Nos. 25-1240

IN THE

Supreme Court of the United States

AZADEH KHATIBI, M.D., *ET AL.*,
Petitioners,

v.

KRISTINA D. LAWSON, PRESIDENT OF THE MEDICAL BOARD OF CALIFORNIA, *ET AL.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICUS CURIAE* JUDICIAL WATCH, INC. IN SUPPORT OF PETITIONERS

Meredith L. Di Liberto
JUDICIAL WATCH, INC.
425 Third Street SW
Washington, DC 20024
(202) 646-5172
mdiliberto@judicialwatch.org

Counsel for Amicus Curiae

Dated: June 1, 2026

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTERESTS OF THE *AMICUS CURIAE* 1

SUMMARY OF ARGUMENT.....1

ARGUMENT 3

I. The Ninth Circuit's Misapplication of This Court's Precedent Threatens to Undermine the Motion to Dismiss Standard.....3

II. The Ninth Circuit's Failure to Enforce the Motion-to-Dismiss Standard Threatens Compelled Speech in Professional Licensing Regimes 9

A. The Ninth Circuit again points to the regulatory nature of the medical profession to justify a comprehensive sweep of private speech. 11

B. The Ninth Circuit set a permission structure for states to compel ideological control in continuing education instruction.....16

CONCLUSION.....20

TABLE OF AUTHORITIES

Cases **Page(s)**

Ashcroft v. Iqbal,
556 U.S. 662 (2009) 2, 3, 4, 6, 7, 8, 9, 11

Bell Atlantic Corp. v. Twombly,
550 U.S. 544 (2007) 10

Berk v. Choy,
607 U.S. 187 (2026) 7, 9-10

Dupree v. Younger,
598 U.S. 729 (2023) 7

Jenkins v. McKeithen,
395 U.S. 411 (1969) 4

Khatibi v. Hawkins,
2024 U.S. Dist. LEXIS 81485 (May 2, 2024) 4

Khatibi v. Hawkins,
145 F. 4th 1139 (9th Cir. 2025)..... 5-6, 7, 10, 15

Khatibi v. Hawkins,
164 F.4th 1105 (9th Cir. 2025).....6, 12, 14

Matal v. Tam,
582 U.S. 218 (2017) 12

Montana v. Wyoming,
2010 U.S. LEXIS 9832 (2010) 4

Nat'l Inst. of Family & Life Advocates v. Becerra, 585 U.S. 755 (2018) 12, 13, 14-16

