IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

BISHOY G. FAM, ESQ,		
	)	
Petitioner,	)	
	)	
v.	)	
	)	
TENNESSEE BOARD OF LAW EXAMINERS,	)	**No. M2025-00705-SC-BAR-BLE**
	)	
	)	
Respondent.	)	
	)	

AMICI CURIAE BRIEF OF GOLDWATER INSTITUTE AND BEACON CENTER OF TENNESSEE IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST

Established in 1988, the Goldwater Institute (GI)[1] is a nonpartisan public policy and research foundation dedicated to advancing the principles of limited government, economic freedom, and individual liberty. GI advances these principles through litigation, research papers, editorials, policy briefings, and forums. Through its Scharf-Norton Center for Constitutional Litigation, GI litigates and occasionally files *amicus* briefs when its objectives are directly affected.

One of GI's main objectives is ensuring constitutional protection for the right to earn a living. GI engages in policy research and analysis about professional or occupational licensing. GI has appeared in federal and state courts across the country in defense of the right to earn a living, *see, e.g.*, *Ladd v. Real Estate Comm'n*, 230 A.3d 1096 (Pa. 2020); *Women's Surgical Center v. Berry*, 806 S.E.2d 606 (Ga. 2017); *Vong v. Aune*, 328 P.3d 1057 (Ariz. Ct. App. 2014). Goldwater Institute scholars have also published extensive research on the right to earn a living. *See, e.g.*, Timothy Sandefur, *The Right to Earn a Living* (2010); Jon Riches, *Restoring the Right to Earn a Living*, Pelican Institute (Mar. 14, 2018).

Additionally, GI was the principal author of the Right to Earn a Living Act in Arizona, which was the basis of Tennessee's Right to Earn a Living Act, which was proposed in 2016 and adopted in 2017. Both reinforce the economic liberty protections of the Fourteenth Amendment to the U.S. Constitution *and* the protections for economic liberty contained in state constitutions, including Tennessee's Constitution. GI continues to provide research and analysis of such laws across the country as well as litigating to ensure these laws are not violated.

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[1] GI and Beacon are nonprofit organizations under Section 501(c)(3) of the Internal Revenue Code. They have no parent corporation. They have issued no stock. They certify that they have no parents, trust, subsidiaries, and/or affiliates that have issued shares or debt securities to the public.

GI has filed amicus briefs in this Court in similar cases twice before. First in *Gluzman v. Tennessee Board of Law Examiners* (No. 16-P-04), and again in *Panasci v. Tennessee Board of Law Examiners*, No M2022-00609-SC-WR-CV (Sep. 16, 2022). In both cases, the Court granted the relief sought—relief GI supported. Mr. Gluzman was permitted to sit for the bar and Ms. Panasci was admitted to the practice of law.

The Beacon Center of Tennessee is a nonprofit public interest organization that strives to protect individual rights and eliminate government barriers to opportunity. To this end, Beacon represents Tennesseans and other Americans free-of-charge in public interest litigation. Beacon has filed several cases in defense of the right to earn a living. *See, e.g.*, *Colman v. Bd. of Veterinary Medical Exam'rs*, MG-24-26 (Tenn. Ch. filed Nov. 13, 2024); *Chivanada v. City of Mt. Juliet*, 3:23-CV-1219 (M.D. Tenn. filed Nov. 17, 2023); *McLemore v. Gumucio*, 24-5794 (6th Cir. Opening Br. filed Oct. 8, 2024).

Amici believe they bring a useful viewpoint for this Court's consideration. In accordance with Tenn. R. App. P. 31(a), 31(b), and Tenn. Sup. Ct. R. 46, this amicus brief has been conditionally filed electronically with the Court clerk in conjunction with the instant motion for leave to file.

