No. _____

In The

Supreme Court of the United States

IN RE LAWYERS FOR FAIR RECIPROCAL ADMISSION,

Petitioner.

On Petition For Extraordinary Writ
To The United States Court Of Appeals
For The Third Circuit

PETITION FOR EXTRAORDINARY WRIT OF MANDAMUS/PROHIBITION

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QUESTIONS PRESENTED

The patchwork of *nonuniform* District Court local rules that deny *general* admissions privileges to lawyers licensed in forty-nine states is challenged in this case. This patchwork of *nonuniform* local rules that deny *general* admissions privileges to lawyers licensed in forty-nine states directly contradicts the *Rules Enabling Act*, First Amendment text, and this Court's First Amendment precedent since the Founding. This patchwork of *nonuniform* local rules occurs in some District Courts, but not in other District Courts where all lawyers are created equal. Six of the sixteen Third Circuit appellate judges are members of the Third Circuit Judicial Council defendants. They are defendants based on the Congressionally enacted *Rules Enabling Act*. This appeal has been sitting in the Third Circuit for sixteen months collecting dust. The government has not even filed an Opposition Brief. The Third Circuit is deciding it's own case, and it has decided not to decide.

A judge's recusal is required because of a due process violation when the judge becomes a "part of the accusatory process." *In re Murchison* (1955) 349 U.S. 133, 137, 75 S. Ct. 623, 625. A party's right to due process is violated when a judge "becomes embroiled in a running bitter controversy" with a litigant. *Mayberry v. Pennsylvania* (1971) 400 U.S. 455, 465, 91 S. Ct. 499, 505

The question presented is should this Court exercise its supervisory duty over local rules and the administration of justice in the federal courts and assign

QUESTIONS PRESENTED—Continued

a hearing panel composed of judges from outside of the Third Circuit because the Third Circuit is "part of the accusatory process" and it has "becomes embroiled in a running bitter controversy" or should this Court renege on its supervisory duty over the lower courts and nullify the People's First Amendment freedoms by local rule?

LIST OF PARTIES

Petitioner, LAWYERS FOR FAIR RECIPROCAL ADMISSION, (hereinafter LFRA) is a corporation dedicated to championing and enforcing its constitutional rights, its associated members' constitutional rights, and the constitutional rights of similarly situated licensed attorney to champion and vindicate their rights as American citizens, and their clients' constitutional and statutory rights.

Respondents are the UNITED STATES OF AMERICA, Attorney General MERRICK B. GARLAND, the Third Circuit Judicial Council, the District Courts for the Districts of Delaware and New Jersey. Respondents are sued in their official capacity solely for injunctive and declaratory relief.

The names of each individual Third Circuit Judicial Council respondent follow: Chief Judge MICHAEL CHAGARES, and five other Third Circuit judges on the Judicial Council, KENT A. JORDAN, THOMAS M. HARDIMAN, PATTY SHWARTZ, CHERYL ANN KRAUSE, L. FELIPE RESTREPO.

Respondent Chief Judge JUAN R. SANCHEZ of the Eastern District of Pennsylvania is also a member of the Third Circuit Judicial Council.

The names of each individual Delaware District Judge are Chief Judge COLM F. CONNOLLY, who also serves on the Judicial Council, and his Hon. District Court judges RICHARD G. ANDREWS, MARYELLEN NOREIKA, GREGORY B. WILLIAMS.

LIST OF PARTIES—Continued

The names of each individual New Jersey District Judge are Chief Judge MARIE BUMB, who also serves on the Judicial Council, and her Hon. District Court judges GEORGETTE CASTNER, ZAHID N. QURAISHI, PETER G. SHERIDAN, MICHAEL SHIPP, ANNE E. THOMPSON, NOEL L. HILLMAN, CHRISTINE P. OHEARN, JOSEPH H. RODRIGUEZ, KAREN M. WILLIAMS MADELINE COX ARLEO, CLARIE C. CECCHI, STANLERY R. CHESLER, KATHERINE S. HAYDEN, WILLIAM J. MARTINI, BRIAN R. MARTINOTTI, KEVIN MCNULTY, JULIEN XAVIER NEALS, ESTHER SALAS JOHN MICHAEL VAZQUEZ.

CORPORATE DISCLOSURE STATEMENT RULE 29.6

LAWYERS FOR FAIR RECIPROCAL ADMISSION (LFRA) is a corporation organized under California law. It is an association of licensed lawyers, citizens, and corporations. It is not publicly traded. It has no parent, subsidiaries, or affiliates.

