No. _____

In The Supreme Court of the United States

THOMAS J. SKELTON,

Petitioner,

v.

ILLINOIS SUPREME COURT, ILLINOIS BOARD OF ADMISSIONS TO THE BAR, AND COMMITTEE ON CHARACTER AND FITNESS FOR THE FIRST JUDICIAL DISTRICT,

Respondents.

On Petition For A Writ Of Certiorari To The Illinois Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Americans with Disabilities Act, discrimination by public entities in all programs, activities, and services against qualified individuals with disabilities is prohibited. Petitioner is a qualified individual under the Act. Respondents are public entities responsible for certifying and licensing individuals as attorneys to the Illinois bar. Following a hearing in which Petitioner presented unrebutted evidence regarding his diagnosis, Respondents denied Petitioner's certification and licensure to the Illinois bar, without offering any reasonable accommodations, and basing their decision on findings and conclusions related to his disability, mental health status, history, and treatment.

The question presented is whether Respondents intentionally discriminated against or disproportionately impacted Petitioner, following his submission of unrebutted evidence, by denying his certification and licensure on findings and conclusions of Petitioner's disability, without providing reasonable accommodations, in contravention of the Americans with Disabilities Act.

PARTIES TO THE PROCEEDING

Petitioner Thomas J. Skelton ("Skelton") is a law school graduate and bar applicant in Illinois. The Illinois Supreme Court ("Illinois Supreme Court") is the highest court in Illinois, and issued the decision that is at issue in this case. The Illinois Board of Admissions to the Bar consists of a seven-person board (the "Board"). Each of those individuals is appointed by the Illinois Supreme Court, and the Board oversees bar admissions in the state of Illinois. The Committee on Character and Fitness for the First Judicial District (the "Committee") consists of members appointed by the Illinois Supreme Court, and evaluates the moral character and general fitness of applicants to the practice of law. The Committee members make recommendations about applicants to the Board.

STATEMENT OF RELATED CASES

In re Application of Thomas Joseph Skelton (proceeding before the Committee on Character and Fitness of the Illinois Board of Admissions to the Bar) (October 10, 2019)

In re: Thomas J. Skelton, Illinois Supreme Court M.R. No. 030018 (January 7, 2020)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Thomas J. Skelton respectfully petitions for a writ of certiorari to review the judgment of the Illinois Supreme Court in this case.

OPINIONS BELOW

None of the opinions below are reported.

JURISDICTION

The Illinois Supreme Court's judgment was entered on January 7, 2020. App. 48-49. This Court's jurisdiction rests on 28 U.S.C. § 1257(a) because Mr. Skelton seeks review of a final judgment rendered by the highest court of the State of Illinois, and he claims a title, right, privilege, or immunity specially set up or claimed under the Constitution or the treaties or statutes of the United States.

STATUTORY PROVISION INVOLVED

The statutory provision at issue is the Americans with Disabilities Act of 1990 ("ADA"), found at 42 U.S.C. § 12101, *et seq*. App. 50-186.

INTRODUCTION

This case presents a narrow, frequently presented and yet unresolved question regarding the applicability of the ADA to bar admissions cases: May a state bar regulatory authority deny an applicant certification to practice law in its jurisdiction by using the applicant's disability as a factor in finding the applicant's lack of fitness to practice, without providing reasonable accommodations? In the absence of review by the federal courts due to the *Rooker-Feldman* doctrine, and despite a seemingly straight-forward application, this question has instead resulted in a patchwork of varying state regulations and thresholds. *See Rooker v. Fid. Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed.2d 362 (1923), and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). This Court should grant review to decide both the applicability of the ADA in state bar admissions cases, as well as the extent to which an applicant's disability, and any resulting reasonable accommodations, may be considered factors in bar admissions decisions.

After both graduating from law school and passing the Illinois bar in 2017, Thomas Skelton faced one last procedural hurdle to gaining admission to the Illinois bar: certification by the Committee, an entity under the Illinois Board of Admissions to the Bar charged with certifying the fitness of bar applicants to practice law in Illinois. Following a certification hearing before a hearing panel of the Committee, the panel issued a written decision declining to certify Mr. Skelton, without providing reasonable accommodations. For

example, rules promulgated by the Illinois Supreme Court and the Committee, and applicable to proceedings before the Committee, set forth the circumstances under which an applicant would be eligible for conditional admission to the bar, in which an applicant is awarded a license subject to probationary conditions, compliance with which is monitored by the Illinois Attorney Registration and Disciplinary Commission. Mr. Skelton met the qualifications for conditional admission and argued, at hearing, that it was appropriate. Nevertheless, the Hearing Panel majority disregarded that option, and instead simply declined to certify Mr. Skelton for admission. In its written decision, the panel cited findings related to Mr. Skelton's mental health history and diagnosis, including their unsupported opinions of his self-reported internal thoughts, ongoing symptoms of mental illness, and facets of his social and support network. These findings unquestionably placed a burden on Mr. Skelton which would not have been placed on an applicant without his mental health history.

