No. 19-

In the Supreme Court of the United States

ROBERT DOYLE,

Petitioner,

v.

DOUGLAS C. PALMER, in his official capacity as Clerk of the United States District Court for the Eastern District of New York,

Respondent.

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

PETITION FOR A WRIT OF *CERTIORARI*

TODD C. BANK
TODD C. BANK,
ATTORNEY AT LAW, P.C.
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
(718) 520-7125
tbank@toddbanklaw.com

Counsel for Petitioner

LEGAL PRINTERS LLC ● Washington, DC ● 202-747-2400 ● legalprinters.com

QUESTIONS PRESENTED FOR REVIEW

1. Whether Congress may delegate, to the Judicial Branch, the power to enact federal-court bar-admission requirements that Congress lacks the power to enact directly.

2. Whether a federal district court may, consistent with the First Amendment, force a bar applicant to associate with a member of the bar of that court and engage, with that member, in a significant amount of expressive conduct.

3. Whether a federal district court may, consistent with the First Amendment, force a bar applicant to waive his freedom of conscience.

LIST OF PARTIES AND RULE 29.6 DISCLOSURE

The caption lists all of the parties. Petitioner, Robert Doyle, is a natural person. Therefore, no corporate-disclosure statement is required under Supreme Court Rule 29.6.

STATEMENT OF DIRECTLY RELATED PROCEEDINGS

There are no directly related proceedings.

TABLE OF CONTENTS

Page

Page

Table of Contents (*cont'd*)

Page

Table of Contents (*cont'd*)

APPENDIX

TABLE OF AUTHORITIES

Page

CONSTITUTIONAL PROVISIONS

STATUTES AND RULES

Page

Table of Authorities;
Statutes and Rules (*cont'd*)

CASES

Page

Table of Authorities; Cases (*cont'd*)

Page

Table of Authorities; Cases (*cont'd*)

Page

Table of Authorities; Cases (*cont'd*)

OTHER AUTHORITIES

INTRODUCTION

Robert Doyle ("Doyle") respectfully petitions this Court for a writ of *certiorari* to the United States Court of Appeals for the Second Circuit.

OPINIONS AND ORDERS BELOW

The Order of the United States Court of Appeals for the Second Circuit, dated December 16, 2019 (the "Subject Order"), which is not reported, is reprinted in the Appendix to this Petition ("Appx.") at Appx. A, 1a-4a.

The Memorandum & Order of the United States District Court for the Eastern District of New York, dated March 19, 2019 (the "Opinion"), is reported at 365 F. Supp. 3d 295, and is reprinted at Appx. B, 5a-22a.

The Order of the Court of Appeals denying Doyle's Petition for Rehearing with Suggestion for Rehearing *En Banc*, dated January 31, 2020, which is not reported, is reprinted at Appx. C, 23a-24a.

STATEMENT OF JURISDICTION

On December 16, 2019, the Subject Order was entered.

On December 30, 2019, Doyle filed a Petition for Rehearing with Suggestion for Rehearing *En Banc*, which the Court of Appeals denied on January 31,

2020.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Civil Rule 1.3(a) of the Local Rules of the United States District Court for the Eastern District of New York

. . .

[An] application [for admission to the bar] shall . . . be accompanied by an affidavit of an attorney of this Court who has known the applicant for at least one year, stating when the affiant was admitted to practice in this Court, how long and under what circumstances the attorney has known the applicant, and what the attorney knows of the applicant's character and experience at the bar.

28 U.S.C. Section 1654

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. Section 2071(a)

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.

Federal Rule of Civil Procedure Rule 83(a)(1)

After giving public notice and an opportunity for comment, a district court, acting by a majority of its district judges, may adopt and amend rules governing its practice. A local rule must be consistent with—but not duplicate— federal statutes and rules adopted under 28 U.S.C. §§ 2072 and 2075 . . . .

STATEMENT OF THE CASE

Doyle brought the underlying action in the Eastern District of New York, which had jurisdiction under 28 U.S.C. Sections 1331 and 1361.

Doyle alleged that the requirement, of Civil Rule 1.3(a) of the Local Rules of the United States District Court for the Eastern District of New York, to obtain an affidavit (the "Affidavit Requirement") is un-Constitutional because, *inter alia*: (i) it was enacted pursuant to any or all of three provisions, *i.e.*, 28 U.S.C. Section 1654 (the "Admission Statute"), 28 U.S.C. Section 2071(a) (the "Prescribing Statute"), and Rule 83(a)(1) of the Federal Rules of Civil Procedure (the "Rule-Making Rule"), each of which, to the extent of having authorized the enactment of the Affidavit Requirement, violated the non-delegation doctrine; (ii) it violated the First Amendment by forcing Doyle to

engage in speech and expressive association, and to violate his conscience.

