Questioning the Inevitability of the NextGen Bar Examination:
A White Paper

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Nachman N. Gutowski, Ashley London, Taylor Ruth Israel, Steven Foster
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The National Conference of Bar Examiners (NCBE) has been actively promoting its new and revised forthcoming legal licensing examination, the NextGen Bar Exam (NextGen), as an inevitable replacement for the current UBE. They tout that 21 jurisdictions have already committed to adopting the NextGen Bar; therefore, it is presumptively only a matter of time until most, if not every, state in the country falls in line. However, when we look at the numbers closely and engage in simple statistical analysis, quite a different picture emerges that calls into question this alleged or perceived inevitability. Jurisdictions have the power to choose the route by which newly graduated lawyers become licensed, and it is an ethical duty that should not fall unquestioningly into conformity if doing something else is right or better to protect the public and support the newest members of the legal profession.

The Numbers Behind the Jurisdictions

The NCBE's announcement that 21 jurisdictions have signed on to the NextGen Bar might initially sound substantial. However, it represents only 38.2% of all jurisdictions. The United States comprises 55 bar jurisdictions, including the 50 states, the District of Columbia, and U.S. territories like Guam or the U.S. Virgin Islands. More importantly, the remaining 34 jurisdictions account for an outsized and supermajority of bar exam takers. Examining the data on bar exam takers reveals a striking disparity. Using the data released by the NCBE on their website, tracking the 2 most recent bar exams, the picture becomes considerably clearer.

The 34 jurisdictions that have not committed to the NextGen Bar represent 61.8% of all national bar exams. These jurisdictions account for a staggering 76.5% of all bar exam takers who are anticipated to sit for licensure in 2028. The combination of 2026 Adopters for NextGen only includes 4.5% of bar exam takers nationally. Similarly, those jurisdictions waiting until 2027 to adopt NextGen, only add another 6.4% of bar takers. Finally, the last group of adopters in 2028 adds the greatest numbers, thanks in large part to the recent adoption by Florida, adding another 12.6%. This means the jurisdictions that have signed on to the NextGen Bar, for the three years of adoption starting in 2026, constitute only 23.5% of bar exam takers nationally.

Jurisdictions using the UBE are lauded for their focus on reciprocity because the UBE allows examinees to transfer scores between UBE jurisdictions fairly easily. It took nearly a decade to amass the 41 jurisdictions that currently utilize the same exam; and countless revisions of what passing scores should be for each individual administering jurisdiction. Now, with NextGen replacing all the elements of the UBE (MEE, MBE & MPT), each of these jurisdictions must re-examine the licensure structure and choose a different and unknown path. Many are hesitating and undoubtedly waiting to see what happens in the canary-in-the-coalmine jurisdictions who have signed on to be NextGen first adopters. Large percentages of UBE examinees still reside in jurisdictions that have not committed to the NextGen Bar, which poses a significant challenge to its nationwide implementation.
Implications and Recommendations

The substantial resistance from a majority of jurisdictions, particularly those representing the lion's share of bar exam takers, suggests that the NCBE's timeline for pushing the adoption of NextGen as early as 2026—while simultaneously phasing out the current UBE by 2028—is not aligned with the interests of the boards of law examiners in those states. The numbers suggest that a comprehensive reassessment of NextGen and its rollout is necessary. The NCBE should focus on (re)engaging stakeholders, providing transparency in data and outcomes of testing, (re)adjust the implementation timeline, and (re)focus on pilot testing, rather than pushing the rapid adoption of the as-yet unbuild and unproven new exam.

Meaningfully engaging all stakeholders effectively is essential for the successful implementation of the NextGen Bar examination and would better ensure the public protections the bar examination is supposed to provide. Law school-based Academic Success Professionals, who are tasked with preparing students for the bar and experts in legal pedagogy, should be involved early in the planning process to offer critical insights into student readiness and potential challenges. Local bar associations, with their close ties to practicing attorneys, can provide practical perspectives on how the NextGen Bar aligns with current legal practice and standards. Public engagement is also crucial, as transparency and public trust in the licensing process are fundamental and a bedrock for building confidence in the justice system. The American Bar Association (ABA) must be closely consulted to understand the impact on law school accreditation and to ensure the NextGen bar exam meets high educational standards. Additionally, law schools, employers, and recent graduates should be included in discussions to gather comprehensive feedback and build broad support for the new examination system. By fostering open communication and collaboration among these diverse stakeholders, the NCBE can address concerns, adapt the exam to better meet the needs of the legal profession, and ensure a smoother transition to the NextGen bar exam.

A critical component of building trust and acceptance of NextGen is transparency in data and information sharing. The NCBE must provide clear and detailed information on the changes in the exam's coverage, depth of knowledge required, approach, and format. Unfortunately, what has been publicized so far has not met this standard. Given the substantial shifts away from traditional, memory-focused, standardized testing to a more comprehensive assessment of legal skills, stakeholders need to understand how these changes will affect exam preparation and performance. Transparent data on pilot testing, the performance of similar examinees, and comparative studies between the current UBE and the NextGen Bar will help demystify the new exam and illustrate better its potential benefits and real challenges. This openness would allow academic institutions, bar associations, and examinees to make informed decisions and adjustments, fostering a smoother transition. Furthermore, by sharing detailed analyses and addressing concerns openly, the NCBE can demonstrate its commitment to improving the bar examination process and maintaining high standards for legal licensure. This shouldn't be a contentious process, but rather one built on trust, inclusion, and transparency.

