No. _____

In The

Supreme Court of the United States

LAWYERS UNITED INC., EVELYN AIMEE DeJESÚS, AND ALLAN WAINWRIGHT,

Petitioners,

v.

UNITED STATES, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

W. PEYTON GEORGE
663 Bishops Lodge Rd. #27
Santa Fe, NM 87501
(505) 680-4001
Peyton@georgelegal.com

JOSEPH ROBERT GIANNINI
Counsel of Record
12016 Wilshire Blvd., Suite 5
Los Angeles, CA 90025
(310) 804-1814
j.r.giannini@verizon.net

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

If all men and women are created equal, all lawyers are created equal. This 21st Century case implicates this Supreme Court's *supervisory* responsibility over the balkanized and disparate attorney licensing Local Rules in the ninety-four United States District Courts that some commentators have concluded are without rhyme or reason. Congress concluded that there is no meaningful opportunity to challenge United States District Court *Local Rules* because the judges who make the rules decide whether they are lawful. It thus enacted 28 U.S.C. § 332(d)(4) and placed on each United States Circuit Judicial Council a statutory duty to periodically review District Court *Local Rules* for consistency with 28 U.S.C. §§ 2071-72. (App. 141-143) Congress declared 28 U.S.C. § 2071(a) incorporates the standard of review set forth in 28 U.S.C. § 2072(b), which provides: "Such rules shall not abridge, enlarge, of modify any substantive rights."

1. The first question presented is whether Local Rules that on their face create classes of citizens and lawyers exceed the rule-making authority of the United States District Courts?

2. The second question presented is whether Local Rules that on their face create classes of citizens and lawyers and compel the petitioners, and all similarly situated *licensed* attorneys, to subsidize, join and associate with a second, third, and fourth mandatory state bar association as a condition precedent to obtain *general* admission *licensing* privileges in the United States District Courthouse are constitutional?

LIST OF PARTIES

Petitioners are LAWYERS UNITED INC., a corporation dedicated to protecting and enforcing the constitutional rights of licensed attorneys in good standing and its members EVELYN AIMEE DeJESÚS, Esq., and ALLAN WAINWRIGHT, Esq.

Respondents are the UNITED STATES OF AMERICA, and the individually named judges serving on the District of Columbia Circuit Judicial Council, Eleventh Circuit Judicial Council, and Ninth Circuit Judicial Council, and the active District Judges serving on the United States District Courts in the District of Columbia, Florida, and California. The respondents are sued in their official capacity solely for injunctive and declaratory relief.

The name of each individual respondent is as follows: SRI SRINIVASAN, Chief Judge District of Columbia Judicial Council, and his Honorable Judicial Council colleagues PATRICIA A. MILLETT, ROBERT L. WILKINS, GREGORY G. KATSAS;

ED CARNES, Chief Judge of the ELEVENTH CIRCUIT JUDICIAL COUNCIL, his Hon. Judicial Council colleagues: CHARLES R. WILSON, WILLIAM H. PRYOR Jr., BEVERLY B. MARTIN, ADELBERTO JORDAN, ROBIN S. ROSENBAUM, JILL PRYOR, KEVIN C. NEWSON, and BRITT C. GRANT;

SYDNEY R. THOMAS, CHIEF JUDGE of the NINTH CIRCUIT JUDICIAL COUNCIL, and his Hon. Judicial Council colleagues, RANDY SMITH,

LIST OF PARTIES—Continued

MARY H. MURGUIA, MILAN D. SMITH, JR., MORGAN CHRISTEN, JAY S. BYBEE, BARRY MOSKOWITZ, VIRGINIA A. PHILLIPS, J. MICHAEL SEABRIGHT, OKI MOLLWAY, RICHARD S. MARTINEZ;

BERYL A. HOWELL, CHIEF JUDGE FOR THE DISTRICT OF COLUMBIA, and his Hon. District Judge colleagues EMMET G. SULLIVAN, COLLEEN KOLLAR-KOTELLY, JAMES E. BOASBERG, AMY B. JACKSON, RUDOLPH CONTRERAS, KETANJI B. JACKSON, CHRISTOPHER R. COOPER, TANYA S. CHUTKAN, RANDOLPH D. MOSS, AMIT P. MEHTA, TIMOTHY J. KELLY, TREVOR N. McFADDEN, DABNEY L. FRIEDRICH, and CARL J. NICHOLS;

PHYLLIS J. HAMILTON, Chief Judge of the Northern District of California, and her Hon. District Judge colleagues YVONNE GONZALEZ ROGERS, JON S. TIGAR, JEFFREY S. WHITE, WILLIAM ALSUP, EDWARD CHEN, VINCE CHHABRIA, JAMES DONATO, WILLIAM ORRICK, RICHARD SEEBORG, EDWARD J. DAVILA, BETH LABSON FREEMAN, LUCY H. KOH;

VIRGINA A. PHILLIPS, CHIEF JUDGE OF THE CENTRAL DISTRICT OF CALIFORNIA, and her Hon. District Judge colleagues;

LAWRENCE J. O'NEILL, Chief Judge of the Eastern District of California, and his Hon. District Judge colleagues DALE A. DROZD, MORRISON C.

LIST OF PARTIES—Continued

ENGLAND, JR., JOHN A. MENDEZ, KIMBERLY J. MUELLER, TROY L. NUNLEY;

LARRY ALAN BURNS, CHIEF JUDGE OF THE SOUTHERN DISTRICT OF CALIFORNIA, and his Hon. District Judge colleagues MICHAEL M. ANELLO, CYNTHIA A. BASHANT, ANTHONY J. BATTAGLIA, ROGER T. BENITEZ, GONZALO P. CURIEL, WILLIAM B. ENRIGHT, WILLIAM Q. HAYES, JOHN A. HOUSTON, MARILYN L. HUFF, M. JAMES LORENZ, M. MARGARENT McKEOWN, JEFFREY T. MILLER, BARRY TED MOSKOWITZ, DANA M. SABRAW, JANIS L. SAMMARTINO, THOMAS J. WHELAN;

MARK WALKER, Hon. Chief Judge of the Northern District of Florida and his active District Judge colleagues;

STEVEN MERRYDAY, Chief Judge of the Middle District of Florida and his active District Court colleagues;

K. MICHAEL MOORE, Chief Judge of the Southern District of Florida and his active District Judge colleagues.

CORPORATE DISCLOSURE STATEMENT RULE 29.6

LAWYERS UNITED INC. is a corporation organized under California law. It is not publicly traded. It has no parent, subsidiaries or affiliates.