REASONS FOR GRANTING THE PETITION

As set forth below, the Court of Appeals: (i) decided important Constitutional questions that have not specifically been, but should be, settled by this Court; and (ii) disregarded relevant decisions of this Court.

This case presents an opportunity to address: (i) important questions concerning the non-delegation doctrine; and (ii) "the Supreme Court's lack of clarity in the area of First Amendment rights for bar applicants[,] [which] confuses character[-]and[-]fitness committees." Theresa Keeley, *Comment, Good Moral Character: Already an Unconstitutionally Vague Concept and Now Putting Bar Applicants in a Post-911 World on an Elevated Threat Level*, 6 U. Pa. J. Const. L. 844, 873 (2004).

I. TO THE EXTENT THAT STATUTES AND RULES AUTHORIZE THE AFFIDAVIT REQUIREMENT, SUCH STATUTES AND RULES VIOLATE THE DUE-PROCESS CLAUSE OF THE FIFTH AMENDMENT

A. An Article III Court, in Determining the Criteria for Admission to its Bar, Does So Pursuant to a Congressional Delegation of Legislative Authority

"[A] district court has discretion to adopt local rules

that are necessary to carry out the conduct of its business. *See* ***28 U.S.C. §§ 1654***, ***2071***; ***Fed.Rule Civ. Proc. 83***. This authority includes the ***regulation of admissions to its own bar***," *Frazier v. Heebe*, 482 U.S. 641, 645 (1987) (emphases added); *see also Brown v. McGarr*, 774 F.2d 777 (7th Cir. 1985):

> The authority to adopt *rules relating to* ***admission to practice*** *before the federal courts* was ***delegated by Congress*** *to the federal courts* in Section 35 of the Judiciary Act of 1789, Act of September 25, 1789, Ch. 20, 1 Stat. 73, 92 now codified as ***28 U.S.C. § 1654***. In addition to § 1654, ***28 U.S.C. § 2071*** provides in part that "[t]he Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business." ***FED.R.CIV.P. 83***, promulgated by the Supreme Court pursuant to its rule-making authority, specifies that, "[e]ach district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice not inconsistent with these rules." . . . . [E]very federal court which has construed [28 U.S.C. §§ 1654 and 2071, and FED.R.CIV.P. 83] has held that they ***permit a federal district court to regulate the admission of attorneys who practice before it***. *See*, *e.g.*, *Matter of Roberts*, 682 F.2d 105, 108

> (3d Cir.1982); *Matter of Abrams*, 521 F.2d 1094, 1099 (3d Cir. 1975); *Sanders v. Russell*, 401 F.2d 241 (5th Cir.1968).

Id. at 781-782 (emphases added).

Congress's conferral of rule-making authority upon the Judicial Branch is the result of an exception to the "general principle . . . [that] executive or administrative duties of a nonjudicial nature may not be imposed on judges holding office under Art[icle] III of the Constitution," *Mistretta v. United States*, 488 U.S. 361, 385 (1989) (citations and quotation marks omitted). As *Mistretta* observed, this Court has "recognized significant exceptions to this general rule and ha[s] approved the assumption of some non[-]adjudicatory activities by the Judicial Branch," *id.* at 386, explaining:

> *[J]udicial rulemaking*, at least with respect to some subjects, falls within [a] twilight area . . . in which the activities of the separate Branches merge . . . . None of our cases indicate that rulemaking *per se* is a function that may not be performed by an entity within the Judicial Branch, either because rulemaking is *inherently nonjudicial* or because it is a function exclusively committed to the *Executive* Branch. On the contrary, we specifically have held that Congress, in some circumstances, *may confer rulemaking authority on the Judicial Branch*. In *Sibbach v. Wilson & Co.*, 312 U.S. 1

> (1941), we upheld a challenge to *certain rules promulgated under the Rules Enabling Act of 1934*, which *conferred upon the Judiciary* the *power to promulgate federal rules of civil procedure*[,] [s]ee 28 U. S. C. § 2072[;] [but] [w]e observed: "*Congress* has *undoubted power* to *regulate the practice and procedure of federal courts*, and *may exercise that power* by *delegating to this or other federal courts authority to make rules not inconsistent with the statutes or constitution of the United States*." 312 U.S., at 9-10 (footnote omitted).

