No. 25-

IN THE

Supreme Court of the United States

LAWYERS FOR FAIR RECIPROCAL ADMISSION,

Petitioner,

v.

UNITED STATES OF AMERICA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether federal district and bankruptcy court professional speech local (sic) rules—that create a nationwide patchwork of conflicting licensing standards, effectively imposing nationwide injunctions on the practice rights of qualified attorneys in violation of the Rules Enabling Act's uniformity requirements and *Trump v. Casa*'s prohibition on lower court nationwide injunctions and the First Amendment freedoms to speech, association, and to petition the government for the redress of grievances—are subject to rational basis review?

LIST OF PARTIES

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

Respondents are the UNITED STATES OF AMERICA, the Attorney General sued on behalf of the United States, the Chief Judge of the Ninth Circuit Judicial Council and its members, and the Chief Judges of all District Courts in the Ninth Circuit and its individual members. Respondents are sued in their official capacity solely for injunctive and declaratory relief.

Respondent members of the Ninth Circuit Judicial Council include Chief Judge MARY H. MURGUIA; Honorable MICHAEL DALY HAWKINS, Circuit Judge; Honorable MORGAN B. CHRISTEN, Circuit Judge; Honorable SANDRA S. IKUTA, Circuit Judge; Honorable MICHELLE T. FRIEDLAND, Circuit Judge; Honorable ERIC D. MILLER, Circuit Judge; Honorable BRIAN M. MORRIS, Chief District Judge; MIRANDA M. DU, District Judge; PHYLLIS J. HAMILTON, District Judge; Honorable RONALD S.W. LEW, Senior District Judge; and G. MURRAY SNOW.

Respondent District Court Judges in the Ninth Circuit include the Honorable SUSAN M. BRNOVICH, DIANE J. HUMETEWA, DOMINIC LANZA, MICHAEL T. LIBURDI, STEVEN PAUL LOGAN,

DOUGLAS L. RAYES, JOHN JOSEPH TUCHI, JOHN CHARLES HINDERAKER, ROSEMARY MÁRQUEZ, SCOTT H. RASH, JAMES ALAN SOTO, JENNIFER G. ZIPPS, Chief District Judge; Honorable PHILIP S. GUTIERREZ, FERNANDO L. AENLLE-ROCHA, PERCY ANDERSON, ANDRÉ BIROTTE, Jr., STANLEY BLUMENFELD, Jr., MICHAEL W. FITZGERALD, MAAME EWUSI-MENSAH FRIMPONG, SHERILYN PEACE GARNETT, DOLLY M. GEE, JOHN W. HOLCOMB, R. GARY KLAUSNER, JOHN A. KRONSTADT, FERNANDO M. OLGUIN, VIRGINIA A PHILLIPS, MARK C. SCARSI, JOSEPHINE L. STATON, JOHN F. WALTER, STEPHEN V. WILSON, OTIS D. WRIGHT II, GEORGE H. WU, MARCO A. HERNANDEZ, ANN L. AIKEN, DAVID G. ESTUDILLO, STANLEY ALLEN BASTIAN, SHARON L. GLEASON, Chief District Judge DERRICK KAHALA WATSON, MICHAEL SEABRIGHT, DAVID C. NYE, STEPHEN W KENYON; RICHARD SEEBORG, Chief District Judge; DANA M. SABRAW; and KIMBERLY J. MUELLER.

CORPORATE DISCLOSURE STATEMENT RULE 29.6

LFRA is a public benefit corporation organized under California law. It is an association of licensed lawyers, citizens, and corporations. It is not publicly traded. It has no parent corporation, subsidiaries, or affiliates.

RELATED PENDING CASES

In *Chiles v. Salazar*, Supreme Court docket 24-539 oral argument was presented on October 7, 2025. *Chiles* presents a circuit split in professional speech licensing cases. *Chiles* and this petitions are related because the Ninth Circuit panel in this professional speech petition that applied rational basis review is virtually the same panel that applied rational basis review in the Ninth Circuit professional speech decision causing a circuit split cited in *Chiles v. Salazar*. The Solicitor General argued in favor of the petitioner that rational basis was not the correct standard of review.

Lawyers For Fair Reciprocal Admission v. United States, 2:22-cv-01221-MWM District of Arizona, Judgment entered March 7, 2024.

Lawyers For Fair Reciprocal Admission v. United States, 24-2213, Ninth Circuit, Judgment entered June 20, 2025.

Lawyers For Fair Reciprocal Admission v. United States, 24-2213, Ninth Circuit, petition for rehearing denied July 30, 2025.

TABLE OF CONTENTS

Table of Contents

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Constitutional Provisions

Statutes, Regulations and Rules

Other Authorities

Cited Authorities

Page

OPINIONS BELOW

The District Court's unpublished Rule 12(b)(6) Order dismissing this case *Lawyers For Fair Reciprocal Admission v. United States* is set forth at App. 32-44. It was filed March 7, 2024.

The Ninth Circuit's published decision affirming is reported at 141 F.4th 1056 (9th Cir. 2025) and set forth at App. 1-31. It was filed June 20, 2025.

The Ninth Circuit's order denying rehearing and rehearing *en banc* is set forth at App. 45-46. It was filed on July 30, 2025,

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254 and Supreme Court Rule 10. The judgment appealed was filed June 20, 2025. The order denying rehearing en banc was filed July 30, 2025.

STATEMENT OF THE CASE

A. The Nationwide Patchwork System

Federal district and bankruptcy courts across the nation have adopted peculiar fundamentally conflicting admission rules that create arbitrary geographic barriers to federal court practice. According to the *United States District Court for the District of Maryland Survey of the Admission Rules in the Federal District Courts* (2015), fifty-six districts (60%) maintain "non-reciprocal" rules that categorically exclude attorneys licensed in

sister states, while thirty-eight districts (40%) maintain "reciprocal" rules that admit qualified attorneys regardless of state of licensure.

This creates a system where identical attorneys receive vastly different treatment based solely on geography:

Example 1: An attorney with decades of federal court experience licensed in California must pass Nevada's entry-level bar examination to practice in Nevada federal court but can practice immediately in Colorado federal court with no additional requirements.

Example 2: A recent Nevada law graduate can practice immediately in Nevada federal court despite having no federal experience, while the experienced California attorney cannot practice in the same court without retaking a bar examination.

If a California citizen sues a Nevada citizen on federal claims, it is arbitrary and capricious to require counsel based solely on venue. If the case is filed in California, the Nevada defendant must hire California counsel or proceed *pro se*. If filed in Nevada, the California defendant faces the same burden. This chilling effect defeats the fundamental purpose of federal courts to provide a neutral forum for federal and diversity claims.

Every client seeking to hire an out-of-state attorney in sixty percent of the district and bankruptcy courts faces a Hobson's choice: either choose two lawyers to appear as counsel or appear *pro se*.

Many provisions of the Constitution compel uniformity. *See* Article I, § 8, for example:

> The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be **uniform** throughout the United States;
>
> To establish an **uniform** Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;
>
> To make **all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof**. (Emphasis added).

The Bill of Rights was promulgated to promise all citizens First Amendment freedoms in all federal courts.

These challenged hometown rules affect the functioning of Article III courts. A reasonable person could conclude the rules are stacked to serve local interests. *See* Richard W. Morris, "Federal courts to out-of-state lawyers: Get lost," *Los Angeles and San Franisco Daily Journal*, January 10, 2025 (47a-52a)

Citizen have constitutional rights to choose their spouse regardless of race or gender, have constitutional rights to carry a gun, have constitutional rights to choose

and exercise their religion, but do not have a constitutional right to choose their counsel to associate with and exercise their right to petition in some federal courts.

B. The Rules Enabling Act Prohibits This Nonuniformity

The Rules Enabling Act establishes clear congressional commands for federal court rulemaking. Section 2071(a) requires that local rules "shall be consistent with Acts of Congress and ***rules of practice and procedure prescribed under section 2072***." Section 2072(b) mandates that federal rules "***shall not abridge, enlarge or modify any substantive rights***." Section 2075 concerning Bankruptcy rules mandates the rules "***shall not abridge, enlarge or modify any substantive rights.***"

The nonuniform local rules directly violate these statutory requirements by creating substantive differences in attorneys' rights to practice federal law based solely on geography. By definition, conflicting rules "abridge, enlarge, and modify substantive rights" differently across jurisdictions.

C. The System Creates Nationwide Injunctive Effects

Each district court's "non-reciprocal" admission rule operates as a nationwide restraint on qualified attorneys' ability to practice federal law. An attorney licensed in California faces categorical exclusion from general practice in sixty percent of federal district courts nationwide—not based on qualifications, but solely on state of licensure. This creates the precise type of nationwide injunctive effect that this Court condemned in *Trump v. Casa*.

D. The System Creates Vastly Different First Amendment Professional Speech, Association, and Petition the Government Standards

The First Amendment provides Congress shall make no law that abridges the People's First Amendment freedoms to speech, association, and to petition the government for the redress of grievances. Petitioner submits this patchwork of First Amendment professional speech licensing standards is a prior restraint; it violates the First Amendment petition and association clauses; and it constitutes content, viewpoint, and speaker discrimination. The Ninth Circuit rejected each claim and held this nationwide professional speech licensing patchwork passes rational basis review. *See* 15a ("bar admission restrictions [are subject] to rational basis review."

REASONS FOR GRANTING THE WRIT

I. THE NINTH CIRCUIT'S DECISION CREATES PRECISELY THE TYPE OF "DISUNIFORMITY" AND "CHAOS" THAT *TRUMP V. CASA* WARNS AGAINST

In *Trump v. Casa*, 145 S. Ct. 2540, 2571 (2024), Justice KAVANAUGH warned against judicial decisions that create "disuniformity" and "chaos," noting that such chaos "is not good for the law or country" and that this Court's role is "to resolve major legal questions of national importance and ensure uniformity of federal law."

The current system embodies exactly this problem. Sixty percent of federal courts categorically exclude

qualified attorneys based on state of licensure, while forty percent welcome the same attorneys. This arbitrary patchwork undermines the fundamental principle that federal courts should provide uniform access to federal justice.

A. Local Admission Rules Function as Nationwide Injunctions

Each "non-reciprocal" admission rule operates with nationwide injunctive effect. When the Central District of California adopts a rule requiring California licensure, it effectively restrains all non-California attorneys from practicing federal law in that district—regardless of their qualifications, experience, or preferences of federal clients and parties.

As in *Trump v. Casa*, these local rules "in purpose and effect, constitute a nationwide injunction and prior restraint" on constitutional rights. The geographic scope may differ, but the legal effect is identical: qualified attorneys face categorical exclusion from federal forums based on judicial decree rather than individual merit.

B. The Patchwork System Contradicts Federal Uniformity Principles

Chief Justice Marshall's foundational observation in *Cohens v. Virginia* remains applicable: "thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed." 19 U.S. (6 Wheat.) 264, 415-416 (1821).

The current system creates exactly this "hydra"—ninety-four independent admission standards governing the same federal laws and procedures. This directly contradicts the constitutional design of a uniform federal judicial system.