NRA of Am. v. Vullo, 602 U.S. 175 (2024) 4, 7

Parents for Priv. v. Barr, 949 F.3d 1210 (9th Cir. 2020) 6, 11

Ramirez v. Guadarrama, 142 S. Ct. 2571 (2022) 6

Stanley v. City of Stanford, 606 U.S. 46 (2025) 5, 7

Tolan v. Cotton, 572 U.S. 650 (2014) 3

Statutes and Rules

Exec. Order No. 13950, 3 C.F.R. 331 (2020 Comp.) 18

Fed. R. Civ. Pro. 12 ..... 3-4, 7

20 ILCS 2105/2105-15.7 17

Ariz. Admin. Code § R4-6-802 17

CAL. BUS. & PROF. CODE § 2190.1(d)(1) 2, 16, 19

CAL. BUS. & PROF. CODE § 2190.1(e).....2, 16

Fla. Stat. § 760.10 (2025) 18

Md. Code Ann., Health Occ. § 1-225.....17

Mich. Admin. Code R. 338.7004 17

Minn. Rules of Cont. Legal Educ. r. 6A (2018) 17

Mo. Sup. Ct. R. 15.05(d)(2023).....17

N.J. Bd. on Cont. Legal Educ. Reg. 201:1 (2021).....17

NV Rev. Stat. § 62B.607 17

OAR 847-008-0070 17

Or. State Bar Minimum Cont. Legal Educ. R. 3.2(a)(2021) 17

TN Code § 49-7-1902 (2024).....18

Utah Code Ann. § 53B-1-118 (2024).....18

Wash. Rev. Code § 43.70.613(1).....17

Bills

H.B. 1167, 123d Gen. Assemb., 2d Reg. Sess. (In. 2024) 17

H.B. 2178, Gen. Assemb., Reg. Sess. (Pa. 2024) 17

L.B. 291, 108th Leg., 1st Sess. (Neb. 2023).....17

S.B. 22, Gen. Assemb., Reg. Sess. (Va. 2026).....17

Other Authorities

Appellant's Opening Brief, *Khatibi v. Hawkins*, No. 24-3108 (9th Cir., Aug. 23, 2024).....13

Brief for the State Respondents, *National Institute of Family & Life Advocates ("NIFLA") v. Becerra*, No. 16-1140 (Feb. 20, 2018).....13

First Amended Complaint for Declaratory and Injunctive Relief, *Khatibi v. Hawkins*, No. 2:23-cv-06195 (C.D. Cal. Dec. 22, 2023).....5

Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss, *Khatibi v. Hawkins,* No. 2:23-cv-06195 (C.D. Cal. Oct. 10, 2023).....4

Petition for Writ of Certiorari, *Khatibi v. Hawkins*, No. 25-1240 (April 28, 2026) 16

Alexander A. Reinert, "Measuring the Impact of Plausibility Pleading," 101 Va. L. Rev. 2127 (2015) 8

Candice Norwood, *Racial bias trainings surged after George Floyd's death. A year later, experts are*

still waiting for 'bold' change, PBS News, May 25, 2021 18

Patricia Hatamyar Moore, "An Updated Quantitative Study of Iqbal's Impact on 12(B)(6) Motions," 46 U. Rich. L. Rev. 603 (2012) 8

Suja A. Thomas, "The New Summary Judgment Motion: the Motion to Dismiss Under *Iqbal* and *Twombly*," 14 Lewis & Clark L. Rev. 15 (2010).....8

INTERESTS OF THE *AMICUS CURIAE*[1]

Judicial Watch, Inc. ("Judicial Watch") is a non-partisan, public interest organization headquartered in Washington, D.C. Founded in 1994, Judicial Watch seeks to promote accountability, transparency and integrity in government, and fidelity to the rule of law. Judicial Watch regularly files *amicus curiae* briefs and lawsuits related to these goals.

Amicus seeks participation in this case for two reasons. First, Judicial Watch is concerned about the frequency of lower federal courts using motions to dismiss to terminate legitimate complaints by employing a standard closer to summary judgment. As regular litigators in federal courts, Judicial Watch relies on the courts to employ the Rules of Civil Procedure in an objective and consistent manner. Second, Judicial Watch is concerned that the blurring of procedural rules leaves the protection of fundamental freedoms at risk. Courts can invoke procedural rules to quash legitimate causes of action they simply do not like.

SUMMARY OF ARGUMENT

Implicit bias is a topic of significant social and political interest which generates strong feelings and opinions. In 2019, the State of California decided

---

[1] *Amicus curiae* states that no counsel for a party to this case authored this brief in whole or in part; and no person or entity other than *amicus curiae* and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

implicit bias was an essential element to add to medical training and licensing, and enacted Assembly Bill 241. This bill amended the continuing medical education ("CME") courses required by the Medical Board of California to include the requirement to teach implicit bias—alleged health care disparities "along the lines of race, ethnicity, gender identity, sexual orientation, age, or socioeconomic status." CAL. BUS. & PROF. CODE §§ 2190.1(d)(1), 2190.1(e). As CME instructors responsible for the content and organization of their CME courses, Petitioners filed suit against Respondents for violations of their free speech. Specifically, Petitioners alleged that the requirement to include implicit bias into their personally composed courses was compelled speech.

