IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

VIOLAINE PANASCI,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. M2022-00609-SC-WR-CV**
	)	
TENNESSEE BOARD OF LAW EXAMINERS,	)	
	)	
	)	
Respondent.	)	

RESPONSE OF TENNESSEE BOARD OF LAW EXAMINERS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED FOR REVIEW

1. Whether the Board of Law Examiners acted contrary to law or arbitrarily in denying Petitioner's application for admission on transferred Uniform Bar Examination score, when the Board determined that Petitioner had not shown the substantial equivalence of her foreign education as required by Tenn. Sup. Ct. R. 7, § 7.01(a). (Petitioner's Issue A.)

2. Whether the Board of Law Examiners' denial of Petitioner's application for admission on transferred Uniform Bar Exam score comported with her right to equal protection. (Petitioner's Issue C.)

3. Alternatively, whether this Court should exercise its discretionary authority to grant Petitioner admission on transferred Uniform Bar Examination score "as a matter of equity." (Petitioner's Issue B.)

STATEMENT OF RELEVANT FACTS

Petitioner, Violaine Panasci, applied for admission to the Tennessee bar pursuant to Tenn. Sup. Ct. R. 7, § 3.05. (Petition, 3.) Petitioner received her legal education outside the United States and therefore sought to qualify for admission by transferred Uniform Bar Exam (UBE) score under Tenn. Sup. Ct. R. 7, § 7.01(a). (*Id.*) That rule provides in part as follows:

> An applicant who has completed a course of study in and graduated from a law school in a foreign jurisdiction, which law school was then recognized and approved by the competent accrediting agency of such jurisdiction, may qualify, in the discretion of the Board, to take the bar examination or for admission by transferred UBE score under section 3.05, provided that the applicant shall satisfy the Board that his or her undergraduate education and legal education were substantially equivalent to the requirements of sections 2.01 and 2.02 of this Rule.

Tenn. Sup. Ct. R. 7, § 7.01(a).

Petitioner provided documentation of her education and an educational-equivalency evaluation. (Order Denying Application for Failure to Demonstrate Substantially Equivalent Education, 2.) Petitioner's post-secondary education was summarized by the Board of Law Examiners as follows:

> [Petitioner] selected International Education Evaluations ("IEE") to produce an equivalency evaluation of her education. In its evaluation, IEE determined that [Petitioner's] education at Marianopolis College is equivalent to a High School Diploma plus 30 semester hours of undergraduate credit and her education at University of Ottawa is equivalent

> to a Bachelor of Arts degree in Legal Studies plus a Master of Legal Studies degree. The program at University of Ottawa consists of three years of study leading to the Licentiate in Law degree in Canada, plus one year of study for a Canadian Juris Doctorate degree.

(*Id.* at 2.) The Board concluded, based on this information, that Petitioner had not shown substantial equivalence:

> Taken together, [Petitioner] has demonstrated two post-secondary degrees but she has not demonstrated total credit hours of study equivalent to those degrees in the United States. With the one year of post-secondary study at Marianopolis College plus the first three years of study at University of Ottawa, [Petitioner] has credit hours equivalent to a four-year U.S. Bachelor's degree, leaving her with one additional year of credit that resulted in a Canadian J.D. The total credit hours earned for the Canadian J.D. fall short of the number of credit hours for a J.D. degree in the United States.
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> In addition to insufficient credit hours to establish equivalency, [Petitioner's] coursework is not substantially equivalent to that required of students in the U.S. Her coursework during her second year of study at Marianopolis College are general studies, but with the exception of one economics course and one Spanish-language course, all of the credit hours earned at University of Ottawa are law courses. The education that [Petitioner] has demonstrated is not equivalent to the rigor of the requirements for a law degree in the United States, which includes at least 3 years of general studies and another 3 years of law-related studies. Thus, [Petitioner] has not demonstrated education that is substantially equivalent to a U.S. Bachelor's Degree and a J.D. Degree.