Thus Court has also united the practice of law across state and federal lines. In *Frazier v. Heebe*, 482 U.S. 641, (1987), this Court exercised its supervisory power over district court local rules and held otherwise qualified attorneys cannot be enjoined from *general* bar admission privileges on the basis of out-of-state office or residence location. This Court held: "the location of a lawyer's office simply has nothing to do with his or her intellectual ability or experience in litigating cases in Federal District Court." *Id*. at 649. "We also do not believe that an alleged need for immediate availability of attorneys in some proceedings requires a blanket rule that denies all nonresident attorneys admission to a district-court bar." *Id.* at 648. "Modern communication systems, including conference telephone arrangements, make it possible to minimize the problem of unavailability." *Id*. at 649. "There is no link between residency within a State and proximity to a courthouse." *Id*. at 650. This Court "rejected the notion that nonresident attorneys should be presumed to be less competent or less available than resident attorneys." *Id.* at 647 Fn. 7. "The availability of appearance *pro hac vice* is not a reasonable alternative for an out-of-state attorney who seeks general admission." *Id*. at 651.

Frazier v. Heebe cited in *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985), where this Court held that:

> The lawyer's role in the national economy is not the only reason that the opportunity to practice law should be considered a "fundamental right." We believe that the legal profession has a noncommercial role and duty that reinforce the view that the practice of law falls within the ambit of the Privileges and Immunities Clause. Out-of-state lawyers may—and often do—represent persons who raise unpopular federal claims. In some cases, representation by nonresident counsel may be the only means available for the vindication of federal rights. *Id.* at 281.

Under this Clause, the *terms "citizen" and "resident"* are used interchangeably. *Id.* at 279 n.6. Fundamental rights" protected by the Clause include:

> The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state; to take, hold and dispose of property, either real or personal. . . . *Id.* at 281 n.10.

Likewise, In *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988), this Court held that states cannot distinguish attorney applicants when waiving attorney licensing examination requirements. According to *Friedman*, "[t]he issue instead is whether the State has burdened the right to practice law, a privilege protected by the Privileges and Immunities Clause, by discriminating among otherwise equally qualified applicants solely on

the basis of citizenship or residency. We conclude it has." *Id.* at 67.

The nonuniform local rules presume exactly what this Supreme Court has held it will not presume; that out-of-state counsel will trespass their professional responsibilities or fail to serve their clients. This petition for certiorari seeking the vindication of equal First Amendment rights is a classic example of an unpopular claim. The Ninth Circuit panel applying rational basis review refuses to adhere to this Court's precedent. It is the same panel that applied rational basis review that caused a professional speech circuit split in *Chiles v. Salazar*, Supreme Court docket 24-539.

C. The Panel's Application of Rational Basis Review Defies this Court's Jurisprudence Applying Strict Scrutiny to Professional Speech Licensing Restrictions and Content Based Laws

These local rules further target professional speech based on its content. The content is federal law and procedure. Content based laws—those that target speech based on its content are presumptively unconstitutional and may be justified only if the government proves they are narrowly tailored to serve compelling government interests. This Court has held that laws that target the speech of lawyers providing support for foreign terrorists are subject to strict scrutiny review. *Holder v. Humanitarian Law*, 561 U.S. 1, 130 S. Ct. 2705 (2010). This Court has held that govermnement imposed professional speech licensing restriction are subject to strict scrutiny. *NIFLA v. Becerra*, 138 S. Ct. 2361 (2018).

The panel entirely ignores *Holder v. Humanitarian Law*. The panel further holds *NIFLA v. Becerra* and this Court's prior restraint and petition the government and association decisions are "distinguishable." *See* 22a ("But whatever the extent of litigation's First Amendment protection as an expressive activity, the cases on which LFRA seeks to rely are distinguishable."

It cannot be doubted that District and Bankruptcy Court local rules that categorically deny general admission licensing privileges to lawyers from forty-nine states regardless of individual merit and experiences, based on vicariously adopted state law, impose more than an incidental burden on federal free speech, association, and petition freedoms.

The panel's egregious misapplication of rational basis review is further self-evident in light of *Free Speech Association v. Paxton,* 606 U.S. 461, 145 S. Ct. 2291 (2025). In *Paxton*, this Court held Texas law requiring certain commercial websites publishing sexually explicit content that is obscene to minors to verify that visitors are 18 or older is subject to intermediate review. This Court held material obscene to minors is not protected speech.

LFRA members are not minors and they are engaged in core protected First Amendment freedoms at the apex of the constitutional hierarchy. Thus, in this petition, as "a general matter," this provision [First Amendment] "means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Id.* at 2302. Laws that target protected speech "based on its communicative content" are presumptively unconstitutional and may be justified only if " they satisfy

strict scrutiny. *Ibid.* These nonuniform local rules cannot pass strict scrutiny or intermediate scrutiny because forty percent of virtually identical federal courts welcome all licensed lawyers.

II. THE RULES ENABLING ACT EXPRESSLY PROHIBITS THE NONUNIFORMITY UPHELD BY THE NINTH CIRCUIT

A. Congressional Command for Uniformity

Congress has explicitly commanded uniformity in federal court procedures through the Rules Enabling Act. The statutory language is unambiguous:

- Section 2071(a): Local rules "**shall be consistent** with Acts of Congress and rules of practice and procedure prescribed under section 2072"
- Section 2072(b): Federal rules "**shall not abridge, enlarge or modify any substantive rights**"
- Section 2075: Bankruptcy rules "**shall not abridge, enlarge or modify any substantive rights**"

B. The Ninth Circuit Ignores Express Statutory Commands

The Ninth Circuit held that constitutional uniformity requirements are "irrelevant" (12a) to district court procedures and that local rules need only satisfy rational basis review. This directly contradicts Congress's express statutory commands.

The panel's reasoning would render the Rules Enabling Act's uniformity requirements meaningless. If local courts can simply adopt conflicting rules and defend them under rational basis review, Congress's command that rules "shall be consistent" and "shall not abridge, enlarge or modify any substantive rights" becomes hollow. If local rules can simply adopt conflicting rules and defend them under rational basis review, this Court's *Piper* line of cases holding an attorney's opportunity to practice law is constitutionally protected is a nullity.

C. Improper Delegation to State Authorities

The challenged rules delegate federal judicial authority to state licensing officials who vary dramatically in their standards—from no experience requirements in some states to complete retesting in others. This delegation lacks any "intelligible principle" and violates separation of powers by allowing state officials to determine federal court access.

III. THE DECISION BELOW CONFLICTS WITH THIS COURT'S UNIFORMITY PRECEDENT IN *SIEGEL V. FITZGERALD*

In *Siegel v. Fitzgerald*, 596 U.S. 464, 142 S. Ct. 1770 (2022), this Court unanimously held that constitutional uniformity requirements "prohibit 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.

The same principle applies here with greater force. If Congress cannot create nonuniform financial

burdens for federal court access, federal judges cannot create nonuniform professional licensing burdens that achieve identical discriminatory results. The uniformity principle reflects a fundamental requirement that federal procedures treat similarly situated parties equally regardless of geography.

The Ninth Circuit dismissed *Siegel* in a single sentence, holding that "the Bankruptcy Clause is irrelevant here, so too is *Siegel*." (12a) This fails to recognize that *Siegel*'s uniformity analysis applies to all federal court procedures, not merely bankruptcy cases.

IV. THE QUESTION PRESENTED IS OF EXCEPTIONAL NATIONAL IMPORTANCE AND CAN ONLY BE RESOLVED BY THIS COURT

A. The Issue Affects Every Federal Court and Every Attorney

This case presents a pure question of federal law affecting every federal district and bankruptcy court. The Ninth Circuit's published decision creates binding precedent in the nation's largest circuit that federal constitutional and statutory requirements may be subordinated to local prejudice. There can be no more important subject matter of protected speech on matters of public concern than federal law and procedure in the federal courtroom.

B. The Patchwork System Undermines Federal Court Access

The arbitrary geographic restrictions contribute to the "justice gap" that affects eighty-six percent of

low-income Americans according to Justice GORSUCH analysis.[1] Twenty-seven percent of federal civil cases involve at least one *pro se* party.[2] The current system forces clients into a geographic lottery where counsel of choice depends on venue rather than qualifications.

C. Lower Courts Cannot Resolve the Conflict

The Rules Enabling Act presents questions of statutory interpretation that only this Court can definitively resolve. The Ninth Circuit's holding that local rules are exempt from federal uniformity requirements directly contradicts congressional intent and creates a circuit split on fundamental questions of federal court administration.

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1. Neil M. Gorsuch, "Bridging the Affordability Gap: It's Time to Think Outside the Box," 45 *Wyoming Lawyer* 16 (Apr. 2022):

> 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.

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

CONCLUSION

In *Bradwell v. The State*, 16 Wall. 130 (1873), the Supreme Court held that the right to practice law in the state courts was not a privilege or immunity of a citizen of the United States. The Supreme Court thus rejected an already licensed woman's application to practice law in a second state, holding that an attorney's opportunity to practice law is not a fundamental right and is not constitutionally protected. Justice Bradley concurring concluded:

> [T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. *Id.* at 141.

Simply stated, the Court in the 19th Century held an attorney's opportunity to practice law is *not* a fundamental

right that merits constitutional protection, and women as a class are delicate, timid, and unfit to leave the domestic sphere and practice law. Times change. The challenged local rules afford lawyers and citizens from forty-nine states in the 21st Century the same rights as women in the 19th Century. If all Americans are created equal, it follows all American lawyers are created equal.

The challenged local admission rules create exactly the type of "disuniformity" and "chaos" that *Trump v. Casa* warns against. They violate express congressional commands in the Rules Enabling Act, undermine constitutional uniformity principles established in *Siegel v. Fitzgerald*, and create nationwide injunctive effects on qualified attorneys' practice rights. They violate this Court's decisions in *Frazier v. Heebe*, *Supreme Court of New Hampshire v. Piper*, *Supreme Court of Virginia v. Friedman*, *NIFLA v. Becerra*, and *Holder v. Humanitarian Law*.

This case presents a pure question of law with no disputed facts affecting every federal court and every attorney practicing federal law. The Ninth Circuit's published decision in our nation's largest circuit is now binding precedent. Without this Court's intervention, the constitutional and statutory violations will continue, and other circuits may follow the Ninth Circuit's flawed reasoning.

LFRA respectfully requests this Honorable Court, including The Honorable Justices Sonia SOTOMAYOR, Elena KAGAN, Amy Coney BARRETT, and Ketanji Brown JACKSON to summarily reverse this federal discrimination that has nothing to do with individual

merit and is based on citizenship status. Or the Court should grant certiorari to restore uniformity to federal court procedures, vindicate the express commands of the Rules Enabling Act, ensure that federal courts provide the neutral, uniform forum for federal law that the Constitution requires.

