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

DENNIS DUBUC
ESSEX PARK LAW OFFICE
12618 10 MILE ROAD
SOUTH LYON, MI 48178
PHONE: (248) 486-5508
LAWPLUS@SBCGLOBAL.NET

COUNSEL FOR PETITIONER
FRANK J. LAWRENCE, JR.

QUESTIONS PRESENTED

The Sixth Circuit determined in this case that although "the Supreme Court has not formally announced the proper standard of review for bar-admission cases, longstanding legal authority governing admission to federal courts favors the abuse-of-discretion standard." Pet. App. 7a.

1. What standard of review should be employed by Courts of Appeals when reviewing a federal district court's decision to deny an attorney's application for admission to its bar and the adverse admission decision disapproves of the attorney's speech-related activities and his beliefs?

2. Should the Courts of Appeals be required to undertake "independent review" of a district court's adverse decision on an attorney's application for admission to the district court's bar, especially when the rejected attorney asserts that the district court's denial violated the unconstitutional conditions doctrine?

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 April 28, 2021.

- *In Re: Frank J. Lawrence, Jr.,* No. 21-1426, U. S. Court of Appeals for the Sixth Circuit. Judgment entered December 29, 2022.

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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The Opinion of the United States Court of Appeals for the Sixth Circuit is unpublished and reproduced at Pet.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 The Opinion of the United States District Court for the Western District of Michigan is unpublished and is reproduced at Pet. App. 14a.

STATEMENT OF JURISDICTION

The Judgment of the United States Court of Appeals was issued on December 29, 2022. Pet. App. 1a. On March 23, 2023, Justice Kavanaugh extended the time in which to file a Petition for Writ of Certiorari to May 26, 2023. 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

For over 22 years, Michigan Bar officials have blocked Lawrence, a resident of Michigan, from practicing law in Michigan state courts. *Lawrence v. Welch*, 531 F.3d 364 (6th Cir. 2008). In 2017, the District of Columbia provided Lawrence a license to practice law. Lawrence thereafter established a *pro bono* federal law practice in Michigan. As a member of the *Pro Bono* Panel of the United States District Court for the Eastern District of Michigan, Lawrence has "diligently represented" prisoners. *Smith v. Taulton*, 587 F.Supp.3d 607, 609 (E.D. Mich. 2022) (Cox, C.J.).

Lawrence has been repeatedly denied admission to the United States District Court for Western District of Michigan. His most recent rejection was issued on April 28, 2021, and it was based upon Lawrence's written response to application questions and without the benefit of an in-person hearing. *See* Pet. App. 4a-5a. The district court disapproved of Lawrence's written answers "rehashing his previous complaint concerning the chief judge's allegedly inappropriate" *ex parte* instruction to his clerk to obtain from the Michigan Bar information deemed confidential by state law. Pet. App. 4a. The district court also rejected Lawrence for saying that "state officials had engaged in misconduct and that the chief judge may have been responsible for the death of the

court employee who allegedly conducted the improper investigation into Lawrence's confidential file." Pet. App. 4a. More specifically, "Lawrence alleged that job-related stress or anxiety" brought on by the chief judge asking his clerk to engage in improper investigate activities could have sent the clerk to an early grave. Pet. App. 4a. The district court disapproved of Lawrence's request for a "full investigation" into whether the clerk's death was caused by the stress associated with the chief judge asking her to engage in improper conduct. *Id.*

The district court determined that Lawrence continued to exhibit the same problematic tendencies that had led to his previous denial. Pet. App. 5a. The district court found that Lawrence remained "obsessed" with his claim that the chief judge had committed judicial misconduct and continued to research extensively into the matter. *Id.*

After denying Lawrence's 2017 request for an evidentiary hearing into chief judge's investigative instructions to his clerk, the district court found that Lawrence offered no evidence to substantiate his claims against the chief judge and it declared the record demonstrated that the chief judge did nothing wrong. Pet. App. 5a.

The district court further stated that it had already determined that the chief judge's handling of the 2017 petition was irrelevant because the chief judge took no part in the earlier panel's decision to deny the application, notwithstanding his own selection of that panel. Pet. App. 5a. The district court found that Lawrence continued "to demonstrate a penchant for personally attacking officials whose decisions he dislikes, including a willingness to make baseless, unsubstantiated allegations." Pet. App. 5a.

In support of its decision, the district court noted that Lawrence intended to hire private investigative firms to investigate and report on Michigan Bar officials, as well as his new allegations against the chief judge involving the death of his clerk. Pet. App. 5a-6a. These allegations against Lawrence led the district court to conclude that Lawrence "has 'show[n] a propensity to act other than in a 'fair' manner. He has not shown that he will exercise good judgment, that he will conduct himself professionally and with respect for the law.'" Pet. App. 6a. Thus, the district court denied Lawrence's re-application for failing "to establish that he possesses the good moral and professional character required for admission to practice" in that court. Pet. App. 6a.

On December 20, 2022, the Sixth Circuit affirmed. Pet. App. 1a. The Sixth Circuit began its opinion by reiterating the 2018 reasons that were used to reject Lawrence, while omitting relevant dates. Some of those events, such as a misdemeanor municipal ordinance violation, took place 22 years ago. *See Lawrence v. 48TH Dist. Court*, 560 F.3d 475, 477 (6th Cir. 2009).

