAR EXAMINATION**

The Supreme Court exercises its jurisdiction over the admission to the practice of law through Rule I of the Rules for the Government of the Bar, which establishes the specific requirements for admission. One of the requirements for most applicants for admission is passing the Ohio Bar Examination. The examination is administered over two-and-one-half days in February and July each year and consists of the following components.

### **The Multistate Bar Examination**

As previously noted, although Ohio has not adopted the UBE, it does currently utilize portions of it. Specifically, part of the Ohio Bar Examination is comprised of the NCBE's Multistate Bar Examination. It is a six-hour examination with 200 multiple-choice questions aimed at assessing the extent to which the applicant can apply fundamental legal principles and legal reasoning to analyze given fact patterns. The examination includes questions concerning civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts. The examination counts for 33<sup>1/3</sup> percent of the total Ohio Bar Examination score.

The Multistate Bar Examination is currently used by all states and territories other than Louisiana and Puerto Rico. The NCBE grades each examination, but each state or territory sets its own passing score.

### **The Multistate Performance Test**

A second part of the Ohio Bar Examination is the NCBE's Multistate Performance Test. The test consists of two 90-minute exercises that present a simulated case file in a realistic setting and can cover any substantive area of law. Exercises include such tasks as preparation of an opinion letter to a client, a persuasive brief, a proposal for a settlement agreement, a contract provision, an objective memorandum, or a letter to opposing counsel. It is designed to test the applicant's ability to use fundamental lawyering skills in a realistic situation and evaluate the applicant's problem-solving abilities; legal analysis and reasoning; factual analysis; communication, organization, and management of legal tasks; and recognition and resolution of ethical dilemmas. The test counts for 13<sup>1/3</sup> percent of the total Ohio Bar Examination score.

The Multistate Performance Test is currently used by all states and territories other than California, Florida, Kentucky, Louisiana, Massachusetts, Michigan, North Carolina, Oklahoma, Pennsylvania, Virginia, and Puerto Rico. Each state or territory using the Multistate Performance Test grades the test itself and sets its own passing score.

## **Ohio-Prepared Essay Questions**

The third part of the Ohio Bar Examination consists of 12 essay questions. This is the only portion of the current examination not prepared by the NCBE. Rather, questions are prepared and graded by the Supreme Court's 18-member Board of Bar Examiners. The questions are designed to test the applicant's ability to identify legal issues raised by a hypothetical factual situation; identify relevant material from that which is not relevant; present a reasoned analysis of the issues in a clear, concise, and well-organized composition; and demonstrate an understanding of the fundamental legal principles pertinent to the probable solution of the issues raised by the factual situation. The questions address the subjects of business associations, civil procedure, commercial transactions, constitutional law, contracts, criminal law, evidence, legal ethics, property, torts, and wills. The essays count for 53<sup>1/3</sup> percent of the total Ohio Bar Examination score.

The essay portion of the examination is administered over two and a half days of the bar examination. Six essays are administered during the afternoon of the first day of the examination and six essays during the morning of the third day. The test takers are given an hour to allocate how they wish to complete two essays at a time, for total of three, one-hour blocks each day.

## **UNIFORM BAR EXAMINATION**

### **Overview**

The UBE is a two-day test comprised of three components prepared by the NCBE: the previously discussed Multistate Bar Examination and Multistate Performance Test, as well as the Multistate Essay Examination. As previously noted, the Multistate Essay Examination is the only component of the UBE not currently administered in Ohio.

### **Multistate Essay Examination**

Like the Ohio-prepared essay questions, the Multistate Essay Examination is designed to test the applicant's ability to identify legal issues raised by a hypothetical factual situation; identify relevant material from that which is not relevant; present a reasoned analysis of the issues in a clear, concise, and well-organized composition; and demonstrate an understanding of the fundamental legal principles pertinent to the probable solution of the issues raised by the factual situation. However, there are differences between the Multistate Essay Examination and the Ohio-prepared essay questions. These include the following:

- The Multistate Essay Examination consists of six questions, while there are currently 12 Ohio-prepared essay questions;

- While there are some common topics between the two, the Multistate Essay Examination questions differ in certain respects from the Ohio-prepared essay questions, with the Multistate Essay Examination adding questions about conflict of laws, family law, and trusts and eliminating questions about legal ethics, personal property, and commercial paper. Additionally, the Multistate Essay Examination questions focus solely upon uniform or model laws, while the Ohio-prepared essay questions can also address Ohio-specific areas of the law.
- Each individual Ohio-prepared essay question normally tests on only one subject, while an individual Multistate Essay Examination question may test multiple subjects (e.g., a past examination question addressed both decedents' estates and conflict of law);
- There is no deviation in the topics the Ohio-prepared essay questions address. With 12 essay questions, all subjects are tested with one subject tested twice. In comparison, because the Multistate Essay Examination consists of only six essays, not every topic may be tested during an examination.<sup>4</sup>
- Test takers are given a total of three hours to respond to each of the six Multistate Essay Examination questions, with the test takers able to allocate the three hours amongst the essays as they choose. All the questions are tested on the first day in the afternoon session. As previously noted, the Ohio essays are currently given in two half-day sessions – six essays in the afternoon on the first day of testing and another six essays in the morning session of the third day. Test takers in Ohio are provided one hour to complete two essays, for three hours total testing time each on the first and third days of testing. Adopting the UBE would eliminate Ohio's current half-day on the third day of testing and would take the same amount of time to administer on the first and second day of testing as we currently do in Ohio.

The Multistate Essay Examination is used by all states and territories other than California, Delaware, Florida, Georgia, Indiana, Louisiana, Massachusetts, Michigan, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, and Puerto Rico. Each state or territory using the examination sets its own passing score and grades it.

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<sup>4</sup> Test subjects are counted differently between the Ohio-prepared essay questions and the Multistate Essay Examination. Ohio groups together as single subjects criminal law and procedure; commercial paper and secured transactions; and agency, partnerships, and corporations. The Multistate Essay Examination treats these three groups as separate subjects. As a result, without grouping, Ohio has 15 single subjects and the Multistate Essay Examination has 16.

## Advantages of the Uniform Bar Examination

As reflected in resolutions from the American Bar Association and the Conference of Chief Justices supporting its adoption,<sup>5</sup> there are a variety of benefits to the UBE. These include the following:

(1) *The portability of scores to other UBE jurisdictions.* Although the admission to the practice of law in a state or territory is still handled by each individual jurisdiction, the practice of law itself is becoming more mobile and increasingly requires attorneys to engage in multi-jurisdictional practice. To a certain extent this has always been true in communities located where state geographic boundaries converge, particularly where major metropolitan areas span state boundaries. However, with the technological and economic changes of the 21st century, business is increasingly becoming mobile and interconnected. These changes have already impacted professions such as accounting and medicine. The practice of law is not immune to or isolated from these changes.<sup>6</sup>

Furthermore, the impact of increased mobility is not limited to business matters. When a spouse or partner of an attorney takes a job in another state or territory (e.g., as a result of new job, military reassignment, etc.), the relocation requires the attorney to find employment in that new jurisdiction. If the attorney is newly admitted and ineligible for admission upon motion to the new jurisdiction, relocation requires the attorney to sit for an additional bar examination.

Finally, because the admission to the practice of law is governed on a jurisdictional basis, employment opportunities for recent law school graduates are limited. Currently, when law school students begin to consider their future employment opportunities, they must decide the states or territories to take the bar examination. This determination is often based not upon the existence and location of a specific job opening, but rather

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<sup>5</sup> American Bar Association, Resolution 109:

<https://www.americanbar.org/content/dam/aba/images/abanews/2016mymres/109.pdf>

Conference of Chief Justices Resolution 4:

<http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/07252012-Endorsing-Consideration-of-a-Uniform-Bar-Examination.ashx>

Conference of Chief Justices Resolution 10:

<http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/02012016-Urging-Consideration-Implementation-Uniform-Bar-Examination.ashx>

<sup>6</sup> Recently introduced Arizona legislation provides an example of this. S.B. 1184 of the 53rd Arizona Legislature would enter that state into “The Interstate Compact for the Temporary Licensure of Professionals.” Pursuant to the compact, member states generally would be required, upon application, to grant a temporary license to an individual licensed in another member state who moves to that state. This temporary license would be valid for a period of 18 months, or 24 months if the individual is the spouse of a member of the military. Although not specifically mentioned, the license to practice law would be covered by the compact.

uncertain potentialities, such as where a student might likely find employment. As a result, a student’s post-graduation employment opportunities are generally limited by the student’s pre-graduation decisions on where to take a bar examination.

With these issues in mind, one of the benefits of the UBE is the portability of examination scores. Provided it meets that state or territory’s passage score, a score from one UBE jurisdiction can be used to gain admission in another UBE jurisdiction. This portability allows for increased geographic flexibility, multijurisdictional practice, and increased employment opportunities. In fact, jurisdictions that have adopted the UBE overwhelmingly cite score portability as the chief reason for that decision.

It is important to note that the length of time a UBE score is portable to another state or territory is jurisdiction-dependent, as each sets the maximum age of a transferred UBE score that the jurisdiction will accept.<sup>7</sup>

Maximum Age of Transferred UBE Score <sup>8</sup>	Jurisdiction
2 years	Missouri, North Dakota
2 years/5 years	Iowa, Utah
25 months	Alabama
3 years	Connecticut, Kansas, Maine, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oregon, South Carolina, Virgin Islands, West Virginia, Wyoming
3 years/5 years	Colorado, New Hampshire, Vermont
37 months	Idaho
40 months	Washington
5 years	Alaska, Arizona, District of Columbia

(2) *Increased efficiency and reduced costs for law school graduates.* An additional benefit of the UBE closely related to portability is reduced costs for law school graduates. The licensing process takes time and costs money, including complying with the application process, studying for and taking the examination, waiting for the results, and

<sup>7</sup> <http://www.ncbex.org/exams/ube/score-portability/maximum-score-age/>

<sup>8</sup> As of the writing of this report, the maximum age of transferred UBE scores in Maryland had not been determined.

incurring the associated living expenses during this time. And for those graduates who wish to be licensed in multiple states, this process must be repeated for each non-UBE jurisdiction, adding to the time and financial costs. The financial costs are even more of a burden for those recent law school graduates who have significant student-loan debt and mounting living expenses while earning limited to no income.

This is an issue for which the UBE’s score reciprocity can provide assistance. UBE score reciprocity means a law school graduate need only sit for one bar examination in one UBE jurisdiction, thus allowing the graduate to lessen the time and financial cost of sitting for multiple bar examinations, subject to each jurisdiction’s passing score and maximum age of UBE score transferability.

(3) *The ability of UBE jurisdictions to maintain local control over bar admission.* Although the practice of law is becoming more multi-jurisdictional, regulation of the practice remains the province of the individual states and territories. Jurisdictions that use the UBE continue to control the admission process locally and set their own requirements, such as deciding who may sit for the bar examination, determining passage scores, setting reciprocity scores, making character and fitness determinations, setting continuing legal education standards, grading the Multistate Essay Examination and Multistate Performance Test, etc.

Another benefit of the UBE is it has sufficient flexibility to allow the state or territory to implement components focused on local law as determined by the jurisdiction. As a result, some jurisdictions have implemented pre- or post-admission mandatory education, separate jurisdiction-specific assessments, some combination of these, etc.<sup>9</sup>

UBE Jurisdiction-Specific Law Component Requirement <sup>10</sup>	Jurisdiction
No component	Alaska, Colorado, Connecticut, Iowa, Kansas, Maine, Minnesota, Nebraska, North Dakota
Pre-admission component	Alabama, Arizona, Maryland, Massachusetts, Missouri, Montana, New Mexico, New York, North Carolina, South Carolina, Virgin Islands, Washington
Post-admission component	District of Columbia, Idaho, New Hampshire, New Jersey, Oregon, Utah, Vermont, West Virginia, Wyoming

<sup>9</sup> <http://www.ncbex.org/exams/ube/score-portability/local-components/>

<sup>10</sup> Maryland, which has adopted the UBE, will require some manner of jurisdiction-specific law component, but as of the writing of this report had yet to determine what form the component will take.

(4) *Ability to draw upon expertise of the NCBE.* The NCBE offers a variety of resources and expertise. Specifically, the NCBE has nine drafting committees that include five to six members each. The committees are composed of law school professors from more than 30 law schools and lawyers and judges from all over the country who are experts in their relevant subjects. Each committee is staffed by a test editor/lawyer from NCBE. NCBE uses external reviewers for validity and fairness. NCBE questions are tested before use. Additionally, Multistate Essay Examination and Multistate Performance Test questions are reviewed by jurisdictions before each exam.

If Ohio were to adopt the UBE, it would allow the state to draw upon these in validating questions, screening them for bias, etc. In turn, the resources of the widely respected Ohio Board of Bar Examiners would be free to be used for other areas of the bar examination process. Under the current Ohio bar examination, Ohio examiners review the questions, which are then sent to an external reviewer in California. The external reviewer makes recommendations regarding the questions and prepares a grading sheet for use by the Ohio examiners. With the adoption of the UBE, this step would presumably no longer be necessary.

### **Disadvantages of the Uniform Bar Examination**

While there are various noted advantages to the UBE, it is important to address the potential disadvantages of adopting the examination and deviating from a state or territories' jurisdiction-specific examination. These include the following:

(1) *Potential impact upon distinct demographic groups.* One area of concern noted in many states and territories that have considered the UBE has been the potential impact of UBE adoption upon bar passage rates of distinct demographic groups, in particular, women and racial minorities. For example, and as discussed in further detail below, studies indicate that, other things being equal, women score distinctly lower than men on multiple-choice questions, and slightly higher than men on essays.<sup>11</sup> Similar concerns are also raised with regard to minority groups, though with regard to the bar examination there is much less evidence with regard to race.<sup>12</sup> In Ohio, such impact could be caused by or increased because of the differences in weighting of the multiple-choice and essay questions between the Ohio Bar Examination and the UBE. Because of this concern, in adopting its resolution

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<sup>11</sup> See Susan M. Case, *Men and Women: Difference in Performance on the MBE*, *The Bar Examiner*, note 60, at 44.