RELATED CASES

Lawyers For Fair Reciprocal Admission v. United States, et al.,
D.N.J. 3:22-cv-02399
Final Judgment Filed January 10,2023 (App. 1)

Lawyers For Fair Reciprocal Admission v. United States, et al., 3rd Cir. 23-1154
Appeal filed January 26, 2023.
No decisions. No scheduling order filed.

Lawyers For Fair Reciprocal Admission v. United States, et al., Supreme Court docket 23-244.
Petition for writ under Supreme Court Rule 11 filed September 14, 2023 denied November 6, 2023.

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PETITION FOR EXTRAORDINARY WRIT

LFRA respectfully requests this Court to exercise its supervisory duty and grant an extraordinary writ under Supreme Court Rule 20 and assign a hearing panel of judges from outside of the Third Circuit because it is both part of the accusatory process and deeply embedded and embroiled in this appeal as the rule-maker, defendant, prosecuting attorney, defense counsel, judge, appellate court, and en banc court.

OPINIONS BELOW AND THE THIRD CIRCUIT'S ROLE IN THE ACCUSATORY PROCESS AND UNYIELDING EMBROILMENT IN THIS BITTER CONTROVERSY

The Hon. District Judge was directly assigned this case by the Hon. Third Circuit Chief Judge. This is the third time that same judge has been directly assigned the very same question by the Third Circuit Chief Judge. The District Judge's views were fixed in stone from the start and twice before affirmed by the Third Circuit. The District Court's Rule 12(b) Order applying rational basis review, dismissing this case, and refusing to allow amendment was filed on January 10, 2023. App. 1-27. The District Court's one-page order denying Petitioner's Motion for Summary Judgment was filed November 18, 2022. App. 28. Petitioners timely appealed on January 26, 2023.

LFRA's Opening Brief and Joint Appendix was filed on April 17, 2023. This appeal has been pending

over sixteen months. Respondents have not yet filed an Opposition Brief. Respondents' counsel has opposed filing an Opposition Brief on the ground the Third Circuit did not file a scheduling order. App. 29.

Petitioners filed three separate motions for hearing priority. Petitioners have further filed motions for recusal and for the Court to assign a hearing panel composed of judges from outside of the Third Circuit. Respondents have not filed any Opposition to these motions.

Petitioners filed a petition for certiorari review under Supreme Court Rule on September 14, 2023. It was denied on November 6, 2023. Thereafter, LFRA respectfully requested hearing priority from the Third Circuit. The government again did not respond. The Third Circuit did nothing and has done nothing for sixteen months.

This appeal raises an important question of federal law that has not yet been decided by this Court, but should be settled by this Court. The Third Circuit is directly embedded and embroiled in this local rule controversy where it is deciding its own case, and it has decided to do nothing.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1651(a); Supreme Court Rule 20.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional and primary substantive provisions involved are set forth in this Petition.

RULE 20.1 STATEMENT

This writ will aid this Court's supervisory jurisdiction because only this Court has supervisory jurisdiction over the appellate courts and the administration of justice process in the United States. Exceptional circumstances exist as the Third Circuit has become embroiled in this controversy which challenges its nonuniform local rules and its steadfast refusal to perform its judicial duty, by doing nothing in this appeal since January 2023, because it is a "part of the accusatory process" *In re Murchison* (1955) 349 U.S. 133, 137, 75 S. Ct. 623, 625. Adequate relifed cannot be obtained in any other forum and LFRA's right to due process is violated when a judge "becomes embroiled in a running bitter controversy" with a litigant. *Mayberry v. Pennsylvania* (1971) 400 U.S. 455, 465, 91 S. Ct. 499, 505. This is a case where the Third Circuit Judicial Council and the Third Circuit are concurrently wearing multiple hats including as rule-maker, defendant, prosecuting attorney, defense counsel, appellate judge, and en banc appellate court.

STATEMENT OF CASE

A. THIS COURT HAS A SUPERVISORY DUTY OVER THE "JUSTICE GAP" THAT IS CAUSED BY THE PATCHWORK OF *NONUNIFORM* DISTRICT COURT *GENERAL* ADMISSION RULES

U.S. Supreme Court Justice NEIL M. GORSUCH, "Bridging the Affordability Gap: It's Time to Think Outside the Box," 45 *Wyoming Lawyer* 16 (Apr. 2022) in discussing the "justice gap" stated:

> At some point just about every American will interact with our civil justice system. Whether it happens because of an eviction, a custody battle, a tort suit, or a contract claim, one thing is clear: Legal disputes are just as much a part of life as death and taxes. Yet today, legal services are increasingly difficult to obtain. A 2017 study found that low-income Americans fail to obtain adequate professional assistance with their legal problems 86% of the time. The vast majority don't even try to obtain professional help, and those who do are often turned away. According to another study, at least one party lacks legal representation in nearly 80% of civil cases in this country. The root cause for this state of affairs is not hard to discern: Legal services are expensive. Lawyers charge hundreds of dollars per hour for even the simplest of legal services. Even a single legal bill can prove financially devastating to many Americans.