Gradual and unforced implementation of the NextGen Bar examination is essential to ensure a smooth transition and avoid potentially disastrous and disruptive change for jurisdictions, law schools, and examinees. Given the profound impact this shift will have on legal education and the licensing process, a phased approach would allow for a more careful assessment and adjustment at each stage. While initial pilot testing has already been conducted, the results have not been universally well-
received. Concerns have been raised about the significant changes in coverage and the shift away from utilizing reference materials, which contradicts one of the stated goals of the NextGen Bar. These concerns highlight the need for a more deliberate and thoughtful implementation process.

Forcing rapid transition risks further alienating key stakeholders and undermining the credibility of the new examination. By adopting a gradual, transparent, and collaborative approach, the NCBE can address legitimate concerns, demonstrate responsiveness to feedback, and build broad support for NextGen. This method would assist in ensuring the changes proposed are not perceived as being imposed without adequate consideration of the practical realities and concerns of those directly affected. Given the high stakes involved, including the careers of future lawyers and the quality of legal practice, it is imperative that the NCBE proceeds with caution and engages deeply with all stakeholders throughout the implementation process.

redoing the pilot tests for NextGen is essential to address the significant concerns raised during the initial trials, particularly the shifts in exam coverage and the departure from utilizing reference materials and adjustment in topic scope. The NCBE must conduct new pilot tests that incorporate the full range of proposed topics and formats, ensuring a comprehensive assessment. Full transparency is crucial in this process; the NCBE must release all raw data and detailed analyses from these tests; rather than only its own internally generated interpretations and conclusions. This openness would allow stakeholders, including law schools, bar associations, academic success professionals, and independent researchers, to conduct their independent analyses and provide a better and more holistic evaluation of the exam’s effectiveness and fairness.

An important aspect of this reassessment is understanding the impact on historically discriminated and marginalized examinees. There are valid concerns that the changes in the exam could continue to disproportionately affect these groups, exacerbating existing inequities in legal education and licensure. The new pilot tests must include a diverse sample of examinees to ensure the results are representative and any disparities in performance are identified and addressed. It is vital to ensure that new topics are relevant and fair and that the shift away from reference materials does not move too far from the stated goals of ensuring practice competence in examinees. By committing to transparency and inclusivity, the NCBE can work to rebuild trust and support among stakeholders, particularly those who have historically been left out of meaningful discussions, ensuring that NextGen upholds the highest standards of justice and equity in the legal profession.

Conclusions

Until these comprehensive steps are taken, the current status of the NextGen bar exam raises significant and unanswered doubts about its widespread adoption. With a substantial 76.5% of bar exam takers (51,184 examinees annually) not scheduled to take the exam in jurisdictions that are adopting NextGen, the claim of its inevitability is more of a sales pitch than reality. The NCBE’s push for NextGen must be viewed in light of these overwhelming numbers and the critical feedback from stakeholders. Furthermore, there is a growing movement toward alternative pathways to licensure, reflecting a broader realization within the legal community that there are more effective and equitable ways to license attorneys. These alternatives include supervised practice models, diploma privilege options, and other innovative approaches that better reflect the competencies required for modern legal practice. The bar examination, as it stands, remains a barrier rather than a gateway to the profession, particularly for those from historically marginalized backgrounds.
In conclusion, while the NCBE’s push for the rapid adoption of NextGen aims to modernize and unify legal licensure, the current numbers and lack of widespread jurisdictional commitment highlight the need for a more cautious and inclusive approach. The transition to a new bar examination system should be data-driven and consider the diverse needs and concerns of all jurisdictions to ensure a smooth and equitable implementation. Without addressing the deep-seated concerns through transparent data, inclusive pilot testing, and a gradual implementation strategy, the NextGen bar exam’s widespread adoption remains far from certain. The NCBE must pivot to a more collaborative and inclusive approach, recognizing the evolving landscape of legal licensure and the need for methods that truly measure an attorney’s readiness to practice law. Only then can the bar examination system align with the high standards of justice and equity that the legal profession strives to uphold.

All the numbers are from the NCBE’s website. [https://www.ncbex.org/statistics-research/bar-exam-results-by-jurisdiction](https://www.ncbex.org/statistics-research/bar-exam-results-by-jurisdiction)

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<thead>
<tr>
<th></th>
<th>FEB EXAM</th>
<th>JULY EXAM</th>
<th>BOTH JULY AND FEB EXAMS</th>
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<tbody>
<tr>
<td><strong>Total Bar Takers</strong></td>
<td>19584</td>
<td>47301</td>
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<tr>
<td><strong>Examinees</strong></td>
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<td>2026 Adopters</td>
<td>2980</td>
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<td>2027 Adopters</td>
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<td>2028 Adopters</td>
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<td>So far announced thru 2028</td>
<td>23.5%</td>
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<tr>
<td><strong>Examinees</strong></td>
<td>51,184</td>
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<tr>
<td>Non-NextGen</td>
<td>76.5%</td>
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iii 21/55
iv 34/55
v 51,184/66,885
vi 15,701/66,885
vii “What type of legal reference materials or library will be included in the NextGen bar exam?” “[t]he intent is to make the exam more realistic and to reduce the amount of legal knowledge candidates must commit to memory for the exam, while emphasizing skills, such as interpreting and applying law.”