<sup>12</sup> Ben Bratman, *Opinion: Why More States Should Not Jump on the Uniform Bar Exam Bandwagon*, *JD Journal*, 2015, at 8.

supporting the UBE, the American Bar Association also adopted a separate resolution urging admission authorities to consider the impact on minority applicants in deciding whether to adopt the UBE.<sup>13</sup>

(2) *Inadequate focus upon state law.* Despite the ability to implement a local component with the UBE, a concern raised by some states and territories that have considered the examination is that the change will result in attorneys not being adequately tested in their jurisdiction's specific law. This leads to the question of whether attorneys would be truly competent to practice in that jurisdiction.

(3) *The ability of UBE jurisdictions to maintain local control over bar admission.* As previously mentioned, UBE jurisdictions maintain local control over bar admission. However, there is concern that states and territories cede too much control over the examination, including the ability to determine examination topics. For example, in Ohio it has been determined that conflict of laws is not a key element of Ohio lawyer competence, as it is not a tested subject. Yet, it would become a tested subject if the UBE is adopted. Similarly, other subjects could be added or subtracted from the examination in the future, with the state perhaps having no control over those decisions.

A related concern is the potential loss of transparency. Under local control, the state or territory has authority over the bar examination process, authority that brings with it inherent transparency in the process of both creating and grading the examination. However, as the NCBE is a private organization, adoption of the UBE could limit the degree of transparency in the process of creating the examination and, for those portions graded by the NCBE, the grading of the examination.

Finally, because the Multistate Essay Examination questions are graded by each individual state or territory, there may be differences in the quality of grading among the UBE jurisdictions. Thus, when accepting scores pursuant to UBE reciprocity, there is no way a jurisdiction can definitely ensure that the results from one jurisdiction are equal to those from other.<sup>14</sup>

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<sup>13</sup> American Bar Association, Resolution 117:

<https://www.americanbar.org/content/dam/aba/images/abanews/2016mymres/117.pdf>

<sup>14</sup> The NCBE notes there are calibrating sessions for the states and territories that use the UBE designed to minimize this potential disadvantage.

## SUMMARY OF RECOMMENDATIONS

<b>Recommendation</b>	<b>Page No.</b>
1. Adoption of the Uniform Bar Examination, conditioned upon the implementation of some mitigation measure to ameliorate the impact upon gender passage rates.	13
2. Collection of demographic information concerning bar examination applicants for study of the Uniform Bar Examination's impact on distinct demographic groups.	23
3. Implementation of an Ohio-specific component to supplement the Uniform Bar Examination, but only in the limited form of a post-examination course.	25
4. Acceptance of Uniform Bar Examination scores from other jurisdictions as soon as possible.	27
5. Acceptance of Uniform Bar Examination scores for up to five years after the examination was taken.	28
6. Applicants transferring a Uniform Bar Examination score still undergo a complete character and fitness investigation.	28

## REPORT AND RECOMMENDATIONS

### I. ADOPTION OF THE UNIFORM BAR EXAMINATION

#### *Introduction:*

The Task Force was charged with evaluating the efficacy and effectiveness of implementing the UBE as an alternative to the current Ohio Bar Examination. As discussed more fully below, based on the Task Force's research and analysis of the UBE and consultations with various stakeholder groups, the Task Force recommends adoption of the UBE. The Task Force's analysis of the UBE further supported additional recommendations concerning administration of the UBE, which also are set forth in greater detail.

#### *Recommendation 1:*

**The Task Force recommends the Supreme Court adopt the Uniform Bar Examination, conditioned upon the implementation of some mitigation measure to ameliorate the potential impact upon gender passage rates.**

#### *Discussion:*

The Task Force's primary recommendation is the Supreme Court adopt the UBE. In making this recommendation, the Task Force cites to the positive responses to its surveys and the various benefits of the UBE previously discussed.

One benefit in particular is the examination would allow the state to continue to pursue its interests - ensuring that new lawyers possess the minimal competence to practice law - while simultaneously providing benefit to students, attorneys, and the legal community through portability. However, and as discussed later, for a majority of Task Force members, this recommendation comes conditioned upon the Supreme Court's implementation of some manner of mitigation measure to ameliorate the potential impact upon gender passage rates.

With regard to the implementation of the UBE, it would require some deviations from current practice. First, the Task Force notes the Multistate Essay Examination is the only component of the UBE not currently administered in Ohio. Thus, full adoption of the UBE would require implementation of that component. With the adoption of the Multistate Essay Examination, Ohio would no longer prepare its own essay questions, but would instead use those prepared by the NCBE. However, because the NCBE does not grade the Multistate Essay Examination, the Ohio Board of Bar Examiners could still grade the essays.

As outlined in the following chart, adoption of the UBE would result in the following changes to the bar examination schedule.

**SCHEDULE**

	<b>Current Ohio Bar Examination</b>	<b>Uniform Bar Examination</b>
<b>Day 1</b>	Multistate Performance Test <b>(2 90-minute sessions in the morning)</b>  6 Ohio-drafted essay questions <b>(3 60-minute blocks, 2 essays each block in the afternoon)</b>	Multistate Performance Test (3 hours in the morning)  Multistate Essay Examination (3 hours in the afternoon)
<b>Day 2</b>	Multistate Bar Examination (3 hours in the morning and 3 hours in the afternoon)	Multistate Bar Examination (3 hours in the morning and 3 hours in the afternoon)
<b>Day 3</b>	6 Ohio-drafted essay questions <b>(3 60-minute blocks, 2 essays each block in the morning)</b>	N/A

Additionally, to obtain the portability benefit of adoption of the UBE, Ohio would have to change the weight of each individual component toward the total examination score. Specifically, there would be the following differences in the weighting of the individual components:

**WEIGHTING**

	<b>Multistate Bar Examination</b>	<b>Multistate Performance Test</b>	<b>Essay Examination</b>
<b>Ohio Bar Examination</b>	33 <sup>1/3</sup> %	13 <sup>1/3</sup> %	53 <sup>1/3</sup> %
<b>Uniform Bar Examination</b>	50%	20%	30%

While the Task Force members uniformly agree there are benefits with adopting the UBE, the potential impact upon distinct demographic groups, particularly gender, must be considered. With this in mind, a majority of the Task Force members recommend, as a condition of adopting the UBE, the Supreme Court implement some manner of mitigation measures to ameliorate any such impact.

The potential impact a switch to the UBE would have upon distinct demographic groups is a concern shared among many of the states and territories that have considered adopting the examination. The concern is particularly focused on the weight given the specific components of the UBE: the multiple choice questions, essays, and performance test. As shown in the preceding chart, switching to the UBE, the weight of the multiple-choice and performance test components go up, while the weight of the essays goes down.<sup>15</sup>

Like many states and territories that have considered adoption of the UBE, the Task Force wished to study the potential impact upon distinct demographic groups, particularly the impact by gender and race. With regard to the impact by race, the Task Force encountered the same hurdle as other jurisdictions – i.e., the lack of and inability to gather data.

As the Maryland Committee examining the UBE noted, “[N]either the NCBE nor testing jurisdictions collect data on race, and there have not been recent wide-scale studies completed.”<sup>16</sup> Ohio similarly does not collect such data. The Task Force spent significant time investigating, including consulting with counsel, whether this data could effectively be gathered by collaboration between Ohio’s law schools and the Supreme Court in order to conduct a retrospective study of this issue. Ultimately, it concluded it was not feasible as a result of privacy laws and rules governing the Supreme Court and the law schools.<sup>17</sup>

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<sup>15</sup> Ohio is among eight of the 22 non-UBE states that use the Multistate Bar Examination questions that do not weigh that component at 50 percent. Ohio and Nevada weigh it at roughly 33 percent; Delaware, Mississippi, North Carolina, Texas, and Virginia weigh it at 40 percent; and Pennsylvania weighs it at 45 percent. All remaining non-UBE states and territories that use the Multistate Bar Examination essay questions weigh the component at 50 percent. UBE jurisdictions that adopt the UBE must follow the NCBE’s preference for the 50 percent weighting.

<sup>16</sup> *Report and Recommendation of the Advisory Committee to Explore the Feasibility of Maryland’s Adoption of the Uniform Bar Examination to the Court of Appeals of Maryland* (2017), page 7.

<sup>17</sup> To study the potential impact upon minority applicants, it would be necessary to (1) identify the race of applicants and (2) know each applicant’s bar examination score. Although the Supreme Court does not currently collect racial data regarding examination applicants, it does maintain information concerning an applicant’s education and examination score. In turn, Ohio’s law schools have racial data regarding their specific students.

In theory, the information from both the Supreme Court and Ohio’s law schools could be combined in order to study the potential impact. However, federal laws and Supreme Court rules prohibit the sharing of this data. Specifically, the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) prohibits Ohio’s law schools from releasing to the Supreme Court the racial identity of specific students absent a waiver from each student. Additionally, Gov.Bar R. I, Sec. 5(D) prohibits the Supreme Court from sharing a bar applicant’s specific examination score. Thus, any study of the potential impact would require a significant amount of time in order for Ohio law schools to obtain waivers from each minority student or for Gov.Bar R. I, Sec. 5(D) to be amended.

As for the potential gender impact, the Task Force was able to conduct a review. As previously noted, there is evidence women, relative to men, perform less well on multiple-choice examinations. Other things being equal, that would mean the shift to the UBE could lead to an increase in men, but a decrease in women, passing the bar examination. The Task Force emphasizes that this potential impact would largely be due to the shift in weighting of the multiple choice MBE component from 1/3 in the current Ohio exam to 1/2 in the UBE. One would expect a similar effect if Ohio did not adopt the UBE but moved from a three-day to a two-day exam and changed its weighting of the MBE component accordingly. With these issues in mind, the Task Force examined whether a shift to the UBE would have the effect of significantly advantaging men and disadvantaging women relative to the status quo and attempted to estimate the size of any such effect.

To this end, the Task Force worked with Roger Bolus, Ph.D., Senior Partner for Research Solutions Group to conduct the following two studies. The results of these studies are described in detail in **Appendix B**.

First Study. This study was based upon the last three years of Ohio Bar Examination scores, for a total of six examinations. Dr. Bolus reweighted each section of the examination for each applicant according to the UBE weights and reported the resulting changes and scores. In this study, Dr. Bolus relied on the assumptions that essay scores and performance scores were interchangeable, and that changing from the 4:1 ratio for essays versus performance test that Ohio currently uses to the 3:2 ratio that the UBE uses would not have a gendered impact. In addition to this assumption, this first study also assumed, for purposes of its estimates, the change in subject matters between the Ohio essays and the UBE essays, the reduction in the number of essays from 12 to six, and the difference between UBE essays and Ohio essays would not have an impact on the gender effect issue under study.

Second Study. Because the Task Force felt it better not to rely upon the assumption that the relative weight within the written portion would not have a gendered impact, Dr. Bolus conducted a second study that adjusted the internal weighting of the essay and performance portions of the written score to the UBE ratio of 3:2. The results of this second study are what the Task Force relied upon.

The results were similar to studies from other jurisdictions. Amongst bar examination takers, men overall score higher on the multiple-choice portion of the test than women. As a result, increasing the relative weight of the multiple-choice portion of the examination is projected to have some impact on the overall passage rate of men and women.<sup>18</sup> Specifically, the study determined:

- The passage rate for men during the period of the study would have risen from 71 percent to 74 percent. The passage rate for women would have fallen from 68 percent to 66 percent. Thus, adoption of the UBE would appear to have increased the gender difference in bar passage rates from men +3 percent to men +8 percent.
- In absolute numbers, this would translate to about eight fewer women and 17 more men passing the bar examinations each year.

It is important to note those numbers are the net change. For example, if four men go from passing to failing and five men go from failing to passing, that would mean one more man would pass. However, nine men would have a different result, and four men who passed under the current approach would fail under the new approach. What is the number of people the study suggests would be affected at all by the reweighting? What is the number that would be affected negatively?

- A total of 93 percent of takers would have the same result with reweighting. However, 7 percent would have a different result.
- Of the 7 percent with a different result, 3.7 percent would go from failing to passing. Another 3.1 percent would go from passing to failing.
- In absolute numbers, about 101 takers per year (out of 1,495) would have their result change, with 55 going from failing to passing and 46 going from passing to failing. Of those 46 in a typical year who passed under the existing examination but would fail under the UBE (i.e., fail), 28 are women.

As for the specific mitigation measures, reviewing the reports of other states that have adopted the UBE and with its own independent investigation and consideration, the Task Force identified three possible mitigation strategies: (1) expand the regrade range, (2) allow admission to test takers who would have passed under the old bar examination

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<sup>18</sup> A minority of Task Force members concluded that although Dr. Bolus' study indicated adopting the UBE could have an impact upon gender, that impact would not be statistically significant.

weighting, and (3) lower the cut score. The Task Force also considered the potential reasons for taking no mitigation steps at all.

While the Task Force did not settle upon a set of specific mitigation measures, a majority of its members recommend the Supreme Court adopt the UBE if, but only if, it also implements one or more of these measures or some other with similar impact. To assist the Supreme Court in reviewing these mitigation measures, the arguments in favor and against the various approaches, including the rejected option of no mitigation, are discussed below. With the exception of the option of doing nothing, they are not mutually exclusive. Finally, the mitigation strategies are listed from most- to least-strongly supported by the Task Force.

**(1) Expand the regrade range**

The first potential mitigation measure would be to expand the regrade range. The current passing score for the Ohio Bar Examination is 405. Students who score 404 have their essays regraded, with the new regraded score used to determine passage. This process is automatic and invisible from the outside; all the regrading takes place before any results are published. In the period studied (2014 through 2016), there were an average of 12 regrades per year, with half of the regraded scores going from fail to pass. Of the 19 regrades in the study period that produced a higher score (53 percent of the regrades), the average increase in score was 4.1; 95 percent of the increases were greater than 1, 84 percent of them were greater than 2. The maximum improvement from regrade was almost 9 points.

Further, 92 takers went from pass to fail as a result of the UBE reweighting and had a revised score between 404 and 399 in the study period (i.e., 31 per year). In aggregate, there were 54 women in this group (i.e., 18 per year) and 38 men (i.e., 13 per year). Applying the typical rates of increase in score (i.e., +1, +2, +3 etc.) from the data to the revised scores from the study, it can be projected if the automatic regrade range were expanded from 404 to 399,<sup>19</sup> 15 fewer women and 9 fewer men would have gone from pass to fail (i.e., 5 fewer women and 3 fewer men each year) under the UBE weighting. This would cut net decrease in women passing the bar by more than half, and it would slightly lessen, by about two per year, the growth in the gap between male and female pass rates.