RELATED CASES

Lawyers United Inc. et al. v. United States et al., Docket 1:19-cv-03222, U.S. District Court for the District of Columbia, Judgment entered June 29, 2020, petition for rehearing denied August 21, 2020.

Lawyers United Inc. et al. v. United States et al., Docket 20-5269, U.S. Court of Appeals for the District of Columbia Circuit, Judgment entered March 15, 2021, petition for rehearing denied May 5, 2021.

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MISCELLANEOUS

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The U.S. Court of Appeals for the District of Columbia Circuit Opinion affirming dismissal is set forth at App. 1-2. It is one paragraph and not published. The Order denying rehearing and rehearing *en banc* is set forth at App. 25. The District Court's Order dismissing the out-of-state parties under FRCP 12(b)(2) and dismissing the amended complaint under FRCP 12(b)(6) and denying Petitioners' Motion for Preliminary Injunction is set forth at App. 6-24. It is not published. The District Court's order denying rehearing is set forth at App. 3-5.

JURISDICTION

The judgment of the U.S. Court of Appeals for the District of Columbia Circuit was entered on March 15, 2021. (App. 1) The timely filed petition for rehearing and rehearing *en banc* was denied on May 5, 2021. (App. 25) This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional and substantive provisions involved are set forth in the Petition. The challenged Local Rules for the District of Columbia, Central District of California, and Middle District of Florida are set forth in the Appendix. (App. 26-44) The Local Rules for the other District Courts in California and Florida adhere to the same pattern set forth in the Central District of California and Middle District of Florida.

STATEMENT OF CASE

A. THE RULES ENABLING ACT

Congress has carefully circumscribed "Local Rule-making" discretion. It legislated an expanded supervisory role for the Judicial Councils in the District Court local rule-making process. (App. 141-143) 28 U.S. Code § 332(d)(4) provides:

> Each judicial council shall periodically review the rules which are prescribed under section 2071 of this title by district courts within its circuit for consistency with rules prescribed under section 2072 of this title. Each council may modify or abrogate any such rule found inconsistent in the course of such a review.

A key part of the legislation was to subject all rule-making of the district courts to review by the Circuit Judicial Councils. (App. 141) According to the Congressional Reporter, the "amendment § 332 to add a new

paragraph (d)(4) was a consequence of widespread discontent," communicated to Congress, about "a proliferation of local rules." (App. 141) Congress found that the rule-making procedures "lacked sufficient openness" and that local rules often "conflict with national rules of general applicability." (App. 141) Congress also placed on the judicial councils a mandatory periodic duty of review because it concluded "effective appellate review of such a [local] rule [is] impossible sometimes, impractical most times, and impolitic always" (App. 142) because the judges who enact the Local Rules decide whether they are lawful. The Circuit Judicial Councils are empowered to "modify or abrogate" any rule found inconsistent with Sections 2071-72. "There is no such thing as a rule's becoming sacrosanct merely for having passed judicial scrutiny the first time. It is subject to ongoing scrutiny." (App. 149)

The decisions below skip over and do not address the principle that all men are created equal, the text of § 332(d)(4), or the reasons and objectives sought by Congress in enacting this statute imposing mandatory judicial review. No lower court, many of whom have upheld attorney licensing Local Rules as rational, has addressed § 332(d)(4) and its ramifications.

Congress has also legislated an interlocking standard of review for District Court Local Rules that is stricter than strict security. Section 2071(a) provides:

> The Supreme Court and all courts established by Act of Congress may from time to time

> prescribe rules for the conduct of their business. *Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.* (Emphasis added)
>
> 28 U.S. Code § 2072(b) provides:
>
> *Such rules shall not abridge, enlarge or modify any substantive rights*. (Emphasis added)

Thus, the standard of review set forth in § 2071(a) for Local Rules is incorporated by reference into the standard of review for nationally promulgated rules set forth in § 2072(b).

The District of Columbia Circuit in *National Ass'n of Multijurisdiction Practice v. Howell*, 851 F.3d 12 (D.C. Cir. 2017) held only the Supreme Court has *supervisory* review over Local Rules. *Howell* holds: "A single district court judge or an appellate panel may not usurp that body's [Supreme Court] authority." *Id*. at 18. *Howell* and other Circuits have carved out an exception to 28 U.S.C. §§ 2071-72 by holding Local Rules need only pass a rational basis standard of review, based on any conceivable evidence in the record or not, in light of the "*professional speech*" doctrine. *Id*. at 19. The District of Columbia Circuit one paragraph decision below cites *Howell* as binding precedent.

However, after *Howell* was decided, this Supreme Court invalidated the so-called "*professional speech*" doctrine in *NIFLA v. Becerra*, 138 S.Ct. 2361 (2018). This Supreme Court also rejected rational basis review as foreign to First Amendment jurisprudence in *Janus*

v. AFSCME, 138 S.Ct. 2448 (2018). *Howell* relies on both the professional speech doctrine and rational basis review. The decisions below rely on *Howell* and pay no attention to *Becerra* and *Janus*.

B. THE RIGHT TO COUNSEL AND THE FULL FAITH AND CREDIT STATUTE IN THE ARTICLE III COURTS

Petitioners aver that if all men and women are created equal then all lawyers are created equal. This case arises out of a common nucleus of operative facts and law. It presents a pure question of law only this Court can decide. The government has admitted petitioners have standing and there is no material fact dispute. The government concedes petitioners have taken an attorney's oath to uphold the law and comply with the Rules of Professional Conduct.

The federal right to counsel is inextricably intertwined with the Bill of Rights' protected freedoms to speech, counsel, assembly, and to petition the government for the redress of grievances. Citizens also have a substantive right to counsel and to petition the government with counsel. *General* admission licensing privileges provide a public office that has particular value to the petitioners as an association of licensed lawyers, individual lawyers, clients, and to 350 million citizens who may want to choose counsel from a nationwide market of legal know-how. 28 U.S.C. § 1654 *Appearance personally or by counsel* provides:

> In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

28 U.S.C. § 1738 *State and Territorial statutes and judicial proceedings; full faith and credit*:

> "The records of any Court or State are admissible in evidence, and such records shall have the same full faith and credit in every court within the United States as they have by law or usage in the Courts of any such State from which they are taken."

Every lawyer is admitted to the bar by a judgment of professional proficiency by an act and record of a state supreme court. Section 1738 states supreme courts acts and records are entitled to full faith and credit in every United States District Court. "Regarding judgments, . . . the full faith and credit obligation is exacting." *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 233 (1998). There is "no roving 'public policy exception' to the full faith and credit due *judgments*." *Ibid.* (emphasis in original).