Although the ADA prohibits public entities from discriminating against individuals with disabilities, which includes a prohibition against the administration of a licensing or certification program by subjecting those with disabilities to discrimination, the hearing panel majority engaged in exactly that type of discrimination against Mr. Skelton. By making findings related to Mr. Skelton's mental health history and diagnosis, without offering reasonable accommodations, the majority cited findings which would not have

been raised for applicants without his diagnosis. In so doing, the panel majority not only discriminated against Mr. Skelton, but also acted in contravention of the ADA and its protections for individuals with disabilities.

Further, by denying Mr. Skelton relief on these and other grounds, the Illinois Supreme Court's three-sentence denial effectively affirmed the rationale of the hearing panel majority and allowed Mr. Skelton's mental health diagnosis to play a significant factor in denying his certification, again in contravention of the ADA.

States are granted wide latitude in the administration of their bar admissions practices and procedures. However, in combination with a significant lack of recourse before the federal courts when considering ADA applicability and relief, and an ever-increasing need to address lawyer well-being, mental health, and the stigma associated with mental illness, the denial to certify Mr. Skelton creates harmful precedent by allowing the Committee, Illinois, and other jurisdictions to improperly use mental health as a justification to deny applicants admission to their bar. Accordingly, certiorari is warranted to resolve this increasingly recurring and consequential issue.

STATEMENT OF THE CASE

A. Factual Background

Mr. Skelton is a native of Oak Park, Illinois who graduated from St. Louis University in 2010 with degrees in history and philosophy. App. 26. After working for AmeriCorps and in construction for a few years, he attended The John Marshall Law School in Chicago, Illinois ("JMLS"). App. 27.

While he was in college, Mr. Skelton experienced depression, requiring 5 days of inpatient treatment in 2009. App. 26. He sought that treatment voluntarily. *Id*. The treatment was helpful, but it did not end his feelings of depression. *Id*. Mr. Skelton met with a social worker for counseling regularly during the remainder of his college career, and he took anti-psychotic and anti-depressant medications as prescribed by a doctor, although the anti-psychotic was at a low dosage. App. 26, 220.

Returning to Oak Park before law school, Mr. Skelton began seeing a psychiatrist. App. 27. She prescribed him Wellbutrin, which he took. App. 220.

1. Conduct at JMLS

Mr. Skelton began attending JMLS in 2014, and he found the experience of law school to be stressful. App. 35. He began to perceive that he was being persecuted, and that others were inappropriately accessing information related to him. *Id*.

Despite his difficulties, Mr. Skelton had friends at JMLS. App. 28. However, he did not feel comfortable confiding in them concerning his mental health struggles. *Id*. Generally, when dealing with his feelings, he would leave the JMLS campus, and that would help him avoid having an outburst. *Id*. On four occasions, he caused disturbances that were brought to the attention of school staff and administrators. App. 204-05. Those incidents included:

a. April 16, 2015 – A student overheard Mr. Skelton in the JMLS library being loud and vulgar. She asked him to quiet down, but he did not. A security officer asked Mr. Skelton to leave the building until class began, which he did.

b. October 13, 2015 – While at JMLS, Mr. Skelton was heard yelling at himself at various times throughout the day. When a security officer went to ask him to leave, Mr. Skelton was already preparing to do so and admitted he had been yelling.

c. February 18, 2016 – As Mr. Skelton was exiting through a turnstile of the law school lobby, a security officer observed him acknowledge the presence of an administrator in a nearby office and yell profanity at the administrator. Mr. Skelton then exited the building.

d. April 8, 2016 – Student heard Mr. Skelton yelling and swearing in the JMLS library and asked if he was all right. He ignored her and left the building.

Id.

During his attendance at JMLS, Mr. Skelton sought and obtained some mental health counseling through the school. App. 29.

JMLS did not take any disciplinary action against Mr. Skelton, although a dean discussed three of the above incidents with him in February 2016. App. 206. Mr. Skelton did not engage in any similar behavior during his third year in law school between April 2016 and May 2017. *Id*.

2. Emails During the Character and Fitness Process

Mr. Skelton graduated from JMLS in June 2017. App. 222. He passed the July 2017 Illinois bar examination. *Id*. During the Board's review of his application, the Board alerted him to his omission to report certain college-era alcohol violations to JMLS. App. 30. Mr. Skelton had forgotten about those violations when he applied to JMLS. *Id*. He disclosed the incidents to JMLS in 2017. JMLS allowed him to amend his application to the school retroactively in order to include those disclosures, and it otherwise took no action following Mr. Skelton's report. App. 30, 222.

In September 2017, Mr. Skelton applied for, and obtained, the position of Freedom of Information Act ("FOIA") Officer at the City of Chicago Law Department in September 2017. App. 30.

Between approximately mid-October 2017 and mid-March 2018, Mr. Skelton began experiencing delusional thoughts about the Committee's review of his application. App. 222. He came to have paranoid thoughts and beliefs concerning the Committee's review of the JMLS incidents, and he began to feel that he would be denied admission as a result of it. *Id*. He sent approximately 40 emails to several recipients, including Ellen Mulaney (the member of the Committee assigned to review his case) and the staff of the Board. App. 4. In the emails, Mr. Skelton suggested that JMLS, the Board, the Committee, and the legal system were biased against him, and that they lacked integrity. He used charged language, including political rhetoric and themes of persecution, in some of the emails. *Id*. Excerpts of some of the emails are set forth at App. 4-7.