The Sixth Circuit first addressed Lawrence's argument concerning the proper standard of review, namely that a *de novo* review should be employed. Pet. App. 6a. The Sixth Circuit determined that it was bound to employ the abuse of discretion standard utilized in its earlier published decision at *Application of Mosher*, 25 F.3d 397, 400 (6th Cir. 1994). Pet. App. 6a-7a. The Sixth Circuit determined that although "the Supreme Court has not formally announced the proper standard of review for bar-admission cases, longstanding legal authority governing admission to federal courts favors the abuse-of-discretion

standard," citing *Ex parte Burr*, 22 U.S. (9 Wheat.) 529, 6 L. Ed. 152 (1824). Pet. App. 7a.

The Court of Appeals supported its conclusion by finding that "the rules governing admission to federal courts support an abuse-of-discretion standard. District courts have not only inherent authority but statutory power to govern membership of their bars. Congress has permitted district courts to prescribe rules to conduct their own business." Pet. App. 8a, *citing* 28 USC § 2071.[1] Finally, after finding that this Court's pronouncements in *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985) were not helpful, the Sixth Circuit concluded that "the abuse-of-discretion standard is the appropriate standard of review for denied applications for admission to practice in a district court." Pet. App. 10a.

Rejecting Lawrence's request to use a *de novo* standard because First Amendment activities were at issue, the Court of Appeals found no abuse of discretion. It stated that "Lawrence chose to use [his 2021 re-application] to not only respond to the questions but rehash many allegations of impropriety he raised in his 2017 petition, all of which the district court had already determined were unfounded." Pet. App. 11a. It also found that "The new allegation of the chief judge's supposed involvement in the death of a court employee gave only more reason for the district court to conclude that the same character traits that led to denial of Lawrence's petition in 2018 continued to plague him in 2021." Pet. App. 12a.

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[1] That authority, however, does not allow a federal district court to violate a bar applicant's constitutional rights.

Finally, the Sixth Circuit refused to review Lawrence's First Amendment claims, finding that Lawrence had a duty to first raise those claims in his written response to the re-application questions. Pet. App. 12a. The Sixth Circuit failed to recognize that because no hearing took place on Lawrence's 2021 re-application and because Lawrence was rejected solely on his written application answers, Lawrence was never provided a meaningful opportunity to assert First Amendment defenses prior to the issuance of the district court's adverse decision. Lawrence's First Amendment claims on appeal were left unaddressed. Pet. App. 12a-13a.

REASONS FOR GRANTING THE WRIT

I. CERTIORARI SHOULD BE GRANTED IN ORDER TO ESTABLISH THAT THE PROPER STANDARD OF REVIEW IN BAR ADMISSION CASES IS *DE NOVO* WHEN THE DISTRICT COURT'S ADVERSE DECISION DISAPPROVES OF AN ATTORNEY'S SPEECH-RELATED ACTIVITIES AND BELIEFS.

The Sixth Circuit determined in this case that although "the Supreme Court has not formally announced the proper standard of review for bar-admission cases, longstanding legal authority governing admission to federal courts favors the abuse-of-discretion standard." Pet. App. 7a. The abuse of discretion standard is an inappropriate standard to employ when the district court's adverse decision disapproves of an attorney's speech-related activities and beliefs.

The Sixth Circuit in *Mosher* relied upon three cases for that proposition that an abuse of discretion standard is appropriate, *Ex parte Burr*, 22 U.S. (9 Wheat.) 529, 530-531, 6 L. Ed. 152 (1824), *In re Snyder*, 472 U.S. 634, 643 n.4, 646, 86 L. Ed. 2d 504, 105 S. Ct. 2874 (1985) and *In re G.L.S.*, 745 F.2d 856, 860 (4th Cir. 1984). None of those cases compel that result.

This Court, in *Burr*, in an 1824 opinion, addressed an attorney suspension. This Court noted that "some controlling power, some discretion ought to reside in" the lower court. *Id*. at 530. The Court did not address the appropriate standard of review in denying an application for admission. While noting that it was not "deciding on this question," this Court observed:

> Some doubts are felt in this Court respecting the extent of its authority as to the conduct of the Circuit and District Courts towards their officers; but without deciding on this question, the Court is not inclined to interpose, unless it were in a case where the conduct of the Circuit or District Court was irregular, or was flagrantly improper.

Id. at 530

Mosher also cites to footnote 4 on page 643 of *Snyder*, as well as page 646, for the argument that the abuse of discretion standard applies to attorney admission cases. However, this Court's opinion in *Snyder* similarly does not require the abuse of discretion standard in Lawrence's case. Footnote 4 of *Snyder* addresses Federal Rule of Appellate Procedure

46, which does not address the appropriate standard of review here. Page 646 of *Snyder* similarly fails to provide any direction on this matter.

