APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LAWYERS FOR FAIR RECIPROCAL ADMISSION,	:	
Plaintiff,	:	**CIVIL ACTION**
v.	:	**No. 22-2399**
UNITED STATES et al.	:	
Defendants.	:	

ORDER

This 10th day of January, 2023, for the reasons set forth in the accompanying memorandum, it is hereby **ORDERED** that Defendants' Motion to Dismiss, ECF 23, is **GRANTED**. Plaintiff's Complaint is **DISMISSED** with prejudice.

/s/ Gerald Austin McHugh
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

LAWYERS FOR FAIR RECIPROCAL ADMISSION,	:	
Plaintiff,	:	**CIVIL ACTION No. 22-2399**
v.	:	
UNITED STATES et al.,	:	
Defendants.	:	

McHUGH, J. **JANUARY 10, 2023**

MEMORANDUM

This case represents yet another effort by Plaintiff's counsel, Joseph Giannini, to establish a legal right for lawyers to practice law in jurisdictions that lack bar reciprocity with the state where such lawyers are barred. Mr. Giannini has filed many such cases in courts across the country over the last several decades, two of which have been before me. *See NAAMJP v. Simandle*, No. 14-3678, 2015 WL 13273313 (D.N.J. Sept. 1, 2015), *aff'd*, 658 F. App'x 127 (3d Cir. 2016); *NAAJMP v. Castille*, 66 F. Supp. 3d 633 (E.D. Pa. 2014), *aff'd*, 799 F.3d 216 (3d Cir. 2015). His efforts have almost uniformly failed. *See Simandle*, 658 F. App'x at 130 (compiling cases). At least two courts have gone so far as to enjoin Mr. Giannini from filing additional cases challenging bar admission rules without leave of court. *See NAAMJP v. Bush*, No. 05-cv-5081, ECF No. 43, slip op. at 9 (E.D. Pa. Mar. 23, 2006), *aff'd sub nom.*

NAAJMP v. Gonzales, 211 F. App'x 91, 93 (3d Cir. 2006); *Paciulan v. George*, 38 F. Supp. 2d 1128, 1146-47 (N.D. Cal. 1999), *aff'd*, 229 F.3d 1226 (9th Cir. 2000).

In the present case, an organization named Lawyers for Fair Reciprocal Admissions (LFRA) challenges the local civil rules in this Court and the District of Delaware, naming the United States, the Attorney General, and an array of federal judges as defendants. LFRA alleges that the courts' rules governing the admission of lawyers to each court's bar violate various federal statutory and constitutional provisions, reasserting many of the arguments advanced against the District of New Jersey's local rules in *Simandle*, 2015 WL 13273313.

Subsequent case law has slightly altered the legal standard for one of Plaintiff's claims since *Simandle*, but Plaintiff has nonetheless failed to state a claim for relief. I will therefore dismiss the entire Complaint with prejudice.

I. Factual and Procedural Background

LFRA "is a corporation organized for public benefit under California law with offices in Los Angeles, CA" that is "engaged in interstate commerce and advocacy." Compl. ¶ 35. Plaintiff's Complaint does not specify the purpose of its "advocacy." Based on the contents of the Complaint and LFRA's name, however, its mission appears to be changing non-reciprocal bar admissions rules, much like the National Association for the Advancement of Multijurisdiction Practice (NAAMJP),

which was the plaintiff in my previous two cases involving Mr. Giannini. *See Simandle*, 2015 WL 13273313, at *1; *Castille*, 66 F. Supp. 3d at 638-39.[1] Plaintiff asserts that it has "members and associates," many of whom are lawyers, "who have been deprived of their citizenship rights by the challenged local Rules" in New Jersey and Delaware. Compl. ¶ 36.

Defendants in this case are the United States, Attorney General Merrick Garland, all judges on the Third Circuit Judicial Council, and all district court judges in the District of New Jersey and District of Delaware. Plaintiff alleges that the United States is a proper party because of "the Supreme Court's supervisory appellate jurisdiction" over local district court rules. *Id.* ¶ 37. Plaintiff alleges that the Attorney General is a proper party because he "has a constitutional duty to assure the laws are faithfully executed." *Id.* ¶ 38. Plaintiff then alleges that the Third Circuit Judicial Council is properly named as defendant due to its role in reviewing the local rules of courts within its jurisdiction. *Id.* ¶ 39. And Plaintiff appears to have sued all judges in the District of New Jersey and District of Delaware due to their role in promulgating each district's local civil rules (though Plaintiff does not state this explicitly). *See id.* ¶¶ 40-41.

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[1] Defendants' brief further highlights that although LFRA does not note any connection with NAAJMP, both organizations share the same counsel and seemingly have the same address, and the Complaint repeatedly references NAAJMP's past litigation efforts. *See* Def.'s Br., ECF 23-1, at 4.

Plaintiff's Complaint challenges each court's adoption and "piggy-back[ing]" of their respective state supreme court's admission rules for out-of-state attorneys. *See id.* ¶¶ 13-14. Plaintiff notes that these local rules differ from other local civil rules, including those in the Western District of Pennsylvania, which allow for admission of any attorney previously admitted to any other federal district court. *Id.* ¶ 12. While Plaintiff does not identify the specific rules they challenge in their Complaint nor any of their briefs, Defendants and I assume that Plaintiff challenges District of New Jersey Local Civil Rule 101.1 and District of Delaware Local Civil Rule 83.5 (the "Local Rules"). Rule 101.1(b) states that "[a]ny attorney licensed to practice by the Supreme Court of New Jersey may be admitted as an attorney at law," with Rule 101.1(c) allowing attorneys licensed in other jurisdictions to appear *pro hac vice* for a specific case, so long as they appear in conjunction with local counsel. Rule 83.5(b) similarly provides that "[a]ny attorney admitted to practice by the Supreme Court of the State of Delaware may be admitted to the Bar of this Court," with a *pro hac vice* provision similar to the District of New Jersey's codified at Rule 83.5(c).

