

No.

SUPREME COURT OF THE UNITED STATES

MATTHEW FLINDERS, Petitioner

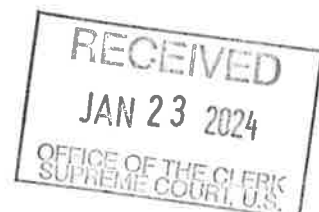
v.

STATE BAR OF CALIFORNIA, Respondent

**On Petition for a Writ of Certiorari
to the Supreme Court of California**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Supreme Court of California (“State Supreme Court”) and their “administrative arm,” the State Bar of California (“State Bar”), effectively eliminate employment opportunities for prospective attorneys based on their ages. Petitioner, an individual of an age in excess of 50, who unsuccessfully participated in two State Bar attorney examinations, sought and received State Bar records reflecting that each of the current Justices of the U.S. Supreme Court would in all likelihood be denied bar admission, as Petitioner was, based on their ages alone.

Despite this Court’s ruling in *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 48 (1994), and this Court’s refusal to reverse *Crowe v. Oregon State Bar*, 989 F.3d 714 (9th Cir. 2021), the Ninth Circuit recently held that the State Bar is entitled to state sovereign immunity under the Eleventh Amendment.¹ Petitioner sought review of his rejected State Bar Applications by directly petitioning the State Supreme Court, which the State Supreme Court summarily denied without a hearing or reasoning, leading to this Petition.

The Questions presented are:

(1) Whether the State Supreme Court and State Bar’s denial of admission based on age violated Petitioner’s rights to due process, equal protection, and his privileges and immunities under the U.S. Constitution; and,

(2) Whether the State Bar is entitled to state sovereign immunity under the Eleventh Amendment of the U.S. Constitution.

¹ *Kohn v. State Bar of Cal.*, Ninth Circ. Case No. 20-17316, 2023 WL 8441781 (9th Cir. Dec. 6, 2023)

LIST OF PROCEEDINGS

Direct Proceedings Below

Matthew Flinders v. State Bar of California, Supreme Court of California, Petition No. S281936 (petition denied on October 25, 2023).

Related Proceedings

Flinders v. State Bar of California, Ninth Circuit Ct. of Appeals, Case No. 22-17014 (held in abeyance on October 3, 2023 pending an *en banc* review in *Kohn v. State Bar of California et al.*, No. 20-17316 (9th Cir. 2023) (*en banc* ruling in *Kohn* filed on December 6, 2023), N.D. of California Case No. 22-cv-04072-VKD (dismissed with prejudice on December 5, 2022).

Flinders v. State Bar of California et al., California Sixth District Court of Appeal Case No. H050562 (dismissed with prejudice December 11, 2023), California Superior Court, County of Santa Clara, Case No. 22CV397095 (dismissed with prejudice on November 2, 2022).

Flinders v. Supreme Court of California et al., California Sixth District Court of Appeal Case No. H050203 (dismissed with prejudice March 17, 2023), California Superior Court, County of Santa Clara, Case No. 21CV391711 (dismissed with prejudice on June 16, 2022).

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No.

SUPREME COURT OF THE UNITED STATES

MATTHEW FLINDERS, Petitioner

v.

STATE BAR OF CALIFORNIA, Respondent

**On Petition for a Writ of Certiorari
to the Supreme Court of California**

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review a Supreme Court of California denial of a direct petition to review and reverse State Bar of California admission decisions.

OPINIONS BELOW

The Supreme Court of California's denial of a direct petition for review of State Bar of California admission decisions is unreported and attached. Appendix ("App.") at 2a.

JURISDICTION

The Supreme Court of California denied Mr. Flinders' petition on October 25, 2023. Mr. Flinders

invokes this Court's jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XI:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

United States Constitution, Amendment XIV:

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.

STATEMENT OF THE CASE

This case surrounds egregious age-based discrimination by the Supreme Court of California and their “administrative arm,” the State Bar of California, in which they utilized the State Bar’s attorney employment/licensing examinations (“Examinations”) to all but eliminate access to employment of prospective attorneys in certain age classes (i.e., those of age 40 and over).

Certain applicants admitted in jurisdictions outside of California are given the option of participating exclusively in the essay portions of the State Bar Examinations, which are graded solely by the State Bar. Other applicants are generally required to participate in both the multi-state multiple-choice exams (graded by the National Conference of Bar Examiners) and Respondent’s essay examinations.

The chances for those of Petitioner’s age category (50 and over) of passing Respondent’s discriminatory employment examinations, by which Respondent makes its own and others’ attorney hiring decisions, were made effectively negligible while the opportunities for applicants of younger ages were and are made overwhelmingly greater. App. 13b.