SUMMARY OF THE ARGUMENT

The Tennessee Constitution protects the right of individuals to earn a living. The Tennessee General Assembly recently adopted the Right to Earn a Living Act, Tenn. Code Ann. § 4-5-501, to reaffirm that constitutional right. Yet the Board of Law Examiners (Board) ignored both the Constitution and the Right to Earn a Living Act in denying Bishoy Fam the ability to practice law in Tennessee.

It is undisputed that Mr. Fam is admitted to practice law in Texas; that he has an undergraduate degree from Middle Tennessee State University and a degree in law from Edinburgh Law School in Scottland, as well as an L.L.M. from Southern

Methodist University in Texas. It is also undisputed that he has achieved a score on the Uniform Bar Exam (UBE) that qualifies him for admission in both Texas and Tennessee, that he has no public character issues, has passed the Texas Board of Law Examiner's character and fitness investigation, and is an attorney in good standing in Texas.

Unfortunately, the Board denied Mr. Fam's application for admission to the Bar of Tennessee by transferred UBE Score pursuant to Tenn. Sup. Ct. R. 7 § 305 because the Board determined that he did not meet the educational requirements for admission in Tennessee. The Board concluded that his law degree from Edinburgh Law School was the equivalent to a U.S. Bachelor's Degree in legal studies and that his two "undergraduate" degrees were not substantially equivalent to a U.S. Bachelor's degree and a U.S. Juris Doctorate degree. The Board did something similar in 2017, when it denied Maximiliano Gluzman's request to sit for the bar examination because his foreign education was not "substantially equivalent." *Gluzman v. Tenn. Bd. of Law Exam'rs*, No. M2016-02462-SC-BAR-BLE (Aug. 4, 2017). It is also similar to *Panasci v. Tennessee Board of Law Examiners*, No. M2022-00609-SC-WR-CV (Sep. 16, 2022). This Court overruled the Board's decisions in both cases, and it should do so again here. To prevent a repeat of these unjustifiable denials, the Court should also make two points clear.

First, Article I, section 8, of the Tennessee Constitution protects the right to earn a living against unreasonable government interference. That section states "[t]hat no man shall be … deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land." This language (the Law of the Land Clause), dates back to Magna Carta, which included a Law of the Land Clause long understood to protect the right to earn a living free from unreasonable or arbitrary restrictions. *See* Timothy Sandefur, *State "Competitor's Veto" Laws and the Right*

to Earn a Living: Some Paths to Federal Reform, 38 Harv. J.L. & Pub. Pol'y. 1009, 1012 (2014).

That is not just curiosity of legal history. This Court has long understood Tennessee's Law of the Land Clause as protecting an individual's right to earn a living. For example, in *Campbell v. McIntyre*, 52 S.W.2d 162, 164 (Tenn. 1932), and *Wright v. Wiles*, 117 S.W.2d 736, 738–39 (Tenn. 1938), this Court struck down licensing regulations that impermissibly burdened the right to earn a living. It even applauded the Oklahoma Supreme Court's explanation that the right to earn a living is a *fundamental* right. *See Livesay v. Tenn. Bd. of Exam'rs in Watchmaking*, 322 S.W.2d 209, 213 (Tenn. 1959) (citing *State ex rel. Whetsel v. Wood*, 248 P.2d 612 (Okla. 1952)). These decisions were correct. The right to earn a living cannot be anything but a fundamental right, and it does not disappear just because an individual enters a highly regulated profession, such as the legal field.

Second, Tennessee's Right to Earn a Living Act reaffirms that the right to earn a living is *fundamental*. *See* Pub. Ch. No. 1053 (2016). That Act declares that the public policy of Tennessee is that the right to earn a living should not be infringed unless doing so is necessary to protect the public health, safety, and welfare. The Act provides a useful framework not just for determining whether a law or regulation violates the right, but also for making individualized determinations about an individual's eligibility to work in a certain field.