Respectfully submitted,

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October 20, 2025

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JUNE 20, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-2213
D.C. No. 2:22-cv-01221-MWM

LAWYERS FOR FAIR RECIPROCAL ADMISSION,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA; MERRICK B. GARLAND, ATTORNEY GENERAL; HONORABLE MARY H. MURGUIA, CHIEF CIRCUIT JUDGE; HONORABLE MICHAEL DALY HAWKINS, CIRCUIT JUDGE; HONORABLE MORGAN B. CHRISTEN, CIRCUIT JUDGE; HONORABLE SANDRA S. IKUTA, CIRCUIT JUDGE; HONORABLE MICHELLE T. FRIEDLAND, CIRCUIT JUDGE; HONORABLE ERIC D. MILLER, CIRCUIT JUDGE; HONORABLE BRIAN M. MORRIS, CHIEF DISTRICT JUDGE; MIRANDA M. DU, DISTRICT JUDGE; PHYLLIS J. HAMILTON, DISTRICT JUDGE; HONORABLE RONALD S.W. LEW, SENIOR DISTRICT JUDGE; G. MURRAY SNOW, DISTRICT JUDGE; SUSAN M. BRNOVICH, DISTRICT JUDGE; DIANE J. HUMETEWA, DISTRICT JUDGE; DOMINIC LANZA, DISTRICT JUDGE; HONORABLE MICHAEL T. LIBURDI, DISTRICT JUDGE; STEVEN PAUL LOGAN,

DISTRICT JUDGE; HONORABLE DOUGLAS L. RAYES, DISTRICT JUDGE; JOHN JOSEPH TUCHI, DISTRICT JUDGE; JOHN CHARLES HINDERAKER, DISTRICT JUDGE; ROSEMARY MÁRQUEZ, DISTRICT JUDGE; HONORABLE SCOTT H. RASH, DISTRICT JUDGE; JAMES ALAN SOTO, SENIOR DISTRICT JUDGE; JENNIFER G. ZIPPS, CHIEF DISTRICT JUDGE; HONORABLE PHILIP S. GUTIERREZ, DISTRICT JUDGE; FERNANDO L. AENLLE-ROCHA, DISTRICT JUDGE; PERCY ANDERSON, DISTRICT JUDGE; ANDRÉ BIROTTE, JR., DISTRICT JUDGE; STANLEY BLUMENFELD, JR., DISTRICT JUDGE; MICHAEL W. FITZGERALD, DISTRICT JUDGE; HONORABLE MAAME EWUSI-MENSAH FRIMPONG, DISTRICT JUDGE; SHERILYN PEACE GARNETT, DISTRICT JUDGE; DOLLY M. GEE, DISTRICT JUDGE; JOHN W. HOLCOMB, DISTRICT JUDGE; R. GARY KLAUSNER, DISTRICT JUDGE; JOHN A. KRONSTADT, DISTRICT JUDGE; FERNANDO M. OLGUIN, DISTRICT JUDGE; VIRGINIA A. PHILLIPS, DISTRICT JUDGE; MARK C. SCARSI, DISTRICT JUDGE; JOSEPHINE L. STATON, DISTRICT JUDGE; JOHN F. WALTER, DISTRICT JUDGE; HONORABLE STEPHEN V. WILSON, DISTRICT JUDGE; HONORABLE OTIS D. WRIGHT II, DISTRICT JUDGE; GEORGE H. WU, SENIOR DISTRICT JUDGE; MARCO A. HERNANDEZ, SENIOR DISTRICT JUDGE; ANN L. AIKEN, DISTRICT JUDGE; DAVID G. ESTUDILLO, DISTRICT JUDGE; HONORABLE

Appendix A

STANLEY ALLEN BASTIAN, DISTRICT JUDGE; HONORABLE SHARON L. GLEASON, CHIEF DISTRICT COURT; DERRICK KAHALA WATSON, DISTRICT JUDGE; J. MICHAEL SEABRIGHT, DISTRICT JUDGE; DAVID C. NYE, DISTRICT JUDGE; STEPHEN W KENYON; HONORABLE RICHARD SEEBORG, CHIEF DISTRICT JUDGE; DANA M. SABRAW, DISTRICT JUDGE; KIMBERLY J. MUELLER, DISTRICT JUDGE,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Arizona
Michael W. Mosman, District Judge, Presiding

Submitted January 14, 2025*
Pasadena, California

Filed June 20, 2025

Before: Ronald M. Gould and Mark J. Bennett, Circuit Judges, and David A. Ezra, District Judge.**

Opinion by Judge Bennett

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* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

** The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

Appendix A

OPINION

BENNETT, Circuit Judge:

Each of the federal district courts within the Ninth Circuit has adopted local rules requiring an attorney seeking general admission to the district court to be a member of the bar of the state in which the district court is located ("Admission Rules"). Lawyers for Fair Reciprocal Admissions ("LFRA") sued the United States, the U.S. Attorney General, and certain federal circuit and district judges in the Ninth Circuit (collectively, "Defendants"), challenging the Admission Rules on various constitutional, statutory, and procedural grounds. LFRA appeals the district court's dismissal of its challenge. Because the Admission Rules are constitutional, we affirm.[1]

I. BACKGROUND

LFRA is a public benefit corporation under California law, with offices in Los Angeles.[2] LFRA alleges that its members include lawyers who are barred in various states outside the Ninth Circuit, who do not wish to join another

1. We deny LFRA's motion for judicial notice, Dkt. No. 53, and motion to consolidate, Dkt. No. 60.

2. LFRA's counsel, Joseph R. Giannini, has filed many challenges to bar admission rules as party or attorney since the 1980s, including a number that have reached this court. *See, e.g.*, *Giannini v. Real*, 911 F.2d 354, 356 (9th Cir. 1990) (citing *Giannini v. Comm. of Bar Exam'rs*, 847 F.2d 1434, 1435 (9th Cir. 1988)); *Nat'l Ass'n for the Advancement of Multijurisdiction Prac. v. Berch*, 773 F.3d 1037, 1043 (9th Cir. 2014) (collecting cases).

state bar, and who cannot seek general admission to a federal district court within the Ninth Circuit as a result. LFRA challenges the local rules of the federal district courts in the Ninth Circuit that require an attorney seeking general admission to the district court to be a member in good standing of the bar of the state in which the district court is located.[3]

LFRA's amended complaint alleges that the Admission Rules violate (1) the separation of powers; (2) the First Amendment; (3) the Sixth Amendment right to counsel; (4) the Full Faith and Credit Act, 28 U.S.C. § 1738; (5) statutory rules for the Ninth 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. §§ 2071-2072; (8) the Fifth and Fourteenth Amendments; (9) the Privileges and Immunities Clause; and (10) Fifth Amendment due process.

Defendants moved to dismiss the amended complaint for lack of standing under Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6).[4] The district court held

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3. *See* D. Alaska Civ. R. 83.1(a); D. Ariz. Civ. R. 83.1(a); C.D. Cal. Civ. R. 83-2.1.2.1; E.D. Cal. R. 180(a); N.D. Cal. Civ. R. 11-1(b); S.D. Cal. Civ. R. 83.3(c)(1)(a); D. Haw. Civ. R. 83.1(a); D. Idaho Civ. R. 83.4(a); D. Mont. R. 83.1(a)(2)(A); D. Nev. R. IA 11-1(a)(1); D. Or. Civ. R. 83-2; E.D. Wash. Civ. R. 83.2(a)(1); W.D. Wash. Civ. R. 83.1(b). We cite the local rules in effect when LFRA filed its complaint.

4. LFRA filed a motion for summary judgment, and a motion for judgment on the pleadings. The district court denied the motion for judgment on the pleadings as procedurally premature and did not rule on the motion for summary judgment.

that LFRA's allegations sufficed to confer associational standing at the pleading stage on all claims except the Sixth Amendment claim. The district court dismissed the Sixth Amendment claim for lack of standing and dismissed the remaining claims for failure to state a claim. All claims were dismissed with prejudice. LFRA timely appealed the district court's dismissal of the amended complaint and denial of the motion for judgment on the pleadings.[5]

II. STANDARD OF REVIEW

We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal of a complaint for lack of jurisdiction under Rule 12(b)(1) or for failure to state a claim under Rule 12(b)(6). *Warren v. Fox Fam. Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). "The nature of the dismissal requires us to accept all allegations of fact in the complaint as true and construe them in the light most favorable to the plaintiffs," *id.*, but "we are not required to accept as true conclusory allegations" or "legal conclusions merely because they are cast in the form of factual allegations," *id.* (quoting *Steckman v.*

5. LFRA also seeks to appeal the district court's "refusing to address and dismissing" its motion for summary judgment. But as a practical matter, that motion was mooted by the district court's grant of the motion to dismiss, with prejudice. Moreover, since we affirm the dismissal with prejudice, LFRA could not have been prejudiced by the district court's decision to take up the motion to dismiss first. And as a technical matter, the district court never ruled on LFRA's summary judgment motion, so there is no "final decision[]" on that motion for us to review. *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106, 130 S. Ct. 599, 175 L. Ed. 2d 458 (2009) (quoting 28 U.S.C. § 1291).

Hart Brewing, Inc., 143 F.3d 1293, 1295 (9th Cir. 1998); *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)). We review for abuse of discretion a district court's decision to dismiss with prejudice and without leave to amend. *Herring Networks, Inc. v. Maddow*, 8 F.4th 1148, 1155 (9th Cir. 2021). And we review de novo a district court's ruling on a motion for judgment on the pleadings. *Doe v. United States*, 419 F.3d 1058, 1061 (9th Cir. 2005).

III. DISCUSSION

"Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions." *Leis v. Flynt*, 439 U.S. 438, 442, 99 S. Ct. 698, 58 L. Ed. 2d 717 (1979) (per curiam). The Supreme Court has long understood that "the Constitution does not require that because a lawyer has been admitted to the bar of one State, he or she must be allowed to practice in another." *Id.* at 443 (collecting cases). And we have recognized that "[f]ederal courts have inherent and broad regulatory authority to make rules respecting the admission, practice, and discipline of attorneys in the federal courts." *Gallo v. U.S. Dist. Ct. for the Dist. of Ariz.*, 349 F.3d 1169, 1179-80 (9th Cir. 2003) (citing *Ex parte Robinson*, 86 U.S. (19 Wall.) 505, 22 L. Ed. 205 (1873); *Ex parte Garland*, 71 U.S. (4 Wall.) 333, 18 L. Ed. 366 (1867)); *see also Frazier v. Heebe*, 482 U.S. 641, 645, 107 S. Ct. 2607, 96 L. Ed. 2d 557 (1987) (recognizing that "a district court has discretion to adopt local rules that are necessary to carry out the conduct of its business," including "the regulation of admissions to its own bar").

Falling within this regulatory authority is the discretion to adopt local rules that "rely on the infrastructure provided by state bar associations in meeting [district courts'] own needs for monitoring attorney admission and practice in the federal courts." *Gallo*, 349 F.3d at 1180 (citing *Russell v. Hug*, 275 F.3d 812 (9th Cir. 2002)). The incorporation of state bar admission rules into the federal bar Admission Rules is an instance of such permissible reliance. In *Giannini v. Real*, 911 F.2d 354 (9th Cir. 1990), we upheld the constitutionality of the admission rules of the U.S. District Courts of the Central, Eastern, and Southern Districts of California against challenges under Article IV's Full Faith and Credit Clause, the Fifth Amendment's Equal Protection Clause, and a "right to travel" derived from the Constitution. *Id.* at 355, 359-60, 360 n.7; *see id.* at 357 & n.5 (noting Giannini claimed a violation of a right to travel derived from the Commerce Clause but holding that "[t]he lack of disparate treatment of non-residents or recent arrivals" is "fatal to Giannini's claims" based on the right to travel, whether derived from the Privileges and Immunities Clause or otherwise). In light of this precedent, we plow little new ground here.

A. Standing

A plaintiff organization may have standing to sue on its own behalf, based on alleged injuries to itself, *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 393-94, 144 S. Ct. 1540, 219 L. Ed. 2d 121 (2024), or standing to sue on behalf of its members, based on alleged injuries to those members, *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 181, 120 S. Ct. 693, 145 L.