For example, the chances for a person of Petitioner’s age of passing the examinations in which he participated were forty-eight one-hundredths of

one percent (0.48%) and one and sixty-seven one hundredths of a percent (1.67%), respectively, while the chances for those of ages between 25-29 were sixty-three percent (63%) and thirty-six percent (36%), respectively. *Id.*

Petitioner, admitted to practice in the Commonwealth of Massachusetts and before the U.S. Patent and Trademark Office, moved to the State of California (the “State”) in 2018 to join a law practice in San Jose, after which he sat for two of the State Bar’s attorney qualification examinations, in 2019 and 2020, at the ages of 50 and 51, in which Petitioner effectively had no opportunity to qualify based on his age alone. Petitioner, arbitrarily being denied any realistic opportunity for qualification, has since moved back to Massachusetts.

In response to growing criticism surrounding their exclusionary practices, Respondent later administered a program in 2020 that retroactively applied a lower “cut score” with the requirement that those meeting the new threshold must first work under the supervision of an already-admitted member.² However, the application of the new licensure expansion program only exacerbated and widened the age-based discriminatory impact of the Examinations. App. 17b-19b, 23b-25b.

After failing to achieve a passing score in two of the State Bar’s Examinations, Petitioner sought and received records regarding these Examinations from the State Bar pursuant to a California Public Records

² “Order Concerning Modifications to the California Bar Examination,” Administrative Order 2020-08-10, Supreme Court of California (2020), available at <https://newsroom.courts.ca.gov/sites/default/files/newsroom/document/20200810121225776.pdf> (last accessed February 7, 2023)

Act request. Based on Petitioner's analysis of the records,³ Petitioner learned of the extreme and arbitrary discriminatory practices by the State Bar.

Challenging California's discriminatory rules for admission, Petitioner has previously pursued actions against the State Supreme Court and the State Bar under the Age Discrimination and Employment Act (ADEA), California's employment discrimination laws, and/or California's Government Claims Act statutes in Federal and California courts, which have been dismissed, in significant part, on the bases of purported "exclusive" and "original" court jurisdiction by the State Supreme Court and/or immunity under California or federal laws. See *supra* pg. iii.

Petitioner has also challenged the specific rejections of his applications to the State Bar by directly petitioning the State Supreme Court. App. 1b. The State Supreme Court summarily denied that petition (App. 2a), in response to which Petitioner herein seeks review by this Court pursuant to *Craig v. State Bar*, 141 F.3d 1353, 1354 (1998) and *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 485 (1983).

In relation to holding the State Bar liable for discrimination in federal court, the issue of the State Bar's immunity under the Eleventh Amendment was recently raised in *Kohn v. State Bar of Cal.*, 497 F. Supp. 3d 526 (N.D. Cal. 2020), a case involving disability discrimination, wherein the Ninth Circuit recently decided (*en banc*) that the State Bar was entitled to sovereign immunity. *Kohn v. State Bar of Cal.*, Ninth Circ. Case No. 20-17316, 2023 WL 8441781 (9th Cir. Dec. 6, 2023) ("*en banc* decision in

³ App. 13b-29b

Kohn”). The Ninth Circuit issued this decision despite this Court’s refusal to overturn a recent ruling involving almost identical relevant facts, *Crowe v. Oregon State Bar*, 989 F.3d 714 (9th Cir. 2021), in which the Ninth Circuit denied state sovereign immunity to Oregon’s state bar.

A denial of the petition below by the Supreme Court of California was rendered on October 25, 2023, less than 90 days from the date of submission of this Petition. App. 2a.

REASONS FOR GRANTING THE WRIT

There is no legitimate interest by the State of California or the State Bar in refusing admission to new attorneys based solely on Petitioner’s age category (e.g., 50 and over). Moreover, habitually barring admission to new members in such age groups bears no rational relationship with “protecting the public.” Indeed, this pattern and practice of discrimination by Respondent, which is utilized by the State Supreme Court and every other California attorney employer to employ or deny employment in the practice of law, is entirely arbitrary and capricious, serves merely to protect the pecuniary interests of the State Bar’s current members and, in fact, harms the public.⁴

Subjecting Petitioner and others in his age group to these arbitrary practices thus violated Petitioner’s rights to due process, equal protection, and his

⁴ Egelko, Bob. “Court cases in California have plummeted. Here’s why the state’s chief justice says it’s a very troubling sign.” *San Francisco Chronicle* (Dec 5, 2022), available at <https://www.sfchronicle.com/politics/article/Court-cases-in-California-have-plummeted-17627219.php>

privileges and immunities under the Fifth and Fourteenth Amendments of the U.S. Constitution. Accordingly, a writ and order should be granted in this case reversing this unlawful conduct and barring Respondent from further engaging in such violations.

This Court has jurisdiction to enforce damage remedies against Respondent, including a refund of Petitioner's application fees, punitive damages, and any other remedies that this Court deems just, under 28 U.S.C. § 1257. This Court and other federal courts have such jurisdiction on the alternative/additional basis that the State Bar is not entitled to sovereign immunity under the Eleventh Amendment.