(*Id.* at 2-3.) The Board therefore denied Petitioner's application for

admission by transferred UBE score. (*Id.*)

Petitioner sought out a second evaluation, this time completed by the International Academic Credential Evaluators, Inc. (IACEI), another credential evaluation service. Using IACEI's report, she filed a petition to reverse the Board's decision. In denying this petition, the Board stated:

> In addition to her foreign education, [Petitioner] was awarded an LL.M. Degree from Pace University in New York. Although Pace University is an ABA-accredited law school, the degree awarded to [Petitioner] by Pace University was not a J.D. degree. Hence, the Board does not have the discretion to waive the undergraduate-degree requirement. Further, Rule 7 does not explicitly permit the Board to exercise its discretion to consider the impact of additional education, such as an LL.M. earned at an ABA-accredited law school, for purposes of determining substantially-equivalent education under Rule 7, §§ 2.01 and 2.02.
>
> [Petitioner] provided a Foreign Education Report, as required in Rule 7, § 7.01(a), supporting equivalency to a Bachelor of Arts degree in Legal Studies plus a Master of Legal Studies degree, and a second Foreign Education Report from a different evaluator supporting equivalency to a High School Diploma and college level studies from a junior college plus a Juris Doctorate Degree. Unfortunately, neither evaluation can establish substantial equivalency to a U.S. Bachelor's degree and J.D. degree, as required here.
>
> Rule 7, § 7.01(a) requires substantial equivalency to both the undergraduate and legal education required of applicants educated in the United States. The Board thus has no alternative but to find that [Petitioner] has not demonstrated substantial equivalence to both degrees. Thus, the Board necessarily concludes that [Petitioner] has not met her burden

of proof to support reversing the Board's prior order.

> The Board has paid careful attention to this Petition and does not reach this conclusion easily, for Rule 7, §§ 2.01 and 2.01, in combination with rule 7, § 3.05, do not appear to contemplate how additional, valuable education—such as an LL.M. from an ABA-accredited law school—might factor into education equivalence under Rule 7, § 7.01(a). But the Board lacks the discretion to deem [Petitioner's] education substantially equivalent based on her additional education in the LL.M. from Pace University. Had the Board possessed such discretion, it would likely have exercised it here. The Supreme Court does have such power and might, on further review, choose to deem her education to be substantially equivalent.

(Order Denying Petition to Reverse Denial of Application for Admission, 2-3.)

Petitioner now seeks this Court's review under Tenn. Sup. Ct. R. 7, § 14.01.

STANDARD OF REVIEW

A person aggrieved by an action of the Board may petition this Court for review of the Board's action "as under the common law writ of certiorari." Tenn. Sup. Ct. R. 7, § 14.01. This Court has said that the scope of review under the common-law writ of certiorari is "limited to determining whether the entity whose decision is being reviewed (1) exceeded its jurisdiction, (2) followed an unlawful procedure, (3) acted illegally, arbitrarily, or fraudulently, or (4) acted without material evidence to support its decision." *Heyne v. Metro. Nashville Bd. of Pub.*

Educ., 380 S.W.3d 715, 729 (Tenn. 2012) (citing *Stewart v. Schofield*, 368 S.W.3d 457, 463 (Tenn. 2012), and *Harding Acad. v. Metro. Gov't of Nashville & Davidson Cty.*, 222 S.W.3d 359, 363 (Tenn. 2007)).

REASONS FOR DENYING REVIEW

The petition for writ of certiorari should be denied. The Board did not act contrary to law or arbitrarily in denying Petitioner's application for admission by transferred UBE score. The Board properly determined that under Tenn. Sup. Ct. R. 7, § 7.01(a), Petitioner's foreign education was not substantially equivalent to U.S.-based bachelor's *and* J.D. degrees. And the Board did not violate due process or Petitioner's right to equal protection in denying her application.

With respect to Petitioner's alternative request that she be admitted on transferred UBE score "as a matter of equity," the Board previously indicated that if it possessed the discretion to waive the requirements of Rule 7, § 7.01, it would likely have exercised it here. The Board also recognized that this Court does have such power and suggested that the Court might choose to deem Petitioner's education to be substantially equivalent. Should the Court decide to do so, however, such a decision would not be based on any legal defect in the Board's denial—there is no such defect—but rather on the Court's own determination that this is an appropriate case in which to exercise its discretionary authority.