Discovery below would have provided a unique opportunity for both Petitioners and the Medical Board of California to dive into implicit bias and develop conclusions based on evidence. Unfortunately, both the U.S. District Court for the Central District of California ("District Court") and the U.S. Court of Appeals for the Ninth Circuit ("Ninth Circuit") opted for a judicial power grab instead. So focused on obtaining the result they wanted—the dismissal of an undesirable case—the lower courts bypassed the significance of the mundane: the motion to dismiss standard. In misapplying this Court's holding in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Ninth Circuit set itself up to be the sole arbiter of authority based on "judicial experience and common sense" at the expense of the application of objective procedural rules.

The Court should grant the petition for all of the reasons articulated in the petition, and because the Ninth Circuit has misapplied this Court's precedent in *Iqbal* and created a holding out of dictum. This case presents the Court with the opportunity to exercise its supervisory authority and clarify *Iqbal* as well as prevent the federal circuits from undermining the motion to dismiss standard. The consequences of permitting the Ninth Circuit to dismiss legitimate cases prior to discovery give the lower courts the unfettered power to replace objective procedural rules of law with political and social biases. And while this Court cannot right every wrong done by a lower court, in this case, where "the opinion below reflects a clear misapprehension" of standards in light of the Court's precedent, intervention is necessary. *Tolan v. Cotton*, 572 U.S. 650, 659 (2014).

ARGUMENT

I. The Ninth Circuit's Misapplication of This Court's Precedent Threatens to Undermine the Motion to Dismiss Standard

The Federal Rules of Civil Procedure may be the penultimate example of the mundane. However, as clearly seen by the lower court's failure to adhere to them, the mundane is essential for preserving fundamental freedoms such as the right of free speech.

Rule 12 of Federal Rules of Civil Procedure governs motions to dismiss and Rule 12(b)(6) permits

the dismissal of a case for a failure to state a claim upon which relief can be granted. Fed. R. Civ. Pro. 12(b)(6). The application of this rule hinges on this Court's very clear direction: all "well-pleaded factual allegations" in a complaint must be accepted as true at the motion-to-dismiss stage. *NRA of Am. v. Vullo*, 602 U.S. 175, 175 (2024) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2008)). And while legal conclusions thinly disguised as factual allegations do not meet that standard, a "Bill of Complaint should be liberally construed in favor" of the plaintiff. *Montana v. Wyoming*, 2010 U.S. LEXIS 9832 *24 (2010) (quoting *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

Having the option of first developing evidence on discovery and proving their theory of implicit bias, Respondents instead moved to dismiss the complaint for a failure of Petitioners to state a claim.[2] Specifically, Respondents stated that the alleged compelled speech was not private speech because it was not "readily associated with" Petitioners.[3] In order to defeat this motion, Petitioners should have only been required to show that their complaint contained well-pleaded facts sufficient for a jury to find that the CME attendees believed the Petitioners

---

[2] Petitioners' original complaint was dismissed with leave to amend. *Khatibi v. Hawkins*, 2024 U.S. Dist. LEXIS 81485, *4 (May 2, 2024). Petitioners filed an amended complaint on December 22, 2023. Id. at *6. The Ninth Circuit reviewed the amended complaint.

[3] Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss, *Khatibi v. Hawkins,* No. 2:23-cv-06195 (C.D. Cal. Oct. 10, 2023).

were responsible for the implicit bias content of their CME courses. Petitioners met this burden easily.

Petitioners' complaint included the following factual allegations that must be accepted as true at the motion-to-dismiss stage:

1) Petitioners teach and organize continuing medical education courses;
2) Petitioners create and compile the courses;
3) Attendees fill out evaluations after the courses;
4) Attendees commonly engage Petitioners in conversation, debate, and ask questions regarding the content of the courses;
5) Attendees treat Petitioners as the persons responsible for the content of the courses.[4]

None of these statements is a legal conclusion, and all of these statements should have been accepted as true by the lower courts. *See e.g., Stanley v. City of Stanford*, 606 U.S. 46, 49 (2025). In fact, the Ninth Circuit credited these statements as factual in stating:

> [S]he has plausibly alleged facts suggesting that attendees treat her as the person responsible for CME content. She is also correct that the State certainly expects, if not relies, on the

[4] First Amended Complaint for Declaratory and Injunctive Relief, *Khatibi v. Hawkins*, Case No. 2:23-cv-06195 (C.D. Cal. Oct. 10, 2023).