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<sup>19</sup> Because the only part of the exam that is regraded is the written portion and because the UBE would lower the weight of the written portion from 67 percent to 50 percent, the change in scaled score from regrading would be reduced by a corresponding factor of .746. That reduction has been made for the purposes of these estimates. With that reduction in regrading impact, none of the 36 regrades in the sample led to an increase of 7 or more, so the cutoff of 399 was selected.

With this analysis in mind, the arguments in favor of expanding the regrade range are as follows:

- It reduces the number of people whom Ohio currently judges minimally competent to practice law who will fail the bar as an unintended consequence of the UBE, and it will do so in a way that offsets slightly the gendered impact of the change in weights of the bar examination components.
- Ohio's automatic regrade range is at the low end of jurisdictions that regrade, and the change would appear to move Ohio closer to the middle of approaches nationally among those that regrade.
- Given the current reality that even the *average* regrade increases the score by more than 4 points, regrading everyone within 4 points is far more appropriate than the current 1-point standard.
- With this expansion, more than 50 percent of the takers who would pass the current bar examination but would fail under the UBE will at least get a fair opportunity for a regrade.
- Given that regrades of the written portion will have less weight under the UBE, if the regrade range is not expanded, bar passage rates would be expected to fall slightly as an unintended consequence.

The arguments against expanding the regrade range are as follows:

- There will be a monetary cost involved in the increased number of examinations that need to be regraded.
- As noted by those Task Force members who are involved in the current examination grading process, it would delay the release of bar examination results as regrading takes a significant amount of time and the number of regraded examinations would be increased. To ensure the quality of the regrading process, examination graders regrade a number of examinations equal to double the number of examinations that are eligible for regrade. For example, if 30 examinations are eligible for regrade, graders are given an additional 30 passing examinations to also regrade, for a total of 60 examinations to regrade. Because of the delay reducing the regrade score would have upon the regarding process, some felt that a regrade score of 403 or 402 at the most would be more appropriate.

- Although not expanding the regrade range would cause bar passage rates to fall slightly as an unintended consequence, expanding it to scores of 401 and above would raise bar passage rates slightly as an unintended consequence.
- The arguments for the last approach, taking no action at all.

**(2) Dual path**

A second approach would be to temporarily establish two paths for bar passage. During a period of study, students who achieve a passing score under either the current Ohio weighting or the UBE weighting would pass. This solution has been proposed in Maryland.<sup>20</sup>

Under this approach, the Ohio Board of Bar Examiners could take the UBE scores and weight the components under the traditional Ohio weighting. Indeed, the Court may wish this to occur for several years in any event to assess the impact of the UBE's reweighting. Under this approach, those examination takers who achieve a passing score with the traditional weighting would pass, regardless of their score under the UBE weights. This "dual path" would last for the period of the study (e.g., three years) and then be assessed in light of the results.

The arguments in favor of the dual-path approach are as follows:

- The reweighting to the UBE impacts women and may also do so based on race. This approach would eliminate that impact and, if the impact proved to be negligible or, with regard to race, non-existent, it could be sunsetted.
- This remedial action does not benefit anyone who would not pass the Ohio Bar Examination under current rules. In other words, it would help only those who may be harmed by the potential unintended consequences of the reweighting.
- That one test of minimal professional competence could yield a pass under one standard (i.e., the Ohio weights) and a fail under another (i.e., the UBE weights) is legitimate. To quote from the Maryland report, "the essay and multiple choice components of a bar examination assess related, and to some

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<sup>20</sup> At the time of the writing of this report, the Maryland Supreme Court had made no final decision on adopting this approach.

extent overlapping, professional skills. Recognizing that those competencies can be demonstrated in different ways does not call the validity of the tests into question; rather it recognizes that people are different.”<sup>21</sup>

- While the dual path would increase the bar examination passage rate, Ohio’s passing score in UBE terms is in the higher group of passing scores, and higher than recent UBE-adopting states such as New York. In addition, as noted above, this would not cause anyone to pass the Ohio Bar Examination who would not pass the examination if the status quo were maintained and the UBE rejected.

The arguments against the dual-path approach are as follows:

- If the dual path approach is implemented on a short-term basis, at what point does Ohio switch to using only the UBE and what would be the rationale for switching to one approach? Could a temporary dual-path approach ultimately lead to two permanent grading systems?
- Using two grading formulas and allowing admission to applicants who pass under either one could undermine public confidence in the bar examination.
- The arguments for the last approach, taking no action at all.

### **(3) Reduction of passing score**

A third approach is to reduce the passing score for the examination. The current Ohio passing score is 405. In UBE terms, that translates to 270. Most UBE jurisdictions are adopting scores between 266 and 270, with many recent adopters, including New York, picking 266. This would be equivalent to a 399 passing score under the current Ohio Bar Examination. Ohio could reduce its passing score from 405 to 399 or to 402 (a UBE score of 268). Dropping the bar passage score to 266 would reduce the number of takers who would go from pass to fail as a consequence of the reweighting. Dropping the bar passage score to 268 would reduce the number of takers who would go from pass to fail by 42 percent.

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<sup>21</sup> Memo from Christopher Kehoe, Ronald Weich, and Jeffrey Shipley in *Report and Recommendation of the Advisory Committee to Explore the Feasibility of Maryland’s Adoption of the Uniform Bar Examination to the Court of Appeals of Maryland* (2017), pages 54 and 55.

The arguments in favor of reducing the passing score are as follows:

- The reduced passing score is in the center of passing scores across the country, and it would eliminate most of the potential unintended consequences of the shift to the UBE, both the negative impact and the rejection of current applicants deemed minimally competent.
- It is a simple and permanent fix.

The arguments against reducing the passing score are as follows:

- It will raise the bar passage rate in Ohio more than the dual-path approach, while solving the problem less completely. The dual-path approach benefits only those who are materially harmed by the reweighting, and it helps all the takers in that group. Reducing the score also benefits some who would not have passed under the existing Ohio Bar Examination and would fail to help about a third of those hurt by the reweighting. It is also not directly targeted at the potential impact upon distinct demographic groups.
- The arguments for the last approach, taking no action at all.

**(4) Take no action**

The fourth approach to addressing the potential impact upon passage rates is the simplest – to decide not to address it at all. As noted, some Task Force members proposed this option, but the majority of members rejected this option. However, the arguments in favor of doing nothing are as follows:

- In developing and then advocating for the UBE, the NCBE selected its weighting system intentionally. In the view of the NCBE and the psychometricians advising it, the 50 percent – 30 percent – 20 percent weighting of the UBE is objectively the best weighting for the components of the bar examination, in significant part because the multiple choice results are the most reliable<sup>22</sup> component. Since this is the best weighting, as determined by experts, it should be accepted, even welcomed – particularly if adoption of the UBE would not have a statistically significant impact upon gender.

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<sup>22</sup> “Reliability” in this context meaning achieving consistent results.

- The relative validity of the components of the bar examination is contested and uncertain; it is not known whether multiple choice questions, essay questions, or performance tests best measure basic legal competence. Since that is unknown, there is no basis for preferring any weighting over any other or for judging whether the gender impact is problematic or reflective of the competence to practice law of the people in the pool.
- The impact of the reweighting is problematic, but all the proposed actions to address it are worse.

The arguments against taking no action are as follows:

- Given that the Task Force's charge is to examine changing to the UBE, the starting point should be that the current Ohio weighting of components is appropriate for measuring competence. That issue is *res judicata* for present purposes. So if a reweighting changes judgments of competence, it should be ameliorated, if possible.
- Given the uncertainty surrounding the relative validity of the different components (even if one doesn't assume Ohio's current weighting is best), a change that would have a negative impact on women is presumptively problematic and should be ameliorated if possible.
- The reweighting will mean a group of people currently judged minimally competent to practice law will be judged incompetent under the UBE. There is no basis for doubting current Ohio judgments of competence, and changing those judgments from competent to incompetent is plainly a side-effect/cost of a shift to the UBE. It is not in any way one of the benefits of moving to the UBE. Accordingly, that side-effect/cost should be reduced or eliminated if possible.

***Recommendation 2:***

**The Task Force recommends with the implementation of the Uniform Bar Examination, the Supreme Court begin collecting demographic information concerning bar examination applicants for study of the examination's impact on distinct demographic groups.**

***Discussion:***

One of the difficulties the Task Force had in attempting to determine the precise impact of adopting the UBE on distinct demographic groups was the lack of data.

Therefore, regardless of what mitigation measure the Supreme Court were to implement, the Task Force recommends that after adopting the UBE, the Court begin collecting demographic data.<sup>23</sup>

Information that could be collected include the race, ethnicity, and gender of all bar applicants and the bar passage rates for these groups. This data could help the Supreme Court determine the precise impact and the effectiveness of any mitigation efforts implemented. Additionally, attorneys voluntarily provide the Supreme Court this same data when applying for admission to the practice of law in Ohio, so there is precedent in collecting such data.

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<sup>23</sup> Other jurisdictions are studying the racial impact prospectively by obtaining demographic data from bar examination takers who agree to share it for this purpose. Ohio could follow the same approach.

## II. ADOPTION OF AN OHIO-SPECIFIC COMPONENT

### *Introduction:*

As noted, the UBE covers a variety of topics. However, a number of states and territories that have adopted the UBE have determined a jurisdiction-specific component is still necessary.<sup>24</sup> These jurisdiction-specific components can take the form of an additional testing portion of the bar examination or of a pre- or post-bar examination class, course, or seminar.<sup>25</sup>

### *Recommendation 3:*

**The Task Force recommends the Supreme Court implement an Ohio-specific component to supplement the Uniform Bar Examination, but only in the limited form of a post-examination course.**

### *Discussion:*

Based upon the feedback from the Task Force's surveys and input of its members, the Task Force recommends that if the Supreme Court adopts the UBE, it create an Ohio-specific requirement for admission to the Ohio bar. Although the UBE will cover the majority of areas in which an Ohio attorney must be minimally competent, there remain Ohio-specific areas of the law of which the Task Force believes Ohio attorneys must be aware.

However, the Task Force recommends the Ohio-specific component not take the form of an additional examination, but rather a post-examination on-line course. This will ensure new Ohio attorneys are made aware of Ohio-specific areas of the law, but would not be overly burdensome in terms of time or financial cost. The course should periodically

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<sup>24</sup> States that use the UBE but have not adopted a state-specific comment are Alaska, Colorado, Connecticut, Iowa, Kansas, Maine, Minnesota, Nebraska, North Dakota, West Virginia, and Wyoming.

States and territories that utilize the UBE and have some manner of state-specific component include Alabama, Arizona, the District of Columbia, Idaho, Massachusetts, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, South Carolina, Utah, Vermont, the Virgin Islands, and Washington. Maryland has recommended some manner of state-specific component, but as of the writing of this report had yet to adopt it.

<sup>25</sup> States and territories that utilize some manner of pre-admission education requirement include Alabama, Arizona, Maryland, Massachusetts, Missouri, Montana, New Mexico, New York, North Carolina, South Carolina, the Virgin Islands, and Washington.

States and territories that utilize some post-admission education requirement include the District of Columbia, Idaho, New Hampshire, New Jersey, Oregon, and Utah.

Vermont requires applicants to complete either a pre- or post-admission requirement.

require the attorney to complete straightforward questions. The questions should, at periodic intervals, test minimal comprehension of the material being covered, not rigorously examine understanding of the material. Finally, the workgroup recommends new attorneys be required to complete the course within six months of admission to the practice of law.

The precise topics covered by the course should be determined by the Ohio Board of Bar Examiners. However, potential topics that have been tested by other states include the following:

- Administrative law
- Alternative dispute resolution
- Business associations
- Civil and criminal procedure
- Contracts
- Criminal law
- Employment law
- Evidence
- Family law
- Professional responsibility and ethics
- Real property and land use
- State court system
- State constitutional law
- Torts and product liability
- Wills, trusts, and probate.

Finally, the Task Force recommends the provider of the course prepare an outline of the key course topics, making it accessible in perpetuity to new attorneys. The Ohio Board of Bar Examiners should be charged with reviewing the outline and ensuring it is up to date.

### III. IMPLEMENTATION OF THE UNIFORM BAR EXAMINATION RECIPROCITY

#### *Introduction:*

As previously noted, one of the most significant benefits of adopting the UBE is the reciprocity of scores. With the adoption of the UBE come a variety of implementation-related issues concerning reciprocity that must be addressed. These include questions concerning when reciprocity of UBE scores should begin, how long scores should be accepted, and whether applicants should comply with any other requirements. The Task Force's recommendations on these matters is as follows.

#### *Recommendation 4:*

**The Task Force recommends the Supreme Court begin accepting Uniform Bar Examination scores from other jurisdictions as soon as possible.**

#### *Discussion:*

If the UBE is adopted, Ohio will have to accept UBE scores from other states. However, although examination score reciprocity would be required, the precise implementation date for reciprocity in relation to the implementation date for administering the UBE is not definite. In other words, should Ohio begin accepting scores, even before implementation of the examination in Ohio?

The Task Force recommends the Supreme Court begin accepting UBE scores from other states and territories as soon as the previously discussed Ohio-specific component is implemented, even before the administration of the examination in Ohio. Even after adoption, a variety of rule and administrative changes will be necessary to fully implement the UBE. However, the process of accepting UBE scores from other territories should require fewer changes and, thus, could be implemented sooner than the administration of the examination. Because of the relative ease of accepting UBE scores and in order to see part of the benefit of score portability as soon as possible, the Task Force believes it would be wise for Ohio not to delay accepting other states' UBE scores until the examination is administered in Ohio, but rather begin accepting scores once the Ohio-specific component discussed earlier in this report is operational.

***Recommendation 5:***

**The Task Force recommends the Supreme Court accept Uniform Bar Examination scores for up to five years after the examination was taken.**

***Discussion:***

As previously discussed in this report, states and territories that use the UBE must set for their jurisdiction the maximum acceptable age of a UBE score, taking into account how current a UBE score should be to represent an applicant's readiness to practice law at the time of admission. The Task Force recommends scores be accepted for five years after the examination was taken.

