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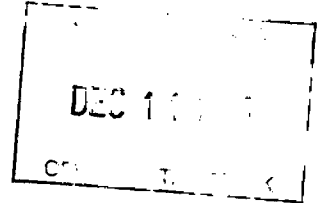
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**In the Supreme Court of the United States**

SOLON PHILLIPS,  
PETITIONER

V.

MARYLAND BOARD OF LAW EXAMINERS, ET AL.,



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On Petition for a Writ of Certiorari to the  
United States Fourth Circuit Court of Appeals

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PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

The overall purpose of the character and fitness test is to protect the public from unscrupulous attorneys. The average age of newly admitted attorneys in the United States is 26 years old. Because past behavior is a strong indicator of future behavior, character committees investigate the past behavior of young attorneys to determine the potential future behavior of these same attorneys. The idea is that “good” young attorneys will continue to do good while “bad” young attorneys will continue to do bad. So, a designated committee investigates an attorney’s past conduct to determine whether issuing a license to practice law will be in the public’s best interest.

This is *not* what happened with Solon Phillips.

Solon Phillips has lived for nearly half of a century. During this time, there is no showing, no pattern, no history of unscrupulous or indiscreet behavior. On the contrary, there is a showing that spans *over 25 years* of a consistent pattern of selfless behavior geared towards serving the public. There was over 25-character reference letters from attorneys, professors, employers, a judge, and a forensic report that all described Solon as a man of high integrity and exemplary character. When the Maryland Board of Law Examiners found Solon to be too immorally unacceptable to be issued a license to practice law, questions abounded. Before this Court now are questions that only this Court can address:

- (1) Is the Maryland character fitness test unconstitutionally vague because it leaves the triers of fact free to decide, without any legally fixed standards, what is and what is not morally acceptable in each particular case?
- (2) The Supreme Court has held that when a bar applicant is denied admission and there is no basis for finding the applicant fails to meet the qualifications required to practice law that applicant is denied due process of law. The Board of Law Examiners reported that Solon lacked the requisite moral character for admission, but the record is void of any behavior that would lead a reasonable person to reach this conclusion. Did Maryland violate Solon's due process of law by denying him admission when there was no rational basis for the denial?
- (3) The Constitution requires a State to afford all individuals an opportunity to be heard on matters impacting life, liberty, and property in order to fulfill the promise of the Due Process Clause. Maryland denied Solon the privilege to practice law on specific issues which it never afforded Solon an opportunity to address. Did Maryland violate Solon's due process rights?
- (4) The Supreme Court has held that any State act permitting a delay without limit is unconstitutional. The Maryland State Board of Law Examiners held Solon's bar application open for *nearly four years*

without any explanation for the delay. Was this unexplained delay unconstitutional?

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## **PETITION FOR WRIT OF CERTIORARI**

Solon Phillips respectfully petitions for a writ of certiorari to review the decision of the Maryland Court of Appeals denying Solon Phillips the right or privilege to practice law in Maryland.

### **PARTIES TO THE PROCEEDING**

Petitioner (plaintiff-appellant below) is Solon Phillips, a 47-year-old, African American man, licensed to practice law in Alabama, the District of Columbia, and Washington State.

Respondents (defendants-appellees below) are the Maryland Board of Law Examiners; Jonathan Azrael, in his official capacity as Chair; John Mudd, in his capacity as a member; David Ralph, in his official capacity as a member; and Matthew Mills, in his official capacity as a member.

### **OPINIONS BELOW**

- Solon had a 15-minute hearing on why the appellate court should agree with the Character Committee's recommendation for admission and decline the Board of Law Examiner's recommendation denying admission. The transcript to the Nov. 16, 2017 Hearing is reproduced at Pet. App. 1 (Nov. 16, 2017 Transcript).
- The 2017 Opinion of the Court of Appeals is reproduced at Pet. App. 2. (Case No. Misc. No. 17, Nov. 16, 2017).
- Solon filed for declaratory relief in the District Court but was denied for lack of subject matter jurisdiction. Opinion is reproduced at Pet. App. 3 (*Phillips v. Maryland Bd. of Law Examiners, et al.*, ADC-19-2427, Dec. 19, 2019).

- The Fourth Circuit Court of Appeals agreed with the District Court on four counts but reversed on two counts. Opinion is reproduced at Pet. App. 4 (*Phillips v. Maryland Bd. of Law Examiners, et al.*, No. 20-1057, U.S. Court of Appeals for the Fourth Circuit. Judgment entered July 17, 2020).