> participation of private parties in executing the CME scheme.

Khatibi v. Hawkins, 145 F. 4th 1139, 1150-51 (9th Cir. 2025).

That should have been the end of the Ninth Circuit's analysis. Instead, the lower court weighed Petitioners' well-plead factual allegations against other "reasonable" inferences weighed in Respondents' favor. *Id.* at 1148 (history of regulation), 1151-52 (public view of speech), 1154-56 (extent of government control). This is not the motion for dismissal standard. This is a muddy motion for summary judgment standard minus the opportunity for discovery. At best, this is an improper conflation of standards. At worst, this is a power grab by lower federal courts to purposely neutralize legitimate complaints and discovery. Blurring the motion-to-dismiss standard with the motion for summary judgment standard cannot be permitted to stand as acceptable. *Ramirez v. Guadarrama*, 142 S. Ct. 2571 (2022) (denial of petition for writ of certiorari) (Sotomayer, J., dissenting); *see also Khatibi v. Hawkins*, 164 F.4th 1105, 1112 (9th Cir. 2025) (Vandyke, J., dissenting) (denial of panel rehearing); *Parents for Priv. v. Barr*, 949 F.3d 1210, 1221 (9th Cir. 2020).

The Ninth Circuit purports to base its motion to dismiss review on this Court's *Iqbal* decision. *Khatibi*, 145 F. 4th at 1144. Tellingly, the lower court focuses on a cherry-picked line and elevates the dictum over the actual holding. *Id.* at 1144 and 1151.

Ignoring the mandate that all well-pleaded facts be accepted as true, the Ninth Circuit elects to use its "judicial experience and common sense." *Id*. Somehow the Ninth Circuit's common sense led it to acknowledge the plausibility of Petitioners' factual allegations and then dismiss the complaint because the Respondents arguments "have some merit." *Id*. at 1150. In addition to this being the very definition of lacking common sense, nowhere in *Iqbal* or subsequent cases reviewing the motion-to-dismiss standard has this Court ever replaced "judicial experience and common sense" for the Rule 12(b)(6) standard.[5]

The Ninth Circuit's concerning misuse of *Iqbal* below is not just an issue in this case alone or even just within the Ninth Circuit. This petition should be granted because the misuse of *Iqbal* to strip plaintiffs of their right to bring a legitimate cause of action has become a frequent occurrence throughout the federal judiciary. Since *Iqbal*, motions to dismiss have been

---

[5] This Court has clearly continued to differentiate motions to dismiss from motions for summary judgment. *See e.g., Berk v. Choy,* 607 U.S. 187, 197 (2026) (Court did not permit defendants attempt to make an end-run around the evidence/discovery part of summary judgment by moving to dismiss); *Stanley*, 606 U.S. at 49 (motion to dismiss requires well-pleaded facts accepted as true and no evidence beyond the complaint is considered); *NRA of Am.*, 602 U.S. at 191 (Court reviewed factual allegations for plausibility); *Dupree v. Younger,* 598 U.S. 729, 731 (2023) (discussion of standards and how each differs in terms of discovery).

granted more frequently.[6] And while a multitude of factors are likely at play in this increase of successful motions to dismiss, it raises the alarm that a significant number of cases may be dismissed by a standard more closely aligned with summary judgment but without the ability to engage in discovery.[7] The Ninth Circuit is one of the most likely federal circuits to engage in this blurring.[8] And constitutional civil rights cases are the type to most often fall victim.[9] It is therefore conceivable that the rights we hold most fundamental are most at risk at being dismissed by lower courts misapplying *Iqbal*.[10] Even a simple LEXIS search is revealing: in a mere 17 years, *Iqbal* has been cited 412,842 times with 39,805 citations being positive. The Ninth Circuit's use of *Iqbal* is overwhelmingly greater than any other federal circuit with 95,388 citations, including 8,395

---

6 *See* "An Updated Quantitative Study of Iqbal's Impact on 12(B)(6) Motions," Patricia Hatamyar Moore, 46 U. Rich. L. rev. 603 (2012).

