IN THE SUPREME COURT OF THE UNITED STATES

MARGARET J. LOWERY,

Petitioner,

v.

SUPREME COURT OF ILLINOIS and its ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION,

Respondents.

Case No. 25-7209

PETITION FOR REHEARING

Petitioner Margaret J. Lowery, by her counsel of record, Ronald D. Wilkinson, respectfully petitions this Court for rehearing of its June 15, 2026, Order denying the Petition for a Writ of Certiorari. Although the Court disfavors rehearing, intervening circumstances of substantial or controlling effect warrant reconsideration under Rule 44.2. A petition for rehearing is the only procedural mechanism through which the Court may consider those intervening circumstances after denial of certiorari. The intervening circumstances are:

RETIRED LAWYERS' CIVIL STATUS – STATUS BASED JURISDICTION

This case raises a state power issue: when does a retired lawyer regain full first amendment rights like an ordinary private citizen or shall their historic status of bar admission permanently alter their constitutional status? Illinois did not regulate former President Barack Obama and his wife 's Michelle Obama's speech when they became inactive, retired members of the Illinois bar. Yet Illinois claims historic jurisdiction based upon status over Petitioner.

The disparity in how Illinois treats retired lawyers is a matter of national importance. By giving reciprocal effect to the Illinois judgment, Oklahoma operationalized Illinois's status-based jurisdictional scheme. Historical bar admission alone became sufficient to establish jurisdiction without adjudication of any factual nexus or constitutional predicate. Under the rule Illinois asserted and Oklahoma enforced, status, not adjudicated fact, supplied the governmental authority to terminate Petitioner's property right.

Once Illinois and Oklahoma accepted and operationalized that legal rule, it could not be limited to Petitioner. Former Presidents and political candidates may now be subjected to a state's disciplinary authority for allegedly "false" political speech. Lawyer-politicians such as Ted Cruz and Josh Hawley can face similar claims. The same theory extends to government lawyers whose official legal opinions concern immigration, election law, national security, abortion, firearms, or civil rights. Judges who publish legal conclusions that a state regulator later declares "dishonest" may likewise face regulatory scrutiny. These examples are not rhetoric. A rule capable of reaching Presidents, Senators, judges, government lawyers, and retired citizens cannot be dismissed as an isolated feature of attorney discipline.

OKLAHOMA VALIDATES ILLINOIS JURISDICTIONAL BY STATUS

The decision authored by Oklahoma Chief Justice Rowe (2026 OK 50) holds *Selling v. Radford* does not apply to the states through the Fourteenth Amendment because it is a "federal" not a "state" case. The published opinion holds, if:

1. A licensed lawyer states a legal conclusion.
2. If a later tribunal determines that conclusion is legally wrong as violative of the Fourteenth Amendment.
3. Then that incorrect conclusion should be characterized by state officials as a "false statement."
4. The speaker's knowledge is inferred from the tribunal's belief that the law was sufficiently clear.
5. Professional discipline shall follow.

Does that mean Justice Rowe uttered a knowingly false statement when he declared *Selling* inapplicable? If the opinion's own method permits knowledge to be inferred merely because the governing law was sufficiently clear, the answer would have to be yes. The *reductio* exposes the constitutional defect: the State cannot convert an erroneous legal conclusion into professional dishonesty without independent proof that the speaker knew the conclusion was false.

The announced new rule incorrectly treats an erroneous legal conclusion as prima facie evidence of a "false statement." That standard taints every reversed judge or government lawyer whose advice is rejected. Any lawyer who advances an unsuccessful constitutional theory now faces an accusation of dishonesty. This state expansion of speech regulation is abhorrent.

The Oklahoma Supreme Court published opinion went further, it:

- Nullified *Selling v. Radford* by declaring its constitutional predicate review inapplicable;
- Nullified *In re Ruffalo* by permitting reciprocal discipline without adjudicating the constitutional predicates preserving due process;
- Nullified *Tennessee v. Lane* by denying meaningful ADA access to state proceedings;
- Rendered the Supremacy Clause inoperative by rejecting controlling federal precedent;
- Rendered the Fourteenth Amendment inoperative by permitting jurisdiction to rest upon historical status; and
- Reinstated the jurisdictional methodology employed in *Scott v. Sandford* by allowing historical status to substitute for the constitutional predicates necessary to exercise governmental power.

No state court may declare controlling constitutional precedent inapplicable and simultaneously eliminate every forum in which those constitutional protections may be enforced. Unless rehearing is granted, the *published opinion* establishes precisely that result.