A. Petitioner's Rights to Equal Protection Were Violated

States and their agents are barred from abridging fundamental freedoms based on arbitrarily discriminatory standards that have no rational relationship to a legitimate state interest. *Zobel v. Williams*, 457 U.S. 55 (1982). Such freedoms include equal opportunities to a public education, public accommodation, and employment, for example. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954); *Browder v. Gayle*, 352 U.S. 903 (1956); *Lynn v. Regents of the University of Calif*, 656 F.2d 1337 (9th Cir. 1981).⁵ Demonstrating discriminatory treatment need not require evidence of intent, but may be based on a disparate impact, as has been clearly demonstrated in this case. *Lynn* 656 F.2d at 1340;

⁵ Pursuant to *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44 (1996), a viable claim by a private individual against a state in lower federal court, absent consent, represents a violation of the Fourteenth Amendment.

Lewis v. City of Chicago, 130 S. Ct. 2191, 2194 (2010);
Griggs v. Duke Power Co., 401 U.S. 424 (1971).

Here, the State Supreme Court and the State Bar all but eliminate attorney employment opportunities in California to Petitioner and others based on their ages, including to every member of this Court. Respondent may argue that their interest is in “protecting the public” from incompetent attorneys. However, there is simply no rational basis for barring members of this Court or anyone else from practicing law in California simply based on the implicated age groups.

Indeed, attorneys with greater experience, particularly those of this country’s highest court, are generally and significantly more competent than individuals who have just finished law school, to whom Respondent grants certification for admission at overwhelmingly greater rates. Moreover, the state and Respondent do not require retesting of current State Bar members upon reaching Petitioner’s age group that they otherwise discriminate against.

Such outright and extreme discrimination has been found to fail rational basis review, even where it is argued that the purpose or “interest” of the discrimination is purportedly to “protect the public.” *Romer v. Evans*, 517 U.S. 620, 635 (1996). Respondent has never articulated any basis, much less a rational basis or legitimate interest, for their extreme discriminatory conduct, because there is none.

Respondent’s refusals of certification based arbitrarily on Petitioner’s age thus violates his rights to equal protection under the Fourteenth Amendment of the U.S. Constitution. Accordingly, Petitioner respectfully requests grant of a writ.

B. Petitioner's Rights to Due Process Were Violated

1. Violations of Fundamental Rights

The State Supreme Court and Respondent's discriminatory actions violate Petitioner's fundamental rights to economic freedom to pursue employment and contractual relations with others, in violation of the Fourteenth Amendment. Freedom to engage in such economic activity has been determined by this Court to be a fundamental right. *Allgeyer v. Louisiana*, 165 U.S. 578 (1897).

Governmental entities may, of course, place some limits on economic activity, including around the practice of law. However, when such restrictions cross into arbitrary conduct that isn't rationally related to any legitimate state interest, as is the case here, this conduct is violative of the U.S. Constitution.

As in *Allgeyer*, which pertained to a state requirement that out-of-state-insurers work through a local agent, the State of California effectively and arbitrarily requires that those seeking legal representation in California by older, experienced attorneys, arbitrarily have no choice but to hire California attorneys admitted in the jurisdiction decades earlier.

Thus, Respondent's arbitrary restrictions on behalf of the state for those of certain ages wishing to enter the practice of law violate Petitioner's fundamental economic rights under the Fourteenth Amendment.

2. Violations of Procedural Due Process

When denying life, liberty, or property to individuals, such as in this case, the procedures required by government actors may vary depending on the seriousness of the deprivations. *Hagar v. Reclamation Dist.*, 111 U.S. 701, 708 (1884). The procedures must be “appropriate to the case and just to the parties affected.” *Id.* “When protected interests are implicated, the right to some kind of prior hearing is paramount.” *Bd. of Regents v. Roth*, 408 U.S. 564, 569–71 (1972).

The right to employment and to earn a living in one’s chosen vocation is one of the most important and fundamental economic freedoms our country affords. Here, when Respondent deprived Petitioner of his fundamental economic freedoms, Petitioner was not granted any “hearing” or otherwise afforded any substantive review,⁶ reasoning, or rationale for their arbitrary and discriminatory deprivations, much less any rational reasons relating to a legitimate governmental interest, even after Petitioner directly petitioned the Supreme Court of California. Petitioner’s rights to due process under the U.S. Constitution were thereby violated.

⁶ Respondent may invoke California Rules of Court § 9.13 (“Review of State Bar Court Decisions”) as purportedly placing time and other constraints on petitions challenging their admission decisions. However, the State Bar’s Committee of Bar Examiners, which issued the rejections Petitioner is challenging, is neither the “State Bar Court,” appointed by it, nor appointed by or comprised of any other entity identified in § 9.13. <https://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/Committee-of-Bar-Examiners>

C. Petitioner's Privileges and Immunities Were Violated

The Privileges and Immunities Clause of the Fourteenth Amendment prohibits, among other things, "a state from discriminating against citizens of other states in favor of its own." *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 511 (1939). Petitioner, an attorney from Massachusetts since 2006, has effectively been barred from California law practice based on his age, while licensed attorneys in the State of California who have reached Petitioner's age are clearly not prohibited from practice or even ever required to be retested. Respondent's state-and-age based discrimination thus violated Petitioner's immunities and privileges under the Constitution.