There is no question that ensuring a person has an adequate education before becoming a lawyer is an important consideration for the general welfare. *See Schware v. Bd. of Bar Exam'rs*, 353 U.S. 232, 238–39 (1957) (explaining that while a "state can require high standards of qualification, such as … proficiency in its law" the requirements still "must have a rational connection with the applicant's fitness or capacity to practice law."). But there is always a risk that government can impose unreasonable or discriminatory barriers against legitimate economic activity in the

guise of public safety regulation. *See, e.g.*, *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002). Indeed, in *Sup. Ct. of N.H. v. Piper*, 470 U.S. 274, 284–87 (1985), the U.S. Supreme Court declared it unconstitutional for New Hampshire to block non-residents from practicing law in the state, where there was no reason to believe the person was unqualified and where the state was really only engaged in protectionist regulation to prevent legitimate competition for legal services.

The risk that regulators will use "protecting the public" as a façade for anti-competitive restrictions on a person's right to earn a living requires meaningful judicial review in cases like this. Courts must not stop at a superficial level and just take the government's word for it when the exercise of a fundamental constitutional right is at stake. The Board should have considered whether prohibiting Mr. Fam *specifically* from becoming a lawyer is necessary to protect the health, safety, or welfare of Tennesseans.

The answer to that question is, of course, no. But the Board did not even consider Mr. Fam's right to earn a living when it denied his application. This Court has an opportunity to correct this error, to ensure that the public policy choices of the Tennessee General Assembly are respected and make clear that an individual does not lose his constitutional rights when applying for admission to the Tennessee Bar.

Specifically, this Court should clarify that the Board must consider both the Tennessee Constitution's Law of the Land Clause and the Right to Earn a Living Act when determining whether a given foreign education is substantially equivalent to a U.S.-based legal education. Erring on the side of allowing qualified individuals to practice their chosen profession promotes the letter and spirit of those crucial protections.

ARGUMENT

The Tennessee Constitution protects the right to earn a living as a *fundamental* right. *See* *Livesay*, 322 S.W.2d at 213. Fundamental rights receive special judicial scrutiny. *Planned Parenthood of Middle Tenn. v. Sundquist*, 38 S.W.3d 1, 11 (Tenn. 2000). In 2016, the Tennessee General Assembly reaffirmed the right to earn a living as a fundamental right when it passed the Right to Earn a Living Act. *See* Pub. Ch. No. 1053. Under that statute, the announced public policy of Tennessee is that laws, regulations, and rules that impair an individual's right to earn a living must be tailored to protect the health, safety, or welfare of Tennesseans. *Id.*

Ensuring that individuals who practice law are properly educated can protect public safety and welfare. *See* *Schware*, 353 U.S. at 238–39. But the Board must make *individualized* determinations, such as whether an individual's particular foreign education is substantially equivalent to the U.S. education required for licensing. *See* *Id.* at 239 ("any qualification must have a rational connection with *the applicant's* fitness or capacity to practice law." (emphasis added)). That is, the Board must evaluate the applicant's right to earn a living measured against health, safety, or welfare concerns.

Here, the Board made no individualized determination that considered all relevant factors, including Mr. Fam's impeccable credentials and fundamental right to earn a living. If it had, it would come to a different conclusion. There is no reasonable argument that Mr. Fam is unqualified, given that he is already licensed in Texas, has a sufficient score on the UBE and exemplary good character, and completed a rigorous post-secondary legal education in Scottland, as well as an L.L.M. in the United States. There is no evidence that he poses *any* threat to public health, safety, or welfare. Consequently, this Court should reverse the Board's denial of his application to practice law in Tennessee.