The *nonuniform* District III Court local rules enhance the "justice gap." Twenty-seven percent of all civil cases filed in the s District Court had at least one *pro se* party.[1] Often, almost fifty percent of civil appeals in the U.S. Courts of Appeals have at least one *pro se* party.[2] The "justice gap" is enhanced by monopoly protecting boundaries that have nothing to do with individual merit or experience. A single legal bill to obtain counsel that can be devastating in the District Court seeps directly into the state courts. The federal rights to counsel and petition transcend state boundary lines. A very small key can open a very heavy door.

B. THE *RULES ENABLING ACT* COMPELS *UNIFORM* LOCAL RULES

Congress has constrained local rule making discretion. Congress enacted 28 U.S.C. § 332(d)(4) expanding the role of the Circuit Judicial Council to periodically review District Court local rules. Section 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 . . .

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

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

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." Congress found that the rule-making procedures "lacked sufficient openness" and that local Rules often "conflict with national rules of general applicability." *Ibid.* 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" because the judges who enact the local Rules decide whether they are lawful. "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." *Id.*

Congress legislated an interlocking standard of review for District Court local rule-making discretion. 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)

Additionally, *Federal Rule of Civil Procedure* 83(a)(1) was amended in 1995.

Rule 83. *Rules by District Courts*, provides:

> "A local rule must be consistent with—but not duplicate—federal statutes and rules adopted under 28 U.S.C. §§2072 . . . ,."

LFRA argues that 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). This standard is also doubled down and set forth in 28 U.S.C. 332(d)(4) and FRCP 83(a)(1). It is a statutory standard of review higher than strict scrutiny because it applies to all substantive rights, not just constitutional rights. The District Court below holds the *nonuniform* local rules are rational. A rational man can find a rational reason for anything.

C. THIS COURT'S PRECEDENT COMPELS *UNIFORM* LOCAL RULES

In *Siegel v. Fitzgerald*, 142 S. Ct. 1770 (2022): "The question in this case is whether Congress' enactment of a significant fee increase that exempted debtors in two States violated the *uniformity* requirement." *Id.* at 1775. This Court held "Congress [does not have] free rein to subject similarly situated debtors in different States to different fees because it chooses to pay the costs for some, but not others." *Id.* at 1781. The United States Bankruptcy Court local rules follow the District Court local rules. This Court concluded, "the Court

holds only that the *uniformity* requirement of the Bankruptcy Clause prohibits Congress from arbitrarily burdening only one set of debtors with a more onerous funding mechanism than that which applies to debtors in other States." *Id.* at 1782.

LFRA argues if Congress cannot subject similarly situated parties in different states to *nonuniform* and different taxes, duties, and imposts to access United States Bankruptcy Courts, it follows judges by local rule cannot subject similarly situated parties in different states to *nonuniform* local rules and different taxes, duties, and imposts to access United States District Courts. The District Court holds the nonuniform local rules are rational. The Third Circuit refuses to address the issue. The Attorney General refuses to address the questions presented.

ARGUMENT

I. EXCEPTIONAL CIRCUMSTANCES WARRANT THE EXERCISE OF THIS COURT'S SUPERVISORY POWER BECAUSE LFRA HAS ALREADY BEEN DENIED A FAIR HEARING IN THE THIRD CIRCUIT

It is hornbook law no man or woman can be a judge in their own case. A judge's recusal is required because of a due process violation when the judge becomes a "part of the accusatory process." *In re Murchison* (1955) 349 U.S. 133, 137, 75 S. Ct. 623, 625. A party's right to due process is violated when a judge

"becomes embroiled in a running bitter controversy" with a litigant. *Mayberry v. Pennsylvania* (1971) 400 U.S. 455, 465, 91 S. Ct. 499, 505.

Congress has enacted legislation to address judicial conflicts. 28 U.S. Code § 291—Circuit judges, provides:

> (a) The Chief Justice of the United States may, in the public interest, designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon request by the chief judge or circuit justice of such circuit.