I. The Board Did Not Act Contrary to Law or Arbitrarily in Denying Petitioner's Application.

A. The Board applied the correct legal standard.

Contrary to Petitioner's argument (Petition, 17-18), neither the Board itself nor its Executive Director applied an erroneous legal standard in denying Petitioner's application for admission. Under Rule 7, § 7.01(a), applicants for admission must have *not only* a passing UBE or Tennessee bar exam score *but also* post-secondary education that is "substantially equivalent" to a U.S. bachelor's degree and J.D. degree. The Board and its Executive Director correctly applied those requirements.

Because Petitioner seeks admission as a foreign-educated applicant, she must "satisfy the Board that [her] . . . undergraduate education and legal education were substantially equivalent to the requirements of sections 2.01 *and* 2.02 of this Rule." Tenn. Sup. Ct. R. 7, § 7.01(a) (emphasis added). Section 2.01 requires an applicant to have received "a Bachelor's Degree or higher from a college on the approved list of the Southern Association of Colleges and Secondary Schools, or the equivalent regional accrediting association, or any accreditation agency imposing at least substantially equivalent standards." Section 2.02 requires an applicant to "have completed a course of instruction in and graduated with a J.D. Degree from a law school accredited by the ABA at the time of applicant's graduation, or a Tennessee law school approved by the Board pursuant to section 17.01 of this Rule." Petitioner was

therefore required to establish her compliance with *both* the bachelor's-degree and the legal-education-degree requirements.[1]

All of the evidence before the Board reflects that while Petitioner has taken an extensive course of legal study, the totality of her post-secondary education is not substantially equivalent to what is required for a bachelor's degree and a J.D. degree from U.S. institutions. The undergraduate degree Petitioner received at Marianopolis College in Quebec Province consists of less than two years of post-secondary education.[2] Consequently, the Board determined that, in combination, Petitioner's education at Marianopolis College and her legal studies at the University of Ottawa were not substantially equivalent to a U.S. bachelor's degree and J.D. degree. The Board concluded that even if some of Petitioner's legal education at the University of Ottawa is counted toward her bachelor's-degree requirement, her overall post-secondary education remains insufficient.

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[1] Petitioner insists that "Rule 7 does not require substantial equivalency to a 'U.S. Bachelor's degree and J.D. degree,'" emphasizing the "*or* any accreditation agency" language in § 2.01(a). (Petition, 18 (emphasis in original).) Petitioner appears to misconstrue this provision; "or any accreditation agency" merely adds a third category of accrediting entities that may approve the college from which the requisite bachelor's degree can be obtained.

[2] The fact that Petitioner's course of study at Marianopolis College resulted in a separate diploma does not compensate for its brevity. (*Cf.* Petition, 4.)

The Board also concluded that Rule 7 did not readily allow it to factor in additional legal education such as Petitioner's LL.M. degree. A J.D. degree is not equivalent to a bachelor's degree, and an LL.M. is not equivalent to a J.D. *See Dundee v. Neb. State Bar Ass'n*, 545 N.W.2d 756, 759 (Neb. 1996) ("Unlike a juris doctor degree program, programs conferring LL.M. degrees are not the subject of any qualitative standards."). Were the Board to count J.D. credits toward the bachelor's-degree requirement in Rule 7, § 2.01, and then compensate by counting LL.M. credits toward the J.D. requirement in § 2.02, the Board would be straining the language of these sections to the breaking point. This the Board was unwilling to do, as it explained to Petitioner. Sections 2.01 and 2.02 do not permit simple credit-counting any more than they permit simple degree-counting. The Board did not insist on a "strict formality of two separate degrees," as Petitioner asserts (Petition, 17); nor did it require exact, as opposed to substantial, equivalence (*id.*). The Board properly considered the totality of Petitioner's post-secondary education and simply found it to be insufficient to satisfy the substantial-equivalence requirement.