I. The right to earn a living is a fundamental right protected by the Tennessee Constitution's Law of the Land Clause.

The Tennessee Constitution protects the right to earn a living. Article I, section 8 forbids the government from depriving any individual "of his life, liberty or property, but by the judgement of his peers, or the *law of the land*." (emphasis added). This section derives from Magna Carta, and the use of a "law of the land" clause and a "due course of law" clause, Tenn. Const, art. I § 17, instead of a due process clause modeled on the federal Constitution, was a conscious choice by the Tennessee Constitution's drafters. That choice reflected a commitment to protect this right as a matter of state law, irrespective of federal jurisprudential developments.[2] *Cf.* *Burford v. State*, 845 S.W.2d 204, 207 (Tenn. 1992) (state constitution protects rights above and beyond federal constitution); *Doe v. Norris*, 751 S.W.2d 834, 838 (Tenn. 1988) (same). This Court should give effect to that commitment and affirm that the Tennessee Constitution's protection for the right to earn a living requires an individualized analysis in a case like this.

A. Tennessee's Law of the Land Clause draws directly from Magna Carta and protects the right to earn a living.

The Law of the Land Clause has been in the Tennessee Constitution since 1796. It originated in the Magna Carta of 1215. And as far back as the seventeenth century—in a series of decisions well known to the eighteenth-century lawyers who wrote America's first constitutions, including Tennessee's—that "Law of the Land" phrase was interpreted as protecting the right to put one's skills to work to provide for oneself and one's family. *See, e.g.*, *Darcy v. Allen*, 77 Eng. Rep. 1260 (K.B.

[2] In *Patel v. Tex. Dep't of Licensing*, 469 S.W.3d 69 (Tex. 2015), the Texas Supreme Court held that that state's "Due Course of Law" Clause differs from the federal "Due Process of Law" Clause and requires courts to apply a higher scrutiny than the rational basis review that applies under federal law.

1603); *Davenant v. Hurdis*, 72 Eng. Rep. 769 (K.B. 1599); *The Case of the Tailors*, 77 Eng. Rep. 1218 (K.B. 1614). *See further* Steven G. Calabresi & Larissa C. Leibowitz, *Monopolies and the Constitution: A History of Crony Capitalism*, 36 Harv. J.L. & Pub. Pol'y 983, 989–96 (2013).

The author of many of these decisions—and the leading authority on the meaning of the Law of the Land Clause in the seventeenth century—was Sir Edward Coke, who served as Attorney General under Elizabeth I and as Chief Justice of King's Bench under James I. After leaving the bench, Coke authored several important legal texts, including the *Institutes of the Laws of England,* which served as the main textbook for law students in colonial America before the advent of Blackstone's *Commentaries* in the 1760s. Thus Thomas Jefferson, John Marshall, James Madison, John Adams, and other founders learned law from Coke's *Institutes,* which, among other things, explained that the "Law of the Land" Clause protected the right to earn a living at a gainful occupation. *See, e.g.*, 2 Coke, *Institutes* *47 ("if a grant be made to any man, to have … the sole dealing with any … trade, that grant is against the liberty and freedom of the subject, that before did, or lawfully might have used that trade, and consequently against this great charter. Generally all monopolies are against this great charter, because they are against the liberty and freedom of the subject, and against the law of the land.") (spelling modernized)). *See also Patel*, 469 S.W.3d at 116 (Willett, J., concurring) ("Magna Carta … and English common law safeguarded the right of any man to use any trade thereby to maintain himself and his family." (citation omitted)).

In today's world, lawyers are accustomed to distinguishing between "procedural" and "substantive" due process. That distinction is an artifact of the mid-twentieth century and is not found in the legal thought of the 1790s, when Tennessee's Law of the Land Clause was written, or in the seventeenth century, when Coke was writing, let alone at the time of Magna Carta. *See* G. Edward White,

The Constitution and the New Deal 243 (2000). Such a distinction finds no basis in Tennessee's Law of the Land Clause, which was understood by its authors as barring the government from depriving any person of liberty except according to a general rule that genuinely protected the public health, safety, and welfare. *See* Timothy Sandefur, *In Defense of Substantive Due Process*, 35 Harv. J.L. & Pub. Pol'y 283, 287–94 (2012).

