No. _____

In the
Supreme Court of the United States

FRANK J. LAWRENCE, JR.,

*Petitioner,*

*v.*

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN,

*Respondent.*

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

Within a four month span, Petitioner filed applications for admission to the bars of eight federal courts, including the United States Court of Appeals for the Sixth Circuit. All of those applications were granted, with the exception of the one submitted to the United States District Court for the Western District of Michigan.

1. Notwithstanding the Sixth Circuit's use of the "abuse of discretion" standard to review the District Court's adverse admission decision, does the decision of the Court of Appeals impermissibly conflict with its own, recent declaration that Petitioner is "duly qualified" to practice law in its own Court? Should *Certiorari* be granted in order to secure and maintain uniformity of admission decisions?

2. Did the District Court use its unbridled discretion to impermissibly assess First Amendment activities of Petitioner, in particular, his criticism of public officials? Should *Certiorari* be granted in order to declare that constitutionally protected, expressive activities cannot be used as a basis to deny an application for admission to practice law?

## PARTIES TO THE PROCEEDING

### Petitioner

Frank J. Lawrence, Jr. is an individual. There are no corporate affiliations.

### Respondent

Respondent United States District Court for the Western District of Michigan is an Article III Court.

## RELATED CASES

- *In Re: Frank J. Lawrence, Jr.*, No. 1:17-mc-0098, U. S. District Court for the Western District of Michigan. Judgment entered February 2, 2018.

- *In Re: Frank J. Lawrence, Jr.,* No. 18-1131, U. S. Court of Appeals for the Sixth Circuit. Judgment entered January 14, 2019.

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## PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Sixth Circuit in this case.

## OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Sixth Circuit is unpublished and reproduced at Pet. App. 1a. The Order of the United States Court of Appeals for the Sixth Circuit denying reconsideration is unpublished and reproduced at Pet. App. 61a. The Opinion of the United States District Court for the Western District of Michigan is unpublished and is reproduced at Pet. App. 21a.

## STATEMENT OF JURISDICTION

The Judgment of the United States Court of Appeals was issued on January 14, 2019. Pet. App. 1a. Reconsideration of that Judgment was denied on February 2, 2019. Pet. App. 21a. On May 14, 2019, Justice Sotomayor extended the time in which to file a Petition for Writ of Certiorari to July 19, 2019. The jurisdiction of this Court is invoked under 28 USC §1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following constitutional provision:

**Amendment I**

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

## STATEMENT OF THE CASE

Within a four month span, Petitioner Frank Lawrence filed applications for admission to the bars of eight federal courts, including the United States Court of Appeals for the Sixth Circuit. All of those applications were granted, with the exception of the one submitted to the United States District Court for the Western District of Michigan. In affirming that one denial, the Sixth Circuit determined that the district court's decision was not "arbitrary," "discriminatory" or "irregular." Pet. App. 19a

Two aberrations took place between the time when Petitioner submitted his application for admission to the Western District of Michigan and date upon which his application was rejected: First, the State Bar of Michigan informed Petitioner that Western District Chief Judge Robert Jonker's admissions clerk had covertly sought information about Petitioner that is contained within the confidential files of the Character and Fitness Department.[1] The admissions clerk stated that these

[1] Under Michigan law, the information that Chief Judge Jonker instructed his clerk to investigate about

efforts were made after Google searches were conducted by Court staff regarding Petitioner and past newspaper articles were located. Petitioner responded by requesting the clerk's testimony in order to show that the Chief Judge violated Canon 3(A)(4) of the Code of Judicial Conduct for United States Judges and that the Chief Judge should have been disqualified from personally selecting the three panelists who decided this matter on his behalf. Pet. App. 22a

Second, while Petitioner's application was pending, the Sixth Circuit issued an Opinion and Order, explaining how Western District of Michigan Judge Paul Maloney had abused his discretion in his efforts to block Petitioner's pending civil rights claims against Michigan licensing officials in a separate case:

> Here, by refusing to lift the stay, [Judge Paul Maloney] refused to adjudicate the merits of the claims raised in Lawrence's initial complaint. There is no indication that [Judge Paul Maloney] intends to adjudicate the merits of that complaint at a later time, as the case remains stayed, apparently indefinitely. * * * [Judge Paul Maloney] gave no reason for failing to lift the stay and, in fact, acted inconsistently with that ruling by adjudicating the motion to amend. * * * Further, [Judge Paul Maloney's] adjudication of the motion to amend was inconsistent with [his] order denying the motion to lift the stay. The

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Petitioner is protected from unauthorized disclosure. *See* Rule 15, Section 1, of the Michigan Supreme Court Rules Concerning the State Bar of Michigan, paragraph 7.