Supreme Court Rule 5 and Federal Rule of Appellate Practice 46 take for granted all attorneys are created equal and provide full faith and credit to all state supreme court records. These national rules promulgated under 28 U.S.C. § 2072 are approved by Congress. Congress also presumes all citizens and attorneys are created equal and does not discriminate for or against any class in admission to practice before

administrative agencies, 5 U.S.C. § 500(b), or in hiring attorneys, 28 U.S.C. § 517. Approximately one-third of the 94 Federal District Courts also assume all lawyers are created equal, provide full faith and credit, and do not discriminate in favor or against any class of lawyers or citizens in *general* bar admission licenses.[1]

In *United States v. Windsor*, 133 S.Ct. 2675 (2103), this Court held the federal government is required to accord same sex citizens equal rights and their marriage licenses full faith and credit in the federal context. The rights to counsel, association, and petition are textually embedded in the Constitution. They predate the fundamental right to marriage equality by over two hundred years.

The Courts below have refused to provide full faith and credit to the state judgments and oath of office of petitioners and other attorneys in good standing licensed in 49 states. The Courts below have refused to follow the dictates of 28 U.S.C. § 1738, the standard of review for Local Rules set forth by Congress, this Court's precedent in *Becerra* overturning the professional speech doctrine, and this Court's decision in *Janus* holding rational basis review is foreign to First Amendment jurisprudence. All of this has occurred under the excuse that only the Supreme Court has supervisory review over licensing rules. *See Howell*, 851 F.3d at 18 ("A single district court judge or an appellate

[1] United States District Court for the District of Maryland Survey of the Admission Rules in the Federal District Court (Jan. 2015), http://www.msba.org/uploadedFiles/MSBA/Member_Groups/Sections/Litigation/USDCTMDSurvey0115.pdf Page 1.

panel may not usurp that body's [Supreme Court] authority.").

C. THE CHALLENGED FEDERAL DISTRICT COURT ATTORNEY LICENSING RULES ARE NOT NEUTRAL AND THEY ARE NOT GENERALLY APPLICABLE

Petitioners challenge the District of Columbia attorney licensing Local Rules that on their face are not neutral and generally applicable. These licensing rules discriminate among and target at least eight classes of citizens and afford these classes of attorneys and their clients unequal substantive and constitutional rights. LCvR 83.2(e) *Attorneys Employed by the United States* provides that any attorney employed by the United States may appear, file papers, and practice on behalf of their client regardless of state of licensure or office location. (App. 27) LCvR 83.2(f) *Attorneys Employed by a State* also provides any attorney who is admitted in any state may appear and represent the state. (App. 27-28) LCvR 83.2(g) *Attorneys Representing Indigents* provides any attorney representing an indigent may be admitted in any state, may appear, file papers, and represent their indigent client in any case handled without a fee. (App. 28) Thus, the federal government, states, and indigents are the special favorites. These superior citizens and body politics can hire any attorney they want regardless of the attorney's state of admission or principal office location. The District of Columbia Bar Association is a mandatory trade union

that engages in political advocacy on matters of public concern.

Similarly, LCvR 83.8 further discriminates among several classes of citizens and affords these classes of attorneys and their clients second-class substantive and constitutional rights. LCvR 83.8(a)(1) provides *general* admission privileges to any District of Columbia attorney regardless of *office location*. (App. 28) LCvR 83.8(a)(2) provides *general* admission privileges to any attorney admitted in a state where they have their principal office. (App. 28) LCvR 83.8(a)(3) provides *general* admission privileges to any admitted in-house corporate attorney. (App. 28)

DC LCvR 57.21 similarly establishes categories of citizens, special friends and foes. (App. 33) Those charged with crimes have more constitutional and substantive rights than citizens seeking to enforce civil rights. Once again, some citizens can sit at the front of the bar in the United States courtroom, but other citizens are second-class, not unlike the citizens who were denied a seat on a bus or railroad car, or denied the right to vote, or denied the right to serve as counsel based on gender. Citizens have a fundamental right to choose their spouses, but not their lawyers under licensing rules in our nation's capital.

Petitioners challenge the Local Rules of the three United States District Courts in Florida. These Local Rules categorically deny *general* bar admission privileges to all lawyers not licensed by the Florida Supreme Court. (App. 41) They further deny some

petitioners *pro hac vice* admission on the basis of residence. (App. 43) They have extra-territorial impact outside the state boundary line. They compel all citizens and corporations to choose a Florida licensed attorney in order to exercise their constitutional rights in the district courts. The Florida Supreme Court compels all of its lawyers join and pay dues to its mandatory Florida Bar Association. The Florida Bar Association routinely utilizes its members' dues to engage in partisan political lobbying. Thus, in order to obtain *general* admission privileges in the United States courts all attorneys are compelled to associate with and pay dues to a mandatory trade union. Sometimes, they are compelled to pay union dues to a second, third, and fourth mandatory bar association.

Petitioners challenge the *general* bar admission licensing rules of the four United States District Courts in California that categorically deny them *general* bar admission privileges because they are not licensed by the California Supreme Court. (App. 36) These Local Rules further categorically and wholly deny some petitioners *pro hac vice* admission privileges because they reside or have offices in California. (App. 38) These Local Rules have extra-territorial impact. They compel all American citizens and corporations to choose a California licensed attorney in order to exercise their constitutional rights in a United States Courthouse. The California State Bar association has been sued numerous times for partisan political lobbying and is historically a mandatory trade union. *See Keller v. State Bar of Cal.*, 496 U.S. 1, 9-17 (1990).

The Florida and California Local Rules are mirror opposites. If a citizen from California sues a citizen from Florida on a federal claim in federal court, the Florida citizen or corporation is also a party. If the first to file or venue is in California, it is arbitrary and irrational to compel the Florida citizen to hire a California lawyer. Likewise, if venue is in Florida, it is equally arbitrary to compel the California citizen to hire a Florida lawyer on the identical federal claims. The same holds true on jurisdiction based on diversity. Diversity claims are also governed by the *Federal Rules of Civil Procedure*. The purpose of diversity jurisdiction is to provide a neutral forum. That purpose is defeated by the Local Rule reliance on forum state law on both federal and diversity claims in two-thirds of the district courts.

The decisions below zoom over the fact the challenged Local Rules are not neutral and they are not generally applicable. They are not neutral because they pre-select favored and disfavored speakers. They do not serve any legitimate government interest because the same citizen can invidiously have unequal privileges and immunities for the same federal claims depending solely on local procedure. They are not generally applicable when the government can choose any lawyer regardless of forum state law or office location and American citizens who have constitutional rights cannot.