The Task Force acknowledges that a five-year acceptance period is at the high end of what other states and territories accept. However, the Task Force feels strongly that the validity of a passing score does not wane significantly over a five-year period. Additionally, the Task Force recommends a five-year acceptance period in significant part to comport with Ohio's rules on admission on motion for experienced attorneys. Under Gov.Bar R. I, Sec. 9(A), an attorney may apply for admission to the practice of law in Ohio without examination (i.e., "admission upon motion") if the attorney has practiced law in another state for at least five full years out of the last ten years. Allowing a UBE score to be accepted for five years after the examination was taken would eliminate a potential gap between admission by examination and admission upon motion for a person who had achieved a sufficient UBE score but who had not yet practiced for five years in another jurisdiction.

***Recommendation 6:***

**The Task Force recommends that applicants transferring a Uniform Bar Examination score still undergo a complete character and fitness investigation.**

***Discussion:***

It is important attorneys have the necessary character and moral qualifications and are fit to practice law in Ohio. As a result, all attorneys who take the Ohio Bar Examination as well as attorneys who apply for admission upon motion are required to undergo a character, fitness, and moral qualifications examination (Gov.Bar R. I, Sec. 3(C) and Sec. 9(D)). Because of the importance of an attorney's character and fitness, the Task Force recommends applicants transferring a UBE score undergo the same investigation.

## **APPENDIX A**

### **UNIFORM BAR EXAMINATION SURVEY**

## MEMORANDUM

To: Dean Benjamin Barros

cc: John VanNorman

From: Nikole Hotchkiss

Date: November 28, 2017

Subject: Uniform Bar Exam survey results

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This memorandum is a report on the results obtained from the 2017 survey on the Ohio Bar Exam.

### **A. Purpose and Implementation**

Initiated by the Supreme Court's Task Force on the Ohio Bar Examination (Task Force), the 2017 Survey on the Ohio Bar Exam was developed to explore the opinions and perspectives of the Ohio legal community on the possibility of Ohio adopting the Uniform Bar Exam (UBE). Two versions of the survey were constructed in Qualtrics, one for registered Ohio attorneys and another for current law school students, faculty and staff. The two instruments were identical except for some slight differences in questions regarding the respondent's history of practicing law (see Appendices A and B for the survey instruments).

In order to reach the largest possible number of respondents, the Task Force decided to send the attorney survey to all currently registered active and inactive Ohio attorneys with email addresses on file with the Supreme Court, for a total of 54,730. Due to the large number of recipients, the invitation process was distributed over a number of days, from November 1 through November 3, 2017.

The Task Force asked its Chair to send a message to all law schools in Ohio asking them to distribute the survey to their students, faculty, and staff. A first request was sent on November 1 and a reminder on November 8, 2017. In total, five schools complied with the request and the invitation reached 1,752 students and 427 faculty and staff.

**B. Response Rates**

As the surveys were sent to the entire available population of attorneys, law students, and law school staff, response rates are expected to be lower than a more targeted sample.<sup>1</sup> Table 1, below, displays the response rate for each of the three groups invited to complete the survey. Response rates were figured by dividing the number of completed surveys by the number of survey invitations received. Some of the email addresses for attorneys were no longer valid, thus the survey was received by 52,555 registered attorneys.

**Table 1. Response Rates by Group. Ohio Bar Exam Survey, 2017.**

	Number of Respondents	Response Rate
Attorneys	6,717	12.8%
Law School Faculty/Staff	101	23.7%
Law Students	546	31.2%

While a high response rate is desirable, the relatively low rate of responses by attorneys here should not be seen as a reason to invalidate the data. More important than the rate of response is the representativeness of respondents.<sup>2</sup> The representativeness of respondents for this survey was evaluated based on years of practice, the metric that was most easily comparable between the population and the respondents. Those that responded to the survey were slightly more likely to have practiced between one and five years (17 percent) compared to all active and inactive attorneys registered in Ohio (12 percent). Respondents practicing more than thirty years (28 percent) were slightly underrepresented compared to the population contacted (31 percent). Otherwise, the distribution of the respondents and those contacted are within one to two percentage points, suggesting that survey respondents are representative of all of those contacted.<sup>3</sup>

The Chair of the Task Force contacted deans at the law schools in Ohio requesting that they distribute the survey to their faculty, staff, and students. Two requests to distribute the survey were sent to the nine law schools currently operating in Ohio. Requests for information about the recipients of the survey to figure the response rate was only received from five of the nine schools. It is unknown if the survey was distributed among the remaining four. For the purposes of figuring the response rate, only data from the five responding schools are included. Table 2, below, compares the distribution of law students invited to take the survey to those that responded based on their class year. While the proportion of third-year and “other” respondents closely match the distribution in the five

<sup>1</sup>As the relevance of the study to a potential respondent is one of the most important factors in response rates, studies that do not more precisely target respondents for relevance should expect a lower response rate. See Greer, T. V., N. Chuchinprakarn, and S. Seshadri. 2000. “Likelihood of participating in mail survey research—business respondents’ perspectives.” *Industrial Marketing Management* 29:97-109.

<sup>2</sup> See Cook, C. Heath and R.L. Thompson. 2000. “A meta-analysis of response rates in web-or internet-based surveys.” *Educational and Psychological Measurement* 60:821-36.

<sup>3</sup> Analysis available by request.

schools, second year law student were over represented and first-year students underrepresented among respondents. This is expected, as asking questions about the bar exam become more relevant as students progress through school.

**Table 2. Law Students Invited and Responding to Survey, by Class Year. Ohio Bar Exam Survey, 2017.**

Classification	Invited	Respondents
1L	36.4%	22.5%
2L	27.6%	41.9%
3L	27.5%	29.4%
Other	8.5%	6.2%

“Other” students here include 19 respondents identifying as 4L and 14 as another classification. Of those 14 students, 13 provided further details. These 13 respondents included six recent graduates, four in a dual degree program, one LLM student, and two part-time evening students.

**C. Preferences for Adoption of Uniform Bar Exam**

The survey asked a series of questions about the respondents’ legal education and practice background (results below) and ended with six questions specifically about the proposed changes to the Ohio Bar Exam. The final closed-ended question asked, “To what degree do you favor or oppose Ohio adopting the Uniform Bar Exam?” A clear majority of respondents were in favor of the adoption of the UBE, as shown below in Table 3. More than 65 percent of all respondents were somewhat or strongly in favor of Ohio adopting the Uniform Bar Exam. Perhaps not surprisingly, current law students were the most in favor of the change, with nearly 95 percent somewhat or strongly in favor. Registered attorneys had the lowest level of favorability of the surveyed groups, at 63 percent.

**Table 3. “To what degree do you favor or oppose Ohio adopting the Uniform Bar Exam (UBE)?” Ohio Bar Exam Survey, 2017.**

	Attorneys (N=6,462)	Law School Faculty/Staff (N=91)	Law Students (N=509)	All Respondents (N=7,062)
Strongly favor	32.1%	49.5%	84.7%	36.1%
Somewhat favor	30.7%	34.1%	10.0%	29.3%
Neither favor nor oppose	16.8%	6.6%	2.6%	15.6%
Somewhat oppose	13.4%	7.7%	2.4%	12.6%
Strongly oppose	7.0%	2.2%	0.4%	6.5%

The sections below further describe the characteristics of respondents and responses by group. Appendices C through E give the frequency distribution of each non-demographic question by respondent group.

**D. Respondent Demographics**

Among those registered attorneys and law school faculty and staff that answered the survey, those that responded were more likely to have earned their JD within the last 30 years (69.3 percent). Table 4, below displays the year respondents received their JD. More than 77 percent of respondents that received their JD attended law school in Ohio.

**Table 4. Year Juris Doctorate Earned. Ohio Bar Exam Survey, 2017.**

	Attorneys (N=6,629)	Law School Faculty/Staff (N=76)	Total (N=6,705)
2012 through 2016	16.0%	2.6%	15.8%
2007 through 2011	10.8%	11.8%	10.9%
2002 through 2006	12.5%	15.8%	12.5%
1997 through 2001	9.8%	25.0%	10.0%
1992 through 1996	10.2%	6.6%	10.1%
1987 through 1991	10.0%	13.2%	10.0%
1982 through 1986	10.0%	3.9%	9.9%
1977 through 1981	9.5%	10.5%	9.5%
1972 through 1976	7.0%	7.9%	7.0%
1967 through 1971	2.6%	1.3%	2.6%
1962 through 1966	1.2%	1.3%	1.2%
1957 through 1961	0.4%	0.0%	0.4%
1950 through 1956	0.1%	0.0%	0.1%
Before 1950	0.0%	0.0%	0.0%

More than 80 percent of respondents currently practice law, and nearly 16 percent responded that they have practiced in the past but do not currently. Of those that formerly or currently practice law, the largest group of respondents were those with more than 30 years practicing, followed by those that had one to five years of experience as shown in Table 5. This likely reflects the large numbers of current or former attorneys receiving the email with more than 30 years practicing law and the more immediate relevance of the topic for those with less experience.

**Table 5. Number of Years Practicing Law. Ohio Bar Exam Survey, 2017.**

	Attorneys (N=6,376)	Law School Faculty/Staff (N=89)	Total (N=6,465)
Less than one year	1.5%	3.4%	1.5%
1 to 5 years	17.8%	36.0%	18.1%
6 to 10 years	12.2%	19.1%	12.3%
11 to 15 years	12.5%	11.2%	12.5%
16 to 20 years	9.6%	1.1%	9.4%
21 to 25 years	9.9%	2.2%	9.8%
26 to 30 years	9.1%	4.5%	9.0%
More than 30 years	27.4%	22.5%	27.3%

Of those that have practiced law at some point, nearly 97 percent practiced law in Ohio and nearly 65 percent have practiced law only in Ohio. About 18 percent of respondents currently practice in a state other than Ohio and slightly more than 29 percent of respondents are admitted to the bar in a state other than Ohio.

As shown above, over 77 percent of the law student respondents were in the second year of law school or later. More than 68 percent of law student respondents were residents of Ohio when they started law school, as show in Table 6.

**Table 6. Residency of Law Students Before Law School. Ohio Bar Exam Survey, 2017.**

		Percentage
Ohio Resident	365	68.4%
Resident of another state or territory in the U.S.	157	29.4%
Resident of a country other than the U.S.	12	2.2%
<b>Total</b>	<b>534</b>	<b>100.0%</b>

#### E. Bar Exam Score Transferability

One of the defining characteristics of the UBE is the ability for the bar examination scores to transfer across state boundaries (though only between UBE jurisdictions) and is a frequently mentioned advantage of adoption. The Ohio Bar Exam Survey asked respondents how important certain aspects of the UBE should be treated when considering the possibility of Ohio adopting the UBE; specifically, three statements asked about the importance of the transfer of scores across physical jurisdictions:<sup>4</sup>

- The portability of bar exam scores to multiple jurisdictions.
- Decreasing the financial stress for attorneys attempting to change jurisdictions.

<sup>4</sup> There is a strong correlation between these items, a reliability test returned a Cronbach's Alpha of .88 among attorney respondents. For clarity of presentation, each item is presented individually here.

- Decreasing the time and difficulty of changing jurisdictions for attorneys.

Results are shown below in Tables 7, 8, and 9. The issue of portability was most often noted as important by all three groups of respondents with over 73 percent finding the portability to multiple jurisdictions to be an extremely or very important element to consider when evaluating if Ohio should adopt the UBE. This point was even more strongly held by law student, as 79 percent said this element should be extremely important.

**Table 7. “How important do you think the following elements be when considering if Ohio should adopt the Uniform Bar Exam? The portability of bar exam scores to multiple jurisdictions.” Ohio Bar Exam Survey, 2017.**

	Attorneys (N=6,454)	Law School Faculty/Staff (N=92)	Law Students (N=509)	All Respondents (N=7,055)
Extremely Important	39.2%	59.8%	79.0%	42.3%
Very Important	32.5%	31.5%	15.5%	31.2%
Moderately Important	19.2%	7.6%	4.5%	17.9%
Slightly Important	5.3%	1.1%	0.6%	4.9%
Not at all important	3.9%	0.0%	0.4%	3.6%

Respondents also believed that the various barriers that confront attorneys when attempting to change jurisdictions should be considered important when evaluating the adoption of the UBE, though not as unequivocally as the issue of portability. Over 65 percent of respondents thought that the issue of financial stress on attorneys attempting to change jurisdictions should be an extremely or very important consideration. Again, responses varied by group, as nearly 89 percent of law students thought this should be important, and just over 62 percent of attorneys felt the same way.

**Table 8. “How important do you think the following elements be when considering if Ohio should adopt the Uniform Bar Exam? Decreasing the financial stress for attorneys attempting to change jurisdictions.” Ohio Bar Exam Survey, 2017.**

	Attorneys (N=6,446)	Law School Faculty/Staff (N=92)	Law Students (N=510)	All Respondents (N=7,048)
Extremely Important	33.4%	48.9%	66.1%	36.0%
Very Important	29.7%	29.3%	22.7%	29.2%
Moderately Important	20.6%	15.2%	8.8%	19.7%
Slightly Important	9.9%	6.5%	1.0%	9.2%
Not at all important	6.3%	0.0%	1.4%	5.9%

**Table 9. “How important do you think the following elements be when considering if Ohio should adopt the Uniform Bar Exam? Decreasing the time and difficulty of changing jurisdictions for attorneys.” Ohio Bar Exam Survey, 2017.**

	Law School			All
	Attorneys (N=6,449)	Faculty/Staff (N=92)	Law Students (N=510)	Respondents (N=7,051)
Extremely Important	37.7%	58.7%	70.8%	40.4%
Very Important	32.8%	26.1%	22.7%	32.0%
Moderately Important	17.7%	9.8%	5.3%	16.7%
Slightly Important	7.5%	5.4%	0.4%	6.9%
Not at all important	4.4%	0.0%	0.8%	4.1%

While it is impossible to predict the future, it is worth it to consider how law school attendance, bar admission, and practicing in Ohio might change with the adoption of the UBE. The following two questions asked respondents how their plans would have changed (for attorneys and law school faculty/staff) or may change (for law students) if the UBE was adopted in Ohio.