Privileges and Immunities also secure an individual's right to travel between states while being treated equally with respect to a state's already established residents. *Saenz v. Roe*, 526 U.S. 489, 501–02 (1999). Because Petitioner is arbitrarily and irrationally denied an opportunity to reside in California to pursue his chosen vocation, Petitioner's privileges and immunities under the U.S. Constitution were violated by Respondents.

D. Respondent State Bar is not entitled to Sovereign Immunity under the Eleventh Amendment

Instead of following this Court's precedent of *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 48 (1994), where a state's liability for an entity's debt was unequivocally ruled as the most "salient factor" in determining entitlement to sovereign immunity, the

Ninth Circuit's *en banc* decision in *Kohn* erroneously ignored this Court's majority opinion and abandoned decades of its own precedent (e.g., including *Mitchell v. L.A. Cmty. Coll. Dist.*, 861 F.2d 198, 201 (9th Cir.1988)).

The Ninth Circuit ruled that the State Bar was entitled to sovereign immunity despite the fact that the State of California is not liable for the State Bar's debts,⁷ and despite the fact that the State Bar merely serves in an "advisory role" to the State Supreme Court. *Keller v. State Bar of California*, 496 U.S. 1, 2 (1990). See also dissenting opinion, Ninth Circuit *en banc* decision in *Kohn*, at 56. Petitioner urges this Court to reverse the Ninth Circuit's *en banc* decision in *Kohn* and be guided by that decision's dissent, which follows *Hess* instead of improperly disregarding it.

The lack of state liability for an entity's debts and the ability to independently sue that entity, apart from the state, fails the tests of the Eleventh Amendment's "twin reasons for being," the solvency and dignity of the state. *Hess* at 47, 52. Along with merely serving in an advisory role to the State Supreme Court and being liable for its own debts, the State Bar raises its own funds, can sue and be sued independently of the state, can purchase and sell property independently of the state,⁸ and is exempt from all the "modes of [governmental] procedures" that almost every other state governmental agency is.

⁷ California Business and Professions Code (BPC) § 6008.1 (a).

⁸ "State Bar of California Sells 180 Howard Building in San Francisco," <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-of-california-sells-180-howard-building-in-san-francisco>

California Business and Professions Code (BPC) § 6001.

The state of California, with manifest intent, organized the State Bar as a largely independent public entity, just as many local public municipalities or corporations are organized in California, and immunized itself from the State Bar's liabilities.

Like the State Bar, many entities provide important services for the state including collecting and enforcing tolls on California's highways and bridges,⁹ providing gas and electricity to California's residents,¹⁰ and providing public transportation across the state.¹¹ Serving these state functions does not transform such entities into "arms of the state" under the Eleventh Amendment, and neither does administering the State Bar's examinations. The State Bar is little more entitled to state sovereign immunity than the National Conference of Bar Examiners, which proffers and grades the multiple-choice portions of the attorney qualification examinations for California.¹²

Even though commissioners of the Port Authority at issue in *Hess* could be appointed or removed by the state, the state could direct which projects the Port

⁹ Fastrak®, "California's electronic tolling system."
<http://fastrak.org/>

¹⁰ Pacific Gas and Electric Company Corporation.
<https://www.pge.com>

¹¹ Caltrain, "a California commuter rail line."
<https://www.caltrain.com/>

¹² "Scope of the California Bar Examination," State Bar of California, available at
<https://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/California-Bar-Examination-Scope> (last accessed on December 30, 2023).

Authority undertook, and the state could disband and reorganize the Port Authority, these facts did not transform that entity into an “arm of the state.” *Hess* at 47-48. It does not so transform the State Bar either. All of the germane indicia for assessing the State Bar’s entitlement to sovereign immunity points to a lack of sovereign immunity for the State Bar. Accordingly, for these additional/alternative reasons, this Court and other federal courts have jurisdiction to award damages arising from the State Bar’s violations of Petitioner’s Constitutional rights and other federal laws.

CONCLUSION

For the foregoing reasons, Mr. Flinders respectfully requests that this Court issue a writ of certiorari to review the judgement of the Supreme Court of California.

Date: January 17, 2024

Respectfully Submitted,

s/Matthew Flinders

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APPENDIX A

THE SUPREME COURT OF CALIFORNIA

No. S281936

MATTHEW FLINDERS, Petitioner,

v.

STATE BAR OF CALIFORNIA, Respondent.

October 25, 2023

**Petition Decision for Review of State Bar of
California Admission Decisions**

Supreme Court
FILED
October 25 2023
Jorge Navarrete Clerk

Deputy

S281936

IN THE SUPREME COURT OF CALIFORNIA

En Banc

Matthew Flinders, Petitioner,

v.