Plaintiff claims that these rules violate various federal statutes and provisions of the U.S. Constitution. Specifically, Plaintiff's ten counts allege that the local rules violate: (1) the separation of powers doctrine; (2) the First Amendment; (3) the Sixth Amendment right to counsel; (4) the Full Faith and Credit Act, 28 U.S.C. § 1738; (5) rules governing the duties of the Third Circuit Judicial Council, 28 U.S.C. § 332(d)(4);

(6) Rules 1 and 83 of the Federal Rules of Civil Procedure; (7) the Rules Enabling Act, 28 U.S.C. §§ 2071–72; (8) rights to equal protection and privileges or immunities of citizenship under the Fifth and Fourteenth Amendments; (9) the unconstitutional conditions doctrine and privileges and immunities of citizenship under Article IV; and (10) the Fifth Amendment, under several procedural due process theories.

Defendants moved to dismiss the Complaint in its entirety. Defendants challenge the Court's ability to assert jurisdiction over the Delaware defendants, Plaintiff's standing to assert its claims against the remaining defendants, and the substantive merits of all claims.

II. Legal Standard

In this Circuit, motions to dismiss under Federal Rule of Civil Procedure 12(b)(6) are governed by the well-established standard set forth in *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009).

Motions to dismiss for lack of jurisdiction under the remaining provisions of Rule 12(b) can be either facial or factual. Where, as here, the party bringing a 12(b)(1) and 12(b)(2) motion attacks the complaint on its face,[2] the motion is treated like a 12(b)(6) motion and the court must treat the complaint's factual allegations

[2] Defendants allege that "Plaintiff does not allege any facts" to show that it can establish standing nor to show that the Court has personal jurisdiction over the Delaware defendants. *See* Defs.' Br., ECF 23-1 at 9, 13.

as true and "draw all reasonable inferences from those allegations" in the Plaintiff's favor. *In Re Horizon Healthcare Servs. Inc. Data Breach Litig.*, 846 F.3d 625, 633 (3d Cir. 2017); *see also Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977).

II. Discussion

I previously addressed the majority of the issues raised here in *Simandle*, where I dismissed a challenge to the District of New Jersey local rule that is challenged again in this case. Specifically, my opinion in *Simandle* addressed Plaintiff's claims regarding the separation of powers doctrine, the First Amendment, the Rules Enabling Act, equal protection, the Privileges or Immunities Clause, and the Privileges and Immunities Clause. Plaintiff has failed to explain why I should reach a different conclusion on any of these issues in this case, nor why, even if there was jurisdiction, the District of Delaware local rule – which is functionally equivalent to the New Jersey local rule – should be treated differently. I will therefore dismiss these claims for the same reasons I dismissed the claims in *Simandle*.

Plaintiff also asserts three new claims involving the Sixth Amendment, the Full Faith and Credit Act, and procedural due process. Because Plaintiff fails to sufficiently establish a factual or legal basis for these claims, the new claims will also be dismissed.

But before discussing the merits of Plaintiff's claims, I must first address issues that Defendants

raise regarding personal jurisdiction over the Delaware defendants and Plaintiff's standing to assert its claims.

A. Personal Jurisdiction

As a preliminary matter, Defendants argue that the Complaint fails to establish personal jurisdiction over the District of Delaware Defendants, and these judges should be dismissed under Fed. R. Civ. P. 12(b)(2).[3] I agree.

This Court has personal jurisdiction over a party to the extent permitted by the Fourteenth Amendment, because the New Jersey long-arm statute permits the exercise of such jurisdiction to the "fullest limits of due process." *IMO Indus., Inc. v. Kiekert AG*, 155 F.3d 254, 259 (3d Cir. 1998). That is, I have personal jurisdiction over a party so long as that party has minimum contacts with New Jersey, such that asserting jurisdiction does not "offend traditional notions of fair play and substantial justice." *DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280, 283 (3d Cir. 1981) (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

The District of Delaware defendants do not have sufficient minimum contacts with New Jersey. Plaintiff does not appear to dispute this notion, but claims that I nonetheless have personal jurisdiction over the

[3] Defendants do not challenge the Court's jurisdiction over the District of New Jersey and Third Circuit defendants.

Delaware defendants under 28 U.S.C. § 1391(e), a section of the venue statute which expands the permissible venues for suits against an "officer or employee of the United States or any agency thereof." There is some dispute over whether 1391(e) confers personal jurisdiction over such defendants beyond establishing proper venue. *See Duplantier v. United States*, 606 F.2d 654, 663 (5th Cir. 1979) (noting that although the Second Circuit held that Section 1391(e) is both a personal jurisdiction statute and a venue statute, other courts treat it as a venue statute only). Even assuming the statute confers personal jurisdiction, however, Defendants rightly highlight that § 1391(e) only applies to lawsuits against agencies and employees of the *executive* branch. *See id.*; *King v. Russell*, 963 F.2d 1301, 1303 (9th Cir. 1992); *Liberation News Serv. v. Eastland*, 426 F.2d 1379 (2d Cir. 1970). By its terms this statute cannot fix the problem of asserting jurisdiction over out-of-state judges who do not have sufficient minimum contacts with New Jersey, and so even before reaching the merits I will dismiss all claims against the District of Delaware judges.

