SUPREME COURT OF LOUISIANA

O R D E R

CRAIN, J., dissents with reasons.

Today we follow. We follow a small group of students who organized to advocate that they not be tested for minimal competency. We follow conflicted interests. We follow "the deans of the four Louisiana Law Schools" whose students, for the first time, would have been tested by someone other than their respective law schools. And today we follow three other states, Washington, Oregon and Utah, who prefer to gift a law license rather than test competency. Make no mistake about it, today we follow.

Without testing for minimal competency, the majority today grants "emergency" admission, or licenses to practice law, to over 500 new lawyers holding law degrees from both in-state and out-of-state law schools. As noted by my colleague, Justice Genovese, where is the "emergency" to admit over 500 new lawyers to practice law without testing minimal competency? If anything, removing the sole competency filter for admission to the practice of law will *create* an emergency, not eliminate one. The bar examination acts to protect the public from basic incompetency. Are our counterparts in the medical and accounting professions handing out licenses to practice medicine and certificates of public accounting without testing competency? We owe a responsibility to the public that an individual certified as a legal professional be actually qualified for the certification.

This court explained the origin and the importance of requiring passage of the bar exam in *Bester v. Louisiana Supreme Court Comm. on Bar Admissions*, 2000-1360 (La. 2/21/01), 779 So. 2d 715, 718:

> The Louisiana Legislature has specifically recognized this Court's authority to regulate bar admissions. Some 77 years ago, the Legislature, in an effort to "promote legal education by requiring better qualifications of candidates for admission to the Bar ..." called upon this Court to establish procedures for examining the competence of persons to practice law. 1924 La. Acts 113. In that Act, the Legislature provided:
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> > Be it enacted by the Legislature of Louisiana, That every applicant for admission to the Bar of this State, whether holding a diploma from a Law School or not, before being licensed to practice law shall be required to pass a satisfactory examination before the Committee of Bar Examiners of the Supreme Court, on such subjects and under such rules and regulations as are now, or may hereafter be, prescribed by the Supreme Court ...

In 1999, the provisions concerning bar admission were moved from the Articles of Incorporation of the Louisiana State Bar Association to the Supreme Court Rules. Nonetheless the requirement to take and satisfactorily pass the bar examination remains. *See* La. S. Ct. Rule XVII Sect. 3(F).

Based upon historical performance, at least twenty percent, and likely more, would not have passed our bar examination. The excuse for gifting licenses to applicants who have not proven their competency is the COVID-19 pandemic. Will we allow that as an excuse against the victims of incompetence? Further, the decision to forego the bar examination was not because we are incapable of administering the test safely. The Committee on Bar Admissions has taken monumental steps, partnering with medical and other interests throughout the state to construct a safe environment in compliance with Centers for Disease Control ("CDC") guidelines for in-person testing. The majority rejected their efforts and advice, the very committee entrusted to "regulate the admission of qualified applicants to the Bar of this state." See Sup. Ct. Rule XVII.

On the other hand, we recently lifted the ban on jury trials and are now ordering Louisiana citizens to courthouses throughout the state to perform their civic duty. Our citizens are doing their critical part to keep our justice system functioning.

They should be applauded. In contrast, these applicants are being gifted a license to practice law because the majority concluded they cannot safely show up for the test. However, once practicing they will be required to go to court like everyone else.

It is not my intent to minimize either the pandemic or the challenges these students have faced and overcome to get to this point. The pandemic is a challenge and its risks are real. But, the virus is not going away. We must adapt to living with it, and we can. The majority ignored the practical solutions to confront the health concerns. The examination, which is typically given over a three-day period, was to be administered in one day, giving the applicants the option of testing in July or October and in person or remotely. While skeptical of the necessary rigor of a one-day exam, I voted to give the one-day test, seeing it as a reasonable alternative to a "diploma privilege."

After our court approved that plan in April, the Committee on Bar Admissions began implementation. Locations were obtained across the state. Medical screening was arranged. Directives and guidelines from the CDC were complied with, including requiring masks and social distancing. The applicants began preparing for the test. They could test remotely if at risk or symptomatic on the date of the test. But, despite these sensible solutions, the majority has now chosen to gift a license to practice law to untested applicants. Membership in the profession of law has always been characterized as a privilege, not an entitlement. Today that appears to have changed, and I fear we may unintentionally be joining a broader effort to eliminate such high-stakes testing.

The inequities and inconsistencies spawned by this decision are too many to number. Why is taking the bar examination not safe for those "qualified candidates," but safe enough for those who are not "qualified candidates"? The latter will be tested in August and October. Are they not affected by the pandemic? Why should a person who took the bar previously, but failed due to unfortunate events that

undermined their preparation, now be denied a "diploma privilege" when we know at least twenty percent of these 2020 applicants would have also failed? As applied, the order rendered by the majority is unfair and results in disparate and random treatment– the type of injustice the judicial system should seek to prevent and remedy. Equity does not demand that a select few applicants be admitted, but that *all* be tested.

Today our court stands nearly alone. Unfortunately, I do not believe we have distinguished ourselves in a positive way. Given the opportunity to be an example for overcoming challenges, we lost our will to persevere. When Hurricane Katrina hit, this state became well-known for its fight and grit during those near hopeless times. Numerous test results from the bar examination administered in the summer prior to Hurricane Katrina's landfall were destroyed. Still, we did not forego the requirement of a bar examination. The affected applicants had the opportunity to *retake* portions of the exam. Not even in the face of flood-induced homelessness, near complete displacement, and death did we eliminate this prerequisite. Those students took the examination, or at least parts of it, *twice*. Those applicants rose to the occasion and proved themselves worthy of a law license and the public's trust. I have no doubt the current applicants could do the same.

We have the constitutional authority to define and regulate all facets of the practice of law. Draped with this authority, and at a time when our leadership is most needed, we followed. As stewards of our third branch of government, we have done an incalculable disservice to the public, our profession, and these otherwise deserving students. Gifting a license to practice law is wrong. Consequently, I dissent.