STATE BAR OF CALIFORNIA, Respondent.

The petition for writ of mandate is denied.

GUERRERO

Chief Justice

(2a)

APPENDIX B
IN THE SUPREME COURT OF CALIFORNIA

No. S281936

MATTHEW FLINDERS, Petitioner,
v.
STATE BAR OF CALIFORNIA, Respondent.

September 21, 2023

**Petition for Review of State Bar of California
Admission Decisions**

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

In Re Matthew Flinders.
Petitioner.

Supreme Court of
California Petition
No.

Petition under BPC § 6066 for Review of a State Bar
of California Admission Decision

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Petitioner

Petition under Business and Professions

Code § 6066

This Court has been previously notified of Petitioner's objections to the scoring rules and methods pertaining to State Bar of California's licensing examinations ("Examinations") that disparately denied licensure to older applicants.¹³

Petitioner, a licensed out-of-state attorney, participated in the Attorney (essay-only) State Bar Examinations of July 2019 and February 2020.¹⁴ Petitioner has met all of the qualifications for licensure and employment in the practice of law in California other than being assigned a passing score in these Examinations. Based on records Petitioner received from the State Bar, the Examinations overwhelmingly and progressively favored applicants of younger ages than Petitioner and did not demonstrate compliance with the purported scaling of essay examination scores with multiple-choice scores of the Examinations,¹⁵ indicating an erroneous manner of scoring Petitioner's Examinations and those of other applicants. Exhibits B and C.

Pursuant to the California Business and Professions Code § 6066, Petitioner hereby requests a reversal of the State Bar's decision to deny Petitioner

¹³ *Flinders v. Supreme Court of California et al.*, Superior Court of California, Santa Clara, Case No. 21CV391711.

¹⁴ Exhibit A

¹⁵ see, e.g.,

<http://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/Scaling>

certification for licensure and a refund of the Examination fees of \$1,386.00 and \$1,215.00. This Petition does not constitute a claim or allegation that the state's attorney admission rules violate employment discrimination laws under California or federal law, an issue being pursued in a case against the State Bar of California in federal courts.¹⁶

Dated: June 2, 2023

Respectfully Submitted,

By:

Matthew Flinders, Petitioner

¹⁶ *Flinders v. State Bar of California*, U.S. Dist. Ct. N.D. Cal., Case No. 22-cv-04072-VKD; Ninth Circuit Ct. of Appeals, Case No. 22-17014.

EXHIBIT A

**(Statements from State Bar on Petitioner's
Admission Status)**

The State Bar
of California

Office of Admissions

Dear Matthew Flinders,

The Committee of Bar Examiners regrets to inform you that you were unsuccessful on the July 2019 California Bar Examination. Your answers were all read once, and your total scaled score was below 1390.

Below are the assigned grades, the operant grades, the raw and scaled totals on the written portion and the total scaled score you received on the examination. The operant grade, which is used to calculate scaled written scores, is one of the following: the first read grade, if your answers were read only once; the average of the first and second read grades; or, the resolution grade, if there was a discrepancy greater than 10 raw points between the first and second read assigned grades. The resolution grade replaces the average of the first and second read grades. Although assigned independently, the resolution grade may happen to be the same as the average of the first and second read assigned grades. The raw written score is the sum of your operant grades, after the PT grade has been doubled.

For the General Bar Examination, the total scaled score is the sum of the scaled written score multiplied by .50 and the scaled MBE score multiplied by .50. For the Attorneys' Examination, the total scaled score is equal to the scaled written score.

Written	1st Read	2nd Read	Operant Grade
Essay 1:	55		
Essay 2:	60		
Essay 3	55		
Essay 4:	55		
Essay 5	60		
Essay 6:	55		

Raw Written: 395.0000

Scaled Written: 1293.0045

TOTAL SCALED SCORE: 1293.0045

For further information, see the Exam Results
information page on the State Bar website under
[Information for Unsuccessful Applicants.](#)

The Committee of Bar Examiners

The State Bar
of California

Office of Admissions

Dear Matthew Flinders,

The Committee of Bar Examiners regrets to inform you that you were unsuccessful on the February 2020 California Bar Examination. Your answers were all read once, and your total scaled score was below 1390.

Below are the assigned grades, the operant grades, the raw and scaled totals on the written portion and the total scaled score you received on the examination. The operant grade, which is used to calculate scaled written scores, is one of the following: the first read grade, if your answers were read only once; the average of the first and second read grades; or, the resolution grade, if there was a discrepancy greater than 10 raw points between the first and second read assigned grades. The resolution grade replaces the average of the first and second read grades. Although assigned independently, the resolution grade may happen to be the same as the average of the first and second read assigned grades. The raw written score is the sum of your operant grades, after the PT grade has been doubled.