## **JURISDICTION**

The Fourth Circuit declined to declare whether Solon's constitutional rights were violated. This Court therefore has jurisdiction under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

- **U.S. Const. amend. XIV § 1**

Section one of the Fourteenth Amendment provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- **MD Code, Bus. Occ. & Pro., § 10-207(b)**

Section b of the Maryland Character and Reputation statute provides:

An applicant shall be of good character and reputation.

- **MD Code, Bus. Occ. & Pro., § 10-211**

The Maryland Order of Admission statute provides:



If an applicant meets the requirements of this Part II of this subtitle, the Court of Appeals shall pass an order of admission of the applicant to the Bar.

- **MD Rule 19-203(b) Character Review**

Section (b) of this Maryland Rule provides:

If the Board concludes after review of the Character Committee's report and the transcript that there may be grounds for recommending denial of the application, it shall promptly afford the applicant the opportunity for a hearing on the record made before the Committee. If the recommendation of the Board differs from the recommendation of the Character Committee, the Board shall prepare a report and recommendation setting forth findings of fact on which the recommendation is based and a statement supporting the conclusion and shall transmit a copy of its report and recommendation to the applicant and the Committee.

- **MD Rule 19-203(d) Burden of Proof**

Section (d) of the Maryland Rule provides:

The applicant bears the burden of proving to the Character Committee, the Board, and the Court the applicant's good moral character and fitness for the practice of law. Failure or refusal to answer fully and candidly any question in the application or any relevant question asked by a member of the Character Committee, the Board, or the Court is sufficient cause for a finding that the applicant has not met this burden.

## REASONS FOR GRANTING PETITION

It's time for the character fitness test to change. States are using it to deny good, moral people from becoming attorneys while at the same time using it to admit bad, immoral people. This Court can now change this.

This Court addressed the moral character requirement of State Bars in 1957, finding that it is a “vague requirement, which can be easily adapted to fit personal views and predilections.” *Konigsberg v. California*, 353 U.S. 252, 263 (1957). This Court went on to say that the moral character requirement “can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law.” *Id.* This Court in *Konigsberg* stopped short of addressing the issue of the constitutionality of the character determining process. This Court should now grant this petition for three reasons. First, it would have the opportunity to provide all States with constitutional direction when fashioning character fitness policies and procedures. Second, granting this petition will potentially save attorneys from being wrongfully denied licensure. Lastly, this Court should grant the petition because by granting the petition and redefining the character fitness provision, the outcome will reasonably redefine the public perception of attorneys throughout the country by allowing States to more accurately weed out corrupt attorneys.

## STATEMENT OF THE CASE

Solon Phillips graduated from the Washington College of Law in 2008. He began the application process to receive his license to practice law in Maryland in 2007. The 2007 Character Committee member interviewed him and recommended that he be admitted into the Maryland Bar. Solon did not complete his application

until February 2011, after he graduated from an M.B.A. program and subsequently passed the Maryland bar exam. After graduating from law school, passing the bar exam, and receiving a favorable recommendation, Solon was all set to attend the induction ceremony and to be admitted as a practicing attorney in the state of Maryland.

Unfortunately, this did not happen. At first, Solon's application was lost. Then, it was later found, but the process was put on hold. After nearly four years of waiting, withdrawing his application, submitting a new application, retaking and passing the Maryland Bar exam for a second time, being interviewed by a Character Committee member for a second time, and being recommended for admission for the second time, Solon was finally told that he lacked the requisite character for admission into the Maryland Bar and was denied a license.

Not accepting this painful setback and determined to practice in Maryland, Solon took the Bar exam for a third time, this time taking and passing the Multistate Bar Exam. He scored high enough to be accepted into three (soon-to-be four) other State jurisdictions.

In the midst of this effort, Solon discovered that a sitting judge wrote a letter to Defendants advising them to not admit him into the Bar. Defendants issued a letter to the Court of Appeals recommending Solon not be admitted into the Maryland Bar. Defendants held a hearing that was for show only because the hearing did not offer Solon an opportunity to address any of the issues it raised in its letter to the Court. The Court then held a hearing that did not allow Solon to

address any of the issues it used to ultimately deny him admission into the Maryland Bar. Upon discovering the facts behind Defendants' refusal to recommend licensing and his ultimate denial, Solon filed suit against Defendants.

Maryland's character fitness process is unconstitutional and *must* be changed. The future of prospective lawyers depends on the change. Solon's own future admission into the Maryland Bar depends on the change. This Court has the authority to usher in the historical change of defining the legal process by which a State may determine character and fitness.