In constitutional substance, the Oklahoma decision restores the methodology of *Scott v. Sandford,* 60 U.S. (19 How.) 393 (1857). In *Scott,* status was the source of jurisdiction. It was used to enforce slavery. Here it is used again to establish jurisdiction, to regulate speech and to sanction ancestry-based inquiries. As will inevitably occur, some obscure judge in a remote outpost will adopt this historic methodology and then quote *Scott's* most infamous passages:

> "The condition of this class of persons was fixed by the laws of the State in which they resided." *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

The ruling is nationally profound. It gives state bar regulators unlimited jurisdictional authority over speech of anyone ever admitted to a state bar. It operationalizes a new political weapon with fifty potential speech-policing jurisdictions to attack presidents, members of Congress, federal judges and political candidates.

The publication of a decision which restores status-based jurisdiction and disavows *Selling* while pronouncing states may follow the methodology of a 200-year-old slave case that this Court has never issued an opinion expressly overruling should now be sufficient reason for rehearing.

PETITION SATISFIES RULE 44.2: INTERVENING DEVELOPMENT PRESENT THE STRUCTURAL CONSTITUTIONAL QUESTION

This Petition complies with Rule 44.2. Petitioner submitted the filing within twenty-five days of the denial of certiorari and now resubmits it to correct a deficiency the Clerk identified.

NON-REVIEW PROBLEM

This Court established constitutional safeguards governing attorney discipline in *Selling v. Radford* and *In re Ruffalo*. Yet merits review of claims seeking to enforce those procedural safeguards remains exceptionally rare. Although an attorney may petition for discretionary certiorari, that theoretical avenue does not provide a dependable forum for adjudicating whether a State established the constitutional predicates necessary to terminate a law license and its attendant property interests.

This case exposes that constitutional gap. Where does an attorney obtain relief when a State disregards federal constitutional requirements, denies meaningful process, or fails to follow the rules that supply its own regulatory authority? The Constitution requires a forum capable of enforcing the process it guarantees. Criminal defendants may obtain direct appellate review of constitutional violations. Attorneys have no comparable forum when a State refuses to adhere to constitutional process or its own rules to inflict constitutional injury.

Federal courts often decline to review federal predicate issues arising from state regulatory matters because of deference to state proceedings. States object to review on various grounds, including relitigation, *Rooker-Feldman*, or *Younger* abstention. That leaves no forum for attorneys to adjudicate constitutional predicates. It is this gap between the rule of law and an available forum that creates the "constitutional exception zone."

NEW CONSTITUTIONAL QUESTIONS:
REVISED ORDER EXPOSES CONSTITUTIONAL DUE PROCESS PROBLEM

The original petition challenged Illinois's failure to adjudicate jurisdiction, meaningful access, and attribution before imposing discipline. The intervening developments reveal more precise constitutional questions:

Issue #1: When does a retired lawyer regain the full speech rights of an ordinary private citizen or does bar admission permanently alter a citizen's constitutional status?

Issue #2 Whether the Due Process Clause of the Fourteenth Amendment and the Supremacy Clause permit a State to impose and give reciprocal effect to attorney discipline where the originating State asserts continuing jurisdiction over post-retirement, out-of-state conduct based solely upon status (the lawyer's historical admission in that State) and current licensure in another State, without adjudicating any factual basis necessary to establish jurisdiction?

Issue #3: Where, and by what tribunal, may an attorney obtain adjudication of preserved federal constitutional predicates, including jurisdiction, due process, meaningful access under Title II of the ADA, and evidentiary integrity, when the originating State declines to adjudicate them, the receiving State characterizes independent constitutional review as impermissible relitigation, and lower federal courts do not provide merits adjudication because of abstention doctrines, jurisdictional limitations, or *Rooker-Feldman*.

Issue #4: Whether a constitutional predicate necessary to the lawful deprivation of a protected property interest in a professional license may be treated as conclusively established when no tribunal of competent authority adjudicates them and notice of termination of right is never provided until after the hearing concludes.

The intervening events exposed the stigmatizing effect unique to lawyers. A lawyer accused is tainted because the accusation alone creates diminished status. The State then uses that taint to justify diminished procedural protections no other citizen accused of serious misconduct would face. This circularity creates a self-reinforcing constitutional defect: the disciplinary label is used to justify diminished process, and the diminished process is then used to validate the disciplinary label. Subsequent tribunals characterize unresolved constitutional objections as proof of unfitness and attempt to "relitigate" issues never adjudicated. The label thereby becomes both the jurisdictional basis and the asserted justification for reduced protections.