**Table 10. Importance of Location (State) in Selecting Law School to Attend. Ohio Bar Exam Survey, 2017.**

	Law School			All
	Attorneys (N=6,628)	Faculty/Staff (N=76)	Law Students (N=529)	Respondents (N=7,233)
Extremely important	28.3%	18.4%	25.3%	27.9%
Very important	24.0%	17.1%	23.1%	23.9%
Moderately	22.5%	25.0%	33.5%	23.4%
Slightly important	9.7%	10.5%	10.6%	9.8%
Not at all important	15.5%	28.9%	7.6%	15.1%

As shown above in Table 10, just over half of the respondents (51.8 percent) answered that the state where the law school was located was an important consideration in selecting which school to attend. Attorneys were more likely to say that location was important, followed by law students. There are multiple reasons that location may be important, including that they intend(ed) to practice in the same state after graduation. The survey then asked if their bar exam score were transferable, would they have made a different decision about where to attend law school. Results are displayed below in Table 11.

**Table 11. “If your [bar exam] score were transferable to other states, would you have made a different decision about where to attend law school?” Ohio Bar Exam Survey, 2017.**

	Law School			All
	Attorneys (N=6,552)	Faculty/Staff (N=76)	Law Students (N=522)	Respondents (N=7,150)
Definitely yes	4.0%	7.9%	0.4%	3.8%
Probably yes	7.1%	3.9%	1.7%	6.7%
Might or Might not	22.1%	23.7%	9.4%	21.1%
Probably not	41.7%	34.2%	30.1%	40.7%
Definitely not	25.1%	30.3%	58.4%	27.6%

According to the survey respondents, the transferability of bar exam scores would not have made much of a difference for where they decided to attend law school.<sup>5</sup>

Not surprisingly since they were registered in the state of Ohio, over 97 percent of responding attorneys had practiced law in Ohio at some point in their careers. However, only 49 percent of eligible law school faculty and staff had done so. Table 12, below displays the number of responding law students that intended to practice law upon graduation. Nearly 56 percent intend to practice in Ohio, and another 33 percent appear indifferent.

**Table 12. Law Students Intending to Practice in Ohio upon Graduation. Ohio Bar Exam Survey, 2017.**

Definitely yes	156	29.5%
Probably yes	139	26.3%
Might or Might not	176	33.3%
Probably not	44	8.3%
Definitely not	14	2.6%
<b>Total</b>	<b>529</b>	

Asked if a transferable bar score would have possibly changed where they practiced, just under half of respondents indicated that they would have considered practicing in a state other than Ohio, as shown in Table 13. This response is highest amongst law students and lowest for attorneys. This result is not surprising as law students are facing a different market than earlier graduates and may be uncertain of their options after graduation.

<sup>5</sup> For the law students, the question was phrased to the opposite. Students were asked, “If your bar exam score were transferable between Ohio and other states, would you **still have chosen** to attend the law school you are now attending?” For comparability with the other groups’ responses, the responses were reversed. Thus, if a student answered “Definitely Yes” to this question, for the table above, it became “Definitely Not.”

**Table 13. “If your bar exam score were transferable to another state would you have considered practicing in another state?” Ohio Bar Exam Survey, 2017.<sup>6</sup>**

	Law School			All Respondents (N=7,134)
	Attorneys (N=6,536)	Faculty/Staff (N=76)	Law Students (N=522)	
Definitely yes	19.5%	28.9%	34.5%	20.7%
Probably yes	28.7%	23.7%	28.0%	28.6%
Might or Might not	33.2%	28.9%	31.8%	33.0%
Probably not	15.3%	11.8%	5.6%	14.5%
Definitely not	3.4%	6.6%	0.2%	3.2%

Nearly 71 percent of attorneys and law school faculty and staff are admitted only to the Ohio bar, as shown in Table 14. Law student respondents were asked which bar exam(s) they were planning on taking upon graduation and they could select as many as applied. Table 15 displays results. Over 80 percent intend to take the Ohio Bar Exam. Nearly one-half of the law student respondents intend to take the UBE, even though the scores are not currently transferable to Ohio.

**Table 14. Bar Membership Among Attorneys and Law School Faculty and Staff. Ohio Bar Exam Survey, 2017.**

	Attorneys	Law School	All
	(N=6,548)	Faculty/Staff (N=76)	Respondents (N=6,624)
Ohio and Other State(s)	28.8%	61.8%	29.2%
Only Ohio	71.2%	38.2%	70.8%

**Table 15. Intended Bar Exam Among Law Students. Ohio Bar Exam Survey, 2017.**

	N=530	
Ohio Bar Exam	427	80.6%
Uniform Bar Exam	244	46.0%
Another State's Bar Exam	160	30.2%
None	4	0.8%

Asked if their score were transferable would they have pursued bar admission in another state, a majority of respondents (62.3 percent) indicated that they would have also pursued

<sup>6</sup> For law students the question was phrased as follows: “If your bar exam score were transferable to another state, would you consider practicing law outside of Ohio?”

bar admission in another state, as displayed in Table 16. While more law students than other groups indicated that they would definitely or probably pursue admission in another state as well as Ohio, the responses of attorneys and law school faculty and staff are much closer than with other questions. It is likely that this is the case because this is the least determinative of the questions asking about hypotheticals. Pursuing bar admission in another state does not preclude practice in Ohio.

**Table 16. “If your bar exam score were transferable to another state, would you have also pursued bar admission in that state?” Ohio Bar Exam Survey, 2017.**

	Law School			All
	Attorneys (N=6,533)	Faculty/Staff (N=76)	Law Students (N=522)	Respondents (N=7,131)
Definitely yes	27.3%	39.5%	42.1%	28.5%
Probably yes	34.0%	26.3%	32.8%	33.8%
Might or Might not	24.8%	22.4%	17.4%	24.2%
Probably not	11.1%	7.9%	5.7%	10.7%
Definitely not	2.8%	3.9%	1.9%	2.7%

It is difficult to draw definitive conclusions to the hypothetical situations presented in these questions. The results do suggest that the adoption of the UBE could somewhat alter decisions to attend law school in Ohio or practice solely in Ohio. The adoption of the UBE could have two potential effects on the population of attorneys in the state: 1) the number of attorneys could increase due to the transferability of scores; 2) there might be a “brain drain” effect as students and attorneys transfer their scores to other markets. While these are both important considerations, data from the National Conference of Bar Examiners (NCBE) on incoming and outgoing scores in states that currently accept the UBE suggest that there will not be a large proportion of scores being transferred in- or out-of-state compared with the number of exams taken in state. With the exception of five UBE states, the percentage of scores being transferred in or out is less than 10 percent of those that took the exam in the state.<sup>7</sup>

**F. Other Considerations for Adopting the UBE**

The Ohio Bar Exam Survey asked respondents about how important two other elements should be treated when considering the possibility of Ohio adopting the UBE. First, respondents were asked to rate the importance of having an additional requirement to the UBE that focused on Ohio specific law. Results are shown below in Table 17.

<sup>7</sup> The five states with large proportions of transferred scores all have a high percentage of scores coming into the state: Kansas, Wyoming, New Mexico, Iowa, and Montana. These states are rural and may need more attorneys to reach underserved areas. See “Final Report, Findings, & Recommendations of the ISBA Standing Committee on Legal Education, Admission and Competence on the Adoption of the Uniform Bar Examination.” Illinois State Bar Association. October 7, 2016. Appendix B.

**Table 17. “How important do you think the following elements be when considering if Ohio should adopt the Uniform Bar Exam? An additional requirement to bar admission in Ohio about Ohio specific law.” Ohio Bar Exam Survey, 2017.**

	Attorneys (N=6,444)	Law School Faculty/Staff (N=92)	Law Students (N=509)	All Respondents (N=7,045)
Extremely Important	19.1%	13.0%	9.8%	18.4%
Very Important	25.4%	18.5%	18.5%	24.8%
Moderately Important	29.1%	33.7%	43.6%	30.2%
Slightly Important	14.5%	18.5%	16.5%	14.7%
Not at all important	11.8%	16.3%	11.6%	11.9%

Overall, over 43 percent of respondents thought that including an Ohio-specific component was extremely or very important. Nearly 45 percent of attorneys believed that this is an important thing to consider, compared with only 28 percent of law students.

Currently, the lawyering skills portion of the Ohio Bar Exam, the Multistate Performance Test (MPT), is 13.3 percent of the total score. In the UBE, the MPT is worth 20 percent of the score. Respondents were asked how important this is to consider.

**Table 18. “How important do you think the following elements be when considering if Ohio should adopt the Uniform Bar Exam? The increased weight of the lawyering skills portion of the exam.” Ohio Bar Exam Survey, 2017.**

	Attorneys (N=6,433)	Law School Faculty/Staff (N=92)	Law Students (N=509)	All Respondents (N=7,034)
Extremely Important	17.0%	18.5%	15.1%	16.9%
Very Important	33.2%	22.8%	27.3%	32.7%
Moderately Important	32.6%	34.8%	43.2%	33.4%
Slightly Important	10.6%	16.3%	8.4%	10.5%
Not at all important	6.6%	7.6%	5.9%	6.6%

Nearly one-half (49 percent) of respondents thought that increased weight to the MPT was extremely or very important to consider. A greater proportion of attorneys held this opinion than law school faculty or students.

**G. Open-Ended Responses**

The final question on the survey asked respondents to add any additional comments or concerns they had about Ohio adopting the UBE. In this optional, open-ended question 1,814 attorneys, 29 law school faculty and staff, and 142 law students provided comments. The full text of the open-ended responses are located in Appendices F through H, separated by respondent group.

A cursory review of the open-ended responses yielded some recurring themes. Below are three of the most prevalent themes as well as an example from the responses.

*Ohio specific content is necessary.*

“An attorney practicing in a state needs to be knowledgeable of the law in their state especially as it relates to their practice. If the law is particularly different in another state as it relates to their practice, there needs to be some mechanism to ensure that the attorney is qualified. Perhaps a continuing education requirements for new attorneys that are admitted through UBE that focus on state specific laws?”

*The portability of the bar exam is important.*

“I wanted to practice in Ohio because my family was here, but when my husband and I moved to New York for his job in the Army, I was so frustrated that I could not practice unless I took another Bar exam. Well, I didn't want to do that, too stressful. So I was blessed to get a job with the Federal Gov't. in New York. Life would have been so much easier, if I was able to just transfer my license or exam scores. We knew we where coming back to Ohio after 5 years, so investing in another bar exam was just not worth it to me.”

*The weighting of the different components of the UBE is problematic.*

“I would think this is a great idea however I do not like more emphasis on multiple choice questions. I like the fact Ohio uses more emphasis on short answer questions. Law does not fit neatly in a little box and those who practice it should have the ability to express their knowledge in essay form not in a guessing situation. If more emphasis was given to short answer questions I would be all for a uniform test.”

**H. Conclusion**

The results presented here are based on answers from over seven thousand respondents. An analysis of respondent demographics compared with the population demographics shows that respondents are a representative sample of their group. Overall, there is support for adopting the UBE in Ohio. The portability of the exam scores appears to be the biggest attraction for changing and many members of the legal community believe that there should be an additional Ohio component to bar entry in the state.

Appendix A: Attorney Survey

**Ohio Bar Exam Survey, 2017**

Q1. In what year did you obtain your JD?

▼ 2017 ... Before 1950

Q2. Did you attend law school in Ohio?

- Yes
- No

Q3. Thinking back on your decision about where to attend law school, how important was the state in which the school was located?

- Extremely important
- Very important
- Moderately important
- Slightly important
- Not at all important

Q4. Do you currently practice law?

- Yes [Skip to Q5]
- No, I have practiced law in the past but I do not currently practice [Skip to Q6]
- No, I have never practiced law [Skip to Q9]

Q5. How many years have you practiced law? [Skip to Q7]

▼ Less than one year ... More than 30 years

Q6. How many years did you practice law?

▼ Less than one year ... More than 30 years

Appendix A: Attorney Survey

Q7. Have you ever practiced law in Ohio?

- Yes
- No

Q8. Have you ever practiced law in a state other than Ohio?

- Yes, I currently practice law in a state other than Ohio
- Yes, though I do not currently practice law in a state other than Ohio
- No, I have never practiced law outside of Ohio

*For the next two questions, please think back to when you took the bar exam.*

Q9.

If your score were transferable to other states, would you have made a different decision about where to attend law school?

- Definitely yes
- Probably yes
- Might or might not
- Probably not
- Definitely not
- Not applicable; I've never taken the bar exam

Q10. Are you admitted to the bar in a state other than Ohio?

- Yes
- No

Appendix A: Attorney Survey

Q11. If your bar exam score were transferable to another state, would you have also pursued bar admission in that state?

- Definitely yes
- Probably yes
- Might or might not
- Probably not
- Definitely not
- Not applicable; I've never taken the bar exam

Q12. If your bar exam score were transferable to another state, would you have considered practicing in another state?

- Definitely yes
- Probably yes
- Might or might not
- Probably not
- Definitely not
- Not applicable; I've never taken the bar exam

**The Uniform Bar Exam (UBE) is different than the current Ohio bar exam in the following ways:**

- The UBE weighs the multiple choice questions and written response equally; for the Ohio bar exam, the written response section accounts for 2/3 of the score and the multiple choice is 1/3.
- There are six essay questions on the UBE and twelve on the current Ohio bar exam.
- The essay portion of the UBE adds Conflict of Laws, Family Law and Trusts to topics covered by the Ohio bar exam and eliminates material about Ohio Civil Procedure, Legal Ethics, Personal Property, and Commercial Paper.
- UBE scores are portable to 26 additional U.S. jurisdictions.
- The UBE testing period is two days; the Ohio bar exam is two and a half days.

Appendix A: Attorney Survey

Please indicate how important you think the following elements should be when considering if Ohio should adopt the Uniform Bar Exam.

	Extremely important	Very important	Moderately important	Slightly important	Not at all important
Q13. The portability of bar exam scores to multiple jurisdictions.	<input type="radio"/>				
Q14. Decreasing the financial stress for attorneys attempting to change jurisdictions.	<input type="radio"/>				
Q15. Decreasing the time and difficulty of changing jurisdictions for attorneys.	<input type="radio"/>				
Q16. An additional requirement to bar admission in Ohio about Ohio specific law.	<input type="radio"/>				
Q17. The increased weight of the lawyering skills portion of the bar exam.	<input type="radio"/>				

Q18. To what degree do you favor or oppose Ohio adopting the Uniform Bar Exam (UBE)?