7 The loss of discovery is substantial and cannot be overstated. *See e.g.,* "The New Summary Judgment Motion: the Motion to Dismiss Under *Iqbal* and *Twombley*," Suja A. Thomas, 14 Lewis & Clark L. Rev. 15, 185 (2010).

8 *Id*. at 620 and Table 3.

9 *Id*. at 617-618 and Table 2.

10 *See* "Measuring the Impact of Plausibility Pleading," Alexander A. Reinert, 101 Va. L. Rev. 2127 (2015). Reinert examined several studies designed to analyze the impact of *Iqbal* including the Moore 2012 study. Reinert's conclusions were not as severe as Moore's but nonetheless concerning.

positive uses.[11] Of those 8,395 positive Ninth Circuit cases, 1,501 use the phrase "judicial experience and common sense" just as the Ninth Circuit did below. In how many of those cases did the court dismiss a case where the plaintiff alleged plausible factual allegations? How many more plaintiffs will suffer the same fate?

II. The Ninth Circuit's Failure to Enforce the Motion-to-Dismiss Standard Threatens Compelled Speech in Professional Licensing Regimes

The motion-to-dismiss standard functions as a critical gatekeeping mechanism designed to allow plausible claims to proceed into discovery while filtering out those that are legally deficient. *Iqbal,* 556 U.S. at 678-79. As the Court explained in *Iqbal*, Rule 8 "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Id*. Plausibility is not, however, meant to be a high bar to meet. This Court has stated that the court:

> [A]sks only whether the complaint's factual allegations, if taken as true, "state a claim to relief that is plausible on its face." A complaint that satisfies this standard is "well-pleaded" and "may proceed even if it strikes a savvy judge that actual proof of the facts alleged is improbable." By design, this system of pleading makes it relatively

---

[11] The Ninth Circuit is more than double the next closest federal circuit, the 11th Circuit Court of Appeals.

> easy for plaintiffs to subject defendants to discovery—even for claims that are likely to fail.

Berk, 607 U.S. at 193 (quoting *Bell Atlantic Corp.* v. *Twombly*, 550 U. S. 544, 570, (2007) (cleaned up).

By failing to properly apply that standard here, the Ninth Circuit prematurely blocked the Petitioners from building an evidentiary record that was critical to assessing the constitutionality of California's suspect compelled speech regime. *Khatibi*, 145 F.4th at 1157.

This misapplication carries profound consequences for free speech. For starters, the Ninth Circuit's decision categorically sweeps CME instruction under the government speech doctrine, effectively erasing any First Amendment interest of private instructors. *Id.* In fact, these private instructors are "private" now in name only, as they are now required to incorporate state-prescribed orthodoxy within their instruction. Second, the consequences of the Ninth Circuit's decision extend beyond CME instruction and bleed into other professions, such as law, where licensure is conditioned by the state. These professions are valued for their intellectual independence at arm's length from the state. But under the Ninth Circuit's holding here, these professions serve merely as mouthpieces for the state.

The Ninth Circuit's decision sets a dangerous precedent. States will undoubtedly seek to impose a preferred political ideology in professional licensing regimes mirroring that of California's. Indeed, several states have already begun exploring or implementing similar implicit bias curriculum requirements. However, these efforts are not confined to any single ideology. Under this broadened government speech doctrine, states now possess unfettered authority to flood the remaining pockets of free speech within regulated professions. And our lower federal courts, which in large part serve as the first line of defense against such dramatic power grabs by states, may now rely on the Ninth Circuit's decision to insert their own political and social biases before a plaintiff can ever build an evidentiary record.