In *First Choice Women's Resource Centers, Inc. v. Davenport*, 605 U.S. ___ (2026), the Court held a plaintiff need not wait until the government completes an enforcement action before bringing a federal constitutional challenge if the government's coercive action already has caused a concrete constitutional injury. But in *T.M. v. University of Maryland Medical System Corp.*, 608 U.S. ___ (2026), the Court said review was not proper, making the review right appear illusory.

ILLINOIS CONSTITUTIONAL PROCESS DEFECTS (RUFFALO)

A. NO RULE 753 INQUIRY BOARD PROCEEDING

Illinois Supreme Court Rule 753 requires a preliminary charging event. The Inquiry Board must examine the matter, determine whether sufficient evidentiary cause exists, and vote on how the matter will proceed. If the Board votes to authorize charges, the matter is referred to the Hearing Board.

That process never occurred for any of the charges against Petitioner. The docket sheet establishes the omission. No docket entry identifies an Inquiry Board meeting, vote, authorization of charges, or referral to the Hearing Board. The official file contains no document evidencing Rule 753 compliance or authorization of a Complaint. The Complaint likewise pleads no fact that the Inquiry Board met, what charges it approved, when it authorized filing, or when it referred the matter to the Hearing Board.

The Complaint identifies only the Administrator as source of the Complaint not the Inquiry Board. It states the Administrator is the actor who "complains." This process was held violative of due process *In re Ruffalo.* Yet no court will review it.

The Complaint pleaded no facts establishing jurisdiction over Petitioner. The *only* basis of jurisdiction was her historical admission status as a once licensed Illinois lawyer. Without an authorized charge, the Hearing Board acquired no authority to convene, permit amendment of the charges, receive evidence, or issue findings. The Review Board consequently received no valid proceeding to review, and the Illinois Supreme Court possessed no lawfully constituted disciplinary adjudication to adopt or export. Worse, Ms. Lowery has no forum in which to obtain review of this constitutional defect.

B. NO NOTICE OF SANCTION.

Illinois never provided notice that it sought disbarment until after the hearing closed. Due process required notice of the proposed termination of Petitioner's protected property interest before the close of the evidentiary hearing. *In re Ruffalo*. The State then falsely claimed Petitioner 'refused to appear' when the record establishes she was excluded from hearing by denial of Title II access.

C. NO FINAL JUDGMENT?

Petitioner filed a *Petition to Appeal by Right* and it was unilaterally converted to discretionary review. Illinois then refused to review the predicates because it was a discretionary appeal or a Petition for Leave to Appeal ("PLA").

Illinois classifies all professional regulatory appeals as discretionary regardless of the issues raised. The Illinois Constitution requires the court not advisory boards to hear constitutional issues (de novo review). Under Illinois Supreme Court Rule 753, the Inquiry

Board must first authorize the disciplinary complaint, here it did not. Nor did Illinois plead facts necessary to invoke jurisdiction. Neither advisory board possessed authority to adjudicate constitutional predicate. The Illinois Supreme Court then refused to review. As a result, no tribunal ever adjudicated the jurisdictional predicate necessary to terminate the protected property interest.

The January 15, 2026, Illinois Order denied leave to appeal an advisory board report. It then adopted the report while not adjudicating the constitutional issue raised. Those two acts which are constitutionally incompatible. A court cannot decline constitutional predicate review, then label a discretionary report as conclusive of the predicates. Under the Illinois Constitution, only the Illinois Supreme Court may regulate the bar not advisory boards. When raised on appeal, the court must make *de novo* review and address predicate findings. It cannot deny or combine predicate review with merits adjudication. Ill. Const. 1970, art. VI, § 16; *In re Day*, 181 Ill. 73, 54 N.E. 646 (1899). *(See Appendix, Exhibit #4.)*

In *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999), this Court recognized that a petition for leave to appeal is ordinary appellate review process for exhaustion purposes. When discretionary review is denied in a criminal case, the lower court's adjudicated case remains intact. Here no lower court adjudicated case existed to remain intact because reports of the boards are advisory not conclusory. While a court can deny review, that act means the property right of the lawyer cannot be terminated. *Bell v. Burson*, 402 U.S. 535, 539–42 (1971); *Willner v. Committee on Character & Fitness*, 373 U.S. 96, 102–07 (1963).