Simply put, any government action that deprives a person of liberty without genuinely sufficient justification is an arbitrary act and therefore is not a genuine "law." It is "not legislation," but "a decree under legislative form," as this Court has put it. *Marshall & Bruce Co. v. City of Nashville*, 71 S.W. 815, 818 (Tenn. 1903) (citation omitted). And thus, it deprives the person of liberty *not* by "the *law* of the land." *See also Harbison v. Knoxville Iron Co.*, 53 S.W. 955, 960 (Tenn. 1899) (Law of the Land Clause allows state to subject economic freedom to "reasonable limitation under the state's reserved police power," but that power "cannot be an excuse for oppressive legislation."); *Dugger v. Mechs.' & Traders' Ins. Co. of New Orleans*, 32 S.W. 5, 6 (Tenn. 1895) (a hypothetical law providing "that the citizens of the state … should not have the capacity to enter into any agreements with regard to their own services or employment … would 'transcend the due bands of legislative power,'" and violate the Law of the Land Clause) (citations omitted)).

Not only did Lord Coke give pathbreaking legal opinions on the phrase "law of the land," but his writings on the subject served as foundational texts to many founding era legal minds. *See* Timothy Sandefur, *The Right to Earn a Living* 18–25 (2010). America's founders, familiar with Coke's writings, were persuaded that the right to earn a living was not only guaranteed by the British Constitution but was also one of the inherent human rights protected by all legitimate governments. James Madison, for example, wrote that a government "where arbitrary restrictions, exemptions, and monopolies deny to … its citizens [the] free use of their faculties,

and free choice of their occupations," is "not a just government." *Property, reprinted in Madison: Writings* 516 (Jack Rakove ed., 1999).

Tennessee's Constitution thus emphasized the importance of the right to earn a living. Its Declaration of Rights provides that monopolies are "contrary to the genius of a free state, and shall not be allowed." Tenn. Const. art. I, § 22. *See, e.g.*, *Checker Cab Co. v. Johnson City*, 216 S.W.2d 335, 337 (Tenn. 1948) (invalidating licensing law for taxicabs because it created a monopoly with no legitimate connection to consumer protection.); *cf. McKinney v. Memphis Overton Hotel Co.*, 59 Tenn. 104, 124–25 (1873) ("a law passed for the benefit of individuals" violates the Law of the Land Clause because if so, "[w]hy may not any thing be authorized to any particular class, however violative of sound morals, or the general law of the land? We can not assent to the correctness of reasoning that leads to these results.").

And the Law of the Land Clause protects the right to practice law just as it protects any other business. As this Court said in *The Lawyers' Tax Cases*, 55 Tenn. 565, 621 (1875), "[t]he right of the lawyer to practice" is "a common occupation which the lawyer has the same right to pursue, that a farmer, or doctor, or drayman has. It is ... [not] something that the legislature can take away. The legislature cannot take away the right of the butcher to kill his beeves; no more can they take away from the lawyer the right to practice his business." *See also Piper*, 470 U.S. at 284–87 (rejecting the argument that the practice of law can be excluded from the kinds of business occupations that a person has a fundamental right to engage in).

In other words, "Law of the Land" does not just reference and protect process. It also had a substantive component. It forbids the government from acting arbitrarily—including arbitrarily taking away a person's livelihood, as, for example, by denying a competent lawyer the right to practice law for reasons that bear no realistic connection to protecting the public safety and welfare.

B. This Court should continue to interpret the Law of the Land Clause independently of federal "due process" precedent and reaffirm the right to earn a living is a fundamental right, which protects all, even lawyers.

The Tennessee Constitution's protection of individual liberty is unique. It is the only constitution in America that "gives the people, in the face of governmental oppression and interference with liberty, the right to resist that oppression even to the extent of overthrowing the government." *Davis v. Davis*, 842 S.W.2d 588, 599 (Tenn. 1992). Given that individual liberty is "so deeply embedded in the Tennessee Constitution" congruency between the federal bill of rights and Tennessee's Declaration of Rights should not be assumed. *Id.* at 599–600. It is this Court's duty to interpret the Tennessee Constitution, and this Court is free to provide for greater protection of individual liberty than what is mandated by the federal constitution. *Norris*, 751 S.W.2d at 838.