Every year, year in and year out, over 16,000 lawyers are provided equal and reciprocal licensing privileges and immunities and dignity in a second state

that are denied to petitioners, and thousands of other citizens, by monopoly protecting licensing Local Rules often fixed and funded by disparate political trade unions. Every single one of these 16,000 lawyers are categorically disqualified for *general* admission licensing privileges in the Florida and California District Courts. Many are categorically disqualified in the District of Columbia. The decisions below dodge these undisputed material facts.

D. PROCEDURAL HISTORY

This Court has never addressed the licensing discrimination question presented in this case on the merits. However, this Court has denied review in prior decisions upholding this licensing discrimination, including the District of Columbia's Circuit's 2017 decision in *Howell*.

1. This Court's Decision in *Becerra* and *Janus*

Recently, this Court held the government cannot "reduce a group's First Amendment rights by simply imposing a licensing requirement." *National Institute of Family and Life Advocates v. Becerra*, 585 U.S. ___, ___ (2018) (slip op., at 14). In *Becerra*, this Court cited with disapproval several U.S. Court of Appeals cases upholding licensing discrimination as rational based on the so-called "professional speech doctrine." In *Becerra*, this Court held there is no such thing as a professional speech doctrine. Several decisions upholding

Local Rules as rational including *Howell* squarely rely on the professional speech doctrine. Additionally, in *Janus v. AFSCME*, 138 S.Ct. 2448, 2465 (2018), this Court held minimal scrutiny rational basis review is foreign to its First Amendment speech jurisprudence and it rejected rational basis review in a licensing case.

In light of *Becerra* and *Janus* and other recent 21st Century Supreme Court precedent and pending litigation, changes in technology and cultural mores, including the coronavirus, petitioners expanded the spotlight because of the interstate relationship of the Local Rules. This licensing discrimination cannot be fairly viewed in insolation; as if our Union only consisted of one state; or only one mandatory bar association; or only one United States District Courtroom, where some citizens are special and others second-class.

Petitioners filed an eighty-page chapter and verse complaint. They attached to the complaint Exhibit A (App. 45-82) which proves the 100% subjective California bar exam that experienced out-of-state attorneys are required to pass in order to obtain *general* admission privileges in the District Courts in California is not a valid and reliable test, and that year in and year out, this 100% subjective licensing test has a *standard error of measurement* shoddier than .48. This speech-content entry level exam is employed by the content-police to routinely fail two out of three already licensed attorneys on the July bar exam. Flipping a coin would be more reliable measure. *See* Amended Complaint ¶ 67 ("The test results for this licensing

exam do not comply with professional *Standards* and are inadmissible as evidence under the *Federal Rules of Evidence* 701 series and the *Daubert* standards because the test results are neither *valid* nor *reliable*, and they contradict the ABA legal industry licensing standard of reciprocity.").

Every experienced out-of-state attorney seeking *general* admission licensing privileges in the Federal District Courts in California must pass this Berlin Wall guarded by the content-police. Moreover, not unlike the 17th Century government practice of licensing printing presses, and not unlike the literacy tests that were used to deprive black citizens of the right to vote, some petitioners are denied *general* admission licensing privileges based on this prior restraint not only in California, but also under the D.C. Local Rules that vicariously adopt this California entry-level rite of passage.

Petitioners further attached to the complaint Exhibit B—a petition filed with the Chair of the Ninth Circuit Judicial Council by legal scholars requesting it to abrogate this licensing discrimination. Exhibit B traces the history of the promulgation of the Local Rules back to the adoption of the *Federal Rules of Civil Procedure* in 1934. Exhibit B demonstrates that this licensing discrimination is not reasonably related to any legitimate government interest in this 21st Century. (App. 83-140) Exhibit B includes notice that the petition was denied. (App. 86-88)

2. Petitioners' Motion for a Preliminary Injunction

The parties below stipulated to a briefing continuance in light of the then pending petition for certiorari *in Jarchow v. State Bar of Wisconsin*, 130 S.Ct. 1720 (2020). Petitioner LAWYERS UNITED INC. filed an amicus petition in *Jarchow*. In light of *Janus*, *Jarchow* and *amici* asked this Court to hold that it was unconstitutional to compel attorneys to join and subsidize mandatory state bar unions that engaged in non-germane political advocacy. Justices THOMAS and GORSUCH filed a dissent from cert denial.

After certiorari was denied in *Jarchow*, petitioners amended their complaint and concurrently filed a Motion for Preliminary Injunction. Petitioners' amended complaint allegations track their Motion for Preliminary Injunction. It includes Exhibits A and B; multiple attorney Declarations under oath establishing injury and standing;[2] the American Bar Association 20-20 Commission (2012) (App. 164-191) judgment that all states adopt admission on motion for ABA graduates with three years of experience; and ABA Recommendation 8A (1995) finding that Local Rules that deny

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[2] Declaration of Thomas Easton, Esq. on behalf of LAWYERS UNITED INC. alleging direct injury and association standing ECF 44-2; Declaration and Supplemental Declaration of EVELYN AIMEE DeJESÚS, Esq. ECF 44.1 and ECF 44.3; Declaration of ALLAN WAINWRIGHT and Order revoking his pro hac vice admission in Middle District of Florida ECF 44.2; Declaration of JENNIFER LOW, Esq. ECF 44; Declaration of PHILLIP DOWNEY, Esq. ECF 44.5; Declaration of CHAD MARZEN, Esq. ECF 44.6.

general admission privileges to out-of-state attorneys are outdated, anti-competitive, and unnecessarily interfere with the attorney-client relationship. (App. 159-163)

Petitioners showed the purpose of a bar exam is to ascertain "entry level" minimum competence in order to protect the public. The ABA holds there is no reason to conclude an experienced attorney is less competent than a brand-new lawyer. According to the ABA, bar exams for previously licensed attorneys serve no useful purpose—women and minorities are disproportionately injured. Several converging lines of Judicial Conference studies[3] and multidisciplinary research reinforce this ABA judgment. Initially, psychometricians have concluded that it is almost impossible to get graders to agree on subjective scores.[4] Exhibit A and the

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[3] "(N)o one has yet devised an examination which will test one's ability to be a courtroom advocate." Report and Tentative Recommendations of the Committee to Practice in the Federal Courts in the Judicial Conference of the United States, 79 F.R.D. 187, 196. "Lawyers with previous trial experience are much more likely to turn in very good performances, and it permits the inference that experience improves the quality of trial performance." *Id.* at 196. There is a correlation between the quality of trial performance and the prior experience of the attorneys evaluated. 83 F.R.D. at 222. (Amended Complaint ¶ 48)

[4] Dr. Geoff Norman is a nationally recognized testing expert with over 30 years of experience. Dr. Norman is one of the experts writing a chapter in the Cambridge Handbook of Expertise and Expert Performance. Dr. Norman writes:

> "Study after study has shown that it is almost impossible to get judges to agree on scores for essay answers."