Id. at 386-387 (emphases added; footnote omitted). *See also id.* at 386, n.14 ("rulemaking power *originates in the Legislative Branch* and becomes an[other] [Branch's] function *only when delegated by the Legislature* to the [other] Branch" (emphases added)).

In sum, a district court, when engaged in "the regulation of admissions to its own bar," *Frazier*, 482 U.S. at 645, does so pursuant to (i) a *direct* Congressional delegation of legislative power, *i.e.*, the Admission Statute and/or the Prescribing Statute, and/or (ii) an *indirect* Congressional delegation of legislative power, *i.e.*, the Rule-Making Rule, which this Court enacted under a direct Congressional delegation of legislative power, *i.e.*, under 28 U.S.C. Section 2072(a) of the Rules Enabling Act.

B. Congress May Not Delegate, to the Other Branches of Government, Power that Congress Does Not Have

Rules and regulations that result from a Congressional delegation of power are Constitutional *only*, of course, to, at most, the extent that Congress *itself* could have enacted them. *See Loving v. United States*, 517 U.S. 748, 758 (1996) ("[t]his Court established long ago that Congress must be permitted to delegate to others at least *some* authority that it could exercise *itself*," citing *Wayman v. Southard*, 23 U.S. 1, 42 (1825) (emphases added)); *see also Wayman*, 23 U.S. at 43 ("Congress may certainly delegate to others, powers which the legislature *may rightfully exercise itself*" (emphasis added)); *Matter of Frazier*, 594 F. Supp. 1173 (E.D. La. 1984), *aff'd*, 788 F.2d 1049 (5th Cir. 1986), *rev'd on other grounds*, *Frazier v. Heebe*, 482 U.S. 641 (1987):

> The rule-making authority of the lower federal courts is limited only to the extent that *Congress* would be limited ***if that body itself exercised the rule-making power***. Congress possesses the power to establish courts inferior to the Supreme Court and to make all laws necessary and proper for executing that power. U.S. Const., art. I, § 8, cl. 9; U.S. Const. art. I, § 8, cl. 18. As part of *the power to make necessary regulations in establishing a lower[-]court system*, Congress can *prescribe rules for practice*

> *and procedure in those courts*. Congress . . . has *instead delegated* the rulemaking authority *to the courts themselves*. *See* 28 U.S.C. § 2071 . . .; 28 U.S.C. § 1654 . . .; *see also* F.R.C.P. 83 . . . . So long as the lower courts do not exceed the authority delegated to them, they can prescribe rules of practice ***to the same extent as could Congress if it exercised the power directly***.

Id. at 1178 (emphases added; footnotes omitted).

In sum, Congress may not delegate, to the Judicial Branch, power that Congress itself does not possess. Thus, Doyle now turns to the question of whether Congress *itself* could have enacted the Affidavit Requirement.

C. Congress Could Not Have Enacted the Affidavit Requirement

Under neither the Prescribing Statute, Admission Statute, nor Rule-Making Rule (collectively, the "Source Provisions") are district courts required to consider, much less find the presence of, any particular factors in order to impose what the Affidavit Requirement imposes (generically, an "affidavit requirement"); that is, district courts have ***unfettered and independent discretion*** in deciding whether to do so. Because there are no factors that are required to exist with respect to those district courts that have an affidavit requirement but to be *absent* with respect to those

courts that do not, ***Congress could not have directly enacted this scheme***, as doing so would violate the Equal-Protection component of the Due Process clause of the Fifth Amendment. Therefore, the Source Provisions, to the extent that they authorize this scheme, violate that component. Moreover, rules regarding who may be a member of the bar of a court are, of course, substantive, and are distinct from a court's procedural rules.

The Opinion, in rejecting Doyle's Due Process claim, reasoned that, "Local Rule 1.3(a)'s requirement that a sponsoring attorney provide [his] knowledge of the applicant's qualifications, experience, and good moral character is *rationally related* to the applicant's fitness to practice law." Appx. B, 18a (emphasis added). However, Doyle's Due Process claim does not hinge upon the question of whether the Affidavit Requirement is so "rationally related." Rather, the question is whether Congress *itself* could have enacted the above-described scheme.