Ed. 2d 610 (2000). For the latter, a plaintiff organization must sufficiently allege that (1) "[its] members would otherwise have standing to sue in their own right," (2) "the interests at stake are germane to the organization's purpose," and (3) "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *LA All. for Hum. Rts. v. County of Los Angeles*, 14 F.4th 947, 959 (9th Cir. 2021) (quoting *Friends of the Earth*, 528 U.S. at 181). To meet the first prong, the plaintiff organization must allege "a member suffers an injury-in-fact that is traceable to the defendant and likely to be redressed by a favorable decision." *Associated Gen. Contractors of Am. v. Cal. Dep't of Transp.*, 713 F.3d 1187, 1194 (9th Cir. 2013).

Setting aside the Sixth Amendment claim, we find that LFRA has pleaded standing to bring all other claims on behalf of its members.[6] LFRA alleges that its members include lawyers who are barred in various states outside the Ninth Circuit, who do not wish to join another state bar, and who cannot seek general admission to a federal district court within the Ninth Circuit as a result. This suffices as an injury in fact for claims brought on behalf of those members. The injury is traceable to Defendants and likely to be redressed by a favorable decision (i.e., the invalidation of the Admission Rules). Because these

6. Although the district court's decisions on standing do not appear to be disputed on appeal, "we have an independent obligation to consider standing at all stages because it is an Article III jurisdictional requirement." *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 680 (9th Cir. 2023) (en banc).

members would otherwise have standing to sue in their own right, LFRA's allegations satisfy the first prong of the test for associational standing. The second and third prongs are also met. The interests at stake are relevant to LFRA's stated purpose to "advocate for . . . reciprocal licensing everywhere." And neither the claims asserted nor the relief requested (declaratory and injunctive relief, plus costs and fees) require the participation of LFRA's individual members in the lawsuit.

Turning to the Sixth Amendment claim, we affirm its dismissal based on LFRA's lack of standing to bring a right to counsel claim on behalf of itself or its members. The Sixth Amendment protects criminal defendants, not their lawyers. U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."); *Portman v. County of Santa Clara*, 995 F.2d 898, 902 (9th Cir. 1993) ("No court . . . has ever held that the Sixth Amendment protects the rights of anyone other than criminal defendants."). And a defendant's "Sixth Amendment right to counsel is personal to the defendant," whether an individual or a corporation. *Texas v. Cobb*, 532 U.S. 162, 171 n.2, 121 S. Ct. 1335, 149 L. Ed. 2d 321 (2001). LFRA does not allege that it or any of its members were facing prosecution as defendants in any criminal case and were denied counsel or had their choice of counsel constrained. Nor has LFRA alleged that it or any of its members suffered any other "invasion of a legally protected interest" that would constitute an injury under the Sixth Amendment. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). Thus, LFRA lacks standing for the Sixth Amendment claim.

B. Failure to State a Claim

"A failure to state a claim may result from the lack of a 'cognizable legal theory' or from 'an absence of sufficient facts alleged to support a cognizable legal theory.'" *Pell v. Nuñez*, 99 F.4th 1128, 1133 (9th Cir. 2024) (quoting *Shroyer v. New Cingular Wireless Servs. Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010)). The complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)).

All remaining claims by LFRA fail on the merits.

1. The Admission Rules do not violate the separation of powers or federalism principles.

LFRA alleges that the Admission Rules violate separation of powers and federalism principles since states cannot exercise federal legislative power, exercise federal judicial power, or govern bar admission in federal courts (or other states).[7] Relatedly, LFRA alleges that the Admission Rules improperly delegate federal power to state licensing officials without an intelligible principle. But a federal district court's conditioning of general admission to its own bar on forum state bar membership

7. LFRA's first cause of action is entitled "violation of the separation of powers doctrine," but the allegations largely concern the division of powers between the federal government and the states, rather than the separation of powers between the three branches of federal government.

does not cede *any* power of the federal judiciary, whether to a coequal branch or to a state. That conditioning involves only the exercise of *federal* power by a *federal* court.

The amended complaint cites *Siegel v. Fitzgerald*, 596 U.S. 464, 142 S. Ct. 1770, 213 L. Ed. 2d 39 (2022), as allegedly "squarely h[olding] non-uniform rules denying equal access to the District Courts are unconstitutional." But the Supreme Court, in *Siegel*, described the reach of its holding much differently:

> A few observations on the limits of this decision are in order.... The Court holds only that the uniformity requirement of the Bankruptcy Clause [of the Constitution] 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 480. As the Bankruptcy Clause is irrelevant here, so too is *Siegel*.

2. The Admission Rules do not violate Article IV's Privileges and Immunities Clause or the Fourteenth Amendment's Privileges or Immunities Clause.

LFRA challenges the Admission Rules under both Article IV's Privileges and Immunities Clause and the Fourteenth Amendment's Privileges or Immunities Clause. Both clauses apply to actions taken by states.

Nevada v. Watkins, 914 F.2d 1545, 1555 (9th Cir. 1990) ("[T]he Privileges and Immunities Clause [of Article IV] has been construed as a limitation on the powers of the States, not on the powers of the federal government."); *Russell*, 275 F.3d at 822 ("[The] Privileges or Immunities Clause of the Fourteenth Amendment . . . applies in terms only to actions taken by states, not to those . . . taken by the federal government." (footnote omitted)); *id.* at 822 n.11 (citing *Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999), as applying the clause "in a right-to-travel context to hold that travelers deciding to become permanent residents of a new state enjoy 'the right to be treated like other citizens of that State'" (quoting *id.* at 500)).

Federal district courts' conditioning of general admission to their bars on forum state bar membership does not involve any action by states. Moreover, "[d]iscrimination on the basis of out-of-state residency is a necessary element for a claim under [Article IV's] Privileges and Immunities Clause," but the Admission Rules do not discriminate based on state *of residence*. *Giannini*, 911 F.2d at 357. And "[t]he lack of disparate treatment of non-residents or recent arrivals" means there is no infringement on any right to interstate travel, whether located in the Fourteenth Amendment's Privileges or Immunities Clause or elsewhere. *Id.* at 357 n.5. The Admission Rules implicate neither clause.

Relying on *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985), and *Supreme Court of Virginia v. Friedman*,

487 U.S. 59, 108 S. Ct. 2260, 101 L. Ed. 2d 56 (1988), LFRA argues that "the opportunity to practice law" is a "fundamental right" protected by Article IV's Privileges and Immunities Clause. But *Piper* and *Friedman* "stand only for the proposition that bar admission rules that impose *residency requirements* on bar applicants violate the Privileges and Immunities Clause." *Nat'l Ass'n for the Advancement of Multijurisdiction Prac. v. Berch*, 773 F.3d 1037, 1046 (9th Cir. 2014) (citing *Piper*, 470 U.S. at 275; *Friedman*, 487 U.S. at 61).[8] These cases are inapposite, as the challenged Admission Rules do not discriminate between resident and nonresident attorneys.

8. *Piper* was a Vermont resident's challenge to New Hampshire's limitation of bar admission to New Hampshire residents, 470 U.S. at 275, and *Friedman* was a Maryland resident's challenge to Virginia's limitation of bar admission to Virginia residents, 487 U.S. at 61. *Berch* concerned a challenge to Arizona's rule permitting admission on motion of attorneys who "have been admitted by bar examination to practice law in another jurisdiction allowing for admission of Arizona lawyers on a basis equivalent to this rule" and of attorneys "admitted to practice law by bar examination in a non-reciprocal jurisdiction, but who are subsequently admitted to practice law on motion in a jurisdiction that has reciprocity with Arizona, and have actively practiced for five of the last seven years in that jurisdiction." 773 F.3d at 1043. Because Arizona's rule "relies solely on state of bar admission, and applies equally to residents and non-residents of Arizona," we concluded that the rule "does not contravene Article IV, Section 2's Privileges and Immunities Clause." *Id.* at 1046.

3. The Admission Rules do not violate the Fifth or Fourteenth Amendment's Equal Protection Clause.

LFRA alleges that the Admission Rules violate equal protection. As we have previously held, there is no fundamental right to practice law, and an attorney's state of admission is not a suspect classification, so rational basis review applies. *Giannini*, 911 F.2d at 359-60 (rejecting equal protection challenge to the Admission Rules of the Central, Southern, and Eastern Districts of California after applying rational basis review); *see also Lupert v. Cal. State Bar*, 761 F.2d 1325, 1328 (9th Cir. 1985) (collecting cases subjecting bar admission restrictions to rational basis review). And we have recognized six legitimate reasons for conditioning general admission to a district court on forum state bar membership: (1) reliance on the state bar's examination and other "procedures . . . for determination of fitness to practice law"; (2) questions of forum state law "permeate" cases heard by the district court; (3) forum state bar membership "provides the district courts assurance that the character, moral integrity and fitness of prospective admittees have been approved after investigation"; (4) "allegations of professional misconduct can be brought to the attention of the State Bar"; (5) forum state bar membership "helps screen applicants [for] ethical misconduct in any other jurisdiction"; and (6) members of both the forum state bar and the district court bar "will not choose the forum for litigation on the basis of their membership in the federal bar rather than the[ir] clients' interests." *Giannini*, 911 F.2d at 360 (quoting *Giannini v. Real*, 711 F. Supp. 992,

1000 (C.D. Cal. 1989)). These reasons "amply satisfy" rational basis for the Admission Rules of district courts not only in California but throughout the Ninth Circuit. *Id.*

4. The Admission Rules do not violate the First Amendment.

LFRA alleges that the Admission Rules violate the First Amendment by (1) establishing an unconstitutional prior restraint on First Amendment rights; (2) restricting speech in a manner that discriminates based on viewpoint, speaker, and content; (3) infringing the right to petition the government; and (4) infringing the right to associate.

a. The Admission Rules are not prior restraints on First Amendment rights.

According to LFRA, the Admission Rules impose an unconstitutional prior restraint "because they compel the plaintiffs [sic] to pass a state administered content-based licensing exam . . . in order to exercise their First Amendment freedoms to speak as a lawyer, associate with their client as a lawyer, and petition the government for the redress of grievances as a lawyer, in some United States Courthouses, but not others." "[A] law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51, 89 S. Ct. 935, 22 L. Ed. 2d 162 (1969). "An outright prohibition is not required to bring a prior restraint claim; rather, 'a [licensing] scheme that places

unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship.'" *Real v. City of Long Beach*, 852 F.3d 929, 935 (9th Cir. 2017) (alteration in original) (quoting *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 225-26, 110 S. Ct. 596, 107 L. Ed. 2d 603 (1990)).

The doctrine of prior restraint is a poor fit here. Even taking the allegations as true, we find any restraining effect of the Admissions Rules on protected expression to be limited. LFRA's own allegations concede that its members can still exercise "their First Amendment freedoms to speak as a lawyer, associate with their client as a lawyer, and petition the government for the redress of grievances as a lawyer, *in some United States Courthouses*" (emphasis added)—including both district courts located in the states in which they are barred and district courts to which they have been admitted pro hac vice. And a lawyer can still speak about and associate with clients in cases pending before courts to which they have not been generally admitted. *See Nat'l Ass'n for the Advancement of Multijurisdiction Practice v. Berch*, 973 F. Supp. 2d 1082, 1107 (D. Ariz. 2013) ("[A]lthough the Supreme Court has held that litigation and the right to hire counsel may be entitled to First Amendment protection, the First Amendment is not an absolute bar to government regulation on free expression and association." (citation omitted) (citing *United Mine Workers v. Ill. State Bar Ass'n*, 389 U.S. 217, 221-22, 88 S. Ct. 353, 19 L. Ed. 2d 426 (1967); *NAACP v. Button*, 371 U.S. 415, 453, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963))); *cf. Leis*, 439 U.S. at 443 ("[T]he Constitution does not require that because a lawyer has

been admitted to the bar of one State, he or she must be allowed to practice in another.").