- Strongly favor
- Somewhat favor
- Neither favor nor oppose
- Somewhat oppose
- Strongly oppose

Q19. Please add any additional comments or concerns you have about Ohio adopting the UBE here:

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Appendix B: Law School Survey

**Ohio Bar Exam Survey, 2017**

Q1. Please select the role that best describes your current position:

- Law school student [Skip to Q14]
- Law school faculty or staff

Q2. In what year did you obtain your JD?

▼ I do not have a JD ... Before 1950

*If In what year did you obtain your JD? = I do not have a JD [Skip to Q22]*

Q3. Did you attend law school in Ohio?

- Yes
- No

Q4. Thinking back on your decision about where to attend law school, how important was the state in which the school was located?

- Extremely important
- Very important
- Moderately important
- Slightly important
- Not at all important

Q5. Do you currently practice law?

- Yes
- No, I have practiced law in the past but I do not currently practice [Skip to Q7]
- No, I have never practiced law [Skip to Q10]

Q6. How many years have you practiced law?

▼ Less than one year ... More than 30 years

Appendix B: Law School Survey

Q7. How many years did you practice law?

▼ Less than one year... More than 30 years

Q8. Have you ever practiced law in Ohio?

- Yes
- No

Q9. Have you ever practiced law in a state other than Ohio?

- Yes, I currently practice law in a state other than Ohio
- Yes, though I do not currently practice law in a state other than Ohio
- No, I have never practiced law outside of Ohio

*For the next questions, please think back to when you took the bar exam.*

Q10.

If your score were transferable to other states, would you have made a different decision about where to attend law school?

- Definitely yes
- Probably yes
- Might or might not
- Probably not
- Definitely not
- Not applicable; I've never taken the bar exam

Q11. Are you admitted to the bar in a state other than Ohio?

- Yes
- No

Appendix B: Law School Survey

Q12. If your bar exam score were transferable to another state, would you have also pursued bar admission in that state?

- Definitely yes
- Probably yes
- Might or might not
- Probably not
- Definitely not
- Not applicable; I've never taken the bar exam

Q13. If your bar exam score were transferable to another state, would you have considered practicing in another state?

- Definitely yes
- Probably yes
- Might or might not
- Probably not
- Definitely not
- Not applicable; I've never taken the bar exam

[Skip to Q22]

Appendix B: Law School Survey

Q14. What is your current classification in your JD program?

- 1L
- 2L
- 3L
- 4L
- Other (please specify): \_\_\_\_\_

Q15. When you began law school, were you a resident of Ohio?

- Yes
- No, I was a resident of another state or territory in the United States
- No, I was a resident of a country other than the United States

Q16. Thinking back on your decision about where to attend law school, how important was the state in which the school was located?

- Extremely important
- Very important
- Moderately important
- Slightly important
- Not at all important

Q17. As of now, which of the following bar exams do you plan to take? Select all that apply.

- Ohio bar exam
- Uniform bar exam
- Another state's bar exam
- None

Appendix B: Law School Survey

Q18. Upon graduation, do you intend to practice law in Ohio?

- Definitely yes
- Probably yes
- Might or might not
- Probably not
- Definitely not

Q19. If your bar exam score were transferable between Ohio and other states, would you still have chosen to attend the law school you are now attending?

- Definitely yes
- Probably yes
- Might or might not
- Probably not
- Definitely not

Q20. If your bar exam score were transferable to another state, would you also pursue admission to the bar in that state?

- Definitely yes
- Probably yes
- Might or might not
- Probably not
- Definitely not

Appendix B: Law School Survey

Q21. If your bar exam score were transferable to another state, would you consider practicing law outside of Ohio?

- Definitely yes
- Probably yes
- Might or might not
- Probably not
- Definitely not

**The Uniform Bar Exam (UBE) is different than the current Ohio bar exam in the following ways:**

- The UBE weighs the multiple choice questions and written response equally; for the Ohio bar exam, the written response section accounts for 2/3 of the score and the multiple choice is 1/3.
- There are six essay questions on the UBE and twelve on the current Ohio bar exam.
- The essay portion of the UBE adds Conflict of Laws, Family Law and Trusts to topics covered by the Ohio bar exam and eliminates material about Ohio Civil Procedure, Legal Ethics, Personal Property, and Commercial Paper.
- UBE scores are portable to 26 additional U.S. jurisdictions.
- The UBE testing period is two days; the Ohio bar exam is two and a half days.

Please indicate how important you think the following elements should be when considering if Ohio should adopt the Uniform Bar Exam.

	Extremely important	Very important	Moderately important	Slightly important	Not at all important
Q22. The portability of bar exam scores to multiple jurisdictions.	<input type="radio"/>				
Q23. Decreasing the financial stress for attorneys attempting to change jurisdictions.	<input type="radio"/>				
Q24. Decreasing the time and difficulty of changing jurisdictions for attorneys.	<input type="radio"/>				
Q25. An additional requirement to bar admission in Ohio about Ohio specific law.	<input type="radio"/>				
Q26. The increased weight of the lawyering skills portion of the bar exam.	<input type="radio"/>				

Appendix B: Law School Survey

Q27. To what degree do you favor or oppose Ohio adopting the Uniform Bar Exam (UBE)?

- Strongly favor (1)
- Somewhat favor (2)
- Neither favor nor oppose (3)
- Somewhat oppose (4)
- Strongly oppose (5)

Q28. Please add any additional comments or concerns you have about Ohio adopting the UBE here:

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Survey Item	Response (See Footnotes)						Total Responses
	Mean	1	2	3	4	5	
<i>If your bar exam score were transferable to other states...<sup>1</sup></i>							
would you have made a different decision about where to attend law school?	3.8	265	467	1,445	2,730	1,645	6,552
would you have also pursued bar admission in that state?	2.3	1,783	2,220	1,621	726	183	6,533
would you have considered practicing in another state?	2.5	1,274	1,876	2,167	998	221	6,536
<i>How important is/was...<sup>2</sup></i>							
the state in which the law school you attended was located?	2.6	1,873	1,592	1,493	642	1,028	6,628
the portability of bar exam scores to multiple jurisdictions [for consideration of the UBE].	2.0	2,527	2,095	1,236	344	252	6,454
decreasing the financial stress for attorneys attempting to change jurisdictions [for consideration of the UBE].	2.3	2,154	1,917	1,328	640	407	6,446
decreasing the time and difficulty of changing jurisdictions for attorneys [for consideration of the UBE].	2.1	2,432	2,113	1,139	482	283	6,449
an additional requirement to bar admission in Ohio about Ohio specific law [for consideration of the UBE].	2.8	1,232	1,637	1,875	937	763	6,444
the increased weight of the lawyering skills portion of the bar exam [for consideration of the UBE].	2.6	1,094	2,137	2,097	679	426	6,433
To what degree do you favor or oppose Ohio adopting the Uniform Bar Exam? <sup>3</sup>	2.3	2,072	1,985	1,085	868	452	6,462

<sup>1</sup>Definitely Yes (1); Probably Yes (2); Might or Might Not (3); Probably Not (4); Definitely Not (5).

<sup>2</sup>Extremely Important (1); Very Important (2); Moderately Important (3); Slightly Important (4); Not at all Important (5).

<sup>3</sup>Strongly Favor (1); Somewhat Favor (2); Neither Favor nor Oppose (3); Somewhat Oppose (4); Strongly Oppose (5).

Appendix D  
Frequency Distribution  
Law School Faculty & Staff Respondents

Survey Item	Mean	Response (See Footnotes)					Total Responses
		1	2	3	4	5	
<i>If your bar exam score were transferable to other states...<sup>1</sup></i>							
would you have made a different decision about where to attend law school?	3.8	6	3	18	26	23	<b>76</b>
would you have also pursued bar admission in that state?	2.1	30	20	17	6	3	<b>76</b>
would you have considered practicing in another state?	2.4	22	18	22	9	5	<b>76</b>
<i>How important is/was...<sup>2</sup></i>							
the state in which the law school you attended was located?	3.1	14	13	19	8	22	<b>76</b>
the portability of bar exam scores to multiple jurisdictions [for consideration of the UBE].	1.5	55	29	7	1	0	<b>92</b>
decreasing the financial stress for attorneys attempting to change jurisdictions [for consideration of the UBE].	1.8	45	27	14	6	0	<b>92</b>
decreasing the time and difficulty of changing jurisdictions for attorneys [for consideration of the UBE].	1.6	54	24	9	5	0	<b>92</b>
an additional requirement to bar admission in Ohio about Ohio specific law [for consideration of the UBE].	3.1	12	17	31	17	15	<b>92</b>
the increased weight of the lawyering skills portion of the bar exam [for consideration of the UBE].	2.7	17	21	32	15	7	<b>92</b>
To what degree do you favor or oppose Ohio adopting the Uniform Bar Exam? <sup>3</sup>	1.8	45	31	6	7	2	<b>91</b>

<sup>1</sup>Definitely Yes (1); Probably Yes (2); Might or Might Not (3); Probably Not (4); Definitely Not (5).

<sup>2</sup>Extremely Important (1); Very Important (2); Moderately Important (3); Slightly Important (4); Not at all Important (5).

<sup>3</sup>Strongly Favor (1); Somewhat Favor (2); Neither Favor nor Oppose (3); Somewhat Oppose (4); Strongly Oppose (5).

Survey Item	Mean	Response					Total Responses
		1	2	3	4	5	
<i>If your bar exam score were transferable to other states...<sup>1</sup></i>							
would you still have chosen to attend the school you are now attending?	1.6	305	157	49	9	2	522
would you pursue bar admission in that state?	1.9	220	171	91	30	10	522
would you consider practicing law outside of Ohio?	2.1	180	146	166	29	1	522
<i>How important is/was...<sup>2</sup></i>							
the state in which the law school you attended was located?	2.5	134	122	177	56	40	529
the portability of bar exam scores to multiple jurisdictions [for consideration of the UBE].	1.3	402	79	23	3	2	509
decreasing the financial stress for attorneys attempting to change jurisdictions [for consideration of the UBE].	1.5	337	116	45	5	7	510
decreasing the time and difficulty of changing jurisdictions for attorneys [for consideration of the UBE].	1.4	361	116	27	2	4	510
an additional requirement to bar admission in Ohio about Ohio specific law [for consideration of the UBE].	3.0	50	94	222	84	59	509
the increased weight of the lawyering skills portion of the bar exam [for consideration of the UBE].	2.6	77	139	220	43	30	509
To what degree do you favor or oppose Ohio adopting the Uniform Bar Exam? <sup>3</sup>	1.2	431	51	13	12	2	509

<sup>1</sup>Definitely Yes (1); Probably Yes (2); Might or Might Not (3); Probably Not (4); Definitely Not (5).

<sup>2</sup>Extremely Important (1); Very Important (2); Moderately Important (3); Slightly Important (4); Not at all Important (5).

<sup>3</sup>Strongly Favor (1); Somewhat Favor (2); Neither Favor nor Oppose (3); Somewhat Oppose (4); Strongly Oppose (5).



**APPENDIX B**  
**IMPACT STUDIES**

**Impact of Alternative Section Weighting  
On the Ohio Bar Examination:  
A Simulation Using Historical Administrations  
October 4, 2017**

**BACKGROUND**

The state of Ohio is considering use of the National Conference of Bar Examiners (NCBE) Uniform Bar Examination (UBE). Among other characteristics, a major difference between the current Ohio examination configuration and the UBE is the weighting of the written and multiple choice (MBE) sections. In calculating applicants final scores, Ohio currently weights its written component twice as much as the MBE, while the UBE requires equal weighting of each section. Because of the higher reliability of the MBE and a shortened written section (6 essays and 2 performance tasks), NCBE has demonstrated that equal weighting of the sections results in a higher reliability of resulting total scores.

Alternative section weighting on a bar examination would necessarily result in different outcomes. Applicants scores would be subject to change as would be the decisions based upon those scores. As it considers use of the UBE, Ohio sought to determine (a) what the magnitude of these changes might be on the population of test takers and (b) whether there would be a differential effect for different subgroups of test takers, namely females vs. males.

**METHODS**

To estimate the impact of weighting changes, we examined initial read scores from the 6 most recently completed administrations of the Ohio Bar examination: July 2014 through February 2017 which includes three February and three July exams. For the applicant sitting for those exams, Ohio provided a record containing an indicator for gender (Male, Female, Unknown) that was linked to the scores maintained by RSG. Multiple examinations were selected so that consistency of results across years and across administrations (i.e., February vs. July) could be assessed.

For each applicant, a written scale score was calculated based on first read scores using the scaling parameters for the given administration. Two total scale scores were then calculated by adding weighted Written and MBE scores. The first total used Ohio's traditional 2 to 1

weighting (“Original”) and the second total used the revised equal (1 to 1) weighting scheme (“Revised”). To allow for direct comparison, in the equal weighting scheme, weights of 1.5 were applied to both exam sections. An applicant’s pass/fail status was determined by comparing each of the total scale scores to the cut score of 405. A score  $\geq 405$  was considered a pass; less than 405 was a fail.

To determine the consistency in pass/fail decisions under each of the weighting schema, the status’ were compared. If an applicant either passed or failed in both of the decisions, there was considered to be agreement. If either schema yielded a different decision (i.e., one method yielded a pass while the other yielded a fail, or vice-versa), it was considered to be disagreement.

**RESULTS**

**Applicant Sample.** Table 1 shows the count of all applicants for each administration cycle. Of the 4,483 applicants, the gender of 4,434 applicants was identified (99.0%). Analysis showed that the missing 1% was distributed equally among the exams. Over the six exam administrations under study, males made up approximately 55% of test-takers, with slightly decreasing proportions over the years. The rates were relatively similar on February and July examinations).

**Table 1**  
**Count of Applicants**  
**By Month and Year<sup>1</sup>**

<u>Year</u>	<u>February</u>	<u>July</u>	<u>Total</u>	<u>% Male</u>
2014-2015	411	1,173	1,584	56%
2015-2016	421	1,047	1,468	54%
2016-2017	436	995	1,431	53%
<b><u>Total</u></b>	1,268	3,215	4,483	55%

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<sup>1</sup> Each examination “year” consists of one July examination and the following February examination

**Score Comparability.** Tables 2A and 2B present the mean and standard deviation (Sd.) of the Original and Revised Scale Scores by administration month and year.