The Board did not "erroneously state[] that it lacks the discretion to assess [Petitioner's] education as a whole." (Petition, 18.) Section 7.01(a) expressly provides that an applicant with a foreign-earned education "may qualify, in the discretion of the Board, to take the examination, *provided* that the applicant shall satisfy the Board that his or her undergraduate and legal education were substantially equivalent

to the requirements of sections 2.01 and 2.02 of this Rule." Rule 7, § 7.01(a) (emphasis added). This Rule makes clear that while the Board, as an agent of this Court, has discretion in admissions of foreign-educated applicants, the Board must first be satisfied that an applicant's undergraduate and legal education were "substantially equivalent to the requirements" of the Rule. And the statements of the Board to which Petitioner points properly reflect the scope of the Board's discretion under Rule 7. (*See, e.g.*, Petition, 18) (stating that "the Board lacks the discretion to deem [Petitioner's] education substantially equivalent based on her additional education in the LL.M from pace University.").

Petitioner criticizes the Board's reliance on the IEE report, characterizing it as "incompetent" and "hearsay." (Petition, 20.) She also complains that the author of the IEE report is "anonymous" and could therefore not be questioned. These complaints lack merit. The Tennessee Rules of Civil Procedure and Rules of Evidence do not apply in license-application proceedings. *See* Rule 7, § 13.03(e). Furthermore, even if the Rules of Evidence did apply, *both* of the evaluation reports—the IEE *and* the IACEI—would have been subject to hearsay objections.

Rule 7, § 13.03(e), provides that the Board "may admit and give probative value to any evidence which in the judgment of the Board possesses such probative value as would entitle it to be accepted by reasonably prudent persons in the conduct of their affairs." Here, the Board gave due consideration to both reports, each of which had been prepared by members of the National Association of Credential

Evaluation Services (NACES). And both reports had been obtained and submitted by Petitioner. The Board acted reasonably with respect to both reports; it did not improperly consider or disregard evidence.

In any event, both the IEE and IACEI reports support the Board's conclusions. Both show the same record of courses and credit hours. The IEE report states that the "US Equivalency" of Petitioner's foreign education is a "High school diploma" plus a "first professional degree in law." (IEE Report, 1.) The IACEI report states that Petitioner's "U.S. Equivalence" for "Credential 1" is a "High School Diploma and undergraduate level studies through a *junior college* that is accredited by a regional accreditation association," while the "U.S. Equivalence" for her "Credential 2" is a "Degree of Juris Doctor awarded by a university that is accredited by a regional accreditation association." (IACEI Report, 1-2) (emphasis added). Neither report gives Petitioner credit for a bachelor's degree, or the equivalent of a bachelor's degree. Both reports reflect approximately 30 hours of undergraduate work.

The Board did not act contrary to law or arbitrarily in reaching this conclusion. On the basis of the evidence, the Board correctly determined that Petitioner had not shown substantial equivalence and had therefore not satisfied the requirements of Tenn. Sup. Ct. R. 7, § 7.01(a).

B. Petitioner had the burden of proof.

Petitioner argues that she made "a *prima facie* case showing that her education satisfied the requirements of Rule 7" and that "the burden of production should then shift to the Board to prove that she was not."

(Petition, 28.) In hearings before the Board, the burden of proof is clearly on the applicant. Rule 7, § 13.03(c). And as discussed above, Petitioner's academic record shows that her education was not substantially equivalent to the educational requirements in Rule 7, §§ 2.01 and 2.02. There is no burden-shifting or "rebuttable presumption" provision in Rule 7, and Petitioner offers no compelling reason for this Court to adopt one.

Petitioner cites Tennessee's "Right to Earn a Living Act," Tenn. Code. Ann. § 4-5-501, and argues that "the Board should err on the side of permitting qualified American lawyers to practice law in Tennessee." (Petition, 30.) By its terms this Act applies to executive-branch licensing authorities; it does not apply to the Board or to the Supreme Court. *See* Tenn. Code Ann. § 4-5-501(2). Petitioner similarly argues that "U.S. public policy leans toward permitting U.S. lawyers to practice law in Tennessee," citing federal executive orders. (Petition, 33.) But U.S. public policy is exactly that—*U.S.* public policy. It has nothing to do with this Court's regulation of the practice of law in Tennessee.