## **FACTUAL BACKGROUND**

### **Early Adult Life**

Plaintiff Solon Phillips has always demonstrated a proclivity to act on his moral beliefs, which are rooted in his Christian faith. At age 20, he chose to withdraw from his pre-medicine studies at Oakwood College and marry his pregnant girlfriend because he believed that to be the morally right thing to do. At age 21, he became the youngest foster parent in Prince George's County, a county in Maryland, and was commended and recognized for his outstanding service to children in foster care because he believed he could help young people in need. At age 22, he was awarded an Outstanding Young Men of America award for achieving a 3.81 GPA as a pre-medicine student while volunteering his time in a community center in Takoma Park, Maryland, which he says is a testament to his faith. At 23, he became a member of Men of Impact, a church group of men who were committed to mentoring young people in Prince George's County.

At age 29, Solon was awarded primary custody of his two children. His then wife informed him that she felt she had married too young, that she had children too young, and that it would be better for the family for her to leave.

At age 30, Solon was accepted into American University Washington College of Law and began his first year in law school in August of that same year as an evening, part-time student while being a full-time father.

From an early age, Solon has actively displayed a fiduciary duty to society, living by the creed of service to God and man. From the time he was 20 years old until the present, he has served as a preschool Bible teacher, a Bible teacher for teens, a Bible teacher to adults, a Men's Ministry leader, a community basketball coach, a religious liberty leader, a deacon, legal ethics instructor, a homeless ministry member, a prison ministry member, a Pathfinder leader, an author of Christian publications, and a recipient of the Men of Honor award for outstanding work in the Washington, D.C. Metro area.

#### **2004 Divorce Proceeding**

Approximately seven months after his wife moved out of the marital home, Solon asked her for financial assistance in raising their two children, Adonis and Athena. His ex-wife declined to offer financial assistance and insisted that the children move in with her.

Solon declined this offer on the basis that the children had not seen their mother in nearly a year and to just change their routine now simply because he

asked for child support was not in the best interest of the children. Even still, Solon waited on his wife to move back home and be a family.

Upon discovering that his ex-wife had a live-in boyfriend, he asked her if she would ever be coming home. She said, “No” and advised him to file for divorce. He then filed for divorce on grounds of adultery. Solon vowed to continue to be the best father he could be to his two children, raising them to adhere to the same Christian beliefs.

### **Judge Toni Clark’s 2007 Letter to the Board**

Judge Toni Clark was the judge assigned to Solon’s 2004 divorce proceeding. At the onset, Judge Clark was noticeably biased against Solon. For example, she denied his complaint for divorce on the ground of adultery for “condonation,” holding that because he openly stated in court that he still loved his wife this meant he forgave her for her past and present and ongoing adultery. Another example of the unfair treatment towards Solon concerned child support. Judge Clark, although she awarded him primary residential custody, awarded him only \$33/month in child support, ruling that he will be an attorney one day and could therefore financially rehabilitate himself.

An attorney, Paul Eason, would later file for a modification for child support and was able to secure the correct amount for Solon. The unfair treatment continued over the years and finally escalated to Judge Clark issuing an order for the two parties to return to court in three months, February 2009, and, if upon

Solon's ex-wife word that Solon violated the order by not delivering the children to her on time, she would order him to weekend incarcerations.

Because of this, Solon filed a Motion to Recuse Judge Toni Clark. In this motion, he detailed how Judge Clark had unfairly treated him over the years and stated that he would undoubtedly be incarcerated if his freedom was left to his ex-wife's word. He hand-delivered this Motion to Recuse to the Chief Judge of Prince George's County Circuit Court.

A few months later, in November 2008, Judge Clark recanted her own order and closed the case.

### **Applying to the Maryland Bar**

Solon first applied to the Maryland Bar in 2007, a year before graduating from American University Washington College of Law (WCL). He was interviewed by a member of the Character Committee in 2007 and was given a favorable recommendation that same year.

Upon graduating from WCL, Solon enrolled back in school to obtain his master's in business administration. After graduating from the master's program in late 2010, Solon took and passed the Maryland Bar exam in February 2011. The ceremony for admission into the Bar was scheduled for June of that year, but due to not fault on Solon's part, Solon was not given the opportunity to participate.

Solon phoned the admission's office to inquire about his ceremony tickets and was told that his application was lost. He was told that he would be admitted in the

fall ceremony in August 2011. August 2011 came but Solon still did not receive any ceremony tickets or any information about his admission into the Maryland Bar.