On March 20, 2018, Mr. Skelton met with Ms. Mulaney and two other members of an inquiry panel of the Committee. App. 207. In its subsequent report, the inquiry panel commended Mr. Skelton for the honesty he exhibited in discussing his conduct and mental state, and for demonstrating responsibility in his work as a FOIA officer for the City of Chicago. *Id*. The Inquiry Panel also noted that Mr. Skelton had recently met with a new psychiatrist, that he had just begun

taking an anti-psychotic medication, and that he was seeking a psychotherapist. *Id*. However, the inquiry panel also noted that Mr. Skelton had not then clearly or convincingly demonstrated present fitness to practice law. *Id*.

Mr. Skelton's meeting with the inquiry panel helped him to realize that he was not being persecuted. App. 33. He understood the inquiry panel's declination to certify him for admission, and he understood that the emails must have struck them as frightening and offensive. *Id*. He is embarrassed and remorseful about having written and sent the emails. App. 33, 223. He apologized to the inquiry panel and to JMLS for his conduct. App. 223.

Shortly after the inquiry panel meeting, in April 2018, Mr. Skelton began therapy with Dr. Leslie Wolowitz. App. 33. He also sought treatment from a psychiatrist who prescribed the medication Seroquel. App. 32-33. Seroquel is an anti-psychotic which helps to organize the personality, ensure stability, and suppress symptoms, including the hearing of voices. App. 11. Dr. Wolowitz eventually referred Mr. Skelton to another psychiatrist, Dr. Charles Turk, who continued to prescribe Seroquel and monitor Mr. Skelton's use of that medication. App. 10.

Shortly after he began seeing Mr. Skelton, Dr. Turk diagnosed him with delusional disorder. App. 11. Delusional disorder involves an elaborate construction of thought departing from reality and that accounts for disturbed feelings, fears, and behaviors. *Id*. The

disorder also involves a patient having paranoid thoughts. *Id*. Dr. Turk observed paranoid thoughts in Mr. Skelton, as well as a sense of being personally selected as the target of a conspiracy. App. 11-12. Dr. Turk testified that in his opinion, the isolated incidents involving Mr. Skelton at JMLS and the emails he sent to the Board were caused by Mr. Skelton's delusional disorder. App. 15.

At his July 15, 2019 hearing before the Committee, Mr. Skelton admitted that those emails were inappropriate, grandiose and deranged. App. 31. He also acknowledged that they were not spontaneous, and that they resembled arguments. App. 32. He explained that he was feeling unhinged during that time, and that his fears as expressed in the emails were not based in reality. *Id*. As he composed the emails, he did not think about how the recipients would react, but by the time of the hearing, he understood why they would have reacted negatively. App. 223. He took responsibility for his misperceptions and failure to take his delusional thoughts seriously. App. 223.

Dr. Turk opined at the hearing that Mr. Skelton was undertreated at the time he sent the emails. App. 209. But he further stated that in light of his treatment since that time, including his continued use of Seroquel or other medication, Mr. Skelton would be able to practice law. App. 16.

Dr. Wolowitz agreed with Dr. Turk's diagnosis of Mr. Skelton. App. 16. She described Mr. Skelton's

conduct at JMLS as acting out inappropriately, with high sensitivity, emotional reactivity, some paranoid ideation, and a history of some depression and anxiety as well. App. 18. Paranoid ideation is a delusional reference involving thinking that something is aimed at the individual which, in reality, is not. *Id*.

Mr. Skelton told Dr. Wolowitz that the emails he sent to Board staff and the inquiry panel were motivated by feelings of not being understood and of persecution, and that he inappropriately spoke his thoughts in the emails. App. 18, 213. During his early consultations with Dr. Wolowitz, Mr. Skelton expressed some confusion about some aspects of the inquiry panel process, and he occasionally expressed a question about what made sense to him. App. 213. In general, though, he was able to understand why his behavior had given rise to concern and alarm. *Id*.

Mr. Skelton has been extremely cooperative and communicative during therapy, which has continued on a regular weekly basis. App. 19. Since beginning treatment with Dr. Wolowitz, Mr. Skelton has not acted out, as he did at JMLS or in the emails, but instead has demonstrated insight and self-reflection. App. 19, 214. He has support from a long-standing group of friends outside the workplace – some from high school, some from previous jobs, some from college, and some from law school. App. 214.

Mr. Skelton has had therapeutic conversations with both Dr. Turk and Dr. Wolowitz in which he mentioned incidents in which he questioned his perception

of events. App. 20, 210-11, 214-16. In none of those incidents did Mr. Skelton act in the manner he did during his problematic interactions with JMLS or the Board. *Id*. Rather, his observations of potential misperceptions were minor, as in one instance in which he questioned the appropriateness of receiving an A- in a graduate school class when he thought he deserved an A. App. 20, 215. Mr. Skelton was able to laugh at himself a bit about that incident. App. 215. According to Dr. Wolowitz, Mr. Skelton can recognize disturbing thoughts, and he can understand distortions in his thinking. App. 20-21, 215-16.