Six out of sixteen active judges serving on the Third Circuit are members of the Judicial Council. The general rule requiring mandatory judicial disqualification is set forth in 28 U.S.C. §455(b). This statute in pertinent part provides:

> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
>
> . . . . . .
>
> **3)** Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

LFRA submits the Third Circuit Chief Judge and his Judicial Council colleagues should be categorically disqualified under Section 455(b)(1) and (3). The Third Circuit has refused to decide this issue for sixteen months.

Further, LFRA submits the entire Third Circuit should be disqualified under Section 455(b)(5), which provides:

> (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
>
> (i) Is a party to the proceeding, or an officer, director, or trustee of a party;

If under 455(b)(5), a judge by blanket rule *shall* disqualify himself when his spouse is an officer, director, and trustee of a party, it follows a judge should by blanket rule disqualify himself when he himself an officer, director, and trustee of a party. The non-council members of the Third Circuit are officers and trustees of the Third Circuit. They have a personal interest in the outcome. They cannot rule in favor of the LFRA without ruling against their Honorable Chief Judge and their trustee colleagues. The Third Circuit has refused to decide this issue for sixteen months.

Section 455(e) provides disqualification cannot be waived when the standards set forth in 455(b) have been met. These 455(b) standards are simply another way of restating the general rule of law "no man is permitted to try a case where he has an interest in the outcome."

Section 455(a) further requires recusal on the reasonable appearance of bias standard. No reasonable person can look at the facts, law, and procedural posture in this appeal and not see disqualifying structural bias, heaped on disqualifying structural bias. The Third Circuit has refused to address this issue for sixteen months.

LFRA submits exceptional circumstances exist as LFRA cannot obtain adequate relief in any court other than this Court. In practical effect, the Third Circuit has already ruled in its own favor on the merits by: repeatedly refusing to decide LFRA's Motion for Expedited Review; refusing to decide LFRA's motions for recusal and to assign a hearing panel from judges from outside of the Third Circuit; excusing its counsel from filing an Opposition since January 26, 2023. The Third Circuit has already demonstrated that it has no interest in the appearance of neutrality.

More particularly, this Court should exercise its supervisory duty because the Delaware and New Jersey local rules are mirror opposite blanket bans. If a citizen from Delaware sues a citizen from New Jersey on a federal claim in federal court in Delaware, the New Jersey citizen or corporation is also a party. If the first to file or venue is in Delaware, it is arbitrary and capricious to compel the New Jersey citizen to hire a Delaware lawyer. Likewise, if venue is in New Jersey, it is equally arbitrary to compel the Delaware citizen to hire a New Jersey 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. The purpose of the *Federal Rules of Civil Procedure* is defeated by the local rule reliance on forum state law or office location on both federal and diversity claims in the district courts. Can anyone plausibly dispute the practical effect of these *nonuniform* local rules is not arbitrary and irrational?

II. EXCEPTIONAL CIRCUMSTANCES WARRANT THE EXERCISE OF THIS COURT'S SUPERVISORY DUTY BECAUSE THE PATCHWORK OF *NONUNIFORM* LOCAL CONFLICTS WITH THE *RULES ENABLING* ACT AND THIS COURT'S DECISIONS

As noted above, in the *Rules Enabling Act*, Congress has declared that "Such [local] rules shall not abridge, enlarge, or modify any substantive rights. 28 U.S.C. § 2072(b). This statute has been violated. Congress has further placed on each Judicial Council a supervisory duty to review the rules prescribed by district courts within its circuit for consistency with rules prescribed under section 2072. *See* 28 U.S.C. § 332(d)(4). This statute has been violated. It is plain the Third Circuit is embedded and embroiled in this controversy. Every Chief District Judge in the Third Circuit is a member of the Third Circuit Judicial Council. The assigned "go to" District Judge below sits in the courtroom next to his Chief District Judge.

As noted above, in *Siegel v. Fitzgerald*, 142 S. Ct. 1770 (2022), this Court held the *uniformity* requirement prevents Congress from subjecting debtors in different states to disparate rules to access the federal courts. *Id.* at 1782. The *nonuniform* local rules are not consistent with this Court's precedent in *Siegel v. Fitzgerald*.

In *Students For Fair Admission v. Harvard*, 600 U.S. 181, 143 S. Ct. 2141 (2023), the Court held "the student must be treated based on his or her experiences as an individual—not on the basis of race." *Id.* at 176. "[I]n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." *Id.* at 2175. The *nonuniform* local rules are not based on experience or merit because novice forum state attorneys are categorically qualified for *general* admission privileges while experienced attorneys from 49 states are categorically disqualified. The *nonuniform* local rules are not consistent with this Court's precedent in *Students For Fair Admission*.