II. THE AFFIDAVIT REQUIREMENT VIOLATES THE FIRST AMENDMENT

Doyle alleges that, "[he] believes that, in order for him to enable a member of the bar of the Eastern District [of New York] (a 'Sponsor') to provide a reasonably accurate assessment of Doyle's character, Doyle would be required to engage in certain activities (the 'Necessary Activities')," Am. Compl., ¶ 24, which include Doyle's disclosure, to the Sponsor, of: "Doyle's beliefs regarding philosophical, religious, political,

social, moral, and ethical matters ('Doyle's Personal Beliefs')," *id.*, ¶ 25; "a sufficient number of experiences of Doyle that demonstrate consistency, or inconsistency, with any of Doyle's Personal Beliefs," *id.*, ¶ 26; "Doyle's thoughts about a sufficient number of the Sponsor's beliefs regarding philosophical, political, religious, social, moral, and ethical matters (the 'Sponsor's Personal Beliefs')," *id.*, ¶ 27; and "a sufficient number of experiences of Doyle that demonstrate consistency, or inconsistency, with any of the Sponsor's Personal Beliefs." *Id.*, ¶ 28.

Given the absence of guidance governing the criteria that a Sponsor may consider in assessing a bar applicant's character, Doyle's allegations regarding the Necessary Activities must be accepted as true. Indeed, it is indisputable that many people consider, as indispensable to the assessment of a person's character, the person's "beliefs regarding philosophical, religious, political, social, moral, and ethical matters," *id.*, ¶ 25, and his level of consistency with those beliefs.

A. The Affidavit Requirement Violates the First Amendment by Compelling Petitioner to Engage in Expressive Association and Conduct

The right *not to speak* is equally protected as the right *to* speak, and the right *not to engage in speech-related association* is equally protected as the right *to* engage in such association. *See Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448, 2462-2464 (2018);

Riley v. Nat'l Fed'n of the Blind of N.C., Inc., 487 U.S. 781, 796-797 (1988).

Because "[m]andating speech that a speaker *would not otherwise make* necessarily alters the content of the speech," *Riley*, 487 U.S. at 795 (emphasis added), such a mandate is "consider[ed] . . . a *content-based regulation* of speech." *Id.* (emphasis added). Thus, in *Riley*, this Court applied *strict scrutiny*, *see id.* at 796, for, "any restriction based on the content of the speech must satisfy strict scrutiny[;] that is, the restriction must be narrowly tailored to serve a compelling government interest." *Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009). Similarly, "[i]nfringements on . . . [t]he right [not] to associate for expressive purposes . . . may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984).

As reflected by those district courts that do not have an affidavit requirement but *do* require bar applicants to be of sufficient character, *see*, *e.g.*, C.D. Calif. L.R. 83-2.1.2.1 and E.D. Mo. L.R. 83-12.01(B), it is clear that the manner in which the Eastern District of New York has acted upon its interest in Doyle's character is neither "narrowly tailored" nor incapable of being realized through "means significantly less restrictive of associational freedoms." First, in containing no standards, it enables a Sponsor to consider even the most dubious criteria upon which to assess the

character of a bar applicant. Indeed, the very reasons that *one* potential Sponsor could find that a bar applicant is of poor character are the same reasons that *another* potential Sponsor could find that the applicant is of outstanding character.

Second, whereas the Affidavit Requirement forces Doyle to engage in the Necessary Activities, and forces him and any potential Sponsor to agree on the character-assessment criteria in order for each of them to comply in good faith with the Affidavit Requirement, the Eastern District of New York could, for example, have posed specific questions to Doyle, and/or required Doyle to provide specific information to the court or a potential Sponsor.

Compelling the expression of opinions, as does the Affidavit Requirement with respect to Doyle, is an even greater affront to the First Amendment than is the compelling of statements of fact (which the Affidavit Requirement also does). Thus, in *Riley*, the Court, referring to several cases, noted that, "[t]hese cases cannot be distinguished simply because they involved compelled statements of *opinion* while *here* we deal with compelled statements of '*fact*': either form of compulsion burdens protected speech." *Riley*, 487 U.S. at 797-798 (emphases added).