In late September 2011, Solon received notification from the Character Committee that it would be holding a hearing February 2012 to discuss allegations made in a letter received from Judge Toni Clark. The allegations were later found to be unfounded as a fellow sitting judge attended Solon's hearing and testified under oath that Judge Clark was in fact biased towards Solon. Judge Clark's letter, however, strongly suggested to the Board that they *not* admit Solon into the Bar.

For nearly four years after the February 2012 hearing, the Board placed Solon's application on hold. Solon made several inquiries over the years as to the status of his application, but each time was told that no decision had been made. Finally, Solon gave the Board an ultimatum—"by this Friday, a decision needs to be made one way or another." That Friday, Solon received a letter recommending that he be denied admission into the Maryland Bar.

### **Solon Withdraws His 2007 Bar Application**

In 2015, Solon joined an online support group for couples experiencing divorce. While in this group, a woman solicited members in the group for assistance to stop her ex-husband's new wife from harassing her. The woman asked Solon to send a cease-and-desist letter to the new wife asking her to stop the harassment. Solon drafted a letter and signed his father's name to the letter because his father, Dalton Phillips, was an attorney. The new wife complained to the Maryland Bar about the letter, asking why a Maryland attorney would contact her, a resident of



Indiana. The Bar contacted Mr. Phillips about the letter. During an interview with the Bar's grievance attorney, Mr. Phillips took offense to a line of questioning, and the issue ballooned with Maryland eventually going after his license.

While Solon awaited the outcome of his father's disciplinary actions, he withdrew his application for admission. Solon disclosed to the Board all of his involvement with his father's case and his reason for withdrawing his application. The grievance attorney characterized Solon's signing for his father as a violation of the code of conduct governing attorneys. It was determined that Solon engaged in the unauthorized practice of law by signing Dalton Phillips's name. Mr. Phillips was later disbarred for a variety of violations, including the unauthorized practice of law.

### **Solon Retakes Maryland Bar Exam and Reapplies for Licensing**

After the matters involving his father were completed, Solon in August 2016 submitted another application for admission into the Maryland Bar. In February 2017, Solon sat for the Maryland Bar exam for a second time and passed. A few months later, Solon discovered he passed the bar exam, and, feeling good about himself, decided to take another bar exam—the Florida Bar exam. During the second week of May 2017, Solon mailed off his initial Florida Bar application. He did not continue with the Florida application, however, and later withdrew this application.

In May 2017, Solon had his character interview with a member of the Maryland Bar's Character Committee, Ms. Deborah Johnson. Solon met with Ms.

Johnson for over an hour and disclosed that he had applied to the Florida Bar and his involvement with his father's disbarment. At the end of the interview, Ms. Johnson commended Solon on his candor and all he had done in his community and church, but especially for raising his two children in the manner in which he had raised them. As he walked out, she smiled at Solon and said, "You're going to be a great lawyer." Solon left the interview feeling confident and grateful that after nearly nine years after graduation he was finally about to be a licensed attorney. —————

### **Board Calls for a Hearing to be Held in July 2017**

In June 2017, a few weeks after his character interview with Ms. Johnson, Solon received notification from the Board of Law Examiners that the Board would be hold a hearing. It is important to note that the Board *did not* provide Solon with a copy of Ms. Johnson's character report before this hearing despite the Maryland rule mandating this disclosure. The notification of a hearing came as a surprise considering the fact that Solon believed that his character interview went extremely well. Not knowing what was in the character report, Solon did not know what Ms. Johnson had reported to the Board that would require a hearing.

In this June 2017 Notice of Hearing letter to Solon, the Board stated it wanted to discuss three matters: (1) the facts surrounding Solon's engaging in the unauthorized practice of law, (2) the facts surrounding Solon's failure to disclose in his application that he committed the unauthorized practice of law and contributed to the disbarment of Dalton Phillips, and (3) whether the matters identified above

reflected a cumulative pattern that suggests a pattern of a lack of candor and failure to abide by the law.

Solon retained Paul Sandler to represent him at the coming hearing. As the third ranked attorney in Maryland, Mr. Sandler thoroughly prepared for the July 2017 Hearing before the Board based on the letter Solon received from the Board. The letter indicated that the Board wanted to discuss Solon's failure to disclose his involvement with Dalton Phillips's disbarment in his 2016 Bar application. So Mr. Sandler prepared to show that Solon did in fact disclose his father's involvement in his Bar application. In a separate written statement that was attached to the last page of Solon's 2016 Bar application, Solon disclosed and explained his involvement with his father's disbarment. Mr. Sandler prepared to prove this fact to show that Solon *did* disclose his involvement in his 2016 Bar application. Mr. Sandler also prepared to demonstrate how Solon had rehabilitated himself by passing the MPRE, writing articles on professional conduct, and securing himself, Paul Sandler, as a mentor to guide him as a new attorney.