Petitioner invokes the full-faith-and-credit provisions in 28 U.S.C. § 1738 and argues that the Court should "steer clear of such Constitutional concerns" by adopting a burden-shifting framework that would give due regard to her admission to the bar in New York. (Petition, 35-36.) But full-faith-and-credit principles do not require this State to recognize Petitioner's New York licensure, for the reasons explained in *Teare v. Committee on Admissions*, 566 A.2d 23 (D.C. Ct. App. 1989).

"The full faith and credit clause does not apply where . . . there is no risk of conflict with or insult to another states." *Id.* at 28. Accordingly, full faith and credit need not be given "for matters of local and statutory law." *Id.*; *see also id.* (" Since the system of rules a state court adopts to govern admission to the bar is a matter of local policy, . . . the District of Columbia need not extend full faith and credit to assessments made by the courts of other states of petitioners' legal training.")

Petitioner cites case law applying the Privileges and Immunities Clause to argue that a fundamental right has been violated. (Petition, 30.) Petitioner relies, in particular, on *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 105 S.CT. 1272 (1985), in which the Supreme Court cited *Corfield v. Coryell*, 6 F. Cas. 546, 4 Wash.C.C. 371 (No. 3,230) (1823), for the proposition that the Clause protects certain "fundamental rights," including "the opportunity to practice law." 470 U.S. at 280-81 and n.10. But *Piper* is inapplicable here. As the Sixth Circuit observed in *Whittle v. United States*, 7 F.3d 1259, 1262 (6th Cir. 1993), the Privileges and Immunities Clause "restricts states from denying privileges to residents of other states that are granted to its own citizens." 7 F.3d at 1262. However, the Privileges and Immunities Clause provides that "citizens of each State shall be entitled to all Privileges and Immunities of Citizens *in the several states*," thus restricting states from denying privileges to residents of other states that are granted to its own citizens. *Whittle v. United States*, 7 F.3d 1259, 1262 (1993) (emphasis added). Rule 7, § 7.01, does not deny any privilege to residents of another

state that is afforded to residents of Tennessee.[3]

Finally, none of Petitioner's statements about competition, protectionism, and diversity, nor the sources she cites in support of those statements, offer any reason to change the framework of Rule 7. (Petition, 33-34, 36.) Some of these sources are simply off-base. For example, the problem discussed by Andrew M. Perlman in *A Bar Against Competition: The UnConstitutionality of Admission Rules for Out-of-State Lawyers*, 18 GEO. J. LEGAL ETHICS 135 (Fall Winter 2004), namely, non-transferability of multistate exam scores, does not exist in Petitioner's case. (*See* Petition, 34.) Citing a blog, Petitioner also hints at potential antitrust liability for the Board, along the lines of the liability recognized in *N.C. State Bd. of Dental Examiners*, 574 U.S. 494 (2015). (Petition, 34-35.) But this Court and its boards enjoy absolute judicial and quasi-judicial immunity, as well as immunity under *Parker v. Brown*, 317 U.S. 341 (1943). And the bedrock facts of bar regulation as administered by this Court and those of other states remain unchanged:

> [S]tates clearly have a substantial interest in assuring the availability of and overseeing attorneys practicing within their borders. *See Leis v. Flynt*, 439 U.S. 438, 444 n.5, 99 S. Ct. 698, 701 n.5, 58 L.Ed.2d 717 (1978) (recognizing "the traditional authority of state courts to control who may be admitted to practice" before them). *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792, 95 S. Ct. 2004, 2015-16, 44 L.Ed.2d 572 (1975) (recognizing state courts have "broad power to establish standards for licensing practitioners and regulating the practice of professionals").

[3] Petitioner is a resident and citizen of Tennessee. (Petition, 8-9.)