Even if the Admission Rules can be analyzed as restrictions on protected expression (and we view them more as professional regulation), any licensing scheme contemplated by the Admission Rules does not "place[] unbridled discretion in the hands of a government official or agency" so as to constitute a prior restraint in violation of the First Amendment. *Real*, 852 F.3d at 935 (quoting *FW/PBS, Inc.*, 493 U.S. at 225); c*f. Berch*, 973 F. Supp. 2d at 1107 (holding the Arizona State Bar's reciprocal admission rules do not impose an unconstitutional prior restraint). Rather, the district courts' Admission Rules provide "narrow, objective, and definite standards to guide the licensing authority," *Shuttlesworth*, 394 U.S. at 151—precisely *because* they incorporate state bar admission rules. The Admission Rules are not unlawful prior restraints.

In asserting this cause of action, the amended complaint cites to *Legal Services Corporation v. Velazquez*, 531 U.S. 533, 121 S. Ct. 1043, 149 L. Ed. 2d 63 (2001), as an example of the Supreme Court's invalidation of "prior restrictions on attorney speech." *Velazquez* concerned a congressionally imposed restriction on arguments that attorneys at Legal Services Corporation-funded grantees could make about existing welfare law while seeking relief for their indigent welfare clients. 531 U.S. at 536-37. The Court concluded that this restriction violated the First Amendment because it was "aimed at the suppression of ideas thought inimical to the Government's own

interest"—not because it was a prior restraint on speech. *Id.* at 549; *see Berch*, 973 F. Supp. 2d at 1107 (noting that *Velazquez* "did not analyze the funding restriction at issue as a prior restraint on speech"). LFRA's reliance on this case is thus misplaced.

b. The Admission Rules do not unlawfully restrict speech.

LFRA next alleges that the Admission Rules restrict speech in a manner that discriminates based on viewpoint, speaker, and content. On appeal, LFRA argues that the district court erred by not evaluating the Admission Rules under the strict scrutiny standard that applies to *content-based* speech regulations. Considering nearly identical allegations of discrimination in a challenge to the State Bar of Arizona's reciprocal admission rules, we previously held that "the appropriate First Amendment framework for analyzing . . . bar admission restrictions" is to treat them as "time, place, and manner restrictions on speech." *Berch*, 773 F.3d at 1047. Thus, bar admission restrictions pass constitutional muster if they (1) "are justified without reference to the content of the regulated speech," (2) "are narrowly tailored to serve a significant governmental interest," and (3) "leave open ample alternative channels for communication of the information." *Mothershed v. Justs. of Sup. Ct.*, 410 F.3d 602, 611 (9th Cir. 2005) (quoting *Kuba v. 1-A Agric. Ass'n*, 387 F.3d 850, 858 (9th Cir. 2004)). As the district court correctly determined based on the Admission Rules themselves, they (1) are neutral not only as to content of the message expressed but also as to viewpoint and speaker; (2) are narrowly tailored

to serve the well-recognized significant governmental interest of regulating the practice of law; and (3) leave open "alternative means for gaining membership in the [district court bar]" (i.e., pro hac vice admission), "which reduces the quantity of speech that the [Admission Rules] might otherwise restrict." *Berch*, 773 F.3d at 1047-48. The Admission Rules therefore do not impose unlawful restrictions on speech.

On appeal, LFRA argues that the district court erred by ignoring *National Institute of Family and Life Advocates v. Becerra*, 585 U.S. 755, 138 S. Ct. 2361, 201 L. Ed. 2d 835 (2018), and *Reed v. Town of Gilbert*, 576 U.S. 155, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015), cases that LFRA characterizes as reversing the Ninth Circuit's application of "intermediate scrutiny" to speech licensing restrictions in favor of applying strict scrutiny. But both cases concerned *content-based* regulations. *Nat'l Inst. of Fam. & Life Advocs.*, 585 U.S. at 760-61, 766 (regulations requiring crisis pregnancy centers to provide certain notices to patients, thereby "alter[ing] the content of . . . speech" (quoting *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988))); *Reed*, 576 U.S. at 159-61, 164 (regulations of outdoor signs that differentiated based on the sign's message). These cases are irrelevant, as the Admission Rules do not "target speech based on its communicative content" and are therefore content-neutral. *Reed*, 576 U.S. at 163.

c. The Admission Rules do not infringe the right to petition.

LFRA alleges that the Admission Rules violate the First Amendment's Petition Clause "because they presume all licensed lawyers from forty-nine states will file sham petitions for an anti-competitive purpose and only file sham petitions." The Petition Clause protects the right "to petition the Government for a redress of grievances." U.S. Const. amend. I. LFRA seeks to rely on *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49, 113 S. Ct. 1920, 123 L. Ed. 2d 611 (1993), for the proposition that the right to petition means "that litigation c[an] only be enjoined when it is a sham." But that case defines the "sham" exception to the *Noerr-Pennington* doctrine of immunity from antitrust liability for those who petition the government for redress. *Id.* at 51, 56, 60-61. It lends no support to LFRA's challenge to the Admission Rules as restrictions on the right to petition, let alone LFRA's far-reaching interpretation of the right to petition as a right to bring any non-sham litigation in any federal court. The right to petition does not give any lawyer, much less every lawyer, the right to practice law in every federal court because that lawyer is admitted to the bar in one state. But the Admission Rules would not even deprive LFRA members of the right to petition as conceived by LFRA, because its members remain free to practice before the federal courts in which they are admitted and to access other federal courts by following relevant pro hac vice procedures.

d. The Admission Rules do not infringe the right to associate.

LFRA alleges that the Admission Rules abridge the freedom of association by depriving its members of the right to associate with potential clients in a forum state and by compelling LFRA members to associate with a forum state bar. The amended complaint cites *NAACP v. Button*, 371 U.S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963), and *In re Primus*, 436 U.S. 412, 98 S. Ct. 1893, 56 L. Ed. 2d 417 (1978), for the proposition that litigation is a form of political association. But whatever the extent of litigation's First Amendment protection as an expressive activity, the cases on which LFRA seeks to rely are distinguishable. Both cases concern restrictions on the solicitation of clients by lawyers at nonprofit advocacy organizations.[9] *Button*, 371 U.S. at 428-29; *In re Primus*, 436 U.S. at 433. The complaint also cites *United Mine Workers v. Illinois State Bar Association*, 389 U.S. 217, 88 S. Ct. 353, 19 L. Ed. 2d 426 (1967), which concerned a labor union's "right to hire attorneys on a salary basis to assist its members in the assertion of their legal rights." *Id.* at 221-22. Since the Admission Rules do not govern the solicitation of clients

9. *See Button*, 371 U.S. at 431 ("The NAACP is not a conventional political party; but the litigation it assists . . . makes possible the distinctive contribution of a minority group to the ideas and beliefs of our society. For such a group, association for litigation may be the most effective form of political association."); *In re Primus*, 436 U.S. at 439 ("[N]othing in this opinion should be read to foreclose carefully tailored regulation that does not abridge unnecessarily the associational freedom of nonprofit organizations, or their members, having characteristics like those of the NAACP or the ACLU.").

or the hiring of lawyers, these cases are not germane to the issue here.

In the context of professional regulations, "[t]he First Amendment's protection of association prohibits [the government] from excluding a person from a profession or punishing him solely because he is a member of a particular political organization or because he holds certain beliefs." *Baird v. State Bar of Ariz.*, 401 U.S. 1, 6, 91 S. Ct. 702, 27 L. Ed. 2d 639 (1971) (plurality opinion). LFRA alleges that the Admission Rules punish lawyers for their "object[ions] to paying union dues and saluting state flags that stand for partisan politics [with which] they disagree." But "the Constitution does not require that because a lawyer has been admitted to the bar of one State, he or she must be allowed to practice in another [state]"—including before the federal district courts located within that state. *Leis*, 439 U.S. at 443 (collecting cases). And even were we dealing here with the claim of a limited right, and not the broad one LFRA asserts, the availability of other ways to gain membership in a district court bar (i.e., pro hac vice admission) would likely also foreclose such a claim. The Admission Rules do not violate the right to associate.

LFRA's second associational theory is that the Admission Rules compel lawyers to "subsidize and associate with" a forum state bar over their objections. "[A] corollary of the right to associate is the right not to associate." *Cal. Democratic Party v. Jones*, 530 U.S. 567, 574, 120 S. Ct. 2402, 147 L. Ed. 2d 502 (2000). But as the Supreme Court held in *Keller v. State Bar of California*,

496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed. 2d 1 (1990), the "compelled association" required by an integrated bar is "justified by the State's interest in regulating the legal profession and improving the quality of legal services." *Id.* at 13. In analyzing the right not to associate, we see no material difference between a state mandating membership in an integrated bar, and a district court generally requiring membership in the bar of the state where the district court is located.

5. The Admission Rules do not violate the Full Faith and Credit Act.

LFRA alleges that the Admission Rules violate the Full Faith and Credit Act because a lawyer's state bar admission is "an act and record of a state supreme court" constituting a "judgment of professional competence" that must be given full faith and credit in every court within the United States. The statute provides:

> The records and judicial proceedings of any court of any . . . State . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken.

28 U.S.C. § 1738. Even if a lawyer's state bar admission counts as a state court "record[]" under the statute (which Defendants do not appear to dispute), a state court's admission determination is, by its terms, limited to that state. Admission to one state's bar does not establish that any attorney is qualified to practice in any other state.

LFRA has made no claim in the complaint that any state's bar admission alone specifically addresses the right of an admittee to practice elsewhere. And we are aware of none. The admission of LFRA's director to the Virginia State Bar, for instance, means only that he can practice law in Virginia. Federal and state courts in California do not deny full faith and credit to the Virginia Supreme Court's admission determination that George may practice law *in Virginia* when they prohibit him from practicing law *in California*. *Cf. Giannini*, 911 F.2d at 360 (holding Admission Rules of the Central, Southern, and Eastern Districts of California do not violate the Constitution's Full Faith and Credit Clause since "no act, record or judicial proceeding, in [the states in which Giannini is barred], states that Giannini is entitled to practice law in California"); *see also Thaw v. Sessions*, 712 F. App'x 604, 606 (9th Cir. 2017) (applying same logic to a Full Faith and Credit Act claim under 28 U.S.C. § 1738).

On appeal, LFRA argues that the district court erred in relying on *Thaw v. Sessions*, 712 F. App'x 604 (9th Cir. 2017), which LFRA characterizes as ruling that the Full Faith and Credit Act "*only* applies to *forum state* judicial acts and records" (second emphasis added). But the district court here and this court in *Thaw* did not so rule. Rather, both courts explained that the predicate for the claim that LFRA seeks to advance would be a record from some state (i.e., any state in which an LFRA member is barred) that "establishes [that member's] entitlement to practice law *in the forum state*." *Id.* at 606 (emphasis added). LFRA can point to no such record that exists, and that disposes of this claim.

6. The Admission Rules do not implicate § 2072(b) of the Rules Enabling Act or § 332(d)(4) of the statutory rules for the Ninth Circuit Judicial Council because they are not "general rules of practice and procedure" prescribed by the Supreme Court under § 2072(a).