The uncontradicted evidence at the hearing before the Committee, including the unimpeached testimony of both Dr. Turk and Dr. Wolowitz, was that with continued treatment including the continued use of Seroquel, Mr. Skelton's prognosis is good, and he would be competent and appropriate to practice law. App. 16, 22-23.

At the request of the hearing panel, Mr. Skelton submitted affidavits executed by Dr. Turk and Dr. Wolowitz in which they addressed issues relating to Mr. Skelton's social relationships. App. 191-99. The evidence at hearing established that Mr. Skelton had long-standing social relationships. App. 19. In their affidavits, Dr. Turk and Dr. Wolowitz affirmed that it was important to ensure that Mr. Skelton remained socially engaged and not isolated, but that his own efforts to ensure that need not, and should not, include informing others of his mental status or mental health history. App. 193, 196-97. Dr. Turk specifically opined that

some patients with delusional disorder are unable to refrain from telling others about their condition or their specific delusions, and that Mr. Skelton's ability to refrain from doing so was "evidence of Affiant's good judgment and his positive response to treatment." App. 198.

No evidence was introduced at the hearing that contradicted the information or opinions presented by Drs. Turk or Wolowitz. The attorney appointed by the Board for the purpose of presenting matters adverse to Mr. Skelton did not seek to admit any evidence into the record, instead only cross-examining the testifying witnesses.

At the time of the hearing, Mr. Skelton worked as a FOIA officer in the City of Chicago Law Department. App. 23. His supervisor, Amber Ritter, never saw Mr. Skelton have any problem with the stress of the job, which involves short turnaround times and frequent interactions with lawyers, the media and the public. App. 24. She was never aware of any incident in which Mr. Skelton acted inappropriately toward anyone in the course of his work. App. 25, 218. She would "absolutely" be comfortable with Mr. Skelton's admission to the Bar of Illinois. App. 219. She would "certainly" recommend Mr. Skelton for a job in the City's litigation division. *Id*.

B. Proceedings Below

Mr. Skelton applied for admission to the Illinois bar on March 19, 2017. App. 1. His application included

a Character and Fitness Questionnaire, which is used by the Committees to determine the fitness of applicants by asking wide-ranging questions regarding the applicant's background. *See* App. 1. Although the Board had not yet certified Mr. Skelton for admission to the bar, Mr. Skelton received his Juris Doctor from The John Marshall Law School on June 11, 2017, and subsequently took and passed the July 2017 Illinois Bar Exam. App. 1-2.

On March 20, 2018, an inquiry panel of the Committee voted against recommending that Mr. Skelton be certified for admission, citing specific emails sent by Mr. Skelton as evidence that he had not clearly and convincingly demonstrated his fitness to practice law. App. 2, 9. Based on their vote to deny his recommendation, Mr. Skelton sought review of the inquiry panel's decision before a hearing panel of the same Committee. App. 9. The hearing panel granted Mr. Skelton's request, and held a hearing on July 15, 2019 regarding Mr. Skelton's application and certification to the Illinois bar. App. 9.

At the July 15, 2019 hearing before the hearing panel, Mr. Skelton presented three witnesses, in addition to himself, who testified on his behalf: Dr. Charles Turk, Dr. Leslie Wolowitz, and Amber Ritter. *See* App. 208, 212, 216. Dr. Turk and Dr. Wolowitz, as Mr. Skelton's treating therapists, testified as to their evaluations, diagnoses, ongoing treatment, and prognoses of Mr. Skelton's treatment. *See* App. 208-16. Both also testified in their professional opinions as to the success

of Mr. Skelton's treatment, and the positive prognosis as a result of his ongoing and future treatment, which, in time, would allow him to competently practice law. App. 13-16, 19-23.

Ms. Ritter, as Mr. Skelton's immediate supervisor within the City of Chicago's Law Department, testified as to her professional and managerial knowledge of and relationship with Mr. Skelton. *See* App. 23. She testified that, in the course of reviewing his work as a FOIA officer for the City of Chicago, she believed him to handle the highly stressful nature of his work responsibly, complete tasks timely and successfully, create positive relationships with FOIA requesters, and called him "one of the best" FOIA officers the City of Chicago employs. App. 24-25.

After Mr. Skelton's July 15, 2019 hearing before a hearing panel of the Committee, the hearing panel requested additional information concerning Mr. Skelton's support network. App. 37. He provided that information along with affidavits from both Dr. Turk and Dr. Wolowitz. *Id*. The hearing panel issued its Findings and Conclusions on October 9, 2019. *See* App. 1. In a 3-2 vote, the majority of the panel declined to certify Mr. Skelton for admission. App. 47.