The Fourth Circuit's decision in *G.L.S.* involved an attorney admission decision by a federal district court. It stated "Because the findings of the district court are supported by the record and because its denial of admission at this time, without prejudice to a later application, is not an abuse of discretion, we AFFIRM." *G.L.S.*, 745 F.2d at 860. Importantly, the Fourth Circuit mentioned that the lower court's decision was "not an abuse of discretion," without citing to any references for the use of that standard of review, and it stopped there. *G.L.S.* does not cite to *Snyder* or *Burr*.

As far back as 1867, this Court has stated that the ability to practice law is not a matter "of grace and favor." *Ex parte Garland*, 71 U.S. (4 Wall.) 333, 379, 18 L.Ed. 366 (1867). "The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character." *Baird v. State Bar of Arizona*, 401 U.S. 1, 8, 91 S. Ct. 702, 27 L. Ed. 2d 639 (1971). In *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 283, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985), the Court stated that the opportunity to practice law is a "fundamental" right within the meaning of the Privileges and Immunities Clause of the Constitution. The ability of an attorney to practice law, which is not a matter of the district court's "grace and favor," *Ex parte Garland,* should not be reviewed on appeal merely for an abuse of discretion. A heightened level of review is proper in such cases.

When an attorney's speech and his beliefs are at issue – i.e., in such cases involving "constitutional facts" – reviewing courts should automatically be required to undertake an "independent review" of the

record to ensure the speech actually qualifies as unprotected speech. *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 505, 508, fn. 27, 104 S. Ct. 1949, 80 L. Ed. 2d 502 (1984). Additionally, that "independent" review should entail a *de novo* standard of review for the reasons set forth by this Court in *Perry v. Sindermann*, 408 U.S. 593, 597; 33 L. Ed. 2d 570; 92 S. Ct. 2694 (1972):

> 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.

For these reasons, *certiorari* should be granted for the Court to announce the appropriate standard of review in bar admission cases.

II. CERTIORARI SHOULD BE GRANTED IN ORDER TO REQUIRE COURTS OF APPEALS TO UNDERTAKE "INDEPENDENT REVIEW" OF A DISTRICT COURT'S ADVERSE DECISION ON AN ATTORNEY'S APPLICATION FOR ADMISSION TO THE BAR, ESPECIALLY WHEN THE REJECTED ATTORNEY ASSERTS THAT THE DISTRICT COURT'S DENIAL VIOLATED THE UNCONSTITUTIONAL CONDITIONS DOCTRINE.

If, assuming *arguendo*, that the Sixth Circuit properly utilized an abuse of discretion standard of review, it still erred in refusing to address Lawrence's First Amendment claims. As noted above, Lawrence's 2021 re-application was denied solely on his written application questions, without an in-person hearing. His First Amendment claims were first asserted on appeal because he never had a meaningful "opportunity to present reasons ... why [the] proposed action should not be taken" before his re-application was denied. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). It was unreasonable for the Sixth Circuit to conclude that Lawrence was required to set forth First Amendment claims in response to the district court's written questions.

This Court in *Bose Corp., supra*, set forth requirements when a party argues on appeal that his speech is protected by the First Amendment. 466 U.S. 485, 104 S. Ct. 1949, 80 L. Ed. 2d 502 (1984). In such cases involving "constitutional facts," *id.* at 508 n.27, reviewing courts must undertake an "independent

review" of the record to ensure the speech actually qualifies as unprotected speech. *Id.* at 505. Although this rule should be self-executing, the Sixth Circuit refused to employ it here.

Lawrence argued in his Sixth Circuit brief that the district court's decision violated the unconstitutional conditions doctrine. Lawrence argued that had he praised the chief judge of the district court and had he commended Michigan Bar officials, he would have been admitted to the Western District of Michigan years ago. Lawrence's refusal to relinquish his beliefs stands as an enduring impediment to his admission to the district court's bar. However, that argument received no appellate review. *Certiorari* should be granted for this Court to require appellate courts to determine for themselves – on a self-executing basis – whether the fact-finder appropriately applied First Amendment law to the facts in bar admission cases. *See Old Dominion Branch No. 496 v. Austin,* 418 U.S. 264, 282, 94 S. Ct. 2770, 41 L. Ed. 2d 745 (1974); *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 567, 115 S. Ct. 2338, 132 L. Ed. 2d 487 (1995) ("This obligation rests upon us simply because the reaches of the First Amendment are ultimately defined by the facts it is held to embrace, and we must thus decide for ourselves whether a given course of conduct falls on the near or far side of the line of constitutional protection.").

Importantly, an independent review helps correct erroneous denials of constitutional rights. The scrutiny of a bar applicant's speech-related activities and his beliefs should either be prohibited or subjected to the most exacting level of review. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."

Elrod v. Burns, 427 U.S. 347, 373 (1976). Under an abuse of discretion review, however, erroneous deprivations of First Amendment rights go uncorrected as long as such deprivations were within a federal district court's discretion. The danger of the decision below is that it has deprived Lawrence of First Amendment protection.

CONCLUSION

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

Dennis Dubuc
Counsel for Petitioner
Essex Park Law Office
12618 10 Mile Road
South Lyon, MI 48178
(248) 486-5508
lawplus@sbcglobal.net

Dated: May 26, 2023