No. 21-507

In The
Supreme Court of the United States

LAWYERS UNITED INC., EVELYN AIMEE De JESUS, 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

PETITIONERS' SECOND SUPPLEMENTAL MEMORANDUM

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Every experienced lawyer in 49 states in order to gain *general* admission privileges in the four United States District Courts in California must undergo an unreliable entry-level subjective test and moral character inquiry comparable to that undergone by Justices THOMAS and KAVANAUGH to obtain confirmation as a justice on the United States Supreme Court. First, the already licensed attorney must pay various California state poll taxes, including a $214 registration fee, and a $998 attorney bar exam fee and pass this 100% subjective test that has a *standard error of measurement* shoddier than .48. Then the attorney must pay separate admission fees to the U.S. District Courts. Second, the already licensed attorney must pay a $551 moral character application fee. The result of these licensing taxes is that a mandatory public union, the State Bar of California, garners $20 million per year, as pointed out by the Sarker Law amicus brief. Every Anita Hill and every Christine Blasey Ford is then invited and authorized to come out of the weeds and hold up the application based on any hearsay from 10 or 20 or 30 years ago, as pointed out by the Herbert Detrick amicus brief. Rather than having a majority of votes of one party in the Senate, which generally leads to confirmation, the result for the out-of-state licensed lawyer is they are often overwhelmed by their superior resourced competitor. The scars and public humiliation accompanying this "lynch mob" like process often never heal and are permanently lodged in the memory of the attorney, the attorney's

family, and often the public at large. No experienced attorney should have to undergo this trial by fire hazing ritual.

Then, if by happenstance, career change or family member transfer, the attorney is required to move to Florida, the entire process has to be undergone all over again *de novo*. The client is presumed innocent. The client's lawyer is categorically presumed guilty of being an incompetent attorney who possess inferior skills.

Meanwhile, while this cruel and unusual punishment is in process, often the experienced attorney is disqualified from *general* admission privileges in the United States District Court for the District of Columbia.

The Hon. Justin R. Walker is presently a sitting judge on the United States Court of Appeals for the District of Columbia Circuit. He is 42 years old. He sees life and the law from the fresh eyes of a modern-day American citizen and federal jurist. While serving as United States District Court judge, in *Doe v. Supreme Court of Kentucky*, 482 F. Supp. 3d 571 (W.D. Ky. 2020), he wrote:

> This case is not only about Jane Doe. It's also about the lawyers who decide who else can be a lawyer. *Id*. at 574.
>
> The Board of Bar Examiners prohibits people from practicing law if they can't pass a timed exam that tests their ability to memorize

> whole areas of the law they will never again need to know anything about.
>
> Anyone with any power in this Bar Bureaucracy is a lawyer. So, just like an oil or drug cartel, those who are already selling something get to decide who else may sell that same thing. Of course, unlike most cartels, this one is legal. *Id.* at 575.

Judge Walker concluded the entire bar admission licensing process in the case of an already licensed attorney is medieval, cruel, and unusual punishment. But he held the bar and courts have virtually unreviewable immunity except for a narrow category of prospective relief.

Supreme Court Rule 15.8 provides:

> 8. Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last fling.

Several intervening matters have occurred since the Petitioners' last filing, in addition to Petitioners' discovery of Judge Justin R. Walker's 2020 opinion.

First, the Solicitor Gen. has waived the right to respond. The Department of Justice Manual 1-8.100 provides:

> The rule of law depends upon the even-handed administration of justice. The legal judgments of the Department of Justice must

> be impartial and insulated from political influence . . . It is a fundamental duty of every employee of the Department to ensure that these principles are upheld in all of the Department's legal endeavors.

By waiving the right to respond, the Solicitor Gen.'s office has forsaken its rule of law duty to conduct itself impartially and ensure the evenhanded administration of justice. The federal facial licensing bias and discrimination at issue in this case is not remotely evenhanded. The Solicitor General conveniently ignores this fact. The Solicitor General conveniently ignores that D.C. Circuit Court of Appeals Judge Janice Rogers Brown violated the recusal statute when she served as the chair and author of *NAAMJP v. Howell*, 851 F.3d 12 (D.C. Cir. 2017).

By waiving the right to respond, the Solicitor Gen.'s office, in conformity with Supreme Court Rule 15.2, has admitted that there is no misstatement of fact in the petition and that it does not have "Any objection to consideration of a question presented based on what occurred in the proceedings below." If, in fact, the Solicitor General had plausible arguments negating Petitioners' claims, they would have been presented.

United States Court of Appeals D.C. Circuit Judge Janice Rogers Brown is presently collecting two pensions. One as a federal judge and a second fat pension from her long-service as a California Supreme Court judge. Judge Brown conveniently concealed the undisputed evidence the 100% subjective California bar exam for already licensed experienced attorneys is

less reliable than flipping a coin. Her published decision on behalf of the D.C. Circuit holds that an out-of-state licensed attorney does not have any constitutional rights. Judge Brown's decision revives the 19th Century decisions that women lawyers are unfit and have the same rights as Belva Lockwood and Myra Bradwell because their place is in the home and male lawyers have the same constitutional rights as Dred Scott and Homer Plessy. Her decision should not be allowed to stand by this Supreme Court as the rule of law for the United States of America. To allow this decision to stand undermines the integrity of this Supreme Court and its Chief Justice of the United States of America.

The second intervening fact is the compelling amicus brief filed by Sarker Law. This amicus brief clearly and unequivocally shows this federal licensing discrimination carried out under the guise of Local rules cannot even survive rational basis review. If it is arbitrary and irrational to disqualify someone for licensure because of oath as in *Schware v. Bd. of Bar Examiners*, 353 U.S. 232 (1957), or because they are Democrat or Republican, or black, or female, or gay, or Jew or Gentile, it is equally arbitrary and irrational to disqualify an experienced attorney based on what state they are or are not licensed. Petitioners below repeatedly argued that this facial licensing discrimination cannot survive rational basis review. The courts below, at the urging of defense counsel appointed by the United States Department of Justice, refused to address Petitioners' rational basis argument.

The third new and intervening fact is the compelling amicus brief filed by Herbert Detrick. He concludes:

> One thing is so clear, however, that it needs little elaboration: Petitioners' challenge to preclusive Local Rules presents an issue of great national importance, because the U.S. Congress not only authorized the implementation of Local Rules by U.S. District Courts nationwide, but also expressly prohibited the promulgation and implementation of Local Rules that infringe any substantive right, no matter where those U.S. District Courts may be located. *See* 28 U.S. Code § 2071(a) (authorizing this Court and all inferior federal courts to "prescribe rules for the conduct of their business") and 28 U.S. Code § 2072(b) (providing that Local Rules "shall not abridge, enlarge or modify any substantive rights").

CONCLUSION

In sum, this is a case where Congress has legislated an even playing field for Local Rules, and the Courts below are not calling balls and strikes fairly under the artifice that only this Honorable Court has supervisory review. Inclusion and diversity of viewpoint is what makes America great. If all men are created equal, it follows that all lawyers are created equal. Sixteen thousand lawyers every year are provided constitutionally protected privileges and immunities that are embedded in the Bill of Rights that are denied to

Petitioners by facial licensing discrimination that is being carried out under this Court's supervisory review.

Respectfully submitted,

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