A. The Ninth Circuit again points to the regulatory nature of the medical profession to justify a comprehensive sweep of private speech.

The Ninth Circuit ran astray from the demands of the motion-to-dismiss stage. Instead of "accepting as true all well-pleaded factual allegations and construing all factual inferences in the light most favorable to the plaintiff,"—a requirement designed to allow plausible claims to pass through the court's initial hurdle—the Ninth Circuit leaned on its "judicial experience and common sense" to dismiss petitioners' case. *Parents for Priv.*, 949 F.3d at 1221 (cleaned up); *Iqbal*, 556 U.S. at 679. Consequently, the Ninth Circuit set in motion an "expansive government speech doctrine that disregards this

Court's cautionary instruction in *Matal v. Tam* and is at odds with this Court's opinion in *Nat'l Inst. of Family & Life Advocates* (*NIFLA) v. Becerra*, 585 U.S. 755 (2018); *Khatibi*, 164 F.4th at 1106 (Vandyke, J., dissenting) (denial of panel rehearing).

In *Matal*, this Court wrote:

> But while the government-speech doctrine is important—indeed, essential—it is a doctrine that is susceptible to dangerous misuse. If private speech could be passed off as government speech by simply affixing a government seal of approval, government could silence or muffle the expression of disfavored viewpoints. For this reason, [the Court] must exercise *great caution* before extending our government-speech precedents.

582 U.S. 218, 235 (2017) (emphasis added). Yet the Ninth Circuit repeats its flawed reasoning from *NIFLA* here by pointing to the regulated nature of the medical industry to justify California's control of private speech. In doing so, the court diminishes the role of the ordinary procedural safeguard—the motion-to-dismiss standard—and sets itself up to be the sole arbiter of authority.

In *NIFLA*, California sought to regulate crisis pregnancy centers by requiring them to notify women of state-funded medical treatments, which included abortion, and to give them a phone number to call.

NIFLA, 585 U.S. at 761. Petitioners argued that "[b]y requiring [them] to inform women how they can obtain state-subsidized abortions—at the same time [they] try to dissuade women from choosing that option—the licensed notice plainly 'alters the content' of petitioner's speech." *Id.* at 766. In defense, California argued that its Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act (FACT Act) "falls well within the First Amendment's tolerance for the regulation of the practice-related speech of licensed professionals."[12]

This Court firmly rejected California's position. *NIFLA*, 585 U.S. at 767 ("Speech is not unprotected merely because it is uttered by 'professionals.'"). It warned that "[a]ll that is required to make something a 'profession[]' . . . is that it involves personalized services and requires a professional license from the State." *Id.* at 773. Thus, "simply imposing a licensing requirement" cannot render some speech less protected under the First Amendment than other speech. *Id.* If that were the case, a state could "impose 'invidious discrimination of disfavored subjects[]'" and "fail to 'preserve an uninhibited marketplace of ideas.'" *Id.* at 772. Yet that is exactly what California is trying to do here, just this time within the context of CMEs.

CME requirements, such as the broad categories of curriculum (like an ethics requirement) and the number of hours that must be completed by

---

[12] Brief for the State Respondents in Opposition at 14, *NIFLA*, Case No. 16-1140 (Feb. 20, 2018).

physicians are, in large part, defined by the state. But physicians who also teach CMEs are free to prepare and present their own courses and materials.[13] As Judge VanDyke wrote in his dissent, "[i]n California, CME courses are created, prepared, approved, and accredited by private actors. While, as one might expect, the state extensively regulates CME courses, it has not historically used that regulation to control the courses' messages." *Khatibi*, 164 F.4th at 1114-15 (Vandyke, J., dissenting) (denial of panel rehearing). Thus, the "court should have reheard this case en banc to correct that improperly anemic governmental speech analysis and to prevent the government from so easily coopting private speech." *Id*.