> result of [Judge Paul Maloney's] actions was the denial of the motion to amend in the absence of a final judgment that would allow Lawrence to challenge that order on appeal and the apparently indefinite stay of Lawrence's initial complaint.

*Lawrence v. Parker*, No. 17-1319, U. S. Court of Appeals for the Sixth Circuit. Order entered December 22, 2017.

The existence of the above two irregularities are what differentiate the receptiveness of Petitioner's application in the Western District of Michigan from the other seven courts in which Petitioner's applications were approved with admission.

Prior to the hearing in the district court, Petitioner requested a document "akin to a bill of particulars" because it was not clear what precisely was being used as a basis to question his character. Pet. App. 25a. The lower court refused to address this request. Petitioner and the undersigned were the only two individuals who appeared at the proceeding. During the hearing, Petitioner's statements were unchallenged by the submission of any contrary evidence or testimony. Petitioner had to wait until the decision was issued in order to find out what the grounds were for his rejection and what evidence *outside the record* was relied upon in reaching the district court's conclusions. The district court's opinion could not have been written as it was without utilizing information outside of the record.

In rejecting Petitioner, the district court drew inferences and conclusions without the submission of any contrary record evidence and without notice. For example, the panel found that Petitioner lacked

candor by "struggling to recall basic facts" concerning a misdemeanor charge 17 years earlier. Pet. App. 53a[2] The district court's dedication of so much discussion to the antiquated events leading to an August, 2000 ordinance violation suggests a questionable motive because Petitioner's record in that arena has been unblemished for the subsequent 19 years of his life.

Most importantly, the other reasons cited by the district court panel concerned events that took place over 10 years ago and they centered on Petitioner's constitutionally protected, expressive activities: (1) a letter written in 2006 explaining why he felt that he would have been treated more favorably if he were black, (2) calling the University of Michigan in 2006 to complain about the way that he was treated by a university employee, (3) hosting a website critical of Michigan licensing officials, (4) picketing the law office of the President of the Michigan Board of Law Examiners in 2006, and (5) mailing out hundreds of questionnaires in 2008 seeking adverse information about the Board's members from their former clients and acquaintances. *Id.*[3]

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[2] What the panel found to be "basic facts" would have been difficult for most people to recall 17 years after the event ("What time of day did this happen? … Was it daylight or dark out? … What day of the week was it? … Was it during the week or was it a weekend?"). Importantly, there is no evidence in the record that Petitioner's failure to recall these details was anything less than honest.

[3] The Sixth Circuit cited *Stilley v. Bell*, 155 Fed. Appx. 217 (6th Cir. 2005) in support of its decision. In *Stilley*, the challenged conduct involved "pursuing an appeal, contrary to a client's wishes, and continuing to pursue the appeal after entry of an order terminating

The Sixth Circuit concluded that Petitioner's expressive activities were subject to scrutiny not because of their "content," but because of "the way in which Lawrence chose to criticize the officials":

> It is not the fact that Lawrence criticized bar officials that is concerning. He certainly has a First Amendment right to do so. Nor is it the content of Lawrence's speech that matters. Of crucial importance is the way in which Lawrence chose to criticize the officials—calling their employers, sending letters to their former clients and friends, and picketing their places of employment.

Pet. App. 19a

While the Sixth Circuit was careful to deny that "the content" of Petitioner's speech was the basis for rejection, it conspicuously avoided addressing what would have happened if Petitioner had picketed with a sign *praising* the President of the Michigan Board of Law Examiners, or making phone calls *commending* the University of Michigan employee, or sending hundreds of questionnaires seeking *favorable* information about the Board's members. Indeed, it

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the representation," "failing to convey a settlement offer to a client," and "knowingly disobeying the rules of a tribunal." By contrast, Petitioner violated no Rule of Professional Conduct, Court Order, or Court Rule. Also, Petitioner was not an attorney during the time that he engaged in his expressive activities. That distinction with *Stilley* – standing alone – is significant.

was the content of Petitioner's speech that resulted in his rejection.

Supreme Court's review is warranted for these reasons.

## REASONS FOR GRANTING THE WRIT

### I. Notwithstanding the Sixth Circuit's use of the "abuse of discretion" standard of review, its opinion conflicts with its own, recent decision that petitioner is "duly qualified" to practice law in the Court of Appeals. *Certiorari* should be granted in order to secure and maintain uniformity of admission decisions.