The hearing panel majority declined to find that Mr. Skelton had proved, clearly or convincingly, his present character and fitness to practice law. App. 47. It found that Mr. Skelton's five-month course of conduct in sending the emails to the Board and the inquiry panel constituted multiple individual acts of

misconduct, and that although he could have reconsidered and changed course, he did not do so. App. 41. The majority further found that "[o]n denial by the inquiry panel, Mr. Skelton acknowledged his inappropriate conduct, but still could not understand why that conduct was alarming to the Inquiry Panel." App. 41-42.

The majority further found that while Ms. Ritter provided positive testimony concerning Mr. Skelton's job performance, her testimony was diminished by the fact that "just before Hearing . . . she was unaware of the incidents at JMLS and Mr. Skelton's emails." App. 42. The majority also found that for Mr. Skelton to have sent some of the emails during work hours undermined Ms. Ritter's ability to "clearly and convincingly corroborate his abilities either to take responsibility for his misconduct or use good judgment in a professional setting." *Id*.

While it considered Mr. Skelton's doctor's testimony "link[ing] his misconduct to a medical condition," the majority focused on the testimony of Dr. Turk, Dr. Wolowitz, and Mr. Skelton concerning therapeutic discussions in which he described to his doctors incidents in which he compared his initial perceptions to reality, and avoided acting out or experiencing paranoid thoughts. App. 42-43. The majority termed those "recent instances of delusional thought during non-stressful circumstances." App. 43. The majority also cited the doctors' "recommendation of long-term treatment" as a reason for concern. *Id*. It found that there had been an "insufficient passage of time clearly and convincingly corroborative of his acceptance of responsibility and

demonstrative of rehabilitation." *Id*. The majority further faulted Mr. Skelton for not having produced the testimony of his parents to corroborate his testimony that they have been supportive of him. *Id*. The majority found that "evidence failed to demonstrate a robust support network" for Mr. Skelton in general, which "remain[ed] a serious concern." App. 44. In concluding its findings, the majority stated its expectation that "going forward Mr. Skelton will conduct himself as set forth in the essential eligibility requirements . . . and demonstrate rehabilitation from misconduct." *Id*.

The two dissenting members of the hearing panel found that Mr. Skelton had been "extremely candid" and had "demonstrated full acceptance of responsibility and sincere remorse for disturbing or offending the recipients of his email correspondence." App. 44. The dissent credited Ms. Ritter's testimony as "persuasive . . . that Mr. Skelton has conducted himself properly and respectfully of others in the context of his two-year employment and that he would be able to do so in a stressful environment as a practicing attorney." App. 45. The dissent also gave weight to the testimony of Mr. Skelton's doctors, and it noted the effectiveness of the treatment they provided. App. 45-46.

The dissenting members found that Mr. Skelton had demonstrated the essential eligibility requirements necessary for admission to the bar, and would have recommended that he be conditionally admitted, with a monitoring period extending beyond the normal two-year period. App. 46.

Mr. Skelton thereafter petitioned the Illinois Supreme Court for review of the hearing panel's decision. *See* App. 201. In a three-sentence order, the Court denied Mr. Skelton's petition, effectively affirming the underlying hearing panel decision. App. 48-49.

REASONS FOR GRANTING THE PETITION

A. The Majority's Decision Below Discriminates Against Mr. Skelton Based on a Disability.

1. The Illinois Board of Licensing is Subject to the Americans with Disability Act.

The ADA prohibits public entities from discriminating against individuals with disabilities. The Act provides:

> [N]o qualified individual with a disability shall, by reason of such disability be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132. Public entities include "any department, agency, special purpose district or other instrumentality of a State or States or local government." 42 U.S.C. § 12131(1)(B).

Significantly, a public entity may not "administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of a disability." *Id.*

§ 35.130(b)(6).[1] Additionally, a public entity may not impose or apply "eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary" for the provision of the service, program, or activity. *Id.* § 35.130(b)(8). A public entity may not "unnecessarily impose requirements or burdens on individuals with disabilities that are not placed on others." 28 C.F.R. pt. 35, App. B at 673. The Board is a public entity under the ADA because it is a public licensing scheme. *Hanson v. Medical Bd. of California*, 279 F.3d 1167, 1172 (9th Cir. 2002).

In order to establish that the majority's decision contravened the ADA, Mr. Skelton must prove that he is a qualified individual with a disability. The ADA defines a disability as:

> (A) a physical or mental impairment that substantially limits one or more major life activities of an individual;
>
> (B) record of such an impairment; or
>
> (C) being regarded as having such an impairment.

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[1] The Department of Justice issued the regulations pursuant to Congressional directive at 42 U.S.C. § 12134(a).

42 U.S.C. § 12102(1).[2] The evidence in this matter establishes that Mr. Skelton's delusional disorder is a disability under the Act: it substantially limited his ability to participate in one or more major life activities.

Next, Mr. Skelton must prove that he is a qualified individual and that the Board has discriminated against him because of a disability.

2. Mr. Skelton is a qualified individual because he meets the essential eligibility requirements for admission to the Bar.