Tolchin v. Supreme Court of New Jersey, 111 F.3d 1099, 1110 (3rd Cir. 1997). Petitioner has offered no reason to overhaul this Court's regulation of the legal profession.

C. Petitioner was not denied due process.

Petitioner argues that she has a protected property and liberty interest in a Tennessee law license and is therefore entitled to a "minimal level of procedural due process" under the Fourteenth Amendment and Tenn. Const. art I, § 8. (Petition, 37.) But this case involves the denial of Petitioner's application for admission; Petitioner does not have, and has never had, a Tennessee law license. And Petitioner has no protected interest, let alone a fundamental right, in *obtaining* a Tennessee law license. A license to practice law in Tennessee is a privilege, not a right. *Hughes v. Bd. of Prof'l Responsibility*, 259 S.W.3d 631, 641 (Tenn. 2008). So the denial of Petitioner's application cannot involve a violation of due process under Tennessee law.

1. The Board's denial did not violate procedural due process.

A protected right in a professional license arises only after a license has been obtained. *See Graham v. New Jersey Real Estate Comm'n*, 217 N.J.Super. 130, 524 S.3d 1321, 1324 (N.J. App. Div. 1987). A property interest entitled to procedural-due-process protection must be a "legitimate claim of entitlement," as opposed to an "abstract need or desire" or "unilateral expectation." *Mid-South Indoor Horse Racing, Inc. v. Tennessee State Racing Comm'n*, 798 S.W.2d 531, 540 (Tenn. Ct. App. 1990 (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)). An

applicant for an initial professional license does "not have a constitutionally protected claim of entitlement" if the state licensing authority has discretion to grant or deny the application. *See Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 756 (2005); *Mid-South Indoor Racing*, 798 S.W.2d at 540. As discussed above, the Board has some discretion under § 7.01 in granting licenses to foreign-educated applicants. So Petitioner has no protected property interest in a license that has not been issued.

Petitioner also has no protected liberty interest at stake. In *Butler v. Tennessee Board of Nursing*, No. M2016-00113-COA-R3-CV, 2016 WL 6248028 (Tenn. Ct. App. Oct. 25, 2016), an applicant for an initial nursing license claimed that his liberty interests were implicated by the denial of his application without the benefit of a contested case hearing. *Id.* at *7. Relying on Sixth Circuit authority, the Court of Appeals ruled that the deprivation of a liberty interest is implicated only when the plaintiff can show that an untrue stigmatizing statement is made public in conjunction with the termination of employment, and that the only process then due is a post-termination name-clearing hearing. *See id.* at *7-8 (and cases cited therein). The court noted that neither the parties nor the court had located any authority for the proposition that the denial of an initial license implicated an applicant's liberty interests. *Id.* at *8 n.3. Here, the only statement the Board made about Petitioner was that her foreign-earned education was not substantially equivalent, as a whole, to a U.S.-based undergraduate and law-school education. There

was therefore no "untrue stigmatizing statement" sufficient to implicate a protected liberty interest.

Further, the right to practice law is not a fundamental right for purposes of federal due-process or equal-protection analysis. *Whittle*, 7 F.3d at 1262 (citing *Lupert v. California State Bar*, 761 F.2d 1325, 1327 n. 2 (9th Cir. 1985)); *see also Frost v. Boyle*, No. 1:06-CV-2649, 2008 WL 650323, *10, (N.D. Ohio, March 5, 2008). While the "right to practice one's chosen profession is protected in *some* way by the Due Process Clause, . . . it is 'subject to reasonable government regulation.'" *Lawrence v. Pelton*, No. 20-2011, 2021 WL 1511664, *4 (6th Cir., Apr. 9, 2021) (citing *Conn v. Gabbert*, 526 U.S. 286, 291-92 (1999)) (emphasis added). And a state has an important interest in ensuring that applicants are qualified to practice law. *Id.*

In any event, Petitioner was afforded adequate process. "The basic requirement of procedural due process is notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at *3 (citing *Garcia v. Fed. Nat'l Mortg. Ass'n*, 782 F.3d 736, 741 (6th Cir. 2015). The procedures under Rule 7, followed by the Board here, satisfy this standard. The Board considered Petitioner's full record, including evaluation reports she submitted, and explained its reasoning thoroughly in two orders. Petitioner did not request a hearing, as permitted by Rule 7, § 13.03(c), so she cannot complain that there was no "contested case hearing" or "fair trial before a neutral or unbiased decision-maker." (Petition, 38). Nothing more than what the Board did was requested or

required.