The Sixth Circuit acknowledged the conflict that exists between its own decision that Petitioner is "duly qualified" and the opposite conclusion drawn by the United States District Court for the Western District of Michigan. Pet. App. 17a. The Sixth Circuit attempted to resolve that incongruity by explaining how its review of the matter was limited via the "abuse of discretion" standard:

> Even if we would reach a different conclusion reviewing Lawrence's petition *de novo*—as it appears we did, given that he is admitted in our court—we cannot say the district court abused its discretion.

Pet. App. 17a

In *Stilley v. Bell*, 155 Fed. Appx. 217 (6th Cir. 2005), the Sixth Circuit cited *Ex parte Burr*, 22 U.S. (9

Wheat.) 529, 530, 6 L. Ed. 152 (1824) for the proposition that "the exercise of the authority to admit, deny, or suspend an attorney is left to the discretion of the district court." *Stilley*, 155 Fed. Appx. at 219. The Sixth Circuit in *In Re Mosher*, 25 F.3d 397, 399-400 (6th Cir. 1994) cited *In Re Snyder*, 472 U.S. 634, 643 n.4, 646, 86 L. Ed. 2d 504, 105 S. Ct. 2874 (1985) as its authority that "this Court reviews a denial of an application for admission to practice before a district court for abuse of discretion." *Snyder* was a disbarment case, incidentally one in which this Court found that an attorney's "ill-mannered" correspondence with a court secretary was not disqualifying. *Snyder* does not say that the abuse of discretion standard governed the Sixth Circuit's entire review of the matter *sub judice*.[4]

More relevant to this Petition, however, is that the Sixth Circuit's decision that Petitioner is "duly qualified" to practice law lacks uniformity with the decision of the Western District of Michigan. And this disparity cannot be summarily dismissed by employing an abuse of discretion standard because a federal "right" exists here in an applicant's ability to earn a living in his chosen profession. This Court has

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[4] However, assuming *arguendo* that the abuse of discretion standard does apply to the admission decision itself, it cannot and should not apply to the factual determinations relied upon by the district court. For example, there was no factual basis for the district court to conclude that Petitioner lacked candor about his failure to recall irrelevant details from 17 years earlier. There is no contrary evidence in the record in which the district court could have permissibly drawn such a conclusion.

said that "The practice of law is not a matter of grace, but of right for one who is qualified by his learning and moral character." *Baird v. State* Bar of Ariz., 401 U.S. 1, 8 (1971). Surely, a significant federal "right" such as the ability to earn a living in a chosen profession cannot be arbitrarily dismissed by simply declaring that "the exercise of the authority to admit, deny, or suspend an attorney is left to the discretion of the district court." Pet. App. 31a

The Sixth Circuit's Opinion acknowledges how bar admission requirements can be "easily adapted to fit personal views and predilections, [and] can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law," and then it sweepingly concluded that the Western District of Michigan's decision is not "irregular":

> We are mindful of the Supreme Court's admonition in *Konigsberg* that such a "vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law." 353 U.S. at 263. But we are satisfied here that the denial was not arbitrary or discriminatory. Because we cannot say that the district court's decision "was irregular, or was flagrantly improper," *D.H. Overmyer Co. v. Robson*, 750 F.2d 31, 33 (6th Cir.1984) (*quoting Burr*, 22 U.S. at 531), we affirm.

Pet. App. 19a

In addition to standing in stark contrast to the other seven federal decisions that found Petitioner to be duly qualified to practice law, the Western District of Michigan's decision took the unprecedented step of prohibiting Petitioner from reapplying for three years. Historically, the Western District has denied applications for one year. *See* former Local Rule 83.1(m)(iii)(C). It is impossible to understand how the Sixth Circuit could have concluded that "… we cannot say that the district court's decision was irregular …". Pet. App. 19a

The consequence of the Sixth Circuit's decision is the absurd result that Petitioner can now handle any appeal in the United States Court of Appeals for the Sixth Circuit which has emanated from the Western District of Michigan, however he is prohibited from providing representation in those same cases in the district court. Moreover, if the Sixth Circuit were to remand an appeal that was handled by Petitioner to the district court, Petitioner is prohibited from following those cases down to the lower level.