B. Standing

Defendants also challenge the standing of LFRA to assert its claims and move to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1). According to Defendants, Plaintiff fails to show that its members suffer an actual and immediate injury from the Local Rules, as required to demonstrate constitutional standing under Article III, and this Court consequently lacks

jurisdiction over the claims. I disagree, and conclude that Plaintiff has sufficiently alleged standing to pursue most of its claims.

Federal courts lack jurisdiction over a claim if the plaintiff lacks standing to bring it. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) ("[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III."). Standing has three requirements:

> First, the plaintiff must have suffered an "injury in fact" – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Const. Party of Pa. v. Aichele, 757 F.3d 347, 360 (3d Cir. 2014) (citing *Lujan*, 504 U.S. at 560-61). As I noted in *Simandle* and *Castille*, an organization may acquire standing through three mechanisms: the organization's own injury, third party standing, or associational standing (i.e., standing to assert injury on behalf of its members). *Castille*, 66 F. Supp. 3d at 641; *Simandle*,

2015 WL 13273313 at *4. An organization has associational standing when:

> (1) the organization's members have standing to sue on their own; (2) the interests the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires individual participation by its members.

Simandle, 2015 WL 13273313 at *4 (quoting *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 279 (3d Cir. 2014)); *see also Castille*, 66 F. Supp. 3d at 641.

Defendants argue that Plaintiff does not plead actual injury from the Local Rules and simply asserts vague allegations about the general impact of the rules. Defendants point out that I found NAAJMP had standing in *Simandle* in part due to specific allegations from two named plaintiffs in that case, and that no such individual plaintiffs are involved in the present case.[4] Defendants argue that this case is therefore more analogous to the circumstances in *NAAJMP v. Gonzales*, 211 F. App'x 91, 95 (3d Cir. 2006), a non-precedential decision concluding that NAAJMP lacked standing to challenge district courts' local rules regulating attorney admission.

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[4] As noted above, NAAJMP and LFRA appear to have functionally the same mission, have the same counsel, and the same address and the same leadership. As such, my analysis from *Simandle* about NAAJMP's standing is highly relevant to my standing analysis here.

I disagree. Defendants are correct that this case lacks individual plaintiffs, but the effect of this is only that I must engage in a more in-depth analysis of whether LFRA's members have standing to sue on their own. Having done so here, I conclude that Plaintiff has pled standing sufficient to survive a motion to dismiss. At the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice' " in order to establish standing. *Lujan*, 504 U.S. at 561 (quoting *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 883-89 (1990)). Read broadly, the Complaint establishes that LFRA membership includes lawyers barred in states that lack reciprocity with Delaware and New Jersey, and as such suffer a cognizable injury because they cannot easily seek admission to either district court's bar. *See* Compl. ¶ 36. The substantial similarity between LFRA and NAAJMP adds further weight to this argument, given that NAAJMP easily produced individual lawyers who could satisfy the elements of standing for *Simandle*. Plaintiff has therefore pleaded general allegations that suggest that some of its members face a concrete, actual, and redressable injury that can (at least partly) be attributed to Defendants.[5]

Clearing this hurdle, Plaintiff can easily satisfy the remaining elements of associational standing. As in *Simandle*, the "second element is satisfied because

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[5] I also give some weight to Plaintiff's assertion that it can supply declarations from members concretely harmed by the Local Rules. *See* Pl.'s Opp. Br., ECF 39 at 37; Pl.'s Supp. Mem., ECF 50 at 14.

[LFRA] exists to challenge rules like Rule 101.1" and Rule 83.5. 2015 WL 13273313, at *4. While LFRA's mission is not explicit from the Complaint, an inference can easily be drawn from LFRA's title that challenging non-reciprocal bar admission rules is central to its work. The declaratory and injunctive relief sought by LFRA also "does not require individual participation by [LFRA's] members," as required by the third prong of associational standing. *Id.* As such, I conclude that LFRA can establish associational standing to pursue its claims.[6]

Despite finding associational standing here, I nonetheless grant Defendants' request to dismiss the Attorney General from this case, just as I did in *Simandle*. While the causal connection between Plaintiff's injury and the actions of the remaining judicial defendants is clear – the New Jersey defendants adopted Local Civil Rule 101.1, and the Judicial Council defendants oversee the local rules of both federal district courts – there is no similar causal link to the Attorney General. Plaintiff's claims do not allege that federal law, which the Attorney General enforces, violates Plaintiff's members' rights. Rather, they allege that the Local Rules conflict with federal law. This is insufficient to trace Plaintiff's injury to any action of the Attorney General, and I will dismiss him from the case under Fed. R. Civ. P. 12(b)(1).

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[6] Plaintiff does not attempt to establish its own individual standing nor third party standing, so I do not address these types of standing.

Plaintiff likely also lacks standing to pursue several claims asserted – such as claims under the Federal Rules of Civil Procedure, which lacks a private right of action, or under the Sixth Amendment right to counsel, which does not apply to civil actions and attaches to parties, not counsel. *See Turner v. Rogers*, 564 U.S. 431, 441 (2011). For clarity, however, I will address such standing issues where relevant to my individual analysis of each claim.

C. Separation of Powers

Count 1 of the complaint asserts that the Local Rules improperly delegate federal power to state licensing officials, and therefore "flagrantly trespass the separation of powers doctrine." Compl. ¶ 97. Because the incorporation of state bar admission rules into the Local Rules does not implicate the separation of powers under the U.S. Constitution, I will dismiss this claim.

Plaintiff cites a litany of authorities to support this claim, but at its core the claim invokes Article I and Article III. Article I, Section 1, mandates that all legislative powers contained in the Constitution are vested in Congress – and as a corollary, that legislative authority generally may not be delegated to other entities. *See Mistretta v. United States*, 488 U.S. 361, 487-88 (1989). Separately, under Article III, Section 1, only Congress may expand or limit a lower federal courts' jurisdiction. *See Kontrick v. Ryan*, 540 U.S. 443, 452 (2004).