If the Ninth Circuit's decision stands, what prevents California from compelling speech in the practice of law or in other licensed professions? As Judge Tung writes:

> Indeed, *any* professional accreditation regime, now open and supported by a vast network of private providers expressing differing (and perhaps conflicting) viewpoints, would be in jeopardy of being converted into an engine of state-sanctioned groupthink if those providers could be compelled to announce a singular position.

Id. at 1117 (Tung, J., dissenting) (denial of panel rehearing) (emphasis added). In fact, "[p]rofessionals

---

[13] Appellants' Opening Brief *Khatibi v. Hawkins*, Case No. 24-3108 at 32.

might have a host of good-faith disagreements, both with each other and with the government, on many topics in their respective fields." *NIFLA*, 585 U.S. at 772.

> Doctors and nurses might disagree about the ethics of assisted suicide or the benefits of medical marijuana; lawyers and marriage counselors might disagree about the prudence of prenuptial agreements or the wisdom of divorce; bankers and accountants might disagree about the amount of money that should be devoted to savings or the benefits of tax reform.

Id. One continuing legal education (CLE) instructor may defend tenant-friendly housing policies and strong eviction protections, while another instructor insists that landlord-friendly housing is better for a state's economic growth. One CLE course may promote the use of AI to assist clients and prepare legal forms, while another may firmly reject the exercise as an improper practice of law. A criminal law seminar may advocate for a strict "just deserts" philosophy of punishment as opposed to a more community-focused healing philosophy.

If all sides of an issue are considered government speech simply because they occur within a regulatory framework, then the state is effectively endorsing every position in every contested debate within continuing education. The Ninth Circuit characterized its holding as "narrow." *Khatibi*, 145

F.4th at 1141. But if instructional speech becomes government speech when a state "impos[es] licensing requirements, set[s] broad standards, and mandat[es] certain content," then what pockets of free speech remain?[14] The Ninth Circuit's decision is fundamentally inconsistent with the longstanding tradition of the First Amendment. *NIFLA*, 585 U.S. at 766 ("The First Amendment . . . prohibits laws that abridge the freedom of speech.") The Ninth Circuit's failure to apply the motion-to-dismiss standard set a blueprint for states to impose ideological orthodoxy in professional licensing regimes by sweeping the entire regime under the government speech doctrine.

B. The Ninth Circuit set a permission structure for states to compel ideological control in continuing education instruction.

Of all fifty states, California has taken the most radical approach to incorporating implicit bias into CMEs. Unlike states that require professionals to take a certain number of credits to satisfy an implicit bias requirement, or to complete a particular implicit bias training course, Assembly Bill 241 requires all *private instructors* of CME courses to incorporate implicit bias curriculum into their teaching. CAL. BUS. & PROF. CODE §§ 2190.1(d)(1), 2190.1(e)

In effect, California has gone beyond regulating *how* licensed medical professionals maintain their licensure; it has also regulated *what* licensed medical

---

[14] Petition for Writ of Certiorari, *Khatibi v. Hawkins,* No. 25-1240 at 18 (April 28, 2026).

professionals who teach CME courses must say. This expansive approach carries significant problems beyond just California. By failing to apply the motion-to-dismiss standard and stamping a seal of approval onto California's sweeping effort to embed implicit bias instruction within the medical profession, the Ninth Circuit effectively signaled to other states that they may impose ideological orthodoxy in *all* professional licensing regimes. In fact, many states are just a step away from implementing the same requirement.

For example, Arizona, Illinois, Maryland, Michigan, Nevada, Oregon, and Washington already require medical professionals to complete implicit bias training as part of their CME requirements.[15] Other states, like Indiana, Nebraska, and Pennsylvania have recently introduced legislation to require the same thing.[16] A similar pattern has emerged in the legal profession regulating CLE requirements.[17]

---

[15] *See* Ariz. Admin. Code § R4-6-802; 20 ILCS 2105/2105-15.7; Md. Code Ann., Health Occ. § 1-225; Mich. Admin. Code R. 338.7004(2); NV Rev. Stat. § 62B.607; OAR 847-008-0070(6)(a); Wash. Rev. Code § 43.70.613(1).