For the General Bar Examination, the total scaled score is the sum of the scaled written score multiplied by .50 and the scaled MBE score multiplied by .50. For the Attorneys' Examination, the total scaled score is equal to the scaled written score.

Written	1st Read	2nd Read	Operant Grade
Essay 1:	60		
Essay 2:	55		
Essay 3	50		
Essay 4:	60		
Essay 5	60		
Essay 6:	50		

Raw Written: 385.0000

Scaled Written: 1195.2116

TOTAL SCALED SCORE: 1195.2116

For further information, see the Exam Results
information page on the State Bar website under
Information for Unsuccessful Applicants.

The Committee of Bar Examiners

Admission Status

Following are the requirements for admission to practice law in California and your status toward fulfilling those requirements.

Please note: The information below is current as of today. Any recent changes in your status will be reflected when the next update is received.

File Number: 491874

Name: Matthew Flinders

Address: 1267 Lakeside Dr. Apt. 3077
SUNNVALE, CA 94085 US

REGISTRATION

Admission Requirement: Register with the Office of Admissions

Applicant Status: Approved

NCBE#: N10483861

FIRST YEAR LAW STUDENTS' EXAMINATION

Admission Requirement: Pass the First-Year Law Students' Examination or establish exemption

Applicant Status: Requirement Satisfied

CALIFORNIA BAR EXAMINATION

Admission Requirement: Pass the California Bar Examination

Applicant Status: Requirement not satisfied

Last Exam Applied for. February 2020

Eligibility Status: Eligible

Assigned Test Center: Oakland Convention Center

PROVISIONAL LICENSURE EXPANSION PROGRAM ELIGIBILITY

Admission Requirement: Have 1390 score in past Examination from July 2015 to February 2020 on file.

Applicant status: Not Eligible

MORAL CHARACTER

Admission Requirement: Have an active positive moral character determination on file

Applicant Status: Requirement satisfied

Application Status: Moral Character
Application cleared, November 16, 2020

Expiration Date: November 15, 2023

MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

Admission Requirement: Have a passing MPRE
score on file

Applicant Status: Requirement satisfied

COMPLIANCE WITH COURT OBLIGATIONS

Admission Requirement: Be in compliance with all
court ordered child/family support obligations

Applicant status: Requirement satisfied

ADMINISTRATIVE ISSUES

Admission Requirement: All administrative issues
must be cleared

Applicant status: No administrative issues
at this time

QUALIFIED TO BE ADMITTED TO PRACTICE LAW

Admission Requirement: Name must be on motion to
the Supreme Court of California and applicant must
be sworn in as an attorney within five years of the last
day of the California Bar Examination passed

Applicant Status: Not on motion
See above for requirement(s)

(12b)

EXHIBIT B

PETITIONER'S ANALYSIS OF STATE BAR OF CALIFORNIA EXAM RESULTS

***Pass rates based on records of July 7, 2020,
provided by State Bar**

****Essay pass determinations based separately on the
(original) 1440 and (retroactive) 1390 cut scores
applied under the State Bar's Provisional Licensure
Expansion Program of 2020**

**B1 - PETITIONER'S ANALYSIS OF FEBRUARY
2020 EXAM RESULTS***

(Approx. Ages
64+)

Overall Pass Rate
Birth Year > 1955

****Essay Pass
Rate**

Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
2	73	2.74%	0	13	0.00%

(Approx. Ages 59 to 64)

Overall Pass Rate
Birth Year - 1956
through 1960

Essay Pass Rate

Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
8	109	7.34%	0	101	0.00%

(Approx. Ages 54 to 59)

Overall Pass Rate
Birth Year - 1961 to
1965

Essay Pass Rate

Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
19	158	12.03%	1	140	0.71%

(Approx. Ages 49 to 54)

Overall Pass Rate

Birth Year - 1966 to
1970

Essay Pass Rate

Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
25	205	12.20%	3	180	1.67%

(Approx. Ages 44 to 49)

Overall Pass Rate

Birth Year - 1971 to
1975

Essay Pass Rate

Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
40	289	13.84%	22	271	8.12%

(Approx. Ages 39 to 44)

Overall Pass Rate

Birth Year - 1976 to
1980

Essay Pass Rate

Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
68	422	16.11%	58	413	14.04%

(Approx. Ages 34 to 39)

Overall Pass Rate

Birth Year - 1981 to
1985

Essay Pass Rate

Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
208	742	28.03%	170	742	22.91%

(Approx. Ages 29 to 34)

Overall Pass Rate

Birth Year - 1986 to
1990

Essay Pass Rate

Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
456	1374	33.19%	407	1374	29.62%

(Approx. Ages 24 to 29)

Overall Pass Rate

Birth Year - 1991 to
1996

Essay Pass Rate

Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
457	1207	37.86%	436	1197	36.42%

**FEBRUARY 2020 PROVISIONAL LICENSURE
EXAM RESULTS ANALYSIS**

(Approx.
Ages 64+)