RAND Corporation studies (App. 46-60) prove it is almost impossible to get essay graders to agree on scores.[5] Exhibit A also contains testing expert evidence from Dr. Susan M. Case and Dr. Robert Kane from the *National Conference of Bar Examiners*, and Dr. Gary McClelland (App. 67-69) from the University of Colorado at Boulder, and Dr. Phillip L. Ackerman, a fellow at the testing associations responsible for promulgating testing *Standards* and professor at Georgia Tech. (App. 61-66) These experts conclude that California's 100% subjective test that experienced attorneys are required to pass is neither a valid nor reliable licensing test. Multiple *Standards* are breached. (App. 62-66)

Neuroscientists have also found that practical experience in a subject rewires the brain and makes it more efficient: "Neurons that fire together wire together." Studies show practice is indispensable for expertise and expert performance. Everyone knows practice makes perfect. Petitioners further submitted

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See "So What Does Guessing the Right Answer Out of Four Have to Do With Competence Anyway?" The Bar Examiner, p. 21 (Nov. 2008). (Amended Complaint ¶ 47)

[5] Grader correlation .41 Feb. 2001 (App. 46)

Grader correlation .48 July 2001 (App. 49)

Grader correlation .38 Feb. 2002 (App. 50)

Grader correlation .40 July 2002 (App. 52)

Grader correlation .48 Feb. 2002 (App. 54)

Grader correlation .39 Feb. 2004 (App. 56)

Grader correlation .41 July 2004 (App. 58)

The industry standard for a test to be valid is .8 to .9 (App. 66). Expert psychometric opinions by Dr. Ackerman, Dr. McClelland, and Dr. Kane included in Exhibit A.

ABA Journal new stories reporting that the *licensing rite of passage* for entry level bar exams was not necessary, being reexamined in light of COVID-19, and requested judicial notice of changed circumstances.[6]

3. The Decisions Below

The Senior District Judge allotted was previously the Chief Judge on the Court whose rules he was judging. His Honor also previously served on the Judicial Council. His Honor was deciding his own case. The court denied oral argument and ignored virtually everything petitioners submitted. He entered a Rule 12(b)(2) dismissal of the out-of-state defendants claiming he did not have *personal* jurisdiction over federal officials under the 14th Amendment (sic). He dismissed the United States as a party and petitioners' claims under Rule 12(b)(6) and denied petitioners' Motion for Preliminary Injunction. He chose to ignore the Judicial Council respondents' status as parties and their duties under 28 U.S.C. § 332(d)(4) to periodically review District Court Local Rules for consistency with 28 U.S.C. §§ 2071-72. The court held his hands were tied by *Howell* and that only the District of Columbia Circuit or the Supreme Court could grant relief.

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[6] ECF 67-1 Ward, ABA Journal, 4-21-20 "Bar exam does little to ensure attorney competence"; ECF 66-1 Ward, ABA Journal, 4-10-20 "Test-takers express safety concerns, fears from in-person bar exam—including lack of masks, unclean bathrooms."

The court further disparaged petitioners' counsel for "highly offensive analogies" (App. 22-24) for comparing the disparate Local Rules as a vestige from separate but equal era: for comparing a seat at the bar in the United States Courtroom with a seat on a public railroad car or public bus; for comparing the right to vote based on a literacy test with the right to petition based on a 100% subjective test that has a standard error of measurement shoddier than 48; for comparing the rights to counsel and to petition with the right to marriage.

On appeal: petitioners' motion to name ALLAN WAINWRIGHT as an additional party was DENIED. He filed a Declaration under oath along with an Order revoking his *pro hac vice* status in the Middle District of Florida because he had an office and residence in Florida that was attached to petitioners' Motion for Preliminary Injunction. The hearing panel members previously served on the Judicial Council. Petitioners' motion to recuse the hearing panel because of conflicts of interests and request that the Court request Chief Justice ROBERTS to assign the panel was DENIED. Petitioners' motion for oral argument was DENIED. The panel affirmed in a one-paragraph decision citing *Howell*. (App. 1-2)

The decisions below refuse to address *Janus*, *Becerra*, and petitioners' claims the challenged Local Rules that often require them to join and subsidize a second, third, and fourth mandatory state bar association to petition United States District Courts trespass

their First Amendment freedoms to not associate and not subsidize political speech they disagree with.

4. The District Court Has Personal Jurisdiction Over All of the Out-Of-State Officials and the United States is the Real Party In Interest

Federal judges are not immune from suit for declaratory and injunctive relief. *See Frazier v. Heebe*, *Chief Judge of the District of Louisiana*, 482 U.S. 641, 645 (1987) ("We hold that the District Court was not empowered to adopt its Local Rules."). This Court is requested to note an important distinction the court below overlooked. The named judicial officers are not being sued for their adjudicatory role to decide cases and controversies. They are parties because of restrictions and omissions in administratively enacted Local Rules, not unlike President Obama's administratively enacted immigration rules invalidated in *Texas v. United States*, 809 F.3d. 134 (5th Cir. 2015) *affirmed* 136 S.Ct. 2271 (2016), or the federal statute in *Windsor* that constructed classes among married citizens that was invalidated.

The District Court's conclusion it did not have *personal* jurisdiction is a pretextual ploy. "Congress' typical mode of providing for the exercise of *personal* jurisdiction has been to authorize service of process." *See BNSF Ry. Co. v. Tyrrell*, 137 S.Ct. 1549, 1555 (2017). "[S]ervice of summons is the procedure by which a court having venue and jurisdiction of the

subject matter of the suit asserts jurisdiction over the *person* of the party served." *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987). *Omni* further holds "federal courts cannot add to the scope of service of summons Congress has authorized." *Id*. at 109.

The District Court's circular reasoning that it did not have *personal jurisdiction* over the judicial officers in California and Florida and the United States is not a real party in interest may sound plausible at first glance. However, a careful analysis reveals both of these conclusions false. The District Court has jurisdiction over the out-of-state defendants and the United States based on 28 U.S.C. § 1391(e)(1) and (2) and this Court's precedent interpreting these provisions. 28 U.S.C. § 1391(e) provides:

> (e) Actions Where Defendant Is Officer or Employee of the United States.—
>
> (1) In general.—
>
> A civil action in which **a** *defendant is an officer or employee of the United States* or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, *or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred*. (Emphasis added)

> (2) Service.—
>
> The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified *mail beyond the territorial limits of the district in which the action is brought*. (Emphasis added)

The administratively enacted rules are the events and omissions that give rise to petitioners' claims. These rules have extra-territorial impact. Under the District Court's reasoning, every citizen in 49 states would be required to travel to Florida or California to bring a challenge to Local Rules that implicate the rights of Americans in all 50 states. This result is the opposite of what Congress intended.