What Mr. Sandler did not prepare for was what the Board would later give as the reason for recommending that Solon be denied admission into the Maryland Bar, specifically, that Solon failed to disclose this same information *during his character interview*. Again, the Board violated the Maryland rules by withholding Ms. Johnson's character report. The Board knew that Ms. Johnson had recommended admission for Solon. They knew that Ms. Johnson reported that Solon disclosed "at length" his involvement with his father's disbarment. Yet, they

withheld this information and later stated that it appeared that Solon did not disclose his father's involvement during his character interview. Mr. Sandler did not know this and did not prepare to address this during the July 2017 hearing.

### **The Board Issues a Report Recommending Denial**

In October 2017, the Board's final recommendation was to deny Solon admission into the Maryland Bar because, "upon reviewing the Committee's report and recommendation, *it appears* that the events related to the applicant's unauthorized practice of law and his prominent role in his father's disbarment may not have been sufficiently explored." (emphasis added). Specifically, the Board was obliquely concluding that Solon had not discussed this issue sufficiently with the Character Committee member, Ms. Johnson, this despite Ms. Johnson stating in her report that Solon discussed this same information "at length" with her.

### **Deborah Johnson Unexpectedly Passes Away**

Because Solon had received a favorable recommendation from the Character Committee and an unfavorable recommendation from the Defendants, by Maryland Rule, the Court of Appeals issued a hearing notice to Solon. The single issue for the hearing was: Why should the Court accept the Character Committee's favorable recommendation over the Board's unfavorable recommendation.

To Solon, addressing this issue was simple. The Board erroneously believed that Solon did not disclose all matters with the Character Committee. Had the Board received this information, they too would have had the same recommendation as the Character Committee because no other issues were addressed at the Hearing.

Solon spoke with Ms. Johnson by email and by phone about the Board's recommendation. She was shocked to learn that the Board had offered such a recommendation and for the reason stated. Ms. Johnson asked that Solon email her a copy of their report. Solon did as he was asked. Solon later emailed Ms. Johnson asking for her to provide a letter stating that he had disclosed all matters in question with her. He would use this at a later hearing as proof that he disclosed the very information he was being accused of not disclosing. Unfortunately, Ms. Johnson passed away the *very same day Solon emailed the letter*.

### **November 16, 2017 Hearing Before Court of Appeals**

On November 16, 2017, Solon had a 15-minute hearing before the Maryland Court of Appeals. The notice from the Court of Appeals stated that the hearing would address why the Court should decide with the Character Committee and not the Board. Solon prepared to address this issue.. During the 15-minute hearing, a few questions were asked about Solon's past, his involvement with this father's disbarment, and nothing else. Solon walked away from the hearing believing that he would be granted a license to practice law in Maryland.

### **Order Results Based on Post-Hearing Issues**

Two weeks after the November hearing, Solon had an interview for a position in which the employer requested the employee to have a juris doctorate degree. Solon applied using his Indeed resume. A day before the interview, the employer requested another copy of Solon's resume.

In the interview, the interviewer asked Solon if he was licensed to practice law. Solon answered that he was not licensed and explained that his license status

was pending in Maryland. The interviewer stated that this position required a law license, not just a degree. Solon apologized for the misunderstanding and the interview ended.

The interviewer later mailed the Maryland Board of Law Examiners a statement explaining that Solon applied for a position that required a law license when in fact he did not have a law license. The Board did not follow up with Solon to ask for clarification on this incident, but rather forwarded the letter to the Court as further evidence of immoral behavior. The Court ultimately denied Solon admission into the Maryland Bar for lack of candor based on everything presented by the Board. In its published opinion, the Court stated that Solon did not disclose his father's involvement, that he applied for position requiring a license, and that he has an email address, solonesq@gmail.com, which suggests he is holding himself out as a licensed attorney. Solon was not given an opportunity to address any of these accusations.

### **Post Maryland's Denial**

After Maryland issued its Order, Solon registered and sat to take the Uniform Bar Exam (UBE) in the District of Columbia. Solon passed the UBE and applied for a law license in the District, Alabama, Washington, Montana, and New York. The District, Alabama, and Washington State conducted thorough investigations, offered Solon an opportunity to be heard on the issues Maryland had not offered, and in the end found Solon to possess the requisite character to practice law. Solon now holds a license to practice law in the District, Alabama, and

Washington State. New York, hard hit by COVID-19, is still reviewing his application. Unlike the other States, Montana did not offer Solon an opportunity to be heard on these issues, but instead, chose to deny Solon solely based on Maryland's denial. Montana's denial is currently being challenged.