The purpose of the Law of the Land Clause is "to secure the citizens against the abuse of power by the government." *State Bank v. Cooper*, 10 Tenn. 599, 606 (1831). This Court has often recognized that one of the liberties protected in the Law of the Land Clause is an individual's right to pursue a chosen occupation. *Campbell*, 52 S.W.2d at 164, explained that state licensure for accountants violated an individual's right to pursue business opportunities under the Tennessee Constitution because such a requirement did not genuinely protect public safety and welfare. In *Wright*, 117 S.W.2d at 738, this Court held a licensing requirement for photographers unconstitutional because regulating the business of photography did not have "any real tendency to protect the public safety, the public health or the public morals." (internal quotation marks and citation omitted). There was no way in which "the interests of the public generally … require such interference." *Id.*

Most notably, this Court held in *Livesay*, 322 S.W.2d at 211, that a regulation of watch repair was unconstitutional—because "repairing watches" was "a 'useful and common occupation'" that had "'no substantial relationship to the protection of the public health, morals, comfort, private happiness, domestic peace and public welfare,'" *id.* (citation omitted)—and it held that the right to pursue a profession of one's choosing is a *fundamental* one. *Id.* at 213.

This was certainly correct. If a fundamental right is one "deeply rooted in this nation's history and tradition," *Sundquist*, 38 S.W.3d at 11 (citation and internal quotes omitted), it is hard to imagine how the right to earn a living does not qualify. Few rights could be more deeply rooted in American history and tradition than an individual's ability to provide a living for himself and his family. Most people would likely regard it as inextricable from "the American Dream."[3] The legal-historical roots of the right to earn a living trace back nearly a thousand years, and its vital importance to individual lives is undeniable. *See, e.g.*, *City of Memphis v. Winfield*, 27 Tenn. 707, 709 (1848) (protecting the constitutional right of a free black man to earn a living, during slavery days, because "[h]e must live, and, in order to do so, he must work."). This Court should take this opportunity to explicitly hold the right to earn a living is a fundamental right protected by the Law of the Land Clause and accord it with the special protections that come with fundamental rights.

II. The Right to Earn a Living Act declared that the right to earn a living is fundamental in Tennessee.

Tennessee's Right to Earn a Living Act bolsters the argument that the right to earn a living is a fundamental right protected in Tennessee. The Act announced that

[3] Indeed, James Truslow Adams' *The Epic of America* 169 (1931), the book that first used the phrase "American Dream," defined it as the idea that America is "a land of unlimited opportunity," where by "building up a business" one can "make things bigger [and] … make them better."

it is the public policy of Tennessee that the right to earn a living is fundamental. In denying Mr. Fam's application, the Board ignored this fact.

A. The Right to Earn a Living Act announced the policy of Tennessee.

In 2016, the people of Tennessee, through their elected representatives, reaffirmed that the right to earn a living is a *fundamental* right. In the Right to Earn a Living Act, the General Assembly explicitly specified "the right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, is a fundamental civil right." *See* Pub. Ch. No. 1053. The Assembly also declared "it is in the public interest to ensure the right of all individuals to pursue legitimate entrepreneurial and profession opportunities to the limits of their talent and ambition … and to ensure that regulations of entry into businesses, professions, and occupations are *demonstrably necessary* and narrowly tailored to *legitimate* health, safety, and welfare objectives." *Id.* (emphasis added).

While obviously not binding on this Court's interpretation of the state constitution, these standards are entitled to great weight. *Cavender v. Hewitt*, 239 S.W. 767, 768 (Tenn. 1922). What's more, this statute provides courts with a roadmap for determining whether a law or regulation unlawfully interferes with this right.