**Table 2A**

**Scale Score Statistics  
By Examination Month**

Month	Scale Written		Scale MBE		Original: Total Scale Score		Revised: Total Scale Score		Difference	
	Ave.	Sd.	Ave.	Sd.	Ave.	Sd.	Ave.	Sd.	Ave.	Sd..
February	137.7	14.2	137.7	14.2	413.2	39.2	413.2	38.7	0	.5
July	143.9	14.7	143.9	14.7	431.6	41.4	431.6	41.1	0	.3
<b>Total</b>	142.1	14.8	142.1	14.8	426.4	41.6	426.4	41.2	0	.4

**Table 2B**

**Scale Score Statistics  
By Examination Year**

Year	Scale Written		Scale MBE		Original: Total Scale Score		Revised: Total Scale Score		Difference	
	Ave.	Sd.	Ave.	Sd.	Ave.	Sd.	Ave.	Sd.	Ave.	Sd..
2014-2015	143.6	14.5	143.6	14.5	430.8	40.8	430.8	40.4	0	-.4
2015-2016	142.3	14.7	142.4	14.7	427.0	41.4	427.0	41.1	0	-.3
2016-2017	140.3	15.1	140.3	15.1	420.9	42.1	420.9	41.7	0	-.4
<b>Total</b>	142.1	14.8	142.1	14.8	426.4	41.6	426.4	41.2	0	-.4

Inspection of Tables 2A and 2B show that under either weighting scheme, the average total scale across the population of test takers remains the same. The reason for this is that the raw written scores are scaled to the MBE on each examination, thus insuring that both the means and Sd.'s of both components remain the same. What does change however is the score spread which shrinks slightly (between .3 to .5 points) for any given year or exam month.

**Passing Rates and Decision Comparability.** In a licensing examination such as the bar examination, it is ultimately the resulting pass/fail decisions that count. Table 3 presents the both the pass rates and decision consistent (i.e., agreement) for both the original scoring and the scoring under the revised 50/50 weighting.

**Table 3**  
**Passing Rates and Decision Agreement**  
**Under Original and Revised Weighting**  
**By Examination Year & Month**

% Passing	Year			Month		Overall
	2014-15	2015-16	2016-17	February	July	
Original	73%	69%	64%	57%	74%	69%
Revised	74%	71%	65%	57%	75%	70%
Difference	1%	2%	1%	0%	1%	1%
<b>Decision Agreement</b>	96%	97%	94%	94%	96%	96%

Not surprisingly, given similar averages and Sd.'s observed in Tables 2A and B, the pass rates are markedly similar under both weighting schema. At most, the passing rates differed by a single percentage point in any given year or administration month. Across all 4,483 applicants sitting for the 6 administrations, it is estimated that slightly less than 50 more applicants would have passed under an equal weighting schema; an average of about 8 applicants per examination.

In terms of the consistency in decisions, all but 4% (about 190) of the 4,483 applicants would have received the same pass or failing status were a different weighting schema used. Slightly lower agreement rates would be expected on a February examination where the score spread was lower.

**Scale Score Differences by Gender.** It is a well-established fact that males, as a group tend to score slightly better on the MBE than woman, while the opposite is true for performance on the written section. Thus, it is reasonable to believe that changes in weighting of the respective bar examination sections may have a differential impact on both scores and subsequent passing rates of men and women.

Tables 4a and 4b present the breakdown of scale scores by males and females by examination month and year.

**Table 4A**

**Scale Score Statistics For  
Female and Male Test-Takers  
By Examination Month**

<b>Gender</b>	<b>Month</b>	<b>Scale Written</b>		<b>Scale MBE</b>		<b>Original: Total Scale Score</b>		<b>Revised: Total Scale Score</b>		<b>Difference</b>	
		<b>Ave.</b>	<b>Sd.</b>	<b>Ave.</b>	<b>Sd.</b>	<b>Ave.</b>	<b>Sd.</b>	<b>Ave.</b>	<b>Sd.</b>	<b>Ave.</b>	<b>Sd.</b>
<b>Female</b>	<b>February</b>	137.7	14.0	135.5	14.0	411.0	39.0	409.9	38.6	-1.1	-4
	<b>July</b>	144.4	14.6	141.5	14.7	430.2	41.4	428.8	41.1	-1.4	-3
	<b>Total</b>	142.5	14.7	139.8	14.7	424.8	41.6	423.4	41.3	-1.4	-3
<b>Male</b>	<b>February</b>	138.3	14.1	140.0	13.9	416.6	38.6	417.5	38.0	+9	-6
	<b>July</b>	143.8	14.6	146.2	14.3	433.8	40.6	435.0	40.1	+1.2	-5
	<b>Total</b>	142.3	14.7	144.4	14.4	429.0	40.8	430.1	40.3	+1.1	-5

**Table 4B**

**Scale Score Statistics For  
Female and Male Test-Takers  
By Examination Year**

<b>Gender</b>	<b>Year</b>	<b>Scale Written</b>		<b>Scale MBE</b>		<b>Original: Total Scale Score</b>		<b>Revised: Total Scale Score</b>		<b>Difference</b>	
		<b>Ave.</b>	<b>Sd.</b>	<b>Ave.</b>	<b>Sd.</b>	<b>Ave.</b>	<b>Sd.</b>	<b>Ave.</b>	<b>Sd.</b>	<b>Ave.</b>	<b>Sd.</b>
<b>Female</b>	<b>2014-15</b>	144.7	13.9	141.3	14.3	430.7	39.7	429.0	39.6	-8	-1
	<b>2015-16</b>	142.0	14.7	139.7	14.5	423.7	41.4	422.6	40.9	-1.1	-5
	<b>2016-17</b>	140.7	15.3	138.3	15.2	419.7	43.1	418.5	42.7	-1.2	-4
<b>Male</b>	<b>2014-15</b>	143.3	14.6	145.9	14.1	432.4	40.5	433.7	39.9	+1.3	-6
	<b>2015-16</b>	143.2	14.4	145.0	14.3	431.3	40.4	432.2	39.9	+1.1	-5
	<b>2016-17</b>	140.2	14.8	142.3	14.7	422.7	40.9	423.7	40.4	+1.0	-5

An inspection of Tables 4A and 4B reveal several interesting findings. First, it can be seen that the MBE/Written score difference between Ohio’s men and women applicants are similar to what is observed in other jurisdictions. On average, across all examinations, men scored higher than woman (144.4 vs. 139.8) on the MBE while women performed slightly better on the written sections (142.5 vs. 142.3). Secondly, these trends, appear to be consistent by examination month and across years. As examination scores have fallen over the past few years, the differences between gender have remained constant.

These differences between gender have a direct impact on the total scale scores under different weighting schema. Weighting both sections equally results in an average decrease of 1.4 scale score points for women and a 1.1 scale score point increase for men. Under the current weighting scheme, the gap between males and females was 4.2 points (429.0 vs. 424.8) while under a revised equal weighting scheme, the gap would have been 6.7 points (430.1 vs. 423.4) As MBE scores have dropped in recent years, the difference in scores between the two weighting schemes tend to increase for females and decrease for males.

**Passing Rates and Decision Comparability Differences by Gender.** The final question to be answered is to what degree do these differences in scores lead to changes in the passing rates in men and women test takers.

**Table 5A**

**Passing Rates and Decision Agreement for Males & Females  
Under Original and Revised Weighting  
By Examination Month**

%Passing	February		July		Total		
	Male	Female	Male	Female	Male	Female	Diff.
Original	60%	55%	76%	73%	71%	68%	3%
Revised	62%	54%	78%	72%	73%	67%	6%
Difference	2%	-1%	2%	-1%	2%	-1%	3%
<b>Decision Agreement</b>	93%	94%	97%	96%	96%	96%	0%

Tables 5A presents passing rates for male and female test-takers, along with the consistency of agreement under each of the weighting schemes. The results are presented by examination month and overall. The data show that the differences in scores found in Table 4A carry over to actual pass/fail decisions. Across all exams, under the equivalent weighting scheme, men would pass at a 2% higher rate (73% vs. 71%), while women would pass at a 1% lower rate (67% vs. 68%). Thus, the change in

weighting scheme would have resulted in an expansion of the gap between men and women passing from 3% to 6%. Results were consistent between February and July administrations.

In terms of decision consistency, 96% of men and women would have received the same pass/fail decision under either weighting scheme. Slightly higher consistency levels were observed on the July administrations, due in part to the wider variation in applicants on those exams.

Table 5B illustrates the same calculations broken down by examination year.

**Table 5B**  
**Passing Rates and Decision Agreement for Males & Females**  
**Under Original and Revised Weighting**  
**By Examination Year**

%Passing	2014-2015		2015-2016		2016-2017	
	Male	Female	Male	Female	Male	Female
Original	75%	73%	73%	67%	66%	62%
Revised	77%	72%	75%	66%	68%	61%
Difference	+2%	-1%	+2%	-1%	+2%	-1%
<b>Decision Agreement</b>	96%	97%	97%	97%	95%	94%

Results from Table 5B show that the year-over-year differences in passing rates under each weighting scheme between men and women would have been fairly consistent, while the actual agreement rates showed a slight decrease in 2016-2017 when scores were at their lowest during the 3-year period.

**SUMMARY**

A decision to move to the Uniform Bar Examination would require to Ohio to adjust the 2:1 weighting that it has historically applied to the written section of the examination. Generally, when a state applies differential weighting to sections on a bar examination, it reflects the perception that the written section has greater validity than a multiple-choice format. All other things held equal, the above analysis which simulated a UBE-like weighting for 6 historical Ohio examinations showed an equivalent weighting scheme would have had little to no impact on the overall mean scale score of test takers, and the smallest of impact on the passing rate. However, because of difference in test-taking skills on written vs. multiple choice formats, the weighting change would have had minor impact on who would pass and/or fail. Across the 4,483 test-takers, about 190 would have had their status change (about 4%). Further analysis by gender revealed that roughly 2% more males would pass while an additional 1% of females would fail. These results were consistent across three years of examination experience.

It should be noted that these analyses did not simulate all conditions of the UBE. First, the UBE is limited to one day of written questions (6 essay and 2 performance tasks), while the Ohio examination has one and half days (12 essays and 2 performance tasks). Secondly, the analysis did not simulate the alternative weighting of the Performance Task<sup>2</sup>. However, given (a) the length of the written test, (b) the high correlation known to exist between the performance tasks and essay questions, and (c) the scaling process itself, it is unlikely these findings would change significantly if the weighting of the performance tasks were adjusted. Such an analysis would require a recalculation of the written score section, a re-scaling of the written scores and recalculation of total scale scores for each examination.

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<sup>2</sup> Within the current testing format, each Performance Tasks is given 50% more weight than a standard essay. This results in the Performance Tasks accounting for 20% of the Written portion of the examination (3/15) or 13.4% of the entire test (20% x 67%). Under UBE, the Performance Test portion of the examination would get 40% of the written test or 20% of the total examination (40% x 50%).

## **Impact of an Alternative Written Test Composition & Section Weighting**

### **On the Ohio Bar Examination:**

#### **A Simulation Using Historical Administrations**

**December 23, 2017**

#### **BACKGROUND**

As one step in evaluating adoption of the National Conference of Bar Examiners (NCBE) Uniform Bar Examination (UBE), a previous report presented data on the impact of changing the current weighting of the Written and MBE sections of the Ohio Bar Examination from 2:1 to 1:1. The 1:1 weighting schema, used in the UBE gives equivalent weighting to both sections of the examination in deriving a total score. Based upon those results, the evaluation committee has requested to extend that analysis by studying two additional differences between Ohio's current examination structure and the UBE's; namely (a) the number of Essay questions on the respective exams and (b) the relative weighting of the Performance Task and Essay questions comprising the Written Section.

A full simulation of the UBE-like examination structure was conducted using past administrations of the Ohio Bar Examination. This report presents the methods used and the results comparing projected outcomes of the simulation to actual outcomes.

#### **METHODS**

As in the initial study, data from the 6 most recently completed administrations of the Ohio Bar examination: July 2014 through February 2017 which includes three February and three July exams were used. For applicant sitting for those exams, Ohio provided a record containing an indicator for gender (Male, Female, Unknown) which was subsequently linked to the score files maintained by RSG. Multiple examinations were selected so that consistency of results across years and across administrations (i.e., February vs. July) could be assessed.

To conduct the simulations, modified scale scores were derived for each applicant sitting for each of those examinations using the following adjustments:

1. **Revised Essay Score.** To better reflect the Essay component of the UBE, only the 1<sup>st</sup> 6 essay scores (out of the available 12) of each applicant were used to calculate the total raw essay score. The evaluation committee provided the following rationale for utilizing the first 6 essay scores:

“Ohio and the UBE both include six 30-minute essays on the first day, so the structure of two MPTs followed by six 30-minute essays matches the structure of the UBE. In addition, there is a fatigue that sets in by the third day, so the performance on essays on day 1 of Ohio exam is likely to be more similar to performance on the day 1 UBE essays than performance on the essays written on the 3<sup>rd</sup> day of the exam.”

2. Revised Written Raw Score Calculation. Under UBE calculations, the Performance Task Score is given a 20% weighting, the Essay Score is given a 30% weighting and the MBE is given 50% weighting. To reflect that weighting schema, a revised Written Raw Score was calculated using the following formula.

$$\text{Revised Written Raw Score} = 1.5 \times (\text{sum of the 6 essay scores}) + 3 \times (\text{sum of two MPT scores})$$

This resulted in the 3:2 ratio of Essay to Performance Task found in the UBE.

3. Revised Scaling and Resulting Revised Written Scale Scores. Since the Raw Written Scores were recalculated, it was then necessary to derive a new scaling equation for each administration. The scaling converted the distribution of the Revised Written Scores to the same means and standard deviations of the respective MBE distributions. Using the same methods applied in the regular Ohio Bar Examination process, new scaling parameters were calculated and applied to the Revised Written Raw Score for each of the 6 examinations to arrive at a Revised Written Scale Score.
4. Revised Section Weighting and Total Scale Scores. Two Total Scale Scores were then calculated by adding weighted Written and MBE scores. The first total used Ohio's original written scores and traditional 2 to 1 weighting (“Original”) while the second used the Revised Written Scale Score and applied the equal (1:1) weighting scheme (“Revised”) used in the UBE. To allow for direct comparison, in the equal weighting scheme, weights of 1.5 were applied to both exam sections.