## **ARGUMENT**

### **I. Maryland's Character Fitness Process Violated Solon's Civil Rights.**

Defendants in their capacity as the State Bar of Maryland have deprived Solon of his civil rights by their capricious application of the character fitness process. "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State...subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Civil Rights Act of 1871, 42 U.S.C. § 1983. The practice of law is a matter of right for one who is qualified by his learning and his moral character. *Baird v. State Bar of Ariz.*, 401 U.S. 1, 7 (1971). Whenever a State official or agent causes a United States citizen to be denied a right or a privilege for an irrational basis that individual's civil rights are violated. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 169-70 (1970).

Defendants caused Solon's right and privilege to practice law in Maryland to be denied by issuing an unfavorable recommendation for "lack of candor" and "failing to disclose" when the undisputed record showed candor and a history of

disclosure. The character committee's report was given to the Board in June 2, 2017. In that same month, the Board issued a notice to Solon calling for a hearing to discuss (1) the facts surrounding "your engaging in the unauthorized practice of law," (2) the facts surrounding "your failure to disclose that you committed the unauthorized practice of law and contributed to the disbarment of Dalton Phillips, and (3) whether the matters identified above reflected a cumulative pattern that suggests a pattern of a lack of candor and failure to abide by the law.

At the hearing, Solon's attorney, Paul Sandler, thoroughly prepared to addresses these issues, showing (1) that Solon did not know that his actions amounted to the unauthorized practice of law and has since this incident, rehabilitated himself by enrolling in ethics courses, taking and passing the professional responsibility exam, and soliciting the services of a mentor, his attorney, Paul Sandler, on these issues; (2) that Solon did in fact disclose the facts surrounding this incident in his 2016 Maryland Bar application, but in a separate sheet of paper attached to the back of his application; and (3) that there is no record of him ever having failed to abide by the law or disclose necessary information.

In October 2017, Defendants published a recommendation stating that "there was no indication the Applicant had apprised the Character Committee of the February 22, 2017 Court of Appeals opinion." The Board further published that, "it appears that the events related to the applicant's unauthorized practice of law and his prominent role in his father's disbarment *may not* have been sufficiently explored."



These statements are false statements issued by the Board. In the Character Committee's report, delivered to the Board on June 2, 2017, Ms. Johnson writes that Solon's involvement with his father's disbarment was discussed "at length." The Board was in possession of this report on June 2, requested a hearing on June 16, and held a hearing on July 15, and at *no time* did any member of the Board ask Solon, Solon's attorney, or the Character Committee member who interviewed Solon, whether the events they claimed "appeared to have been sufficiently explored" were sufficiently explored. Because the clear facts show that Solon did disclose information to the Character Committee, the Board's reason for the denial is irrational, baseless, and flat out untrue.

The Board also accused Solon of failing to disclose his involvement with this father's disbarment to the Board. This is also is untrue.

The disbarment came about because Solon cut-and-pasted a cease-and-desist letter on a 2007 letter head, signed his father's name to the letter, and then mailed the letter in May 2015 to a lady in Indiana he had never met. This initiated an investigation into his father by the Attorney Grievance Committee in June 2015.

Solon did not learn that he was a party to this suit against his father until January 2017. As soon as he received the subpoena from Lydia Lawless, the attorney representing the Attorney Grievance Committee, he notified his then attorney, Norman Smith, who in turn, notified the Board.

Since counsel represented Solon in a matter before the Board, his duty to disclose was directed to his attorney. Indeed, the Board itself made it quite clear to

Solon that his attorney should be the only person contacting it. In 2013, while being represented by his attorney Mark Foley, Solon sent a letter directly to the Chair of the Character Committee inquiring about the delay on his application. For this, he was admonished stating that he was not to communicate directly with the Board since he was represented by counsel.

The clear fact is Solon promptly disclosed his involvement with his father's disbarment through his attorney in January 2017, and then again in May 2017 to the Character Committee.

Defendants' irrational and baseless finding resulting in Solon being denied the right to practice law in Maryland is a violation of Civil Rights Act of 1871, 42 U.S.C. § 1983. As the fitness test stands now, the Board can deny any future applicant the right to practice law in violation of that applicant's civil rights.