Plaintiff does not, however, point to anything that implicates either provision. The only part of the Complaint that possibly pleads a violation of either constitutional provision is the conclusory assertion that the Local Rules are "procedural rules created by the judiciary that impermissibly shrink and withdraw District Court jurisdiction without Congressional approval." Compl. ¶ 95. But the Local Rules do not alter either district court's jurisdiction – they are simply setting the guidelines which lawyers must meet to join each district court's bar. The remainder of Plaintiff's arguments focus on the delegation of authority from the federal court to the state supreme courts, which is not addressed by the separation of powers provisions in the Constitution. Even assuming a constitutional issue exists here, federal courts are not delegating power to the states but making a choice to adopt state rules as a model. As I previously explained in *Simandle*, when discussing whether Local Rule 101.1 violated the Supremacy Clause, "New Jersey's District Court has decided to adopt state rules; the State of New Jersey is not imposing any rules on the District of New Jersey," further recognizing that "[t]he District Court is free to change these rules at any time." *See* 2015 WL 13273313, at *6. There is therefore no delegation of power from the federal courts to the state courts, and this claim will be dismissed.

D. First Amendment

Count 2 asserts that the Local Rules violate the First Amendment for six different reasons, arguing

that the Local Rules: (1) violate the Petition Clause because they "presume all licensed lawyers from other states will file sham petitions"; (2) operate as a prior restraint on protected speech by forcing lawyers to take an additional bar exam before they can exercise their speech rights; (3) discriminate against the viewpoints of out-of-state lawyers; (4) discriminate against a group of speakers; (5) constitute content-based speech discrimination; and (6) violate the freedom of association by compelling individuals to associate with the local bar. I dismissed all of these claims in *Simandle*, and I will dismiss them again in this case. Because Plaintiff highlights a relevant change in content-based speech discrimination law, however, I will first address that claim in more depth.

1. The content-based speech discrimination analysis remains the same, despite the change in law.

LFRA alleges that the Local Rules "constitute content discrimination in the same way the Arizona sign code was held to be content discrimination" in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015).[7] Compl. ¶ 113.

Where a government entity regulates speech based on its content, such regulation is subject to

[7] In *Reed*, the Supreme Court invalidated a town sign code that regulated three different types of signs differently. 576 U.S. at 159. The Complaint strains to explain how the facts of *Reed* are relevant to the current action, however, and I therefore address Plaintiff's content-based speech discrimination claim more generally.

strict scrutiny. *Reed*, 576 U.S. at 165. In *Simandle* and *Castille*, the Third Circuit partly relied upon the notion that content-based restrictions applied to so-called "professional speech" are entitled to a lesser tier of scrutiny. *See Castille*, 799 F.3d at 221 (quoting *King v. Governor of the State of N.J.*, 767 F.3d 216, 229 (3d Cir. 2014) (holding that bar admission rules are an "an exercise of Pennsylvania's 'broad power to establish standards for licensing practitioners and regulating the practice of professions'"); *Simandle*, 658 F. App'x at 135-36 (quoting *Castille*, 799 F.3d at 221). Plaintiff rightly points out, however, that the Supreme Court's decision in *National Institute of Family and Life Advocates v. Becerra* held that "professional speech" is not a separate speech category and therefore regulation of such speech requires courts to apply strict scrutiny. *See* 138 S. Ct. 2361, 2371-72 (2018) (finding error in the Third Circuit's decision in *King*).

This change of law does not change the result I reached in *Simandle.* In my prior review of the content-based speech discrimination claim, I did not rely on a lesser scrutiny for professional speech, but instead found that Local Civil Rule 101.1 did not discriminate on the basis of the content of any attorney's speech. *Simandle*, 2015 WL 13273313 at *8. Plaintiff again fails to explain how Local Rule 101.1 (or Local Civil Rule 83.5) constitutes content-based speech discrimination, and I will therefore dismiss the claim.

2. The analysis for the remaining claims from Simandle *is the same in this case.*

Plaintiff provides no basis on which to alter my prior findings on the remaining First Amendment issues from *Simandle*. The right to petition argument again fails because Plaintiff has not "shown any support for the argument that the right to petition protects an attorney's right to litigate on behalf of a client in a particular court." 2015 WL 13273313 at *10. The prior restraint argument fails because Plaintiff offers no basis for finding that the Local Rules give each court "unbridled discretion" to censor attorney speech, as the Rules set out clear guidelines for admission to each court's bar. *Id*. at *9. The viewpoint and speaker discrimination arguments fail because the Local Rules do not "discriminate on the basis of the viewpoint . . . or of the identity of the speaker." *Id.* at *8. And the compelled association argument fails because Plaintiff does not show that the local rule impermissibly imposes penalties because of out-of-state lawyers' membership in a "disfavored group," because the Local Rules "simply puts non-New Jersey [or Delaware] lawyers in the same position as non-lawyers. All must join the New Jersey [or Delaware] bar to gain general admission to the federal court's bar." *Id.* at *8-9.

I will therefore dismiss the remaining First Amendment claims in Count 2.