Without addressment of the predicates no final adjudication occurs and no final judgment is created That judgment may not be exported to another State for reciprocal discipline.

D. NO ADA ACCESS OR ADA ACCOMMODATION

Denial of ADA accommodation was confirmed in the Hearing Board's May 10, 2024, Order. A proceeding conducted after denying reasonable ADA access cannot produce a constitutionally valid final judgment. The Hearing Board, an advisory tribunal, lacked authority to deny ADA accommodation or to substitute its own judgment for that of Petitioner's board-certified treating physician by declaring the physician's documented medical restrictions "insufficient." (See Appendix, Exhibit 6.) Those actions exceeded the Board's administrative authority and deprived Petitioner of meaningful access to the disciplinary proceeding.

This Court has never defined what evidence a litigant must present to trigger Title II protection under *Tennessee v. Lane*. Petitioner repeatedly submitted medical affidavits demonstrating her condition prevented meaningful participation. The state tribunal nevertheless refused to engage in an interactive process, refused to hold a hearing on her requested accommodation, and proceeded without providing access. That conduct should state an actionable Title II claim under *Lane*. Yet federal courts continue to deny relief when state professional-regulatory bodies exclude disabled litigants from their proceedings.

In *In re Marriage of James M. & Christine J. C.*, 158 Cal. App. 4th 1261 (2008), the California Court of Appeal reversed a judgment after the trial court denied a medically supported continuance. The court held that the trial court denied meaningful access and violated due process when it conducted the proceeding despite medical evidence showing that the litigant could not participate.

This case exposes the enforcement gap. Illinois denied reasonable accommodation, rejected uncontroverted medical evidence, and proceeded without providing meaningful access. On January 16, 2026, the United States District Court for the Southern District of Illinois granted Petitioner's motion for reasonable ADA accommodations in litigation to which Oklahoma itself was a party. Oklahoma nevertheless denied those same accommodations in its reciprocal disciplinary proceeding while simultaneously insisting that it must defer to Illinois's disciplinary judgment. Thus, Oklahoma accorded operative effect to the foreign judgment imposing discipline while giving no operative effect to the federal order protecting Petitioner's access. Constitutional protections became optional whenever they conflicted with reciprocal discipline. When every reviewing tribunal refuses to enforce a federal right, that right ceases to exist.

E. <u>Multiplication of Due Process Issues:</u>

1. **<u>Evidentiary Issues</u>**: Once the proceedings were based upon status, Illinois felt emboldened to admit evidence unauthenticated and without foundation. Then no witness testified any social media statement was false because it was presumed. The Hearing Board treated the State’s allegations as conclusive as to both authorship and falsity.

2. **<u>Notice Issues:</u>** Thirty minutes before the Hearing Board convened on May 2, 2024, it ordered the Clerk to telephone Petitioner. Then it never sent the link to participate remotely. Thirty minutes' notice does not comply with Due Process Clause.

<u>CONCLUSION:</u>

This case presents a structural constitutional question extending beyond Petitioner's individual disciplinary proceeding. Neither the originating jurisdiction nor the receiving jurisdiction adjudicated the required federal predicates before the property right was terminated violating Due Process. The question presented is therefore not whether this Court should resolve those predicates in the first instance, it is whether the Constitution permits reciprocal attorney discipline when no tribunal has adjudicated them at all.

This case reveals the danger of treating attorney discipline as constitutionally self-contained. When required federal predicates may be presented, preserved, rejected as immaterial, and then carried into reciprocal enforcement without adjudication by any tribunal at all. The problem is no longer confined to one lawyer or one state. It becomes a structural question about whether federal rights retain operative force in disciplinary proceedings governed by the Supremacy Clause.

`PRAYER FOR RELIEF

For the foregoing reasons, the petition for rehearing should be granted recalling its June 15, 2026, order denying certiorari. This Court should require a response from Respondent Illinois identifying where, when, and by what adjudicative act the required federal predicates were satisfied. **The Constitution does not dictate which court must hear the issue, but it forbids a system in which *no court will.***

Respectfully submitted,

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RULE 44.2 CERTIFICATION

Pursuant to Supreme Court Rule 44.2, I certify that this Petition for Rehearing is restricted to intervening circumstances of a substantial or controlling effect and to other substantial grounds not previously presented. I further certify that this Petition is presented in good faith and not for delay.

Respectfully submitted,

Ronald D. Wilkinson
Counsel for Petition