**II. Maryland's Character Fitness Test is unconstitutionally vague because it invites arbitrary enforcement by allowing the Board to decide who is admitted and who is not admitted without any legally fixed standard.**

Maryland can violate any bar applicant's civil rights because its Character Fitness Test is unconstitutionally vague. "An unconstitutionally vague law invites arbitrary enforcement in this sense if it leaves triers of fact free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case." *Beckles v. United States*, 137 S. Ct. 887, 894 (2017).

At first blush, Maryland's fitness test could appear to be not arbitrary. Although it has no "litmus test" for moral character or fitness for the practice of law, Maryland has enunciated four factors that *predominately* suggest moral fitness: (1)

financial responsibility, (2) candid truthfulness, (3) lack of criminal activity, and (4) the strictest observance of fiduciary responsibility. *Allan S.*, 282 Md. 683, 691, 387 A.2d 271, 275 (1978). Based on Maryland law, an individual who proves that he is financially responsible, candid and truthful, has not engaged in criminal activity, and has observed the strictest of fiduciary responsibility should be admitted into the Maryland Bar.

But this is not the case. In Solon's case, the Board of Law Examiners showed just how arbitrary its fitness test. When it denied his application, the Board clearly did not use its own standard in testing Solon's character because the facts show that he passed the test and yet was still found to be immoral.

#### **Financially Responsible.**

The undisputed fact is Solon has financed two children through sixteen years of private education and college, he has purchased a home for these children, he has purchased cars for himself and members of his church, and he has consistently maintained a "good" credit report for over 22 years. He has thoroughly proven this first factor and this is not disputed.

#### **Candid and Truthful.**

The undisputed fact is Solon, through the span of eight years, supplemented his application to disclose to the Board *all of his activities giving rise to disclosure*. The character committee member who interviewed him reported to the Board that Solon disclosed "at length" all relevant information to her during the character interview. There is no showing that Solon displayed a proclivity to withhold or lack

candor. He has thoroughly proven this second factor, despite the Board's wan attempts to dispute it.

### **No Criminal Activity.**

Solon is 46 years old (he will be 47 in January 2021). In 46 years, the record is absolutely void of any criminal convictions. He has never been arrested. He has never been convicted of a crime. The only time he has been to prison is when he has gone to minister to inmates on a regular basis. Solon has thoroughly met this factor and this is undisputed.

### **Strict Fiduciary Responsibility.**

As a father, a son, a brother, a coach, a mentor, a community worker, a church member, his engagement with the members of his church and community, Solon's life convincingly proves that he has observed the strictest of fiduciary responsibility. Solon has actively proven a commitment to the well-being of others and has received awards for his fiduciary responsibilities. Solon has thoroughly met this factor and this is undisputed.

Despite the fact that Solon met all the factors outlined in Maryland's rules for determining character fitness, he was still denied admission into the Maryland Bar. This shows that the character committee process is so vague and arbitrary and so chaotic that good, moral candidates can be denied admission while bad, immoral candidates can be granted admission.

A simple social media search into some of the Maryland attorneys who this Board has found to be of "good moral character" reveals that the moral fitness

standard is vague and arbitrary and chaotic. This Board has issued favorable recommendations for applicants who were bigots, cheating spouses, foul-mouthed men and women, drunkards, and liars, and who blatantly care more about their pockets than they do about the members of their own community. *See, e.g., In re Otion Gjini*, No. 32 (May 10, 2016). These are attributes that society deems as immoral.

Meanwhile, this same Board has issued an unfavorable recommendation for Solon who has no record of bigotry, no record of cheating, no record of drug or alcohol use, and no record of excessive greed and selfishness, and has a long-standing record spanning over 20 years of displaying morally what society defines as good, sound moral behavior. The vagueness of the good moral character standard in Maryland's fitness test leaves an applicant clueless as to what is prohibited and what is not. As the process stands, Board members with no clear understanding of morality can subjectively apply the fitness test to intentionally deny an applicant's admission based on any arbitrary definition of candor. Because Board members are not vetted and are not accountable for their actions, the Board has free reign to discriminate against, either intentionally or unintentionally, good, moral applicants who desire admission into the Maryland Bar.

Currently, the Board is under the fallacy that disclosing information equals good moral character and failing, even forgetting to disclose means immoral or poor character. This reasoning opens the door to discriminatory admissions. An applicant can inadvertently, mistakenly, unintentionally, or ignorantly leave off the

fact that he worked for McDonald's for a month during summer vacation and be denied admission, while at the same time, an applicant who is a racist, a self-centered bigot, and a thief who is yet to be caught can disclose all his employment and be admitted to practice law.