E. Sixth Amendment

Count 3 asserts that the Local Rules "categorically disqualify licensed lawyers from 49 states" and therefore "trespass the Sixth Amendment right to counsel." Compl. ¶ 127. The Complaint is extremely cursory in setting forth this claim and fails to explain exactly why the rules violate the Sixth Amendment, and I could therefore dismiss this claim as inadequately pleaded. *See Fowler*, 578 F.3d at 210. But even reaching the merits, this claim quite clearly lacks any basis in law. Despite recent efforts to expand the right to counsel, the Sixth Amendment does not extend to civil actions, *Turner v. Rogers*, 564 U.S. 431, 441 (2011), and the challenged Local Rules govern admission of attorneys for civil actions. Even in a criminal action where the Sixth Amendment applies, the right to counsel belongs to a *defendant*, not the defendant's attorney. *See Texas v. Cobb*, 532 U.S. 162, 172 n.2 (2001) (noting that "[t]he Sixth Amendment right to counsel is personal to the defendant"). Plaintiff's members therefore lack the required injury to establish standing even to raise the Sixth Amendment claim. This claim will therefore be dismissed.

F. Full Faith and Credit Act (28 U.S.C. § 1738)

Count 4 asserts that federal courts must recognize and honor a lawyer's out-of-state bar admission pursuant to the Full Faith and Credit Act, 28 U.S.C. § 1738. Under that statute, "Acts, records and judicial

proceedings" from any "State, Territory, or Possession" are given full faith and credit "in every court within the United States." *Id.* Plaintiff claims that a state supreme court's decision to admit someone to the local bar represents an "act" and "record" of that state's supreme court, and federal courts must honor that determination. But a state's judgment that an individual should be admitted to its own bar establishes only eligibility in that jurisdiction pursuant to its rules. It does not follow an individual should automatically be entitled to bar admission in a different state or federal court. *See Giannini v. Real*, 911 F.2d 354, 360 (9th Cir. 1990) ("Giannini's claim [under the Full Faith and Credit Clause] lacks merit because no act, record or judicial proceeding, in New Jersey or Pennsylvania, states that Giannini is entitled to practice law in California"); *Simandle*, 658 F. App'x at 135 (affirming conclusion that Full Faith and Credit Act claim lacked merit). I will therefore dismiss this claim.

G. Rules Enabling Act and Rulemaking Authority (28 U.S.C. §§ 2071, 2072)

Count 5 asserts that the Local Rules violate the Third Circuit Judicial Council's duty under 28 U.S.C. § 332(d)(4) to "periodically review" local rules prescribed by district courts within the Circuit to ensure their consistency with rules promulgated by the Supreme Court pursuant to the Rules Enabling Act, 28 U.S.C. § 2072. Count 7 makes a related and more straightforward argument that Local Rules violate the Rules Enabling Act's prohibition that court rules "shall

not abridge, enlarge or modify any substantive right." *Id.*

I previously addressed this argument in *Simandle*, where I found that "even if the Rules Enabling Act permits Plaintiffs to challenge local district court rules, Plaintiffs have not plausibly alleged Local Rule 101.1 is an impermissible exercise of district courts' rule-making discretion." *Simandle*, 2015 WL 13273313 at *6; *see also NAAJMP v. Lynch*, 826 F.3d 191, 197 (4th Cir. 2016) (rejecting Rules Enabling Act claims). I will therefore dismiss both claims.

H. Federal Rules of Civil Procedure 1 and 83

Count 6 asserts that the Local Rules violate Federal Rule of Civil Procedure 1 by preventing the "just, speedy, and inexpensive determination of every action and proceeding," and violate Rule 83(a)(1) because they are inconsistent with the Rules Enabling Act.

The Federal Rules of Civil Procedure do not create a private right of action, as the Defendants rightly point out in their Motion. *See In re Baldwin–United Corp.*, 770 F.2d 328, 335 (2d Cir. 1985); *Digene Corp. v. Ventana Med. Sys., Inc.*, 476 F. Supp. 2d 444, 452 (D. Del. 2007). Even if the Rules did create a substantive right, however, Plaintiff's claims fail on the merits. As noted in the previous section, Plaintiff's argument that the Local Rules somehow violate the Rules Enabling Act lacks merit. The Complaint also fails to make a coherent argument as to why the Local Rules prevent

efficient resolution of civil actions in their respective courts. *See* Compl. ¶¶ 139-43 (making general complaints about the unfairness and inequity of non-reciprocal bar admissions). I will therefore dismiss this claim.

I. Equal Protection and Privileges or Immunities Clause

Count 8 asserts that the Local Rules treat Plaintiff's members as second-class citizens[8] and therefore violate principles of equal protection under the Fifth and Fourteenth Amendments, and further argues that the Local Rules infringe upon the right to travel

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[8] Plaintiff's filings frequently compare the treatment of out-of-state lawyers to the discrimination faced by LGBTQ and Black Americans. The Complaint alleges, for example, that:

> *Pro hac vice* admission [for lawyers barred in other states] is no different than requiring Black people to stand in the rear of the bus, take a literacy test to vote, or requiring women to obtain their spouse's permission to undergo a medical procedure, or treating gay people as second-class citizens.

Compl. ¶ 141. This comparison is unconvincing at best and is more accurately described as disrespectful. Plaintiff's counsel has already been criticized by several other courts for making such comparisons, so I will not beleaguer this point. *See*, *e.g.*, *Simandle*, 658 F. App'x at 138 n. 11; *Laws. United Inc. v. United States*, No. 1:19-CV-3222-RCL, 2020 WL 3498693, at *7 (D.D.C. June 29, 2020).

inherent to the Fourteenth Amendment's Privileges or Immunities Clause.[9]

The Equal Protection Clause of the Fourteenth Amendment prohibits the government from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV, § 1. An equal protection claim asserted against a federal actor is properly treated as a claim under the Due Process Clause of the Fifth Amendment, which "forbids discrimination in a similar manner" as the Fourteenth Amendment. *Matter of Roberts*, 682 F.2d 105, 108 (3d Cir. 1982). If a law or rule neither burdens a fundamental right nor targets a suspect class, courts apply rational basis review and "will uphold it so long as it bears a rational relation to some legitimate end." *Connelly v. Steel Valley Sch. Dist.*, 706 F.3d 209, 212 (3d Cir. 2013) (internal citations omitted). Assuming Plaintiff can assert a Privileges or Immunities Clause claim here,[10] the claim would be treated under the "same standard" as the equal protection claim. *Id.* at 213.