The author of the Sixth Circuit's decision in *Stilley* who wrote "one court's decision to admit an applicant does not diminish another court's discretion to refuse to do so" *Id.* 155 Fed. Appx. at 224, was disturbingly unconcerned about promoting uniformity in federal courts decisions. Uniformity is a primary concern to the interests of this Court. This concern for uniformity should be especially true here, where one's profession is at stake and incongruous admission decisions such as those in the matter *sub judice* suggest that Petitioner was arbitrarily targeted by one particular district court.

## II. The district court used its unbridled discretion to impermissibly assess First

**Amendment activities of petitioner, in particular, his criticism of public officials. *Certiorari* should be granted in order to declare that constitutionally protected, expressive activities cannot be used as a basis to deny an application for admission to practice law.**

Never, in the history of this Court, has it rejected a bar applicant for conduct that was not violative of a promulgated professional conduct rule, statute or court rule. The Sixth Circuit's decision represents a dangerous transformation where federal bar applicants will no longer be able to predetermine whether their lawful, expressive activities will result in future character rejections.

For example, after comparing the decision in this case with *Dean v. Byerley*, 354 F.3d 540 (6th Cir. 2004), a prospective bar applicant who desires to peacefully protest the decisions of state officials would not know whether his future, expressive conduct would be disqualifying.[5] Here, both the Sixth Circuit and the district court concluded that Petitioner's picketing activities "could discourage clients from retaining the Board member's services." Pet. App. 14a. The same, hypothetical argument could have been made about the plaintiff in *Dean* or any other person who pickets a state official who operates a side business. However, because federal law protected Mr. Dean's right to picket, that was the end of the matter

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[5] In *Dean*, the Sixth Circuit determined that a disgruntled Michigan Bar applicant had a constitutionally protected right to picket outside of the residence of a Michigan character and fitness official.

and the Sixth Circuit upheld his right to do so outside of the state official's residence.

This Court should grant *certiorari* to declare that lawful activities cannot form the basis for character rejection. This Court has previously stated:

> For at least a quarter-century, this Court has made clear that even though a person has no "right" to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests -- especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to "produce a result which [it] could not command directly." *Speiser v. Randall*, 357 U.S. 513, 526. Such interference with constitutional rights is impermissible.

*Perry v. Sindermann*, 408 U.S. 593, 597; 33 L. Ed. 2d 570; 92 S. Ct. 2694 (1972).

Assuming *arguendo* that Petitioner had improper, underlying motives in his expressive activities, a review of those motives should be off-limits because the "freedom to criticize public officials and expose their wrongdoing is at the core of First Amendment values, even if the conduct is motivated

by personal pique or resentment." *Barrett v. Harrington*, 130 F.3d 246, 263 (6th Cir. 1997).

The word "attack" is nothing more than a subjective label. The Western District of Michigan's Opinion labels Petitioner's protests as an "attack" on Michigan officials, but this Court has said "debate on public issues should be uninhibited, robust and wide-open, and . . . may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials". *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 11 L. Ed. 2d 686, 84 S. Ct. 710 (1964) (emphasis added). The same label could be placed on the comments that President Donald Trump frequently makes in his efforts to expose bias in the judicial decision-making process. While some have chosen to label President Trump's criticism as "attacks," many other citizens (including Petitioner) applaud the President's efforts to expose what he perceives as judicial improprieties. Labeling Petitioner's expressive activities as "attacks" does not render the censorship of those activities a legitimate judicial function. The Sixth Circuit's decision indicates that the President of the United States could be ineligible for admission to practice law due to his public comments about certain judicial officers.

This Court should also declare that statements "impugning the integrity" of a public official are not subject to scrutiny *unless a judicial determination is first made* that those statements are false. As explained in *Standing Committee on Discipline v. Yagman*, 55 F3d 1430, 1438 (9th Cir 1995):

> ... statements impugning the integrity of a judge may not be punished unless they are capable of being proved true or false; statements of opinion are protected by

> the First Amendment unless they "imply a false assertion of fact." 55 F3d at 1438 (cite omitted). Similarly, "statements of 'rhetorical hyperbole' aren't sanctionable, nor are statements that use language in a 'loose, figurative sense'." *Id.*

Notwithstanding the fact that it is unpublished, the Sixth Circuit's decision will have a chilling effect on federal bar applicants because they will be left unsure whether to engage in expressive activities that could subjectively be labeled as "attacks" on government and public officials. *Certiorari* is necessary in order to clarify that expressive conduct protected by law cannot be cited as a basis for rejection to a federal bar.

This Court should grant *certiorari* in this matter.

## CONCLUSION

For the reasons set forth above, the Petition for a Writ of *Certiorari* should be granted.

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