More particularly, this Court has held "[S]ection 2 of the Act, 28 U.S.C. § 1391(e), provides a similarly expanded choice of venue *and authorizes service by certified mail on federal officers or agencies located outside the district in which such a suit is filed*." (Emphasis added) *Stafford, U.S. Attorney v. Briggs*, 444 U.S. 527, 534 (1980). "The purpose of this bill [Section 1391(e) amendment] is to make it possible to bring actions against Government officials and agencies in U.S. district courts outside the District of Columbia, *which, because of certain existing limitations on jurisdiction and venue, may now be brought only in the U.S. District Court for the District of Columbia*." *Id.* at 539-40. (Emphasis in original). The "general rule" is that "all

persons materially interested . . . in the subject-matter of a suit, are to be made parties to it . . . , however numerous they may be, so that there may be a complete decree, which shall bind them all." *Trump v. Hawaii*, 138 S.Ct. 2392, 2427 (2018). One of the recognized bases for an exercise of equitable power was the avoidance of multiplicity of suits. *Ibid*.

The District Court further holds the United States is not a proper party or the real party in interest. But the text of Section 1391(e) by its terms authorized suits against the United States. "Frequently, the administrative determinations involved are made not in Washington but in the field. In either event, these are actions *which are in essence against the United States.*" (Emphasis in original) *Stafford*, 444 U.S. at 542. Hence, defendant United States is the real party in interest. The United States has been a real party in many civil lawsuits. *See United States v. Windsor*. *See Texas v. United States*, where 26 states filed a lawsuit in the Western District of Texas naming multiple federal officials with offices in the District of Columbia. Contrary to the District Court's conclusion, there is nothing in the current statutory language or current text of § 1391(e)(1) that shows that Congress was only thinking about executive officers in providing a remedy or providing for nationwide service of process under § 1391(e)(2).

The District Court further devotes several pages of his Opinion to dismissing the out-of-state defendants for lack of *personal* jurisdiction under the 14th Amendment (sic) and the District of Columbia long-arm

statute (sic). A first-year law student would know that the 14th Amendment has nothing whatsoever to do with a lawsuit in federal court challenging federal licensing discrimination. Similarly, petitioners repeatedly affirmed they were not relying on the District of Columbia long-arm statute. Petitioners rely on 28 U.S.C. § 1391(e)(2) which provides for nationwide service of process. The District of Columbia long-arm statute is not remotely relevant. False in one, false in all.

ARGUMENT

I. THIS COURT'S *SUPERVISORY* RESPONSIBILITY OVER FEDERAL LICENSING DISCRIMINATION AND ITS *SUPERVISORY* RESPONSIBILITY OVER THE ARTICLE III COURTS WARRANTS GRANTING REVIEW

The Congressional conclusion that there is no meaningful opportunity to challenge Local Rules because the judges who make the rules decide whether they are valid is front and center. The Founding principle all men and women are created equal is turned upside down. The due process principle that no person should decide their own case is turned upside down. *Howell* holds only this Supreme Court has supervisory review. *See* 851 F.3d at 18 ("A single district court judge or an appellate panel may not usurp that body's [Supreme Court] authority."). If this Court does not grant review, there is no judicial review.

Initially, the legal system is broken. In large part, this fractured system under this Court's supervisory watch is the product of monopoly protecting mandatory bar association conduct. According to respondents, all men are presumed equal and innocent, except members of the bar licensed in 49 states. Law forms the basic operating system, the transactional platform of all economic and social activity. Clifford Winston, et al., *Trouble at the Bar*, p. 2 (Brookings Institution Press, Kindle Edition 2020). The legal profession has been able to create a powerful self-aggrandizing position in the United States. *Ibid*. It has been estimated the law profession's legal monopoly fails to serve 80 percent of the known market and it continues to build barriers for people to access legal services. *Ibid*. Twenty-seven percent of all civil cases filed in the United States District Court had at least one *pro se* party.[7] The following chart depicts the numbers of total appeals and the shocking percentage of pro se appeals in all U.S. Circuit Courts of Appeals.[8]

Fiscal year	**Total Appeals**	**Pro se appeals**	**Percentage pro se**
2020	48,190	23,546	48.9%
2019	48,486	23,728	48.9%
2018	49,276	24,680	50.1%
2017	50,506	25,366	50.2%
2016	60,357	31,609	52.4%

[7] Just the Facts: Trends in Pro Se Civil Litigation from 2000 to 2019 | United States Courts (uscourts.gov)

[8] https://www.uscourts.gov/sites/default/files/data_tables/jff_2.4_0930.2020.pdf

2015	52,698	26,883	51.0%
2010	55,991	27,208	48.6%
2005	68,469	28,555	41.7%
2000	54,694	24,935	45.6%
1995	50,072	19,973	39.8%

This Court should exercise its supervisory review responsibility because the courts below have neglected to conform to the public trust essential for our Union of checks and balances. Justice Brandeis believed that he could not properly comprehend the legal aspects of a controversy unless he fully understood the facts. "[T]he judgment should be based upon a consideration of relevant facts, actual or possible—Ex facto jus oritur [Law must arise from facts]. That ancient rule must prevail in order that we may have a system of living law." Melvin Urofsky, *Louis D. Brandeis* (Doubleday Publishing Kindle Edition) at 10207-10209. Brandeis held: "Knowledge is essential for understanding and understanding should precede judging." *Jay Burns Baking Co. v. Bryan*, 264 U.S. 504, 520 (1924).

The following undisputed material facts warrant careful consideration and review and were suppressed by the courts below, including:

- Exhibit A—demonstrating the 100% subjective California experienced attorney bar exam is not a valid or reliable licensing test according to numerous testing experts.

- Exhibit B—demonstrating legal scholars have presented a petition to the Ninth Circuit showing the balkanized licensing rules do not serve any legitimate government interest that was summarily denied.
- ABA Recommendations 8A (1995) holding the Local Rules are anti-competitive and interfere with the right to counsel and should be abrogated.
- ABA 20-20 Commission (2012) report concluding that all states should adopt admission on motion for attorneys with three years of experience as there is no reason to conclude an experienced attorney is less qualified than a law school graduate.
- Statistics showing that every year 16,000 lawyers are admitted to the bar of a second state on motion under the Uniform Bar Exam rubric adopted in 36 states and on reciprocity rules adopted in 43 states that are categorically denied to petitioners by the Local Rules in Florida and California, and sometimes denied by District of Columbia Local Rules.