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[9] Plaintiff characterizes this as "privileges and immunities" under the Fourteenth Amendment, but that amendment contains the Privileges or Immunities Clause.

[10] The breadth of protections conferred by the Privileges or Immunities Clause remains an open question since the Supreme Court reinvigorated the clause in *Saenz v. Roe*, 526 U.S. 489 (1999), but as part of the Fourteenth Amendment it likely applies only to state action. *See*, *e.g.*, *Willman v. Att'y Gen. of United States*, 972 F.3d 819, 825 (6th Cir. 2020) (stating that "[t]he Fourteenth Amendment's Privileges or Immunities Clause is a directive to states").

The Complaint neither argues that Local Rules burden a fundamental right for equal protection purposes nor target a suspect class, so I will apply rational basis review to the Local Rules.[11] Applying that standard, I can easily identify a legitimate rational basis for the limiting admission to those barred in the forum state. As I explained in *Simandle*, issues in a federal court frequently "turn on questions of state law from the district in which the court sits," 2015 WL 13273313 at *11, and the Third Circuit has recognized that "tying district court admission to state bar membership tends to protect the interests of the public." *Roberts*, 682 F.2d at 108. I will therefore dismiss the claims in Count 8.

J. Unconstitutional Conditions and Privileges and Immunities Clause

Count 9 asserts that the Local Rules impose "unconstitutional conditions," but almost the entirety of this Count discusses why the local rule impedes the fundamental right to practice law under the Privileges and Immunities Clause of Article IV, Section 2.

Assuming that this count primarily invokes Article IV, the Complaint fails to assert a valid claim. The

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[11] To the extent that other parts of the Complaint suggest that the right to practice law is a "fundamental right" under *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985), that opinion dealt with fundamental rights in the context of Article IV, not equal protection – and the Third Circuit has previously held that "the right to practice law is not a fundamental right for the purposes of the Equal Protection Clause." *Tolchin v. Sup. Ct. of the State of N.J.*, 111 F.3d 1099, 1115 (3d Cir. 1997).

federal government is simply not subject to scrutiny under the Privileges and Immunities Clause of Article IV. *See Pollack v. Duff*, 793 F.3d 34, 41 (D.C. Cir. 2015).

Even if claims under the clause could be asserted against the federal government, this claim still fails. As in *Simandle*, Plaintiff's argument here is that the local rule is unconstitutional under *Piper*, 470 U.S. at 288, which held that New Hampshire's rule limiting bar admission to state residents violated Article IV by treating resident and non-resident bar applicants differently. *Id.* at 287. Plaintiff makes a creative argument that the "*practical* effect of the Local Rules is to discriminate against out-of-state attorneys and create a *proxy* for preferential patronage for in-state attorneys." Compl. ¶ 169. Ultimately, however, the Local Rules are not based on residency, and are instead "based on whether an attorney is admitted to practice law in New Jersey." *Simandle*, 2015 WL 13273313. *Contrast Piper*, 470 U.S. at 275 (invalidating rules that "limit bar admission to state residents"). Plaintiff therefore fails to plead a claim under Article IV.[12]

[12] Even couched as unconstitutional conditions claim, this count still fails. Under that doctrine, the government may not condition access to a benefit on someone waiving a constitutional right. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 606 (2013); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Plaintiff has failed to identify what right Plaintiff's members are forced to waive to access the benefit of appearing in court.

K. Procedural Due Process

Finally, in Count 10, Plaintiff asserts several procedural due process claims under the Fifth Amendment. First, Plaintiff alleges that it is unable to have a fair hearing on its claims, because federal judges in each district have aligned themselves with forum state law on bar admissions through the Local Rules.[13] Second, Plaintiff claims that the Local Rules violate the due process rights of attorneys by leaving them "at the whim" of the forum state's bar licensure process, which generally does not allow for an appeal or petition to the forum state's courts. Third, Plaintiff asserts a confusing claim that the district courts should "have the burden of proof to establish by clear and compelling evidence that the original state of licensing order of admission was secured by fraud, mistake, or duress." Compl. ¶ 175.

Plaintiff asserts these claims with nothing but conclusory allegations, addressing each claim with just a single paragraph. As such, I will dismiss this count for failure to state a claim under Fed. R. Civ. P. 12(b)(6). *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007) (noting that sufficiently pleading a claim "requires more than labels and conclusions").

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[13] This point appears moot, as this case was assigned outside of either district court to lessen any conflict-of-interest concerns.

IV. Conclusion

For the reasons set forth above, I will grant Defendants' Motion to Dismiss. Based upon my prior analysis of these issues and a singular lack of success in similar actions nationwide, I deem amendment to be futile, *see Hill v. City of Scranton*, 411 F.3d 118, 134 (3d Cir. 2005), and Plaintiff's Complaint will therefore be dismissed with prejudice. An appropriate order follows.

/s/ Gerald Austin McHugh
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

LAWYERS FOR FAIR RECIPROCAL ADMISSION,	:	
Plaintiff,	:	**CIVIL ACTION No. 22-2399**
v.	:	
UNITED STATES et al.,	:	
Defendants.	:	

ORDER

This 18th day of November, 2022, it is hereby ORDERED that Plaintiff's Motion for Summary Judgment, ECF 40, is **DENIED without prejudice**. Plaintiff's Motion and Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss, ECF 39, contain many overlapping arguments. Moreover, the Court's resolution of the Motion to Dismiss, ECF 23, may moot some or all of Plaintiff's claims. Plaintiff's Motion for Summary Judgment is therefore premature, but may be renewed pending the outcome of the Motion to Dismiss.