B. The Affidavit Requirement Violates Petitioner's Freedom of Conscience

Doyle alleges that, "[his] belief that he would have to engage in the Necessary Activities in order for him

to enable a Sponsor to provide a reasonably accurate assessment of Doyle's character ('Doyle's Necessary-Activities Belief') is a belief that Doyle holds sacredly," Am. Compl., ¶ 29; that, "Doyle's Necessary-Activities Belief is fundamental to Doyle's self-identity," *id.*, ¶ 30; that, "[i]t would be virtually impossible for Doyle to engage in the Necessary Activities to a degree that would avoid the non-negligible risk (the 'Risk') that the Sponsor would be untruthful in stating 'what the [Sponsor] knows of [] [Doyle]'s character,'" *id.*, ¶ 31, quoting E.D.N.Y. L.R. 1.3(a); that, "Doyle believes that taking the Risk would be immoral," *id.*, ¶ 32; that, "Doyle's belief that it would be immoral to take the Risk ('Doyle's Risk-Related Belief') is a belief that Doyle holds sacredly," *id.*, ¶ 33; and that, "Doyle's Risk-Related Belief is fundamental to Doyle's self-identity." *Id.*, ¶ 34.

Doyle's beliefs are entitled to the same protection to which they would be entitled if they had been based upon religion; that is, Doyle's beliefs are, for First Amendment purposes, *equivalent* to religious beliefs. *See Zhang v. Chinese Anti-Cult World Alliance*, 311 F. Supp. 3d 514, 545-547 (E.D.N.Y. 2018).

As this Court has explained, "a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 531 (1993). Such laws are, instead, subject to the rationale-basis test. *See Parents for Privacy v. Barr*, 949 F.3d 1210, 1238 (9th Cir.

2020). However, although the Affidavit Requirement is neutral and generally applicable, it fails the rational-basis test because, as set forth in Point I, *supra*, it would not have been rational of *Congress* to directly enact an affidavit requirement that applies in some district courts but not in others without regard to whether any common factors separate the former courts from the latter.

The Opinion states that the Affidavit Requirement "does not require a comprehensive survey of the applicant's legal experience or an explanative analysis of [the applicant's] ethical beliefs[,] [and] [t]he court may reasonably inquire generally into the personal and professional background of applicants to its bar without contravening the First Amendment." Appx. B, 20a. First, the Affidavit Requirement is silent about what types of information a bar applicant must impart to a potential Sponsor in order to enable the applicant to submit, in good faith, the potential Sponsor's assessment of the applicant's character, thus necessarily leaving the matter to be determined the applicant and the potential Sponsor.

Second, the question suggested by the above-quoted statement is *not* what criteria a potential Sponsor must consider in assessing a bar applicant's character, for, again, the Affidavit Requirement is silent regarding any such criteria. Rather, the statement suggests that Doyle's First Amendment claim is defeated by the possibility that Doyle would find a Sponsor who would sign an affidavit attesting to Doyle's character without Doyle's having to engage in

the Necessary Activities. However, Doyle is entitled to maintain his beliefs that he would have to engage in the Necessary Activities in order to comply, in good faith, with the Affidavit Requirement, and that "[i]t would be virtually impossible for Doyle to engage in the Necessary Activities to a degree that would avoid non-negligible risk (the 'Risk') that the Sponsor would be untruthful in stating 'what the [Sponsor] knows of [] [Doyle]'s character,'" Am. Compl., ¶ 31, quoting E.D.N.Y. L.R. 1.3(a), thereby forcing Doyle to take what, to him, is an immoral risk. *See id.*, ¶¶ 33-34.

C. The District Court Relied Upon Cases That Did Not Address the First Amendment Questions at Issue

The Opinion's reliance upon *Randall v. Brigham*, 74 U.S. 523 (1869), and *Ex parte Secombe*, 60 U.S. 9 (1857), *see* Appx. B, 18a-19a, is unwarranted. First, *Randall* and *Ex parte Secombe* addressed disbarments of attorneys by, respectively, a state-court system and a territorial-court system. Second, neither of these cases concerned the types of claims that Doyle makes.

The Opinion also cites *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), for the proposition that "the scope of the federal court's inherent power includes 'the power to control admission to its bar and to discipline attorneys who appear before it.'" Appx. B, 7a, quoting *Chambers*, 501 U.S. at 43. First, the issue in *Chambers* was "whether the District Court, sitting in diversity, properly invoked its inherent power in assessing as a sanction for a party's bad-faith conduct *attorney's fees*

and related expenses paid by the party's opponent to its attorneys." *Chambers*, 501 U.S. at 35 (emphasis added). The full quotation in *Chambers* is:

> Prior cases have outlined the scope of the inherent power of the federal courts. *For example*, the Court has held that *a federal court has the power to control admission to its bar and to discipline attorneys who appear before it. See Ex parte Burr*, [22 U.S.] 529, 531 (1824). While this power "ought to be exercised with great caution," it is nevertheless "incidental to all Courts." *Ibid*.