2. The Board's denial did not violate substantive due process.

Petitioner also asserts her right to substantive due process, maintaining that the denial of her application for admission implicates a fundamental right. (Petition, 41-42.) As stated in *Whittle*, 7 F.3d at 1262, the ability to practice law is *not* a fundamental right for federal due process purposes, but in any event, Petitioner's substantive-due-process rights were not violated. "Substantive due process protects against arbitrary and capricious government action that shocks the conscience and violates the decencies of civilized conduct." *Lawrence*, 2021 WL 1511664, at *4 (citing *Guertin v. Michigan*, 912 F.3d 907, 918 (6th Cir. 2019)). "To shock the conscience, the alleged abuse of power must have been so brutal and offensive that it did not comport with traditional ideas of fair play and decency." *Id.* at *5. The Board's decision to deny Petitioner's application does not begin to approach this level. Official conduct can "shock the conscience" when it is intended to injure and there is no justifiable government interest. *Id.* at *5. Here, there is absolutely no indication of an intent to injure, and there is a clear government interest.

The policy reflected in Rule 7, § 7.01, is "reasonably and rationally related" to this Court's interest in ensuring that attorneys licensed in Tennessee are adequately trained. *Lawrence*, 2021 WL 1511664, at *5. Rule 7, § 7.01 ensures that all attorneys licensed in Tennessee have a U.S. bachelor's and J.D. degree or the substantial equivalent. The

Board's enforcement of this requirement was well within the bounds of constitutionally permitted action.

3. The Board's refusal to waive the Rule's requirements did not violate due process.

Lastly, Petitioner focuses on the Board's refusal to "waive" the substantial- equivalence requirement, arguing that such waivers "must be granted in accordance with due process." (Petition, 38.) But this argument assumes that the Board shares this Court's waiver power. Except in certain narrowly defined instances, only this Court has the power to waive the requirements of Rule 7. The Board's discretion in administering Rule 7 remains limited; as the Board explained to Petitioner, the Board lacks any power to disregard, modify, or waive the substantial-equivalence requirement in Rule 7, § 7.01(a). That this Court may sometimes have waived this requirement does not mean that the Board's denial of Petitioner's application violated due process.

Murphy v. Egan, 498 F. Supp. 240 (E.D. Pa. 1980), which Petitioner cites (Petition, 38), and which involved a state supreme court's waivers, is therefore inapposite. Likewise, this Court's granting a waiver in *Maximiliano Gabriel Gluzman v. Tennessee Board of Law Examiners*, No. M2016-02462-SC-BAR-BLE (Tenn. Aug. 4, 2017) (Petition, 14), or for any other foreign-educated applicant, does not invalidate the Board's refusal to waive Rule 7's requirements here. Even if the facts in *Gluzman* were identical—and they are not—waiver by the Board here would be a usurpation of this Court's exclusive power. Only this Court can alter this assignment of authority.

II. The Board's Denial of Admission Comported with Petitioner's Right to Equal Protection.

Petitioner argues the Board denied her application "solely on the basis of her Canadian upbringing" and thereby violated her right to equal protection by "employ[ing] the suspect classification of national origin for singling out [Petitioner] for differential and facially discriminatory treatment." (Petition, 47-48.) Contrary to Petitioner's argument, the Board's denial of her application for admission did not violate her right to equal protection.