By the time Mr. Skelton presented evidence to the hearing panel, it was clear that he met the essential eligibility requirements for admission to the bar, as set forth by the Illinois Supreme Court. Pursuant to Rule 6.3, those elements are:

> (1) the ability to learn, to recall what has been learned, to reason, and to analyze;
>
> (2) the ability to communicate clearly and logically with clients, attorneys, courts, and others;
>
> (3) the ability to exercise good judgment in conducting one's professional business;

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[2] 42 U.S.C. § 12102(4)(A) provides: "[t]he definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter."

> (4) the ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations;
>
> (5) the ability to conduct oneself with respect for and in accordance with the law and the Illinois Rules of Professional Conduct;
>
> (6) the ability to avoid acts that exhibit disregard for the health, safety, and welfare of others;
>
> (7) the ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, creditors, and others;
>
> (8) the ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others;
>
> (9) the ability to comply with deadlines and time constraints; and
>
> (10) the ability to conduct oneself properly and in a manner that engenders respect for the law and the profession.

The testimony of all of the witnesses in the hearing below establishes that Mr. Skelton meets the above criteria. Ms. Ritter's detailed, specific, and unimpeached testimony concerning Mr. Skelton's conscientious and skillful performance of his duties as a FOIA officer establishes elements (1), (2), (3), (4), (7), (9), and (10). Dr. Turk three times described Mr. Skelton as "forthright," which establishes element (4), as does Mr. Skelton's own truthful and open conduct and

testimony throughout the Character and Fitness process. Even the inquiry panel, toward which he had behaved improperly as a result of his disorder, noted Mr. Skelton's honesty, and commended him for it. No evidence was presented that Mr. Skelton does not meet elements (5), (6), or (8), and no facts appear from any materials compiled by the Board that would indicate that those elements are somehow not satisfied.

Moreover, other than discriminatory presumptions and inferences made by the hearing panel majority, it was undisputed that at the time of the hearing and the panel's decision, Mr. Skelton's psychiatric treatment was working and he satisfied all essential eligibility requirements. *See Hason v. Med. Bd.*, 279 F.3d 1167, 1173 (9th Cir. 2002) (reversing dismissal of plaintiff's ADA claim based on improper denial of his application for a medical license due to a history of mental health impairment because allegations that "by the time of the Medical Board's decision" the plaintiff "had received treatment for his [mental health] disability and was capable of practicing medicine" established that plaintiff was a qualified individual with a disability); *In re Petition and Questionnaire for Admission to Rhode Island Bar*, 683 A.2d 1333, 1337 (R.I. 1996) (holding character and fitness questionnaire was ADA compliant because it asked only whether the applicant was "currently" suffering from a disorder that impaired his or her judgment). To the extent Mr. Skelton's mental health history posed a risk of relapse, such risk was not evidence that Mr. Skelton actually failed to meet the eligibility requirements at

the time of the panel's decision. Rather, a risk of relapse merely entitled Mr. Skelton to the reasonable accommodation of conditional approval.

3. The Majority's Decision Discriminates Against Mr. Skelton Based on a Disability.

The majority's decision discriminates against Mr. Skelton based on a disability, in a manner inconsistent with the ADA. The Seventh Circuit has held that discrimination under Title II of the ADA

> [m]ay be established by evidence that (1) the defendant intentionally acted on the basis of the disability, (2) the defendant refused to provide a reasonable modification, or (3) the defendant's rule disproportionally impacts disabled people.

Washington v. Indiana High Sch. Athletic Assoc., 181 F.3d 840, 847 (7th Cir. 1999). The majority's decision intentionally discriminates against Mr. Skelton based on his disability, the majority refused to provide a reasonable accommodation, and its approach to the issues raised by Mr. Skelton's disability disproportionally impacts disabled people.

i. The Majority's Decision Intentionally Discriminates Against Mr. Skelton Based on a Disability.

In its decision, the panel majority made findings adverse to Mr. Skelton based on criteria that would not have been applicable to non-disabled applicants

without a similar mental health history. For example, the majority made reference to testimony elicited from Mr. Skelton's treatment providers not concerning his past conduct, but in reference to wholly unrelated incidents that Mr. Skelton had discussed with them over the course of his treatment. The majority characterized those incidents as involving "delusional thoughts," and gave them the same adverse weight as the other, more serious incidents that gave rise to the proceedings before the inquiry and hearing panels.

The hearing panel unfairly scrutinized the implications of Mr. Skelton's treatment evidence. The doctors themselves did not describe the incidents as serious, instead noting that the incidents only involved passing thoughts that Mr. Skelton had, which he then reported to them. They resulted in no conduct of any kind, much less conduct that harmed anyone. In one case, the thoughts in question involved Mr. Skelton's quibble – contained entirely within his own mind – regarding a grade in a graduate school class. No applicant without Mr. Skelton's mental health history would find such an incident the subject of a finding in a character and fitness decision. That it arose in this case is evidence both of discrimination against Mr. Skelton based on his disability, and of the disparate impact the majority's reasoning has on people with disabilities.