Id. at 43 (emphases added). Not only is the Court's reference regarding bar admission dicta, but, in *Ex parte Burr*, the Court merely denied "a motion for a mandamus[,] to the Circuit Court for the District of Columbia, to restore [an attorney] to his place of attorney at the bar of that Court," *Ex parte Burr*, 22 U.S. at 529, explaining:

> There [was] . . . no irregularity in the mode of proceeding which would justify the interposition of th[e] [Supreme] Court[,] [which] could only interpose[] on the ground that the Circuit Court had clearly exceeded its powers, or had decided erroneously on the testimony . . . on which the [Circuit] Court [had] proceeded. . . . The power [of the Circuit Court] is one which ought to be exercised

> with great caution, but which is, we think, incidental to all Courts, and is necessary for the preservation of decorum, and for the respectability of the profession. Upon the testimony, th[e] [Supreme] Court would not be willing to interpose where any doubt existed. It is the less inclined to interpose in this case, because the complaint is not of an absolute removal, but of a suspension, which is nearly expired, after which, [the petitioner] may be restored by the Court itself, should not very serious objections exist to that measure.

Id. at 531. In sum, *Ex parte Burr* did not concern a court's regulation of bar admission.

The Opinion notes that, in *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978), this Court stated: "'[a] lawyer's procurement of remunerative employment is a subject only marginally affected with First Amendment concerns. It falls within the … proper sphere of economic and professional regulation.'" Appx. B, 19a, quoting *Ohralik*, 436 U.S. at 459. In *Ohralik*, which concerned unsolicited visits by an attorney to recently injured persons during which the attorney sought to be retained by them, this Court, in holding that a state "constitutionally may discipline a lawyer for soliciting clients in person, for pecuniary gain, under circumstances likely to pose dangers that the State has a right to prevent," *id.* at 449, relied upon the less-protected commercial speech at issue, *see id.* at 455-

456, 464-466, as opposed to the *more-protected non-commercial speech* that Doyle's claims concern. Thus, the Opinion's reliance upon *Ohralik* is unwarranted.

The Opinion's reliance upon *Nat'l Assn. for the Advancement of Multijurisdiction Practice ("NAAMJP") v. Lynch*, 826 F.3d 191 (4th Cir. 2016), *see* Appx. B, 17a, is also unwarranted. In *Lynch*, attorneys challenged the District of Maryland's limiting of admission to "attorneys licensed in the State of Maryland," *Lynch*, 826 F.3d at 194, and to "non-Maryland attorneys . . . [who] maintain[] [their] principal law office in [a] state in which [they] [are] licensed to practice law [and] whose district courts observe reciprocity with the District [of Maryland]." *Lynch*, 826 F.3d at 194, 195. The challenge did not concern any part of the application process, let alone an affidavit requirement. In sum, *Lynch* did not face, much less rule upon, the issues that Doyle's claims present.

Finally, the Opinion's reliance upon *NAAMJP v. Howell*, 851 F.3d 12 (D.C. Cir. 2017), *see* Appx. B, 19a, 20a, is likewise unwarranted. In *Howell*, the court rejected a challenge to what it referred to as the "Primary Office Provision," *Howell*, 851 F.3d at 16, *i.e.*, a requirement that an attorney, in order to be admitted to the District Court for the District of Columbia, must be an "active member[] in good standing of the Bar of [a] state in which [he] maintain[s] [his] principal law office." *Id.* The *Howell* court cited *Lynch* in reasoning that "[r]egulations on entry into a profession, as a *general matter*, are constitutional if they have a

rational connection with the applicant's fitness or capacity to practice the profession," *id.* at 20 (emphasis added; citations and quotation marks omitted), and that "the First Amendment does not come into play when considering restrictions on admission similar to the Principal Office Provision." *Id.* (citations and quotation marks omitted). In sum, *Howell*, like *Lynch*, did not face, much less rule upon, the issues that Doyle's claims present.

CONCLUSION

This Petition should be granted.

Respectfully submitted,

TODD C. BANK
TODD C. BANK,
ATTORNEY AT LAW, P.C.
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
(718) 520-7125
tbank@toddbanklaw.com

Counsel for Petitioner

APRIL, 2019