First, strict scrutiny does not apply. "There is no basis in law for the argument that the right to pursue one's chosen profession is a fundamental right for the purpose of invoking strict scrutiny under the Equal Protection Clause." *Lupert v. California State Bar*, 761 F.2d 1325, 1327 n. 2 (9th Cir. 1985) (*quoted in Whittle*, 7 F.3d at 1262). Moreover, Rule 7, § 7.01, does not facially discriminate against applicants on the basis of national origin. And the Board did not discriminate against Petitioner on the basis of national origin. Applying this Court's rule for applicants with law degrees from a foreign jurisdiction to the evidence presented, the Board determined that the education she received was not substantially equivalent to the requirements for U.S.-educated applicants, namely, a bachelor's degree and a J.D. degree.

Second, the education requirements of Rule 7, §7.01, undoubtedly have a rational basis. Petitioner's reliance on *Schware v. Bd. of Law Examiners*, 353 U.S. 232 (1957), is therefore misplaced. (Petition, 48.) In *Schware*, the Supreme Court stated that "[a] State cannot exclude a

person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." *Id.* at 238-39. "A state can," however, "require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualifications must have a rational connection with the applicant's fitness or capacity to practice law." *Id.* at 239.

Rule 7, § 7.01, and the Board's implementation of it, more than meet this standard. The education requirement in Sections 2.01 and 2.02 is necessary to Tennessee's regulation of its legal profession, a legitimate state interest. And the substantial-equivalence requirement in Section 7.01 merely recognizes that foreign-based education may differ from U.S.-based education. But it imposes no additional requirements. Far from excluding qualified applicants, as Petitioner suggests, Section 7.01 ensures that all admittees are qualified—a difficult task given the differences between educational systems. Rather than violating the rights of foreign-educated students, the Rule gives foreign-education students an opportunity to practice law in Tennessee that they otherwise would not have.

Petitioner insists that Rule 7 § 7.01 "qualified foreign-educated American attorneys who have successfully passed the UBE." (Petition, 48.) But this assertion tends only to beg the question, because the determination whether an applicant is *qualified* necessarily includes an assessment of the applicant's education. Insofar as Petitioner is

suggesting that an applicant should be deemed qualified based only on a passing UBE score, she is effectively seeking to substitute one requirement for admission (the examination) for another (education). As discussed above, however, these requirements are independent.

Petitioner has a passing UBE score, but because she lacks the equivalent education she is not qualified for admission. That result does not discriminate against her on the basis of national origin; it therefore does not violate her right to equal protection.

III. Alternatively, This Court May Determine Whether to Waive the Requirements of Tenn. Sup. Ct. R. 7, § 7.01(a).

Petitioner requests, in the alternative, that she be admitted on transferred UBE score "as a matter of equity." (Petition, 21.) Only this Court has the power to waive the requirements of Rule 7, § 7.01(a). *See* Tenn. Sup. Ct. R. 7, § 12.12. So Petitioner's request is committed to the sole discretion of this Court.

As discussed above, the Board properly determined that Petitioner has not met the educational requirements in Rule 7, §§ 2.01 and 2.02. The extra-jurisdictional authority on which Petitioner relies (Petition, 21-23) is neither binding nor persuasive here; in large part it relates to the *legal-education* component of the substantial-equivalence requirement. Petitioner's focus on this component is misplaced, however, since it was Petitioner's *entire* post-secondary education—not just her legal education—that the Board found insufficient. Nevertheless, as the Board has acknowledged, that Petitioner obtained an LL.M. degree complicated the Board's application of Rule 7, § 7.01. And this Court may

determine for itself whether the totality of Petitioner's education, including her LL.M., is sufficient to warrant admission.

CONCLUSION

For the reasons stated, the petition for writ of certiorari should be denied.

In the alternative, even though the Board did not err in its decision, this Court may exercise its inherent discretion to grant Petitioner admission if the Court believes her education is sufficient to warrant admission "as a matter of equity" even though she cannot comply with Rule 7, § 7.01.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the requirements of Rule 46 of the Tennessee Supreme Court because this brief contains 5708 words and is prepared in MSWord format using 14-point Century Schoolbook proportionally spaced type font.

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Response of Tennessee Board of Law Examiners in Opposition to Petition for Writ of Certiorari has been served on the persons listed below by email and first-class U.S. Mail addressed as follows:

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