LFRA invokes two related statutes for its challenges here: the Rules Enabling Act, 28 U.S.C. §§ 2071-2072, and the Ninth Circuit Judicial Council's statutory duties under 28 U.S.C. § 332(d)(4). Section 2071 empowers federal district courts to make local rules, which must "be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072." 28 U.S.C. § 2071(a). Section 2072(a) empowers the Supreme Court to make "general rules of practice and procedure and rules of evidence" for the lower federal courts—which, according to section 2072(b), must "not abridge, enlarge or modify any substantive right." *Id.* § 2072(a)-(b). Section 332(d)(4) requires each judicial council of the U.S. Courts of Appeals to "periodically review the rules which are prescribed under section 2071 . . . by district courts within its circuit for consistency with rules prescribed under section 2072" by the Supreme Court. *Id.* § 332(d)(4). The judicial council may "modify or abrogate any such rule found inconsistent." *Id.*

LFRA alleges that the Admission Rules violate § 2072(b)'s requirement that rules "shall not abridge, enlarge, or modify any substantive right." The parties dispute whether § 2072(b) applies to the Admission Rules in the first place. LFRA argues that § 2071(a)'s limits for district courts' local rules and § 2072(b)'s limits for

the Supreme Court's rules are "interlocking," and thus § 2072(b) sets forth a standard of review that applies to the Admission Rules. Defendants argue that the Admission Rules are not "general rules of practice and procedure" prescribed by the Supreme Court under § 2072(a), so § 2072(b) does not apply. Rather, according to Defendants, the Admission Rules are subject only to § 2071(a)'s requirement that they "be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072" by the Supreme Court. *Id.* § 2071(a). A plain reading of the statute supports Defendants' position. *See Lamie v. U.S. Tr.*, 540 U.S. 526, 534, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004) ("[W]hen the statute's language is plain, the sole function of the courts . . . is to enforce it according to its terms." (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000))). Since LFRA does not identify any conflict between the Admission Rules and the authorities cited in § 2071(a) (either an Act of Congress or a rule prescribed under § 2072 by the Supreme Court), the Rules Enabling Act claim fails.

LFRA further alleges that § 332(d)(4) requires the Ninth Circuit Judicial Council to review the Admission Rules, applying § 2072(b)'s allegedly "stricter than strict scrutiny" standard of review. Even if § 332(d)(4) could support a private right of action against the Ninth Circuit Judicial Council, the provision provides for the review of local rules only for "consistency with rules prescribed under section 2072" by the Supreme Court. 28 U.S.C. § 332(d)(4). LFRA's failure to allege a conflict between the Admission Rules and any rule prescribed under

§ 2072 also means that LFRA cannot state a claim for any violation of § 332(d)(4).

7. Rules 1 and 83 of the Federal Rules of Civil Procedure do not create a private right of action.

LFRA alleges that the Admission Rules violate two Federal Rules of Civil Procedure: Rule 1's command that the Federal Rules of Civil Procedure "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding," Fed. R. Civ. P. 1, and Rule 83's requirement that local rules adopted by a district court "must be consistent with . . . federal statutes and rules adopted under 28 U.S.C. §§ 2072 and 2075," Fed. R. Civ. P. 83(a)(1) (referring to the "general rules of practice and procedure and rules of evidence," 28 U.S.C. § 2072(a), and "bankruptcy rules," *id.* § 2075, prescribed by the Supreme Court).

According to § 2072, however, the Federal Rules of Civil Procedure—which, unlike the Admission Rules, are in fact "general rules of practice and procedure" prescribed by the Supreme Court—cannot "abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072(a)-(b); *cf. Sibbach v. Wilson & Co.*, 312 U.S. 1, 10, 14, 61 S. Ct. 422, 85 L. Ed. 479 (1941) (holding Rules 35 and 37 of the Federal Rules of Civil Procedure did not "abridge, enlarge, nor modify substantive rights" but "really regulate[d] procedure" alone). As the district court concluded, Rules 1 and 83 of the Federal Rules of Civil Procedure do not create a private right of action.

8. The due process claim lacks sufficient factual allegations.

LFRA asserts procedural due process violations from the nonrecusal of the district judge in this case "when federal judges have previously partnered themselves with and adopted forum state interests as their own," and the requirement of "entry-level testing" for already-barred attorneys where "review of their bar exam scores is not available in practice as state supreme courts never grant review." As the district judge noted, the amended complaint fails to allege any basis warranting his recusal under 28 U.S.C. § 455.[10] LFRA pleads no facts as to why the district judge's "impartiality might reasonably be questioned." 28 U.S.C. § 455(a); *United States v. Spangle*, 626 F.3d 488, 495 (9th Cir. 2010) (noting § 455(a)'s objective standard for recusal calls for "a fact-specific inquiry that should be guided by the circumstances of the specific claim"). Nor does LFRA plead any facts about "personal bias or prejudice" on his part. 28 U.S.C. § 455(b)(1); *United States v. Winston*, 613 F.2d 221, 222 (9th Cir. 1980) (noting § "455(a) and (b)(1) are to be construed together when the ground for recusal is the bias or partiality of the trial judge," which means § 455(a)'s objective, fact-specific standard applies to recusal under § 455(b)(1)). To the extent that LFRA claims that the assignment of *any* district judge to this case violates due process, that is a conclusory assertion that cannot support the claim. The procedural due process challenge to the state bar exam

10. In fact, the case was assigned to a judge from outside the forum district. Judge Mosman, U.S. District Judge for the District of Oregon, presided over this case filed in the District of Arizona.

is similarly lacking. LFRA asserts that its members right to review of their bar exam scores "is not available in practice as state supreme courts never grant review," but it pleads no facts to support this vague and conclusory allegation. *Cf. Giannini*, 911 F.2d at 357 (holding Giannini failed to state a valid constitutional claim based on alleged procedural defects related to review of his bar exam results because the opportunity to present his claim before the California Supreme Court satisfied the minimum procedural requirements of due process).

C. Dismissal with Prejudice

"Dismissal with prejudice and without leave to amend is not appropriate unless it is clear on de novo review that the complaint could not be saved by amendment." *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (per curiam). "A district court's failure to consider the relevant factors and articulate why dismissal should be with prejudice instead of without prejudice may constitute an abuse of discretion." *Id.* "[W]here the record does not clearly dictate the district court's denial [of leave to amend], we have been unwilling to affirm absent written findings, and have reversed findings that were merely conclusory." *Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau*, 701 F.2d 1276, 1292-93 (9th Cir. 1983) (citation omitted). But "futile amendments should not be permitted." *Id.* at 1293 (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962)).

The district court did not abuse its discretion in dismissing the amended complaint with prejudice and denying LFRA a second opportunity to amend. Although

the district court's order did not contain written findings, our de novo review confirms that the "the record . . . clearly dictate[d]" the futility of amendment and the district court's decision. *Id.* at 1292. We find that the complaint could not be saved by amendment, so dismissal with prejudice and without leave to amend was appropriate.

D. Denial of Motion for Judgment on the Pleadings

A motion for judgment on the pleadings under Rule 12(c) "before any answer [is] filed . . . [is] procedurally premature and should [be] denied." *Doe*, 419 F.3d at 1061. Rule 12(c) provides: "*After the pleadings are closed*—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c) (emphasis added). "[P]leadings are closed for the purposes of Rule 12(c) once a complaint and answer have been filed, assuming . . . that no counterclaim or cross-claim is made." *Doe*, 419 F.3d at 1061.

LFRA moved for judgment on the pleadings before Defendants answered the amended complaint. The district court therefore denied LFRA's motion as procedurally premature, with leave to re-file if Defendants filed an answer. This denial was proper.

IV. CONCLUSION

For these reasons, we affirm the district court's dismissal with prejudice of LFRA's claims and denial of LFRA's motion for judgment on the pleadings.

AFFIRMED.

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, PHOENIX DIVISION, FILED MARCH 7, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

No. 2:22-cv-01221-MWM

LAWYERS FOR FAIR RECIPROCAL ADMISSION,

Plaintiff,

v.

UNITED STATES OF AMERICA *et al.*,

Defendants.

OPINION AND ORDER

MOSMAN, J.,

LFRA's Complaint challenges "the categorical bar admission local rules in the Ninth Circuit for experienced sister-state attorneys in good standing." Am. Compl. [ECF 64] ¶ 23. Each district court in the Ninth Circuit has a local rule requiring an attorney admitted to practice in district court to be a member in good standing of the state bar of the forum state (collectively, "Admission Rules"). On September 14, 2023, the United States filed a Motion to Dismiss [ECF 79]. Plaintiff Lawyers for Fair Reciprocal Admission ("LFRA") responded in opposition

on December 1, 2023 [ECF 87], to which the United States replied on December 15, 2024 [ECF 88]. For the reasons discussed below, I GRANT the United States' Motion to Dismiss.

STANDARD

Federal Rule of Civil Procedure 12(b)(1) provides for dismissal of a complaint for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Once a party has moved to dismiss for lack of subject matter jurisdiction, the plaintiff "bears the burden to establish subject matter jurisdiction by a preponderance of the evidence." *United States ex rel Mateski v. Raytheon Co.*, 816 F.3d 565, 569 (9th Cir. 2016).

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). A pleading that offers only "labels and conclusions" or 'naked assertion[s]' devoid of 'further factual enhancement' will not suffice. *Id.* (quoting *Twombly*, 550 U.S. at 555, 557). While the plaintiff does not need to make detailed factual allegations at the pleading stage, the allegations must be sufficiently specific to give the defendant "fair notice" of the claim and the grounds on which it rests. *Erickson v. Pardus*, 551 U.S. 89, 93-94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) (per curiam) (citing *Twombly*, 550 U.S. at 555).

Appendix B

Review on a motion to dismiss is normally limited to the complaint itself. If the court relies on materials outside the pleadings to make its ruling, it must treat the motion as one for summary judgment. Fed. R. Civ. P. 12(d); *Carstarphen v. Milsner*, 594 F. Supp. 2d 1201, 1207 (D. Nev. 2009) (citing *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003)). But the court may "consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *Ritchie*, 342 F.3d at 908; *see also Durning v. First Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987).

DISCUSSION

I. Standing

The United States first argues that LFRA lacks standing because LFRA has not demonstrated that any of its members has suffered any actual harm. Mot. to Dismiss [ECF 79] at 4. LFRA is an organization that includes members who are lawyers in states other than California and Arizona. Am. Compl. [ECF 64] ¶ 47.

To establish associational standing, LFRA must show that (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are gemiane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Associated Gen. Contractors of Am., San Diego Chapter,*

Inc. v. Cal. Dep't of Transp., 713 F.3d 1187, 1194 (9th Cir. 2013). The interests LFRA seeks to protect here are directly related to its purpose and the claims asserted do not require the participation of individual members, so the only issue is whether LFRA has met the first element of associational standing. To establish the first element that a member has standing to sue in their own right, LFRA "must show that a member suffers an injury-in-fact that is traceable to the defendant and likely to be redressed by a favorable decision." *Id.*

In *General Contractors*, the court held that the plaintiff failed to establish associational standing because it did not identify any affected members by name or submit declarations by any of its members attesting to harm they had suffered or would suffer. 713 F.3d at 1194-95. This case is distinguishable because this is a motion to dismiss. At the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). Here, LFRA alleges that its membership includes lawyers barred in states that lack reciprocity with California and Arizona. *See* Am. Compl. [ECF 64] ¶ 47. Those members suffer a cognizable injury because there is a barrier to their admission to other district courts' bars. *See Laws. for Fair Reciprocal Admission*, No. 22-2399, 2023 U.S. Dist. LEXIS 4162, 2023 WL 145530, at *4 (D.N.J. Jan. 10, 2023). A favorable decision could redress this injury.