Overall Pass Rate Birth Essay Pass
Year > 1955 Rate

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
2	73	2.74%	13	0	0.00%

(Approx. Ages 59 to 64)

Overall Pass Rate Birth Essay Pass
Year - 1956 through Rate
1960

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
8	109	7.34%	101	1	0.99%

(Approx. Ages 54 to 59)

Overall Pass Rate Birth Essay Pass
Year - 1961 to 1965 Rate

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
19	158	12.03%	140	8	5.71%

(Approx. Ages 49 to 54)

Overall Pass Rate Birth Essay Pass
Year - 1966 to 1970 Rates

Pass	Count	%Pass	%Pass (1440)	Pass (1390)	%Pass (1390)
25	205	12.20%	1.67%	11	6.11%

(Approx. Ages 44 to 49)

Overall Pass Rate Birth **Essay Pass**
Year - 1971 to 1975 **Rate**

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
40	289	13.84%	271	40	14.76%

(Approx. Ages 39 to 44)

Overall Pass Rate Birth **Essay Pass**
Year - 1976 to 1980 **Rate**

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
68	422	16.11%	413	92	22.28%

(Approx. Ages 34 to 39)

Overall Pass Rate Birth **Essay Pass**
Year - 1981 to 1985 **Rate**

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
208	742	28.03%	742	244	32.88%

(Approx. Ages 29 to 34)

Overall Pass Rate Birth **Essay Pass**
Year - 1986 to 1990 **Rate**

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
456	1374	33.19%	1374	562	40.90%

(Approx. Ages 24 to 29)

Overall Pass Rate Birth Essay Pass
Year - 1991 to 1996 Rate

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
457	1207	37.86%	1197	595	49.71%

**B2 - PETTTONER'S ANALYSIS OF JULY 2019
EXAM RESULTS***

(Approx.
Ages 64+)

Overall Pass Rate Birth Year > 1955			Essay Pass Rate		
Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
6	86	6.98%	0	25	0.00%

(Approx. Ages 59 to 64)

Overall Pass Rate Birth Year - 1956 through 1960			Essay Pass Rate		
Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
6	99	6.06%	0	93	0.00%

(Approx. Ages 54 to 59)

Overall Pass Rate Birth Year - 1961 to 1965			Essay Pass Rate		
Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
21	165	12.73%	1	144	0.69%

(Approx. Ages 49 to 54)

Overall Pass Rate

**Birth Year - 1966 to
1970**

**Essay Pass
Rate**

Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
32	239	13.39%	1	207	0.48%

(Approx. Ages 44 to 49)

Overall Pass Rate

**Birth Year - 1971 to
1975**

**Essay Pass
Rate**

Pass	Count	%Pass	Pass (1440)	Count	%Pass
92	365	25.21%	75	365	20.55%

(Approx. Ages 39 to 44)

Overall Pass Rate

**Birth Year - 1976 to
1980**

**Essay Pass
Rate**

Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
161	542	29.70%	126	542	23.25%

(Approx. Ages 34 to 39)

Overall Pass Rate

**Birth Year - 1981 to
1985**

**Essay Pass
Rate**

Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
401	1047	38.30%	365	1047	34.86%

(Approx. Ages 29 to 34)

Overall Pass Rate

**Birth Year - 1986 to
1990**

**Essay Pass
Rate**

Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
1177	2312	50.91%	1099	2312	47.53%

(Approx. Ages 24 to 29)

Overall Pass Rate

**Birth Year - 1991 to
1996**

**Essay Pass
Rate**

Pass	Count	%Pass	Pass (1440)	Count	%Pass (1440)
2202	3296	66.81%	2081	3296	63.14%

**JULY 2019 PROVISIONAL LICENSURE EXAM
RESULTS ANALYSIS**

**(Approx.
Ages 64+)**

**Overall Pass Rate Birth
Year > 1955**

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
6	86	6.98%	25	2	8.00%

(Approx. Ages 59 to 64)

**Overall Pass Rate Birth
Year - 1956 through
1960**

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
6	99	6.06%	93	0	0.00%

(Approx. Ages 54 to 59)

**Overall Pass Rate Birth
Year - 1961 to 1965**

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
21	165	12.73%	144	7	4.86%

(Approx. Ages 54 to 59)

**Overall Pass Rate Birth
Year - 1966 to 1970**

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
32	239	13.39%	207	10	4.83%

(Approx. Ages 44 to 49)

Overall Pass Rate Birth
Year - 1971 to 1975

Essay Pass
Rate

Pass	Count	%Pass (1390)	Count	Pass (1390)	%Pass (1390)
92	365	25.21%	365	114	31.23%

(Approx. Ages 39 to 44)

Overall Pass Rate Birth
Year - 1976 to 1980

Essay Pass
Rate

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
161	542	29.70%	542	185	34.13%

(Approx. Ages 34 to 39)

Overall Pass Rate Birth
Year - 1981 to 1985

Essay Pass
Rate

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
401	1047	38.30%	1047	478	45.65%