An applicant's pass/fail status under the original and UBE-like methods was determined by comparing each of the total scale scores to the cut score of 405. A score  $\geq 405$  was considered a pass; less than 405 was a fail.

To determine the consistency in pass/fail decisions under the current configuration and the UBE simulated condition, the status' were compared. If an applicant either passed or failed under both configurations, there was considered to be agreement. If either schema yielded a different decision (i.e., one method yielded a pass while the other yielded a fail, or vice-versa), it was considered to be disagreement.

The following section provides the results of the score calculations, the resulting passage and agreement rates by administration year and month (July vs. February). Results are presented across all applicants and broken down by gender.

**RESULTS**

**Applicant Sample.** Table 1 shows the count of all applicants for each administration cycle. Of the 4,483 applicants, the gender of 4,434 applicants was established (99.0%). Analysis showed that the missing 1% was distributed equally among the exams. Over the six exam administrations under study, males made up approximately 55% of test-takers, with slightly decreasing proportions over the years. The rates were relatively similar on February and July examinations.

**Table 1**  
**Count of Applicants**  
**By Month and Year<sup>1</sup>**

<u>Year</u>	<u>February</u>	<u>July</u>	<u>Total</u>	<u>% Male</u>
2014-2015	411	1,173	1,584	56%
2015-2016	421	1,047	1,468	54%
2016-2017	436	995	1,431	53%
<u>Total</u>	1,268	3,215	4,483	55%

**Score Comparability.** Tables 2A and 2B present the mean and standard deviation (Sd.) of the Original and Revised Scale Scores by administration month and year. Note that the Written Scale Score has the same mean and Sd. under both traditional and UBE scoring since they have been scaled to the same administration-specific MBE.

Inspection of Tables 2A and 2B show that under traditional and UBE configurations, the average total scale across the population of test takers remains the same. The reason for this is that the raw written scores are scaled to the MBE on each examination, thus insuring that both the means and Sd.'s of both components remain the same. What does change however are the score spreads (i.e., Sd.'s) which shrinks between 1.3 to 1.5 points depending on administration. This is due in part to the differences in the overall reliability of the written sections. i.e., the written section of the UBE-like model has only 6 essays and 2 PTs, while the traditional test has 12 essays and 2 PT tasks.

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<sup>1</sup> Each examination “year” consists of one July examination and the following February examination

**Table 2A**

**Scale Score Statistics  
By Examination Month**

Month	Scale Written		Scale MBE		Original: Total Scale Score		Revised: Total Scale Score		Difference	
	Ave.	Sd.	Ave.	Sd.	Ave.	Sd.	Ave.	Sd.	Ave.	Sd..
February	137.7	14.2	137.7	14.2	413.2	39.2	413.2	37.9	0	-1.3
July	143.9	14.7	143.9	14.7	431.6	41.4	431.6	40.0	0	-1.4
<b>Total</b>	142.1	14.8	142.1	14.8	426.4	41.6	426.4	40.3	0	-1.3

**Table 2B**

**Scale Score Statistics  
By Examination Year**

Year	Scale Written		Scale MBE		Original: Total Scale Score		Revised: Total Scale Score		Difference	
	Ave.	Sd.	Ave.	Sd.	Ave.	Sd.	Ave.	Sd.	Ave.	Sd..
2014-2015	143.6	14.5	143.6	14.5	430.8	40.8	430.7	39.5	-.1	-1.3
2015-2016	142.3	14.7	142.4	14.7	427.0	41.4	427.1	40.1	.1	-1.3
2016-2017	140.3	15.1	140.3	15.1	420.9	42.1	420.9	40.6	0	-1.5
<b>Total</b>	142.1	14.8	142.1	14.8	426.4	41.6	426.4	40.3	0	-1.3

**Passing Rates and Decision Comparability.** In a licensing examination such as the bar examination, it is ultimately the resulting pass/fail decisions that count. Table 3 presents the both the pass rates and decision consistent (i.e., agreement) under the traditional and UBE configurations.

**Table 3**

**Passing Rates and Decision Agreement  
Under Original and Revised Weighting  
By Examination Year & Month**

% Passing	Year			Month		Overall
	2014-15	2015-16	2016-17	February	July	
Original	73%	69%	64%	57%	74%	69%
Revised	74%	70%	64%	57%	74%	70%
Difference	1%	1%	0%	0%	0%	1%
<b>Decision Agreement</b>	93%	94%	92%	91%	94%	93%

Not surprisingly, given similar averages and relatively similar *Sd.*'s observed in Tables 2A and B, the pass rates are markedly similar under both weighting schema. At most, the passing rates differed by a single percentage point in any given year and were virtually identical across the February and July administrations. Across all 4,483 applicants sitting for the 6 administrations, we calculated that 26 more applicants would have passed under the UBE-like structure (3,118 passing) than under the traditional structure (3,092) passing; an average of about 4 applicants per examination.

In terms of *consistency* of decisions, we calculated an overall agreement rate of 93%. Thus, across the 4,483 applicants, approximately 7% would have changed their respective status'. To be exact, 165 test takers (3.68%) would have transitioned from a fail to a pass under the UBE configuration while 139 (3.10%) would have changed from a pass to a fail. Slightly lower agreement rates would be expected on a February examination where both the score spreads were lower and the passage rates approached 50%.

**Scale Score Differences by Gender.** As referenced in the previous report, it is a well-established fact that males, as a group tend to score better on the MBE than woman, while often performing the same or slightly worse on the written section. Thus, it is reasonable to believe that changes in weighting of the respective bar examination sections may have a differential impact on both scores and subsequent passing rates of men and women. Additionally, it has been suggested by the committee members that differential PT weighting may positively impact female outcomes. Tables 4a and 4b present the breakdown of scale scores by males and females by examination month and year.

**Table 4A**

**Scale Score Statistics For  
Female and Male Test-Takers  
By Examination Month**

Gender	Month	Revised Scale Written		Scale MBE		Original: Total Scale Score		Revised: Total Scale Score		Total Score Difference	
		Ave.	Sd.	Ave.	Sd.	Ave.	Sd.	Ave.	Sd.	Ave.	Sd.
Female	February	137.7	13.7	135.5	14.0	411.0	39.0	409.9	37.3	-1.1	-1.7
	July	144.6	14.6	141.5	14.7	430.2	41.4	429.0	40.3	-1.2	-1.1
	Total	142.6	14.7	139.8	14.7	424.8	41.6	423.6	40.4	-1.2	-1.2
Male	February	138.4	14.4	140.0	13.9	416.6	38.6	417.6	37.4	+1.0	-1.2
	July	143.6	14.6	146.2	14.3	433.8	40.6	434.7	39.0	+9	-1.6
	Total	142.2	14.7	144.4	14.4	429.0	40.8	429.9	39.3	+9	-1.5

**Table 4B**

**Scale Score Statistics For  
Female and Male Test-Takers  
By Examination Year**

Gender	Year	Revised Scale Written		Scale MBE		Original: Total Scale Score		Revised: Total Scale Score		Total Score Difference	
		Ave.	Sd.	Ave.	Sd.	Ave.	Sd.	Ave.	Sd.	Ave.	Sd.
Female	2014-15	144.9	14.1	141.3	14.3	430.7	39.7	429.3	39.0	-1.4	-.7
	2015-16	142.1	14.6	139.7	14.5	423.7	41.4	422.7	40.0	-1.0	-1.4
	2016-17	140.8	15.0	138.3	15.2	419.7	43.1	418.6	41.5	-1.1	-1.6
Male	2014-15	143.9	14.4	145.9	14.1	432.4	40.5	433.4	38.8	+1.0	-1.7
	2015-16	143.1	14.6	145.0	14.3	431.3	40.4	432.2	38.9	+9	-1.5
	2016-17	140.1	15.0	142.3	14.7	422.7	40.9	423.6	39.5	+9	-1.4

From the results in Tables 4A and 4B, it can be seen that the MBE score difference between Ohio’s men and women applicants are similar to what is observed in other jurisdictions. As established in the initial report, on average, across all examinations, men scored higher than woman (144.4 vs. 139.8) on the MBE. However, women performed only slightly better on the revised written sections (142.6 vs. 142.2), even with the differential weighting of the Performance Task<sup>2</sup>. These trends appear to be consistent by examination month and across years. As examination scores have fallen over the past few years, the differences between gender have remained constant.

These differences between gender have a direct impact on the total scale scores under different weighting schema. Use of the UBE-like structure resulted in an average *decrease* of 1.2 scale score points for women and a .9 scale score point *increase* for men. Under the current weighting scheme, the gap between males and females was 4.2 points (429.0 vs. 424.8) while under the UBE-like structure, the gap would have been estimated to be 6.3 (429.9 vs. 423.6). It is interesting to note that these male-female differences findings are extremely close to the observations in the initial report where the alternative model only included a change to the section weightings as opposed to all the modifications in the UBE model. As MBE scores have dropped in recent years, the difference in scores between the two weighting schemes tend to increase for females and decrease for males.

**Passing Rates and Decision Comparability Differences by Gender.** Table 5A presents passing rates and degree of agreement between the two exam structures by gender for February and July exams.

**Table 5A**

**Passing Rates and Decision Agreement for Males & Females  
Under Original and Revised Weighting  
By Examination Month**

%Passing	February		July		Total		
	Male	Female	Male	Female	Male	Female	Diff.
Original	60%	55%	76%	73%	71%	68%	3%
Revised	63%	53%	78%	71%	74%	66%	8%
Difference	3%	-2%	2%	-2%	3%	-2%	5%
<b>Decision Agreement</b>	92%	91%	94%	94%	93%	93%	0%

<sup>2</sup> Separate analyses showed no statistically significant differences between men and women on either the essay or PT performance on 5 of the 6 exams. On the 6<sup>th</sup> exam, the differences that were observed were statistically, but not materially different (yielding an effect size of less than .15).

The results show that the differences in scores found in Table 4A carry over to actual pass/fail decisions. Across all exams, under the equivalent weighting scheme, men would pass at a 3% higher rate (74% vs. 71%), while women would pass at a 2% lower rate (66% vs. 68%). Thus, the change in weighting scheme would have resulted in an expansion of the gap between men and women passing from 3% to 8%. Results were consistent between February and July administrations.

In terms of decision consistency, 93% of men and women would have received the same pass/fail decision under either weighting scheme. Slightly higher consistency levels were observed on the July administrations, due in part to the wider variation in applicants on those exams.

Table 5B illustrates the same calculations broken down by examination year.

**Table 5B**  
**Passing Rates and Decision Agreement for Males & Females**  
**Under Original and Revised Weighting**  
**By Examination Year**

%Passing	2014-2015		2015-2016		2016-2017	
	Male	Female	Male	Female	Male	Female
Original	75%	73%	73%	67%	66%	62%
Revised	78%	71%	74%	66%	68%	61%
Difference	+3%	-2%	+1%	-1%	+2%	-1%
<b>Decision Agreement</b>	93%	94%	94%	94%	93%	91%

Results from Table 5B show that the year-over-year differences in passing rates under each model between men and women would have been fairly consistent, while the actual agreement rates showed a slight decrease in 2016-2017 (mainly for females) when scores were at their lowest during the 3-year period.<sup>3</sup>

<sup>3</sup> A separate file containing the listing of applicants whose pass-fail dispositions would have changed under the UBE-like structure and the traditional structure has been provided under separate cover. This file contains the total scores under both models and their differences. Accompanying that listing is a table summarizing the applicant counts (by year and overall) of males and females who would have gone from pass to fail and vice-versa under the two examination models.

## SUMMARY

The initial study conducted for this project evaluated the impact of changing the written and MBE section weighting schemes from the current 2:1 method to the 1:1 method used on the Uniform Bar Examination. The committee subsequently requested that the simulation be adjusted to reflect both the reduction in the number of essays that would be used on the Essay portion of the exam (from 12 to 6) and the increased weighting of the Performance Task (PT) to 20%. The committee was particularly interested in seeing if (a) a more heavily weighted Performance Task would mitigate the slight decrease in female passage rates that was observed in shifting to a 1:1 weighting, and (b) whether it would possibly decrease the gap between males and females.

The findings in this report suggest that while a reduction in the number of written questions would have impacted the outcomes of a greater number of applicants (relative to simply changing section weighting), in and of itself, increasing the weighting of the Performance Task would do relatively little to attenuate the performance gap (i.e., passage rate) between males and females. The most likely reason for this is that while males have consistently performed better than females on the MBE, we found relatively no mean difference between the two groups on either their Performance Task scores or their Written Essay scores. Thus, any shift in the relative weighting applied to either of the two written task types would be expected to impact both genders equally.

We calculated an overall agreement rate of 93% between the two models. This is slightly less than the 96% agreement rate observed in the initial study. The difference is most likely due to the decrease in reliability of the written portion of the examination under a UBE-like configuration (12 essays and 2 PTs vs. 6 essays and 2 PTs).

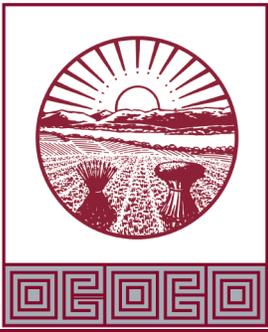
With 165 test takers (3.68%) transitioning from a fail to a pass under the UBE configuration, and 139 (3.10%) test takers moving from a pass to a fail, we estimated that 26 more applicants (.58%) would have passed. This is less than 5 applicants per examination. The shifts were not exactly equivalent in each gender. Overall, 25 less females (roughly 4 per exam) would have passed under the UBE model, while 51 more males (roughly 6 per exam) would have passed. When we subjected these shifts (i.e., the percentage of applicants moving from pass to fail and fail to pass) to inferential statistical testing however, we found no significant differences ( $\alpha=.05$ ) between males and females on any of the administrations, nor across all examinations.

In conclusion, when the two studies are taken together, it is clear that it is primarily the increased weighting of the Multistate Bar Examination that would drive any further discrepancy between gender performance, relative to the current structure. (As mentioned previously, the

current weighting scheme may be thought of as biased against males!). Whether the resulting small gender differences are large enough from a practical perspective (as opposed to a strictly statistical one) to impact a significant policy decision to change exam structure should be considered within the context of other factors. Such factors might include potential cost savings, burden of administration, reduction in examinee fatigue due to a shortened testing period and other features of the UBE such as ease of MBE score transferability.







# THE SUPREME COURT *of* OHIO

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