Although the Act places affirmative obligations only on the Executive Branch, *see* Tenn. Ann. Code §§ 4-5-501 & 4-5-502, its terms and purpose are broader. The Act announced the public policy of Tennessee: that the right to earn a living is fundamental. It did not declare that this right is only fundamental if a profession is regulated by the Executive Branch. So, while most licensing authorities fall under the Executive Branch, the reasons for the Act and the criteria explained in the Act apply to all agencies and all branches of government.

Further, the Act did not announce a *new* policy. It simply reaffirmed the protections contained in the Tennessee Constitution's Law of the Land Clause. As shown, this Court long ago agreed that the right is fundamental. *See* Livesay, 322 S.W.2d at 213. In other words, the Act took what already is a fundamental constitutional right in this state and made it a civil right, too. This provides guidance to Tennessee courts when examining laws or regulations that impair economic freedoms. The preexisting constitutional principles incorporated into the Act should guide the outcome of the case.

B. The Right to Earn a Living Act provides a guide for deciding this case.

The principles in the Right to Earn a Living Act provide a useful framework for interpreting the rule regarding substantial equivalency of foreign education for admission to the Bar. In this case, the Board applied a rigid, formalistic, and context-free interpretation of the substantial equivalency rule without evaluating "*the applicant's* fitness or capacity to practice law." Schware, 353 U.S. at 239 (emphasis added). In other words, it employed a blanket presumption that ignores the facts. But as the U.S. Supreme Court warned in Stanley v. Illinois, 405 U.S. 645, 656–57 (1972), while "[p]rocedure by presumption is always cheaper and easier than individualized determination," it can "foreclose[] the determinative issues of competence," and "needlessly risks running roughshod over [individual rights]."

That is just what happened when the Board denied Mr. Gluzman the opportunity to sit for the bar exam in 2017, without considering his individual (and impeccable) qualifications. This Court reversed that decision. Gluzman, No. M2016-02462-SC-BAR-BLE.

Properly weighing Mr. Fam's fundamental right to earn a living requires balancing his obvious qualifications to practice law against any possible threat to the public's health, safety, or welfare. Here, the record shows that Mr. Fam is a highly

qualified, practicing attorney with impressive education credentials. There is no cause to believe he is any threat to public health, safety, or welfare. Consequently, the substantial equivalency rule should have been read to recognize his academic and professional credentials as more than sufficient.

The General Assembly has declared that the public interest is to favor "the right of all individuals to pursue legitimate entrepreneurial and professional opportunities to the limits of their talent and ambition." Pub. Ch. No. 1053. Applying the rule through a blanket presumption—"disdain[ing] present realities in deference to past formalities," *Stanley*, 405 U.S. at 657—to prevent otherwise qualified individuals from practicing their professions burdens a fundamental constitutional right. The Board, however, did not even consider this fundamental right. Instead, it erred on the side of costing Mr. Fam the right to earn a living, and in doing so, countermanded the recently affirmed public policy of Tennessee.

CONCLUSION

In sum, the Right to Earn a Living Act establishes a presumption in favor of liberty that reaffirms the right to earn a living as a fundamental right. The priorities espoused by the Act, principles derived from the Tennessee Constitution's Law of the Land Clause, should not be ignored. Only if the Board can point to *specific* evidence that Mr. Fam's admission will threaten the public's health, safety, or welfare, should the presumption in favor of economic freedom give way. The Board has not done so here. This Court should reverse the order denying Mr. Fam's motion for admission on transferred UBE score and he should be permitted to practice law in Tennessee.

Dated: May 15, 2025

Respectfully submitted,

/s/ *Adam C. Shelton*
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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements set forth in Tenn. Sup. Ct. R. 46, § 3.02. My word processing system indicates that the sections of the brief subject to the 7,500 word limitation contain 4,874 words.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served upon the following, by the following means:

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Dated: May 15, 2024

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