In *Georgia v. Public Resource Org, Inc.*, 140 S. Ct. 1498 (2020), this Court held, "The animating principle behind this rule [government edicts doctrine] is that no one can own the law. Every citizen is presumed to know the law," and "it needs no argument to show . . . that all should have free access" to its contents. *Id.* at 1507. The animating principle behind the *government edicts doctrine* is the government cannot grant a

patent, copyright, or trademark on free access to the law. The nonuniform local rules provide what is essentially a patent, copyright, or trademark on *access* to the District Courthouse. If states cannot usurp the *government edicts doctrine*, federal judges cannot usurp the *government edicts doctrine* by providing a monopoly to *state* licensing officials to control *access* to the District Courthouse. "It needs no argument to show . . . that all should have free access" to its contents." *Id.* at 1507. The right to *free access* to the federal courthouse cannot be owned by anyone. The *nonuniform* local rules are not consistent with this Court's precedent in *Georgia v. Public Resource Org, Inc*.

In *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 142 S. Ct. 2111 (2022) this Court struck down New York's "proper cause" firearms licensing requirement because it "prevent[ed]ng law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms in public. *Id*. at 2156. This Court held law-abiding citizens do not need to establish proper-cause to exercise their constitutional rights. The nonuniform local rules deny a *general* admission permit to lawyers licensed in forty-nine states. This "proper cause" requirement embedded in the local rules for ordinary law-abiding citizens prevents them from choosing their own counsel to petition the government to protect their First Amendment freedoms in the United States District Courthouse. The *nonuniform* local rules at issue in this case are not consistent with this Court's precedent in *New York State Rifle & Pistol Assn., Inc.* A federal courthouse divided

against Americans should not stand, unless the First Amendment is a nullity.

In *Trump v. Anderson*, Supreme Court, 23-719 filed March 4, 2024, this Court reversed the Colorado Supreme Court decision to remove former President Trump from the ballot because the Constitution makes Congress, rather than the States, responsible for enforcing federal law for federal officeholders and candidates. This Court held: The "patchwork" that would likely result from state enforcement would "sever the direct link that the Framers found so critical between the National Government and the people of the United States" as a whole. *U. S. Term Limits*, 514 U.S., at 822."

Here, the "patchwork" of nonuniform local rules "sever the direct link that the Framers found so critical between the National Government and the people of the United States," when they established our more perfect Union with First Amendment rights for the People.

This federal judge delegation of federal rights and judicial duty to forum state licensing officials, who do not have extraterritorial jurisdiction over another state's citizens, makes a mockery of the separation of powers doctrine. The *nonuniform* local rules are not consistent with this Court's precedent in *Trump v. Anderson*. These nonuniform local rules continue to exist because this Honorable Court has not discharged its supervisory responsibility and only this Court can discharge that duty, and this Court should discharge that duty. That the people shall not choose their

representatives, but the government shall choose the people's representatives, nullifies the Constitution.

CONCLUSION

Our ancestors, and sometimes ourselves too, at moments have gotten stuck in old ways of thinking that often continues by habit and neglect. Justice Holmes, in letter to Harold Laski, wrote "man is like all other growing things and when he has grown in a certain crevice for say 20 years you can't straighten him out without attacking his life." Respondents here view LFRA as attacking an ancient tradition. The same tradition that denied equal opportunity for women in the United States military academies has been overturned in many contexts.

Justice Holmes further famously set forth a free speech principle that has become the benchmark, "but when men have realized that time has upset many fighting faiths, they may come to believe in more and they believe the very foundations of their own conduct that ultimate good desired is better reach by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is only ground upon which their wishes safely can be carried out. That, at any rate is the theory of our Constitution. *Abrams v. United States*, 250 U.S. 616, 630 (1919).

The *nonuniform* local rules stunt and enfeeble the First Amendment text, freedoms, and its purpose as

set forth by Justice Holmes, and this Honorable Court many, many times. These local rules constitute a courthouse divided against itself. This local error exalts forum state lawyers and debases and degrades lawyers from forty-nine states by throwing them into the background as extras. These local rules have nothing what-so-ever to do with individual merit or experience.

In view of the foregoing, LFRA requests that this Court exercise its supervisory responsibility and assign a panel of judges from outside of the Third Circuit.

This assignment will relieve the Third Circuit of a judicial duty to judge what it does not want to judge. LFRA submits that until this Honorable Court discharges its supervisory responsibility over these nonuniform local rules, that supervisory reasonability will remain undone now and forever.

This Court would also be well within its supervisory duty by granting certiorari review or entering summary reversal and decide these issues once and for all.

Respectfully submitted,

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