The courts below also systematically ignore and disregard this Court's out-of-state attorney licensing precedent that overturned state and federally imposed burdens on a licensed attorney's opportunity to practice law under a strict scrutiny or heightened scrutiny standard of review.

First, in *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985), this Court overruled the 19th Century holding that an attorney's opportunity to practice law is not a fundamental right and is not a constitutionally protected privilege and immunity. The Court held:

> The lawyer's role in the national economy is not the only reason that the opportunity to practice law should be considered a "fundamental right." We believe that the legal profession has a noncommercial role and duty that reinforce the view that the practice of law falls within the ambit of the Privileges and Immunities Clause.[fn11] Out-of-state lawyers may—and often do—represent persons who raise unpopular federal claims. In some cases, representation by nonresident counsel may be the only means available for the vindication of federal rights. *Id*. at 281-82.

Second, in *Frazier v. Heebe, Chief Judge for the District of Louisiana*, 482 U.S. 641 (1987): "The question for decision is whether a United States District Court may require that applicants for general admission to its bar either reside or maintain an office in the State where that court sits." *Id*. at 642-43. This Court said No. *Frazier* holds, "[s]imilarly, we find the in-state office requirement *unnecessary* and *irrational*. First, the requirement is not imposed on in-state attorneys." *Id*. at 649. The *Frazier* Court applied its supervisory power over Local Rules and a heightened scrutiny rational and necessary standard. *Id*. at 645. *Frazier* further states: "No empirical evidence was introduced at

trial to demonstrate why this class of attorneys . . . should be excluded from the Eastern District's Bar." *Id*. at 646-47. Obviously, rational basis review does not require the introduction of empirical evidence. *Frazier* also holds *pro hac vice* admission is not an equivalent substitute for *general* admission privileges.

Third, *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988) squarely holds that *bar admission on motion* (without taking another bar exam) for out-of-state licensed attorneys is a constitutionally protected Privilege and Immunity. In *Piper* and *Friedman*, this Court applied strict scrutiny. These licensing cases uniformly reject the hypothesis that licensed lawyers will not conform with their professional responsibilities as members of the bar.

This Court has not addressed attorney licensing preferential treatment in over thirty years. Looking back thirty years, information was not at a lawyer's finger-tip with smartphones, internet, email, Google, PACER. Today, computers are driving cars, children have access to information technology previously unimaginable. These Supreme Court licensing cases were also decided before Congress enacted 28 U.S.C. § 332(d)(4) and amended 28 U.S.C. §§ 2071-2072(b) tightening the District Court Local Rule standard to "Such rules shall not abridge, enlarge or modify any substantive right." Clear and specific congressional legislation has rejected Local Rule inequality. Yet, this federal licensing inequality that makes a mockery out of our Constitution exists and it will continue unless

review is granted because the Courts below hold only this Court has supervisory review.

It is difficult to imagine a more egregious example of speech-licensing discrimination than in this petition. Every citizen in the United States is compelled to choose as their primary counsel in two-thirds of the 94 United States District Courthouses a local attorney preselected and approved by a mandatory trade union that engages in partisan politics.

II. UNLESS THIS COURT GRANTS REVIEW, THE DECISIONS BELOW UNDERMINE PUBLIC CONFIDENCE IN THE INTEGRITY OF THE ARTICLE III COURTS BECAUSE NO PERSON SHOULD BE A JUDGE AND PARTY IN THEIR OWN CASE

This Court has been scrupulous in maintaining the separation of powers structure that has an essential connection to the non-delegation doctrine. In *Nguyen v. United States*, 539 U.S. 69 (2003), the Court considered the question whether a panel consisting of two Article III judges and one Article IV judge had jurisdiction. The Article IV judge did not have life tenure and Article III Court protections. The DOJ argued this structural error had been waived by failure to object and it was harmless error. This Court reversed and remanded for a new hearing by Article III judges. The Courts below, and every other court upholding Local Rules as rational, have not addressed

petitioners' separation of powers arguments that were presented below.

Petitioners' argument that the Local Rule delegation of federal power to forum state licensing officials who have not subscribed to a federal oath of office violates the separation of powers doctrine and *Janus* is clear and unambiguous.

First, states are prohibited from exercising federal legislative power. Article I § 1 of the Constitution provides, "All legislative Powers herein granted *shall* be vested in a Congress of the United States, which *shall* consist of a Senate and House of Representatives." States do not have a shred of jurisdiction over many of the enumerated powers including patents, copyrights, bankruptcy, admiralty, federal taxation, federal criminal law, or to prescribe rules necessary and proper for the adjudication of federal claims in the federal courts. No state bar exam tests the exclusively federal subjects of patents, trademarks, copyrights, bankruptcy, admiralty, or federal taxation.

Second, states are prohibited from exercising Article III Court judicial duties. Federal district courts are national courts and have jurisdiction over cases arising under the Constitution. District Judges are nominated by the President and confirmed by the Senate. They take an oath of office. Article III Court jurisdiction and power is necessary, according to the Great Chief Justice John Marshall because "the mere necessity of uniformity in the interpretation of the national laws decides the question. Thirteen independent

courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed." *Cohens v. Virginia*, 19 U.S. 264, 415-416 (1821). "[L]ocal Courts must be excluded from a concurrent jurisdiction in matters of national concern, else the judicial authority of the Union may be eluded at the pleasure of every plaintiff or prosecutor." *Id*. at 420.

Third, states have no power to govern bar admission in other states or in the federal courts. The right to practice law before federal courts is not governed by State court rules. *Theard v. United States*, 354 U.S. 278, 280 (1956); *Winterrowd v. American Gen. Annuity Ins. Co*., 556 F.3d 815, 820 (9th Cir. 2009). *Birbrower, Montalbano, Condon & Frank v. Superior Ct*., 17 Cal. 4th 119, 130 (1998).

Furthermore, "when a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest." *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S.Ct. 1101, 1114 (2015). State agencies controlled by active market participants pose the exact risk of self-dealing. *Ibid*. These active market participants are not angels. Even assuming the irrational proposition that federal district judges can delegate their Article III Court judicial duties solely to one state's licensing officials, this delegation is annexed without a shred of supervision and without any "intelligible standard."

These Local Rules have no consistent standard, let alone an *intelligible standard*.

This delegation of federal judicial duty to state-sponsored public trade unions further encroach upon *Janus* and the *Code of Conduct for United States Judges*. Canon 2 provides:

> "A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities"
>
> "(B) Outside Influence. A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge."