This is irrational reasoning resulting in arbitrary and chaotic admissions. Having this arbitrary and chaotic system in place creates a double negative impact on society. First, *morally* sound applicants are being denied admission based on the erroneous idea that they are immoral, thus damaging the applicant and depriving society of good, moral lawyers. Second, *immorally* sound applicants are being admitted based on the same erroneous idea that they are moral, thus exposing society to immoral lawyers, hence the continued negative stigmatism associated with lawyers.

Maryland can correct this arbitrary outcome by making one simple change to its procedures. Because attorneys have a longstanding reputation in the community for being immoral, it only makes sense (1) that the Board responsible for deciphering good moral character consist of members of society who are familiar with good moral character: clergymen, sociologists, judges, and (2) that the Board apply a more objective, clearly defined character test. As of today, the test in Maryland is unconstitutionally vague and arbitrary.

**III. The Board of Law Examiners violated Solon's Due Process rights by denying him an opportunity to be heard on issues it used to find him unfit to practice law.**

It is axiomatic that "a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause."

*Boddie v. Connecticut*, 401 U.S. 371, 379 (1971). So, when Maryland's Board of Law Examiners issued its report and the Court of Appeals issued its opinions based on issues and findings that Solon was *never given an opportunity to address*, his Due Process Clause rights were brutally violated.

The Constitution requires an opportunity be granted at a meaningful time and in a meaningful manner for a hearing appropriate to the nature of the situation. *Id.* at 378. In Solon's situation, he was not afforded an opportunity to be heard on the issue concerning the North American Securities Administrators Association (NASAA), his e-mail address, or the erroneous idea that he did not disclose his involvement with this father's disbarment. In December 2017, the Board received a letter from Ms. Mirko from the General Counsel for NASAA. The Board then, without issuing a hearing for Solon to address the NASAA letter, communicated this information directly to the Court.

The Court of Appeals, without issuing a hearing to Solon to address these issues, published an opinion that is based on information that is simply not true. Had Solon been given the opportunity to be heard on these issues, as in the case with the District of Columbia's character committee and Alabama's character committee, he would have been able to explain the misunderstanding revolving around these concerns. But he never had an opportunity to explain or defend. As a result, the Court of Appeals denied Solon's application and published information that is flatly incorrect, even misquoting the affidavit from Ms. Mirko in the process.

This is an extreme Due Process violation. This Court should rule that by denying Solon an opportunity be heard on issues the Board used to deny him admission, his Due Process rights were violated. This Court should also hold that a provision must be in place in Maryland's character and fitness process for an applicant to be heard *on the specific issues it intends to use to deny the applicant admission*. Anything less is unconstitutional.

**IV. The Board violated Solon's Due Process rights by sitting on his application for nearly four years without reason or explanation.**

This Court has held that any state "permitting a delay without limit is unconstitutional. *Riley v. Nat'l Fed. of the Blind*, 487 U.S. 781, 783 (1988). The Board took nearly three years to make a decision on Solon's application. They took longer to review Solon's application for admission than it took for him to graduate law school. And gave no explanation for taking this long. This is unconstitutional.

As it stands today, the Board is free to delay any applicant admission in perpetuity. The Board is free to place a life on hold without any cause or reason. The Board later explained that Solon's application was held open for him to supplement the record. This was not true. Solon supplemented the record with his credit report 30 days after the request. The Board proceeded to hold his application open for *another 3.5 years*. This is unconstitutional.

Solon asks this Court to rule that the delay was unconstitutional and require Maryland to have a provision, like that of Alabama, which states that if an applicant's application is not decided within a specific amount of time, due to no



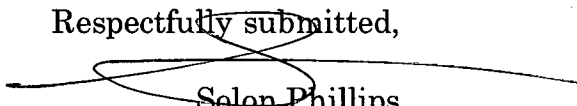
fault of the applicant, the applicant will be admitted. Anything less is unconstitutional.

### CONCLUSION

As it stands today, the character fitness test is, as this Court once aptly defined it, “a vague qualification, which can be easily adapted to fit personal views and predilections.” *Konigsberg*, 353 U.S. 263. The test has never been scrutinized and challenged. This Court now stands in a position to address this “dangerous instrument” and set a standard whereby States will be made to tighten its character fitness test by removing the subjective standards that are currently in place.

Maryland denied an applicant the right to practice law on unconstitutional grounds. This happened because of there is a flaw in Maryland’s law governing the right and/or privilege to practice law in the State. This Court can correct the flaw. Solon petitions this Court to accept this case and decide the merits.

Respectfully submitted,

  
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