I hold that at this stage, LFRA has pled standing sufficient to survive a motion to dismiss.

Appendix B

II. Claim 1: Separation of Powers

In Claim 1 LFRA alleges that the Admission Rules violate the separation of powers doctrine because states cannot exercise federal legislative power, cannot exercise Article III powers, and cannot govern bar admission in other states or in federal courts. Am. Compl. [ECF 64] ¶¶ 128-38. However, states do not exercise federal powers when they govern state bar admission. District courts have authority to make rules respecting the admission of attorneys in federal courts. *Gallo v. U.S. Dist. Court for Dist. of Ariz.*, 349 F.3d 1169, 1179-80 (9th Cir. 2003); *see also* 28 U.S.C. § 2071(a). District courts generally require membership in good standing in the respective state bar. LFRA does not provide support for the existence of any theory that district courts' reliance on state bar rules converts the state bar rules into federal action.

The United States focuses its argument on the non-delegation doctrine, arguing that there is no delegation where district courts are merely choosing to use admission to the state bar as a criterion for admission to district court bars. Mot. to Dismiss [ECF 79] at 6. To the extent that LFRA invokes the non-delegation doctrine, I find that there is no delegation here. LFRA also mentions that states have no extraterritorial power to govern bar admission in other states—I find that local bar admission rules, even if they influence whom clients may choose as their counsel, cannot be characterized as exerting extraterritorial power.

III. Claim 2: First Amendment

In Claim 2 LFRA alleges that the Admission Rules violate the First Amendment under the following theories: violation of petition clause and prior restraint, viewpoint discrimination, speaker discrimination, content discrimination, and right to association. Am. Compl. [ECF 64] ¶¶ 139-64. The United States argues that these arguments have already been rejected by other courts. Mot. to Dismiss [ECF 79] at 7 (citing *Thaw v. Lynch*, No. 2:15-CV-01703 JWS, 2016 U.S. Dist. LEXIS 34938, 2016 WL 1045527 (D. Ariz. Mar. 16, 2016)).

In *Thaw v. Lynch*, the court explained that the Ninth Circuit considers "bar admission restrictions to be time, place, and manner restrictions on speech." 2016 U.S. Dist. LEXIS 34938, 2016 WL 1045527, at *6 (quoting *Nat'l Ass'n for the Advancement of Multijurisdiction Practice v. Berch*, 773 F.3d 1037, 1047 (9th Cir. 2014)). Time, place, and manner restrictions are reasonable when (1) they "are justified without reference to the content of the regulated speech"; (2) "they are narrowly tailored to serve a significant governmental interest"; and (3) "they leave open ample alternative channels for communication of the information." *Mothershed v. Justices of Supreme Court*, 410 F.3d 602, 611 (9th Cir. 2005). Here, bar admission rules are content-neutral, are narrowly tailored to serve the courts' interests,[1] and leave open alternative channels

1. Courts and states have a substantial interest in regulating the practice of law. *Berch*, 773 F.3d at 1047; *Mothershed*, 410 F.3d at 611.

of communication. This undercuts LFRA's content discrimination claim. LFRA's viewpoint and speaker discrimination claims similarly fail because the Admission Rules are neutral as to viewpoint and speaker.

The First Amendment protects the right "to petition the Government for a redress of grievances." U.S. Const. amend. I. LFRA argues that the Admissions Rules impose a prior restraint on the right to petition the government and are subject to strict scrutiny. Am. Compl. [ECF 64] ¶¶ 144-49. The *Thaw v. Lynch* court rejected an identical argument, holding that a local admissions rule "does not deny Plaintiffs meaningful access to the courts because they may practice before the Arizona District Court so long as they follow the procedures outlined in that rule." 2016 U.S. Dist. LEXIS 34938, 2016 WL 1045527, at *7, *aff'd sub nom. Thaw v. Sessions*, 712 F. App'x 604 (9th Cir. 2017). I likewise find that the Admission Rules do not deprive LFRA members of their right to petition because they can practice before the courts in which they are admitted and can access federal courts by following available procedures under the Admission Rules.

LFRA includes a claim that the Admission Rules violate the right of free association in two ways—by depriving its members of the right to freely associate, and by compelling association. Am. Compl. [ECF 64] ¶¶ 156-64. The First Amendment prevents states from excluding a person from a profession or punishing them solely because they are a member of a particular political organization or because they hold certain beliefs. *Baird v. State Bar of Ariz.*, 401 U.S. 1,6, 91 S. Ct. 702, 27 L. Ed. 2d 639 (1971).

Here, the Admission Rules do not exclude LFRA members from district court bar membership based on their beliefs or membership in a particular political organization. *See Thaw v. Lynch*, 2016 U.S. Dist. LEXIS 34938, 2016 WL 1045527, at *7. Furthermore, in *Berch*, the court held that the presence of alternative means for gaining membership in the Arizona bar "significantly decreases any obstacles to the freedom to associate," and anyway, "Arizona attorneys and non-Arizona attorneys are free to associate with attorneys who are members of the bars of other states." 773 F.3d at 1047-48. I find that LFRA has not sufficiently pled a claim for violation of the right of free association.

Accordingly, I hold that LFRA has not sufficiently pleaded any First Amendment claim because the Admission Rules are neutral and do not prevent attorneys from petitioning the government or freely associating.

IV. Claim 3: Sixth Amendment Right to Counsel

In Claim 3 LFRA alleges that the Admission Rules violate the Sixth Amendment right to counsel because they constrain clients' choice of attorney. Am. Compl. [ECF 64] ¶¶ 165-68. The United States argues that the right to counsel applies only to criminal defendants and the Admission Rules apply only to civil matters. Mot. to Dismiss [ECF 79] at 11. The United States also argues that LFRA has not demonstrated that any of its members have been denied counsel in a criminal case, so it lacks standing to bring this claim. *Id.* LFRA does not directly respond to these arguments. *See* Pl.'s Resp. [ECF 87].

Instead, LFRA reasserts its argument that the Admission Rules force citizens sued in another state to hire a second lawyer "or forfeit their right to counsel." *Id.* at 42.

I dismiss this claim on standing grounds. The Sixth Amendment right to counsel protects defendants, not attorneys. U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . ."). LFRA's Complaint fails to allege that its members have suffered injury under the right to counsel.

V. Claims 4, 5, and 7: 28 U.S.C. §§ 332(d)(4), 1738, 2071-2072

Claims 4, 5, and 7 allege that the Admission Rules violate various statutes. In Claim 4, LFRA alleges that the Admission Rules violate 28 U.S.C. § 1738, the Full Faith and Credit Act. Am. Compl. [ECF 64] ¶¶ 169-76. The United States responds that bar admission rules do not fail to give full credit to other states because when a state admits an attorney, it is not saying that the attorney is qualified to practice in any other state. Mot. to Dismiss [ECF 79] at 12. The United States also cites *Thaw v. Sessions*, in which the court explained that "the predicate for a full faith and credit claim is an act, record, or judicial proceeding of some state that establishes appellants' entitlement to practice law in the forum state." 712 F. App'x 604, 606 (9th Cir. 2017).

Here, LFRA has not pled that any state bar established its members' qualification to practice law in a different state. 28 U.S.C. § 1738 does not apply here

where no outside state has qualified LFRA members to practice in another state.

In Claims 5 and 7 LFRA alleges that the Admission Rules violate 28 U.S.C. § 332(d)(4), the statutory rules for the U.S. Courts of Appeals judicial council, and 28 U.S.C. § 2071-2072, the Rules Enabling Act. Am. Compl. [ECF 64] ¶¶ 177-79,186-95. LFRA argues that the Admission Rules are inconsistent with federal rules. The judicial council of each circuit is required to "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" and may "modify or abrogate any such rule found inconsistent." 28 U.S.C. § 332(d)(4).

The United States argues that LFRA does not identify any conflict between the Admission Rules and 28 U.S.C. § 2702, so LFRA has failed to state a claim. Mot. to Dismiss [ECF 79] at 12-13. LFRA responds that 28 U.S.C. § 332(d)(4) subjects rules promulgated by the courts to a standard of review stricter than strict scrutiny. Pl.'s Resp. [ECF 87] at 16-17. This does not cure the problem the United States pointed out. The United States also argues that in *Thaw v. Sessions*, the Ninth Circuit did not find Arizona's admission rule to be contrary to federal rules under § 2071, and other bar admission rules are substantially the same. *See Thaw v. Sessions*, 712 F. App'x at 605.

I dismiss Claims 5 and 7 because LFRA does not allege any inconsistency that the judicial council should

have reviewed under 28 U.S.C. § 332(d)(4) and because the Admission Rules are not contrary to other federal rules.

VI. Claim 6: Federal Rules of Civil Procedure

In Claim 6 LFRA alleges that the Admission Rules violate FRCP 83(a)(1) because they are inconsistent with other federal rules. The United States argues that this claim fails because the Federal Rules of Civil Procedure do not create any substantive right. Mot. to Dismiss [ECF 79] at 23 (citing *Synanon Church v. United States*, 557 F. Supp. 1329, 1330 n.2 (D.D.C. 1983)). I agree with Defendants—the Federal Rules of Civil Procedure are procedural in nature and do not create substantive rights in the way that LFRA describes. This claim therefore fails.

VII. Claim 8: Fifth and Fourteenth Amendments

In Claim 8 LFRA alleges that the Admission Rules violate the Fifth and Fourteenth Amendments because they discriminate against individuals on the basis of which state they are or are not licensed in. This claim fails because the right to practice law is not a fundamental right, one's state of admission is not a protected class, and the rules survive rational basis scrutiny. *See Giannini v. Real*, 911 F.2d 354, 357 (9th Cir. 1990).

VIII. Claim 9: Privileges and Immunities

In Claim 9 LFRA alleges that the Admission Rules violate the Privileges and Immunities Clause because

they restrict an attorney's opportunity to practice law outside of their home state, discriminating against out-of-state attorneys. The United States argues that the Privileges and Immunities Clause applies only to actions taken by states and the Admission Rules do not impose residency requirements. *See Russell v. Hug*, 275 F.3d 812, 822 (9th Cir. 2002). LFRA does not directly respond to this argument. I find that this claim fails because the Admission Rules are not state actions and they do not impose residency requirements.

IX. Claim 10: Fifth Amendment Due Process

In Claim 10 LFRA alleges that the Admission Rules violate Fifth Amendment Due Process because they deprive licensed lawyers of procedural due process. This claim fails because the right to practice law is not a fundamental right. *Giannini*, 911 F.2d at 359. LFRA argues that plaintiffs have a fundamental right to choose their counsel but cites no authority to support this argument. LFRA does not adequately establish that the right to select one's counsel should be regarded as a fundamental right.

LFRA also alleges that federal judges cannot be neutral under 28 U.S.C. § 455 where licensing rules are concerned. The United States argues that this case was assigned to a judge from outside the forum who is not named in the action, so LFRA is unable to show that a reasonable person would question my impartiality. *See United States v. Winston*, 613 F.2d 221, 222 (9th Cir. 1980). LFRA does not directly respond. This sub-claim

fails because LFRA failed to plead facts alleging personal bias or prejudice. *See United States v. Sibla*, 624 F.2d 864, 868 (9th Cir. 1980).