/s/ Gerald Austin McHugh
United States District Judge

[SEAL]

U.S. Department of Justice
United States Attorney
District of New Jersey
Civil Division

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Alex Silagi
Assistant United States Attorney

May 16, 2023

BY ECF
Patricia S. Dodszuweit, Clerk
U.S. Court of Appeals, Third Circuit
U.S. Courthouse
601 Market Street, Room 21400
Philadelphia, PA 19106-1790

Re: *Lawyers for Fair Reciprocal Admission v. United States, et al.*,
No. 23-1154

Response to Appellant's Motion for an Order Requiring The Government To File an Opposition Brief

Dear Ms. Dodszuweit:

This Office represents the Government in this matter. We write to oppose Appellant's purported motion for an order requiring the Government to file an opposition brief before this Court even issues a briefing

schedule. See Motion filed May 8, 2023. Prior to filing this motion, Appellant has filed motions on January 31, 2023, February 12, 2023, April 2, 2023, and May 1, 2023, all which are pending. Included in these motions are requests to recuse all judges of the U.S. Court of Appeals for the Third Circuit. The Court has not set a briefing schedule in this matter. Appellant nonetheless voluntarily filed an opening brief and a "joint appendix," although the Government did not agree to any such appendix. The Government accordingly will await further guidance from this Court regarding a briefing schedule.

Respectfully submitted,

PHILIP R. SELLINGER
United States Attorney

By: *s/ Alex Silagi*
ALEX SILAGI
Assistant United States Attorney

Western District of Pennsylvania

LCvR 83.2 ADMISSION TO PRACTICE AND APPEARANCE OF ATTORNEYS AND STUDENTS

A. Admission to Practice – Generally.

1. Roll of Attorneys. The bar of this Court consists of those heretofore and those hereafter admitted to practice before this Court, who have taken the oath prescribed by the rules in force when they were admitted or prescribed by this rule.

2. Eligibility; Member in Good Standing. Any person who is eligible to become a member of the Bar of the Supreme Court of Pennsylvania or who is a member in good standing of the bar of the Supreme Court of Pennsylvania, or a member in good standing of the Supreme Court of the United States, or a member in good standing of any United States District Court, may be admitted to practice before the bar of this Court.

New Jersey District Court Civ RULE 101

(a) Scope of Admission The bar of this Court shall consist of those persons heretofore admitted to practice in this Court and those who may hereafter be admitted in accordance with these Rules

(b) New Jersey Attorneys

Any attorney licensed to practice by the Supreme Court of New Jersey may be admitted as an attorney at law upon completion of a sworn application submitted to the Court. Any New Jersey attorney deemed ineligible to practice law by order of the New Jersey Supreme Court entered pursuant to New Jersey Court Rule 1:28-2(a) shall not be eligible to practice law in this Court during the period of such ineligibility. Any attorney licensed to practice by the Supreme Court of New Jersey who has resigned from the New Jersey bar shall be deemed to have resigned from the bar of this Court effective as of the same date as his/her resignation from the New Jersey bar.

(c) Appearance Pro Hac Vice; Local Counsel

(1) Any member in good standing of the bar of any court of the United States or of the highest court of any state, who is not under suspension or disbarment by any court and is ineligible for admission to the bar of this Court under L.Civ.R. 101.1(b), may in the discretion of the Court, on motion, be permitted to appear and participate in a particular case. The motion shall contain a certified statement of the applicant disclosing each bar in which the applicant is a member in

good standing including the year of admission and the name and address of the official or office maintaining the roll of such members of its bar; in lieu thereof, the motion may attach a certificate of good standing issued by the person or office maintaining the roll of the members of its bar. The motion shall also contain a statement certifying that no disciplinary proceedings are pending against the attorney in any jurisdiction and no discipline has previously been imposed on the attorney in any jurisdiction. If discipline has previously been imposed within the past five years, the certification shall state the date, jurisdiction, nature of the ethics violation and the penalty imposed. If proceedings are pending, the certification shall specify the jurisdiction, the charges and the likely time of their disposition. An attorney admitted pro hac vice shall have the continuing obligation during the period of such admission promptly to advise the Court of the disposition made of pending charges or of the institution of new disciplinary proceedings.

(2) The order of the Court granting a motion to appear pro hac vice shall require the out-of-state attorney to make a payment to the New Jersey Lawyers' Fund for Client Protection as provided by New Jersey Court Rule 1:28-2(a). This payment shall be made for any year in which the admitted attorney continues to represent a client in a matter pending in this Court. A copy of the order shall be forwarded by the Clerk to the Treasurer of the Fund.

(3) The order of the Court granting a motion to appear pro hac vice shall require the out-of-state

attorney to make a payment of $150.00 on each admission payable to the Clerk, USDC.

(4) If it has not been done prior to the granting of such motion, an appearance as counsel of record shall be filed promptly by a member of the bar of this Court upon whom all notices, orders and pleadings may be served, and who shall promptly notify his or her specially admitted associate of their receipt. Only an attorney at law of this Court may file papers, enter appearances for parties, sign stipulations, or sign and receive payments on judgments, decrees or orders. A lawyer admitted pro hac vice is deemed to have agreed to take no fee in any tort case in excess of New Jersey Court Rule 1:21-7 governing contingent fees.

(5) A lawyer admitted pro hac vice is within the disciplinary jurisdiction of this Court. A lawyer admitted pro hac vice may not withdraw as counsel without leave of this Court before the action is terminated.