[16] *See* H.B. 1167, 123d Gen. Assemb., 2d Reg. Sess. (Ind. 2024); L.B. 291, 108th Leg., 1st Sess. (Neb. 2023); H.B. 2178, Gen. Assemb., Reg. Sess. (Pa. 2024). And Virginia's efforts were recently successful. *See* S.B. 22, Gen. Assemb., Reg. Sess. (Va. 2026).

[17] *See, e.g.,* Minn. Rules of Cont. Legal Educ. r. 6A (2018); N.J. Bd. on Cont. Legal Educ. Reg. 201:1 (2021); Mo. Sup. Ct. R. 15.05(d)(2023); Or. State Bar Minimum Cont. Legal Educ. R. 3.2(a)(2021).

This increasing trend toward mandatory implicit bias training in continuing education reflects states' growing willingness to use professional licensing regimes to shape the viewpoints licensed professionals are expected to share in the course of their work. But implicit bias is not merely a medical or education concept—it is a politically contested social issue that has gained significant prominence in recent years, particularly in the aftermath of the 2020 George Floyd protests.[18]

In response to this growing trend, some states have taken a firm stance against implicit bias training and other Diversity, Equity, and Inclusion (DEI) curriculum. For example, Florida, Tennessee, and Utah have all expressly prohibited the practice in educational or professional spaces.[19] The political nature of this curriculum is also readily apparent by the Trump administration's executive orders prohibiting federal agencies from incorporating it into the workplace. *See,* Exec. Order No. 13950, 3 C.F.R. 331 (2020 Comp.).

---

[18] Candice Norwood, *Racial bias trainings surged after George Floyd's death. A year later, experts are still waiting for 'bold' change*, PBS News, May 25, 2021. https://www.pbs.org/newshour/nation/racial-bias-trainings-surged-after-george-floyds-death-a-year-later-experts-are-still-waiting-for-bold-change

[19] *See, e.g.,* Fla. Stat. § 760.10 (2025); TN Code § 49-7-1907 (2024); Utah Code Ann. § 53B-1-118 (2024).

Implicit bias training is an incredibly contested subject. A cursory Google search pops up countless news articles, academic journal entries, and other resources exploring its effectiveness. When states condition professional licensure on satisfying an implicit bias curriculum requirement, they are not just exposing those professionals to an idea, but they are embedding a state-prescribed viewpoint into a licensing regime. California's implicit bias CME requirement highlights this by treating implicit bias as settled knowledge, thus expecting private CME instructors to incorporate the curriculum into their own courses. CAL. BUS. & PROF. CODE §§ 2190.1(d)(1) ("On and after January 1, 2022, all [CME] courses shall contain curriculum that *includes the understanding of implicit bias*.") (emphasis added).

By dismissing this case early, the Ninth Circuit stripped Petitioners of the opportunity to build an evidentiary record to explore if and how Assembly Bill 241 demands private instructors to espouse California's preferred message. It also gives other states more confidence to follow suit, since many already treat implicit bias as settled knowledge. Thus, the Ninth Circuit's failure to correctly apply the motion-to-dismiss standard created a permission structure for states to rely on the "extensive regulation" of a licensed profession to demand private instructors repeat the state's preferred message.

CONCLUSION

For the foregoing reasons, *Amicus* respectfully requests that the Court reverse and remand the Ninth Circuit.

Respectfully submitted,

Meredith L. Di Liberto
Counsel of Record
JUDICIAL WATCH, INC.
425 Third Street SW
Washington, DC 20024
(202) 646-5172
mdiliberto@judicialwatch.org

Counsel for Amicus Curiae

June 1, 2026