The majority's suggestion that Mr. Skelton needed to prove the existence of his support network also contravenes the ADA. In point of fact, affidavits from various members of Mr. Skelton's network of friends and

colleagues were in evidence, as part of the Committee file; but the majority ignored them. Instead, it suggested that the absence of other affidavits from Mr. Skelton's family corroborating his testimony indicated that Mr. Skelton was socially isolated, which it termed a matter of "serious concern." It would not be a matter of "serious concern" in any case not involving the mental health issues presented here. All applicants to the Illinois bar submit character affidavits of the same kind that Mr. Skelton submitted, and they are routinely determined to be sufficient proof of an applicant's character and of the relationship that forms the basis for the affiant's knowledge of the applicant. The majority, however, wrongly disregarded Mr. Skelton's affidavits and created a "serious concern" where there was none, due to its discriminatory misconstruction of Mr. Skelton's condition. The majority skewed the evidence to justify a finding that Mr. Skelton is socially isolated and then used that finding in its final determination. But evidence of "social isolation" is not a criterion that a non-impaired applicant would face. Thus, Mr. Skelton's disability forms the entire basis for the "serious concern," and it was based on a criterion not applicable to non-impaired applicants. Under the ADA, that places a burden on Mr. Skelton that other applicants would not have, in a manner inconsistent with 28 C.F.R. pt. 35, App. B at 673, which "prohibits policies that unnecessarily impose requirements or burdens on individuals with disabilities that are not placed on others" and which prohibits the imposition of criteria that "tend[s] to" screen out an individual with a disability.

ii. The Majority Refused to Provide a Reasonable Accommodation.

In addition to declining to recommend certification of Mr. Skelton to the bar, the panel majority also refused to provide Mr. Skelton with reasonable accommodations or modifications in certifying his admission. Under the ADA, a public entity is required to reasonably accommodate a qualified individual with a disability when necessary to avoid discrimination on the basis of a disability. *See Dadian v. Village of Wilmette*, 269 F.3d 831 (7th Cir. 2001); 42 U.S.C. § 12131(2); 28 C.F.R. § 35.130(b)(7)(i). Those accommodations may include making changes to its rules, policies, practices or services. *See Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775 (7th Cir. 2002).

The reasonable accommodation requested by Mr. Skelton, and rejected by the majority, was Mr. Skelton's admission to the bar on a conditional basis. App. 37, 40. More specifically, Mr. Skelton's request for conditional admission proposed for his continued and supervised treatment for an agreed-upon period of time, to be supervised by the agency responsible for the registration and discipline of attorneys in Illinois, the Illinois Attorney Registration and Disciplinary Commission ("ARDC"). *See* App. 211, 216. Mr. Skelton's request for conditional admission as a reasonable accommodation was supported by several factors, which included qualification under a plain reading of the Committee's own rules, and the professional opinions testified to by Dr. Turk and Dr. Wolowitz. App. 211, 216, 270-71.

Under Rule 7 of the Board Rules of Procedure, a panel may consider conditional admission, if, among other requirements, the applicant is engaged in sustained and effective course of treatment for or remediation of " . . . a diagnosed mental or physical impairment that, should it reoccur, would likely impair the applicant's ability to practice law or pose a threat to the public. . . ." App. 270-71. The rule further states that conditional admission may be recommended in order to allow an applicant to practice law while their ongoing course of treatment or remediation for prior misconduct is monitored, in order to protect the public. *Id*. The Rule also provides that conditional admission is appropriate when an applicant has already engaged in

> "sustained and effective" treatment for a time period demonstrating the applicant's commitment and progress "but not yet sufficient to render unlikely a recurrence of the misconduct or unfitness."

Id.

In addition, the testimony of both Dr. Turk and Dr. Wolowitz corroborated the propriety of conditional admission. Dr. Turk opined that Mr. Skelton would remain fit to practice law assuming he continued treatment during the course of any recommended conditional admission. *See* App. 211. Further support for the effectiveness of ongoing treatment came from Dr. Wolowitz, who also opined that three to five years of additional therapy would result in additional

progress of Mr. Skelton's self-awareness with a low likelihood of reverting to his prior conduct. App. 216.

Based on the eligibility provisions, Mr. Skelton met not only the baseline requirements but also the purpose of the conditional admission process. As testified to by Mr. Skelton, Dr. Turk and Dr. Wolowitz, Mr. Skelton was engaged in ongoing treatment for his disability, with demonstrative positive effects on his disability and mental health, but for which additional treatment was still necessary.

Despite Mr. Skelton's two treating therapists providing their uncontested opinions as to the effectiveness of Mr. Skelton's current treatment, the positive effects of his future treatment, the relation to conditional admission, and Mr. Skelton meeting both the baseline requirements and purpose of the conditional admission process under the Board's rules, the panel majority nonetheless disregarded the evidence. In its report, the majority not only rejected Mr. Skelton's request for a reasonable accommodation or modification through conditional admission, but also failed to recommend or provide any other reasonable accommodation required to avoid discrimination against Mr. Skelton on the basis of his disability. As a result, the majority's findings and decision with respect to their failure to provide or recommend any reasonable modifications were also in contravention of the ADA.

iii. The Majority's Decision Disproportionately Impacts Disabled People.