(6) Any pro hac vice counsel admitted in the action is deemed to have certified under Fed. R. Civ. P. 11(b) to those pleadings, written motions or other papers that the pro hac vice counsel signs, files, submits or later advocates to the Court.

(d) Adherence to Schedules; Sanctions All members of the bar of this Court and those specially permitted to participate in a particular action shall strictly observe the dates fixed for scheduling conferences, motions, pretrial conferences, trials or any other proceedings. Failure of counsel for any party, or of a party appearing pro se, to comply with this Rule may result in the

imposition of sanctions, including the withdrawal of the permission granted under L.Civ.R. 101.1(c) to participate in the particular action. All applications for adjournment shall be made promptly and directed to the Judge to whom the matter is assigned.

(e) Appearance by Patent Attorneys Any member in good standing of the bar of any court of the United States or of the highest court of any state who is not eligible for admission to the bar of this Court under L.Civ.R. 101.1(b) may be admitted as an attorney at law, subject to the limitations hereinafter set forth, on motion of a member of the bar of this Court and upon taking the prescribed oath and signing the roll, provided such applicant has filed with the Clerk a verified application for admission as an attorney of this Court establishing that the applicant:

(1) is a member in good standing of the bar of any United States court or the highest court of any state for at least five years;

(2) has been admitted to practice as an attorney before the United States Patent Office and is listed on its Register of attorneys;

(3) has been continuously engaged in the practice of patent law as a principal occupation in an established place of business and office located in the State of New Jersey for at least two years prior to date of application; and

(4) has sufficient qualifications both as to prelegal and legal training to satisfy the Court. No member admitted under L.Civ.R. 101.1(e) shall designate himself or herself other than as a patent

attorney or patent lawyer, and that person's admission to practice before this Court shall be limited to cases solely arising under patent laws of the United States or elsewhere. Failure to continue to maintain an established place of business or office within the State for the practice of patent law shall, upon proof thereof to the Court, justify the striking of such attorney's name from the roll of patent attorneys established under this Rule. In any litigation, any patent attorney admitted under L.Civ.R. 101.1(e) shall be associated of record with a member of the bar of this Court admitted under L.Civ.R. 101.1(b). Nothing herein contained shall preclude any patent attorney from being admitted under L.Civ.R. 101.1(b) or (c).

(f) Appearance by Attorneys for the United States An attorney admitted to practice in any United States District Court may practice before this Court in any proceeding in which he or she is representing the United States or any of its officers or agencies. If such attorney does not have an office in this District he or she shall designate the United States Attorney to receive service of all notices or papers in that action. Service upon the United States Attorney or authorized designee shall constitute service upon a government attorney who does not have an office in this District.

(j) Appearance of Attorneys in Criminal Cases This Rule does not govern the appearance of attorneys representing defendants in criminal cases.

District of Delaware LOCAL RULES 2016.pdf (uscourts.gov)

Delaware District Court Rules

RULE 83.5. **Bar Admission.**

(a) The Bar of this Court. The Bar of this Court shall consist of those persons heretofore admitted to practice in this Court and those who may hereafter be admitted in accordance with these Rules.

(b) Admission. Any attorney admitted to practice by the Supreme Court of the State of Delaware may be admitted to the Bar of this Court on motion of a member of the Bar of this Court made in open court and upon taking the following oath and signing the roll:

> "I, _____, do solemnly swear (or affirm) that I will conduct myself, as an attorney and counselor of this Court, uprightly, and according to law; and that I will support the Constitution of the United States."

(c) Admission *Pro Hac Vice*. Attorneys admitted, practicing, and in good standing in another jurisdiction, who are not admitted to practice by the Supreme Court of the State of Delaware, may be admitted pro hac vice to the Bar of this Court in the discretion of the Court, such admission to be at the pleasure of the Court. Unless otherwise ordered by the Court, or authorized by the Constitution of the United States or acts of Congress, an applicant is not eligible for permission to practice pro hac vice if the applicant:

(1) Resides in Delaware; or

(2) Is regularly employed in Delaware; or

(3) Is regularly engaged in business, professional, or other similar activities in Delaware.

Any judge of the Court may revoke, upon hearing after notice and for good cause, a pro hac vice admission. The form for admission pro hac vice, which may be amended by the Court as prescribed by standing order, is appended to these rules.

(d) Association with Delaware counsel required. Unless otherwise ordered, an attorney not admitted to practice by the Supreme Court of the State of Delaware may not be admitted pro hac vice in this Court unless associated with an attorney who is a member of the Bar of this Court and who maintains an office in the District of Delaware for the regular transaction of business ("Delaware counsel"). Consistent with CM/ECF Procedures, Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. Unless otherwise ordered, Delaware counsel shall attend proceedings before the Court.

(e) Time to Obtain Delaware Counsel. A party not appearing pro se shall obtain representation by a member of the Bar of this Court or have its counsel associate with a member of the Bar of this Court in accordance with D. Del. LR 83.5(d) within 30 days after:

(1) The filing of the first paper filed on its behalf; or

(2) The filing of a case transferred or removed to this Court.

Failure to timely obtain such representation shall subject the defaulting party to appropriate sanctions under D. Del. LR 1.3(a).

(f) Association with Delaware counsel not required.

(1) Attorneys who are members in good standing of the bar of the highest Court of any state, territory, or the District of Columbia may, after submitting themselves to the jurisdiction of this Court in writing, act as an attorney in this Court on behalf of the United States or any of its departments, agencies or officials (in their official or individual capacities).

(2) Attorneys who are admitted to the Bar of this Court and in good standing, but who do not maintain an office in the District of Delaware, may appear on behalf of parties upon application to the Court.