These uneven speech-licensing rules on their face stem from a social, political, and financial relationship with forum state public trade unions that regularly engage in lobbying and litigation on political matters of public concern. The *Code of Conduct for United States Judges* prohibits this incestuous relationship with a political trade union.

This Article III Court nepotism further nullifies *Federalist Paper 10*, which holds a core benefit of our Union is to dissolve local faction. It provides:

> AMONG the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its

> tendency to break and control the violence of faction.
>
> . . . . . .
>
> By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

The District of Columbia Circuit's one-paragraph ruling overlooks separation of powers, non-delegation, and our government's requirement of checks and balances. This one-paragraph ruling is a pretextual ploy that does not warrant the presumption of regularity. It is arbitrary and irrational to conclude the right to marriage is constitutionally protected, but the rights to speech, association, counsel, and to petition the United States are not constitutionally protected, as *Howell* and the decisions below hold.

III. THIS COURT SHOULD SUMMARILY ABROGATE THIS FACIAL LICENSING DISCRIMINATION THAT RENDERS THE FIRST AMENDMENT A DEAD LETTER OR GRANT CERTIORARI

If Congress shall make no law abridging the freedoms to speech, association, and petition, neither can judges abridge these freedoms under the guise of Local Rules. In addition to *Janus* and *Becerra*, the

one-paragraph ruling turns a blind eye to First Amendment scripture. In *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 638 (1943), Justice Robert Jackson famously summarized First Amendment gospel:

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Equally important:

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *Id*. at 642.

Barnette means District Judges cannot utilize Local Rules to prescribe First Amendment orthodoxy for any class of citizens.

There is no reason to conclude that "religious freedom" is more important than "*petition freedom*." The Local Rules constitute a prior restraint on the right to petition. In *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries*, *Inc*., 508 U.S. 49 (1993), the Court, in construing the right to *petition*,

held that "litigation could only be enjoined when it is a sham. To be a sham, first, it must be objectively baseless in the sense that no reasonable litigant could expect success on the merits; second, the litigant's subjective motive must conceal an attempt to interfere with the business relationship of a competitor . . . through the use of government process—as opposed to the outcome of that process—as an anti-competitive weapon." *Id*. at 60-61. Petitioners submit the Local Rules on their face violate the Petition Clause because they presume that the petitioners and all licensed lawyers from 49 states will file sham petitions for an anti-competitive purpose, and only file sham petitions.

The Local Rules on their face also constitute viewpoint discrimination. A subject that is first defined by content and then regulated or censored by mandating only one sort of comment is not viewpoint neutral. To prohibit all sides from criticizing their opponents makes a law more viewpoint based, not less so. *Matal v. Tam*, 137 S.Ct. 1744, 1766 (2017). "A law or policy permitting communication in a certain manner for some but not for others raises the specter of content and viewpoint censorship. This danger is at its zenith when the determination of who may speak and who may not is left to the unbridled discretion of a government official." *Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 763 (1988). The government, by enforcing disparate Local Rules, suppresses the viewpoints of a disfavored class of licensed lawyers, citizens, and corporations.

These licensing rules also constitute *speaker discrimination.* In *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010):

> Quite apart from the purpose or effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each. *Citizens United*, 130 S.Ct. at 890
>
> . . .
>
> Any effort by the Judiciary to decide which means of communications are to be preferred for the particular type of message and speaker would raise questions as to the courts' own lawful authority. Substantial questions would arise if courts were to begin saying what means of speech should be preferred or disfavored. *Id*. at 890 (Emphasis added)

These licensing rules on their face further constitute content discrimination. This Court in *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015) redefined "content

discrimination." The subject and content of this federal discrimination is federal law and procedure.

Similarly, in *Legal Services Corp. v. Velazquez*, 531 U.S. 533 (2001), at issue was the constitutionality of restrictions on attorney speech enacted by Congress. This Court held the Congressionally imposed restriction on attorney speech was *facially unconstitutional*. *Id*. at 549. (Emphasis added)

CONCLUSION

As famously stated by Justice Anthony Kennedy, the nature of injustice is that we may not always see it at first blush. The generations that wrote and ratified the Bill of Rights did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed. According to the Congressional Reporter, "there is no such thing as a rule's becoming sacrosanct merely for having passed judicial scrutiny the first time. It is subject to ongoing scrutiny." (App. 149) It is hornbook law that no man shall be a judge in his or her own case. This maxim has been turned on its head by the decisions below where lower courts are judge, jury, and defense counsel. The courts below hold only this

Court has supervisory responsibility over federal licensing discrimination.

Yet, if all men and women are created equal, lawyers are created equal. This Court has held an attorney's opportunity to practice law is a fundamental right. This Court has squarely held that it will not presume that out-of-state lawyers will trespass the Rules of Professional Conduct. The decisions below do not adhere to this Court's precedent, the will of Congress, and the Bill of Rights.

Are this Court's precedent, Congress, and the text of the Constitution to be disregarded with impunity? Are the RAND Corporation Reports and testing experts Dr. Norman, Dr. Ackerman, Dr. McClelland, Dr. Case, and Dr. Kane to be ignored? (App. 45-82) Sixteen thousand lawyers, year in and year out, are afforded reciprocal licensing in other states that are denied to them under Local Rules.

In *Boudreaux v. Louisiana State Bar Association*, No. 20-30086, the Fifth Circuit in the first paragraph of its published decision acknowledges the 21st Century national importance of this licensing issue:

> [T]he COVID–19 pandemic threw the rite-of-passage bar exam into turmoil, states adopted a hodgepodge of responses that teed up larger questions, like "Is the bar exam the best way to measure competency?" and "[A]re there ways to fundamentally change how lawyers are trained, licensed, and regulated?" The exam is being reexamined. But for most

> lawyers, the bar examination is just step one of a career-long relationship with the bar association. Even if the legal licensing regime is lastingly upended, thirty or so states still mandate joining and funding the state bar as a precondition to practicing law.

In view of the foregoing, it is plain and unambiguous that this federal uneven playing field constitutes structural error that only this Court can remedy. This Court is thus requested to summarily abrogate this facial licensing discrimination or issue a writ of certiorari to review it.

Respectfully submitted,

JOSEPH ROBERT GIANNINI
Counsel of Record
PA State Bar 38814
12016 Wilshire Blvd., Suite 5
Los Angeles, CA 90025
(310) 804-1814
j.r.giannini@verizon.net

W. PEYTON GEORGE
DC Bar ID 14837
663 Bishops Lodge Rd., Unit 27
Santa Fe, NM 87501
(505) 680-4001
Peyton@georgelegal.com
Counsel for Petitioners