CONCLUSION

For the reasons discussed above, Defendant's Motion to Dismiss [ECF 79] is GRANTED. Plaintiff's complaint is DISMISSED with prejudice.

IT IS SO ORDERED.

DATED this 7th day of March, 2024.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
Senior United States District Judge

APPENDIX C — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JULY 30, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-2213
D.C. No. 2:22-cv-01221-MWM
District of Arizona, Phoenix

LAWYERS FOR FAIR RECIPROCAL ADMISSION,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA; *et al.*,

Defendants-Appellees.

ORDER

Before: GOULD and BENNETT, Circuit Judges, and EZRA, District Judge.*

Plaintiff-Appellant has filed petitions for panel rehearing and rehearing en banc. Dkt. No. 62. The panel has unanimously voted to deny the petition for panel rehearing. Judge Gould and Judge Bennett have voted to deny the petition for rehearing en banc, and Judge Ezra

* The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

so recommends. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

The petitions for panel rehearing and rehearing en banc are **DENIED**.

APPENDIX D — ARTICLE FROM *DAILY JOURNAL*, DATED JANUARY 10, 2025

LOS ANGELES & SAN FRANCISCO

DAILY JOURNAL
www.dailyjournal.com

FRIDAY, JANUARY 10, 2025

PERSPECTIVE

Federal courts to out-of-state lawyers: Get lost

By Richard W. Morris

Any lawyer who's ventured into the courtroom of another state has likely experienced the delightful phenomenon of being "hometowned." That's right – faced with a judge who favors the locals over outsiders, the visiting lawyers often find themselves on the wrong side of a bench that suddenly feels like a hometown fan club. But don't worry – it's just an attitude, not a rule, right? Or is it?.

Let's imagine the rules require judges to discriminate against "them thar' foreign folk"– you know, the strangers in town. Sounds absurd? Not so fast! There are rules, and then there are rules. And when it comes to the federal court system, oh, Good Golly Miss Molly, do we have some goodies.

Appendix D

A judge's ideal vs. reality

Federal judges don sacred black robes, symbolizing purity, innocence, and impartiality – or so the story goes. With gavel in hand, they wield the wondrous power of truth, justice, and the American way. The bailiff announces, "All rise," and the judge takes the bench – an embodiment of fairness, ready to dispense justice. In theory, they are as pristine as a snowy mountaintop. Their duty as noble as a knight rescuing a damsel in distress. Really?

In practice, these paragons of propriety often find themselves bogged down in a maze of rules that seem more suited for bureaucratic posturing than the noble pursuit of justice. Some rules are so baffling they could

have been scribbled on a cocktail napkin during a late-night drinking session.

How can these paragons of purity enforce rules that undermine the very fairness and equality they are sworn to deliver? The answer, my friend, is blowing in the wind – buried in a legal system that often prioritizes rules over justice.

Sometimes, courts don't even follow their own rules. Let's dive into one particularly absurd example about whether visiting lawyers can practice in the Bankruptcy Court.

A tale of two legal systems

Our legal system takes its cues from the British. In the United Kingdom, a lawyer admitted (licensed) to practice in any of His Majesty's courts can practice in any of those courts and in about two dozen other countries. But here in the U.S., it's a different story.

A lawyer admitted by a state supreme court can generally practice in all lower courts of that state. But a lawyer admitted to practice before the Supreme Court of the United States? Those lawyers can't practice in any lower federal courts – not one. A lawyer must obtain admission for each individual District Court or Court of Appeals.

But wait, there's more! Not only do these courts have their own sets of rules, but within those rules are *local*

rules, and then there are "local-local" rules – specific to each judge's courtroom. It's a hodgepodge, a Matryoshka doll, of regulations that would make Kafka blush.

Enter the bankruptcy circus

The bankruptcy courts are units of the federal District Courts. Bankruptcy law is supposed to be uniform nationwide, as stated in Article I, § 8 of the Constitution: Congress has the power "to establish... uniform Laws on the subject of Bankruptcies." Uniform laws. Simple enough, right?

Wrong.

Uniformity is precisely what the system lacks. A lawyer admitted to the District Court in District A cannot appear in the Bankruptcy Court of District B without a separate admission. Same national uniform law, same uniform procedure – different permission slip. Why? Historically, it's been a case of the proverbial dog marking its territory – local lawyers staking their claim through exclusive rules, like fire hydrants, for their legal turf. While some District Courts do allow visiting lawyers, others don't. Not uniform.

And that brings us to the *Lawyers for Fair Reciprocal Admission v. United States* case currently pending in the Ninth Circuit as Docket Number 24-2213.

Appendix D

The argument for uniformity

Lawyers for Fair Reciprocal Admission (LFRA) argue that the federal system should be uniform, just as the federal law requires. Therefore, a lawyer admitted in one District Court should be allowed to practice in all District Courts – just like their counterparts in the U.K. or a lawyer practicing in a single state. LFRA argues that federal courts should adopt a uniform standard: A lawyer admitted in one District Court should be permitted to practice in all District Courts.

LFRA leans heavily on *Siegel v. Fitzgerald*, 142 S. Ct. 1770 (2022), which held that similarly situated parties must be uniformly treated when accessing federal courts. LFRA also cites 28 U.S.C. § 2072(b), which states that local rules "shall not abridge, enlarge, or modify any substantive right..."

Going further, LFRA contends the Constitution and federal law mandate such uniformity in reciprocity.

This mishmash of restrictive admissions rules creates a dual injustice: Clients are denied the right to choose their preferred lawyer, especially those lawyers with specialized expertise. Simultaneously, lawyers are arbitrarily barred from practicing in multiple districts despite being qualified. By enforcing barriers that stifle cross-district representation, the federal court system undermines both professional freedom and the principle of equal access to justice.

Appendix D

The Ninth Circuit hasn't ruled yet, but its decision will say a lot about whether the U.S. judicial system obeys its own rules – or whether it allows the local dogs to keep marking their hydrants.

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APPENDIX E — STATUTORY PROVISIONS AND RULES INVOLVED

ACTS OF CONGRESS

5 U.S. Code § 500 - Administrative practice; general provisions

(a) For the purpose of this section—

(1) "agency" has the meaning given it by section 551 of this title; and

(2) "State" means a State, a territory or possession of the United States including a Commonwealth, or the District of Columbia.

(b) An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

28 U.S. Code § 1738 - State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S. Code § 2071 - Rule-making power generally

(a) 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.

(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

(c)

(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

(f) No rule may be prescribed by a district court other than under this section.

Appendix E

28 U.S. Code § 2072 - Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

Appendix E

28 U.S. Code § 2075 - Bankruptcy rules

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.

The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.

Appendix E

NATIONAL RULES PROSCRIBED UNDER 28 U.S. CODE § 2072

Federal Rules of Appellate Procedure

Rule 46 Attorneys

(a) Admission to the Bar.

(1) *Eligibility.* An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands)

Federal Rules of Civil Procedure

Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding

Appendix E

Rule 83. Rules by District Courts; Judge's Directives

(a) Local Rules.

(1) *In General.* After giving public notice and an opportunity for comment, a district court, acting by a majority of its district judges, may adopt and amend rules governing its practice. A local rule must be consistent with—but not duplicate—federal statutes and rules adopted under 28 U.S.C. §§2072 and 2075, and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule takes effect on the date specified by the district court and remains in effect unless amended by the court or abrogated by the judicial council of the circuit. Copies of rules and amendments must, on their adoption, be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public.

(2) *Requirement of Form.* A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.

(b) Procedure When There Is No Controlling Law. A judge may regulate practice in any manner consistent with federal law, rules adopted under 28 U.S.C. §§2072 and 2075, and the district's local rules. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

Appendix E

Supreme Court Rule 5. Admission to the Bar

- 1. To qualify for admission to the Bar of this Court, an applicant must have been admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for a period of at least three years immediately before the date of application; must not have been the subject of any adverse disciplinary action pronounced or in effect during that 3 year period; and must appear to the Court to be of good moral and professional character.

- 2. Each applicant shall file with the Clerk (1) a certificate from the presiding judge, clerk, or other authorized official of that court evidencing the applicant's admission to practice there and the applicant's current good standing, and (2) a completely executed copy of the form approved by this Court and furnished by the Clerk containing (a) the applicant's personal statement, and (b) the statement of two sponsors endorsing the correctness of the applicant's statement, stating that the applicant possesses all the qualifications required for admission, and affirming that the applicant is of good moral and professional character. Both sponsors must be members of the Bar of this Court who personally know, but are not related to, the applicant.

- 3. If the documents submitted demonstrate that the applicant possesses the necessary qualifications, and if the applicant has signed the oath or affirmation and paid the required fee, the Clerk will notify the

applicant of acceptance by the Court as a member of the Bar and issue a certificate of admission. An applicant who so wishes may be admitted in open court on oral motion by a member of the Bar of this Court, provided that all other requirements for admission have been satisfied.

- 4. Each applicant shall sign the following oath or affirmation: I, _____, do solemnly swear (or affirm) that as an attorney and as a counselor of this Court, I will conduct myself uprightly and according to law, and that I will support the Constitution of the United States.

- 5. The fee for admission to the Bar and a certificate bearing the seal of the Court is $200, payable to the United States Supreme Court. The Marshal will deposit such fees in a separate fund to be disbursed by the Marshal at the direction of the Chief Justice for the costs of admissions, for the benefit of the Court and its Bar, and for related purposes.

- 6. The fee for a duplicate certificate of admission to the Bar bearing the seal of the Court is $15, and the fee for a certificate of good standing is $10, payable to the United States Supreme Court. The proceeds will be maintained by the Marshal as provided in paragraph 5 of this Rule.

Appendix E

Rule 6. Argument Pro Hac Vice

- 1. An attorney not admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for the requisite three years, but otherwise eligible for admission to practice in this Court under Rule 5.1, may be permitted to argue *pro hac vice*.

- 2. An attorney qualified to practice in the courts of a foreign state may be permitted to argue *pro hac vice*.

- 3. Oral argument *pro hac vice* is allowed only on motion of the counsel of record for the party on whose behalf leave is requested. The motion shall state concisely the qualifications of the attorney who is to argue *pro hac vice*. It shall be filed with the Clerk, in the form required by Rule 21, no later than the date on which the respondent's or appellee's brief on the merits is due to be filed and it shall be accompanied by proof of service as required by Rule 29.

APPENDIX F — CODE OF CONDUCT FOR UNITED STATES JUDGES

The Code of Conduct for United States Judges includes the ethical canons that apply to federal judges and provides guidance on their performance of official duties and engagement in a variety of outside activities.

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities

(A) *Respect for Law.* A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) *Outside Influence.* A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

(C) *Nondiscriminatory Membership.* A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

COMMENTARY

Canon 2A. An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant

circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges, including harassment and other inappropriate workplace behavior. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

Canon 2B. Testimony as a character witness injects the prestige of the judicial office into the proceeding in which the judge testifies and may be perceived as an official testimonial. A judge should discourage a party from requiring the judge to testify as a character witness except in unusual circumstances when the demands of justice require. This Canon does not create a privilege against testifying in response to an official summons.

A judge should avoid lending the prestige of judicial office to advance the private interests of the judge or others. For example, a judge should not use the judge's judicial position or title to gain advantage in litigation involving

a friend or a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office.

A judge should be sensitive to possible abuse of the prestige of office. A judge should not initiate communications to a sentencing judge or a probation or corrections officer but may provide information to such persons in response to a formal request. Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration and by responding to official inquiries concerning a person being considered for a judgeship.