The majority's decision disparately impacts not just Mr. Skelton himself, but disabled people generally. Mr. Skelton candidly provided evidence and responsive information to the hearing panel at every turn, even discussing and allowing his treatment providers to discuss the most intimate details of his counseling sessions. That evidence was then used to further stigmatize Mr. Skelton. To encounter that stigma in this kind of proceeding is discouraging to those who would seek to obtain professional help in an effort to demonstrate competency and fitness.

The American Bar Association National Task Force on Lawyer Well-Being recently published a report addressing lawyer well-being, mental illness, and addiction in the legal profession. National Task Force on Lawyer Well-Bring, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (2017). The report repeatedly emphasized that lawyers and law students often avoid seeking assistance for mental health or addiction issues because of fear that seeking help will impact their licensure. Lawyers and law students avoid seeking help to the point that their illness impacts their daily function in addition to their ability to practice law competently. The majority's decision contributes to the stigma that results in lawyers and law students avoiding mental health treatment by grounding its finding of unfitness in Mr. Skelton's mental health status. Disabled people are concerned with the impact of that stigma upon them in a direct

way that non-disabled people are not; thus, the majority's decision has a disproportionate impact on disabled people.

B. This Court Should Grant Review to Provide Guidance on the ADA's Applicability to Admissions Cases

Admissions cases are creatures of state proceedings and as a result, will not typically be reviewed in federal courts. Indeed, the *Rooker-Feldman* doctrine specifically provides that lower federal courts do not have subject matter jurisdiction to review state court civil decisions. *See Rooker v. Fid. Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed.2d 362 (1923), and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983); *Young v. Murphy*, 90 F.3d 1225, 1230 (7th Cir. 1996). An applicant therefore can seek review through the state court system and then, if necessary, petition the United States Supreme Court for a writ of certiorari. *See Young*, 90 F.3d at 1230.

This complicates an applicant's ability to have a federal court review an admission board's decisions and specifically, whether such decisions violate the ADA. For example, consider *Edwards v. Illinois Bd. of Admissions to Bar*, 261 F.3d 723 (7th Cir. 2001). There, an applicant to the Illinois bar brought an action against the Illinois Board of Admissions to the Bar, the bar president, and others, seeking a declaratory judgment that the defendants' conduct violated the

ADA. *Edwards*, 261 F.3d at 725. After a thorough review of the *Rooker-Feldman* doctrine, the Seventh Circuit concluded "that the district court lack[ed] subject matter jurisdiction to review [the applicant's] ADA claims and that dismissal was appropriate." *Id.* at 731. Thus, the applicant's "only avenue for federal relief was through the United States Supreme Court." *Id.* at 729. *See also Feldman*, 460 U.S. at 486, 103 S.Ct. 1303; *see also Dale v. Moore*, 121 F.3d 624, 627 (11th Cir. 1997) (holding that plaintiff's ADA claim was "inextricably intertwined with the state's judicial proceedings relating to his bar admission"); *Campbell v. Greisberger*, 80 F.3d 703 (2d Cir. 1996) (finding that *Rooker-Feldman* barred the district court from reviewing whether the New York state court violated the ADA when it required the applicant to provide medical information as a precondition to renewal of his bar application).

In *Schware v. Board of Bar Exam. of State of N.M.*, 353 U.S. 232, 249 (1957), this Court held that "a state cannot exclude an applicant from the practice of law when there is no basis for finding that the applicant fails to meet the standards of qualification or when the state action is invidiously discriminatory." *Id.* Therefore, under *Schware*, a state can have and enforce requirements and qualifications for admission to its bar; however, those qualifications must bear a rational relationship to fitness to practice, and determinations of whether those qualifications are met must not be made in arbitrary or discriminatory ways.

Here, the State's application of its admission criteria, juxtaposed with its consideration of Mr. Skelton's mental health and refusal to apply reasonable accommodations, violates the ADA. In denying Mr. Skelton admission, the majority relied principally on isolated conduct at JMLS and emails to the inquiry panel. In doing so, the State failed to properly apply the ADA. Consider the following:

> (a) Shortly after the emails sent to the inquiry panel, Mr. Skelton began therapy with Dr. Wolowitz.
>
> (b) Mr. Skelton began taking Seroquel.
>
> (c) Mr. Skelton began seeing Dr. Turk, who diagnosed him with delusional disorder and continued to prescribe Seroquel.
>
> (d) Both doctors who testified provided medical evidence that Mr. Skelton's alleged misconduct at JMLS and in sending the emails was the result of his delusion disorder.
>
> (e) Both doctors who testified provided medical evidence that Mr. Skelton's medication and therapy were appropriate treatment for his delusion disorder and would address any concerns regarding his practice of law.
>
> (f) The evidence presented unquestionably demonstrated that Mr. Skelton was skilled and qualified to become a lawyer, meeting the essential eligibility requirements.

Thus, pursuant to the medical evidence provided, Mr. Skelton had a disability, it was being properly

addressed, and as long as he was accommodated by allowing treatment, it did not limit his ability to practice law. Without presenting any evidence to the contrary, the State made quasi-psychological conclusions adverse to the presented medical testimony and did not provide any explanation why reasonable accommodations could not be provided.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

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