(Approx. Ages 29 to 34)

Overall Pass Rate Birth
Year - 1986 to 1990

Essay Pass
Rate

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
1177	2312	50.91%	2312	1385	59.90%

(Approx. Ages 24 to 29)

Overall Pass Rate Birth Essay Pass
Year - 1991 to 1996 Rate

Pass	Count	%Pass	Count	Pass (1390)	%Pass (1390)
2202	3296	66.81%	3296	2462	74.70%

FIRST PAGE OF STATE BAR RAW RECORDS OF
JULY 7, 2020
(page 1 of 375)

Year of Birth	Exam	Essay scaled total	Essay #1	#2	#3	#4	#5	Perfo rman ce Test Raw	Pass / F
1932	July 2019	■	■	■	■	■	■	■	F
1932	February 2020	■	■	■	■	■	■	■	F
1933	July 2019	■	■	■	■	■	■	■	F
1933	February 2020	■	■	■	■	■	■	■	F
1933	February 2020	■	■	■	■	■	■	■	F
1936	July 2019	■	■	■	■	■	■	■	F
1936	February 2020	■	■	■	■	■	■	■	F
1940	July 2019	■	■	■	■	■	■	■	F

■ - Record Redacted by State Bar

1940	July	■	■	■	■	■	■	■	P
	2019								
1940	February	■	■	■	■	■	■	■	F
	2020								
1941	July	■	■	■	■	■	■	■	F
	2019								
1941	July	■	■	■	■	■	■	■	F
	2019								
1942	July	■	■	■	■	■	■	■	F
	2019								
1942	February	■	■	■	■	■	■	■	F
	2020								
1942	February	■	■	■	■	■	■	■	F
	2020								
1943	February	■	■	■	■	■	■	■	F
	2020								
1943	February	■	■	■	■	■	■	■	F
	2020								
1944	July	■	■	■	■	■	■	■	F
	2019								

■ - Record Redacted by State Bar

1944	July	■	■	■	■	■	■	■	F
	2019								
1944	February	■	■	■	■	■	■	■	F
	2020								
1945	July	■	■	■	■	■	■	■	F
	2019								
1945	July	■	■	■	■	■	■	■	F
	2019								
1945	July	■	■	■	■	■	■	■	F
	2019								
1945	February	■	■	■	■	■	■	■	F
	2020								
1946	July	■	■	■	■	■	■	■	F
	2019								
1946	July	■	■	■	■	■	■	■	F
	2019								
1946	July	■	■	■	■	■	■	■	F
	2019								
1946	February	■	■	■	■	■	■	■	F
	2020								
1946	February	■	■	■	■	■	■	■	F
	2020								

■ - Record Redacted by State Bar

1946	February	■	■	■	■	■	■	■	F
	2020								
1946	February	■	■	■	■	■	■	■	F
	2020								
1946	February	■	■	■	■	■	■	■	F
	2020								

■ - Record Redacted by State Bar

CERTIFICATE OF WORD COUNT

No. TBD

Matthew Flinders,

Petitioner,

v.

State Bar of California,

Respondent.

STATE OF MASSACHUSETTS)
COUNTY OF NORFOLK) SS.:

Being duly sworn, I depose and say:

1. That I am over the age of 18 years and am not a party to this action. I am an employee of the Supreme Court Press, the preparer of the document, with mailing address at 1089 Commonwealth Avenue, Suite 283, Boston, MA 02215.

2. That, as required by Supreme Court Rule 33.1(h), I certify that the MATTHEW FLINDERS PETITION FOR WRIT OF CERTIORARI contains 2771 words, including the parts of the brief that are required or exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.



Lucas DeDeus

January 17, 2024

CERTIFICATE OF SERVICE

No. TBD

Matthew Flinders,

Petitioner,

v.

State Bar of California,

Respondent.

STATE OF MASSACHUSETTS)
COUNTY OF NORFOLK) SS.:

Being duly sworn, I depose and say under penalty of perjury:

1. That I am over the age of 18 years and am not a party to this action. I am an employee of the Supreme Court Press, the preparer of the document, with mailing address at 1089 Commonwealth Avenue, Suite 283, Boston, MA 02215.

2. On the undersigned date, I served the parties in the above captioned matter with the MATTHEW FLINDERS PETITION FOR WRIT OF CERTIORARI, by both email and by mailing three (3) true and correct copies of the same by Fedex 2-Day, prepaid for delivery to the following address which the filing party avers covers all parties required to be served.

Jean Krasilnikoff
Office of General Counsel
The State Bar of California
180 Howard St.
San Francisco, CA 94105
(415) 538-2444
jean.krasilnikoff@calbar.ca.gov
Counsel for Respondent

As a courtesy, we have e-mailed a PDF of the petition to the following email addresses:
caroline.holmes@calbar.ca.gov;


Lucas DeDeus

January 17, 2024