

No. 26-____
IN THE
Supreme Court of the United States

LAWYERS FOR FAIR RECIPROCAL ADMISSION,
Petitioner,

v.

ANN A. SCOTT TIMMER, CHIEF JUSTICE OF THE
ARIZONA SUPREME COURT, 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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QUESTIONS PRESENTED

The questions presented are:

1. Whether Arizona Supreme Court Rule 34 — which categorically denies bar admission on motion to attorneys licensed and in good standing in eleven nonreciprocal states and denies recent graduates of law schools not accredited by the American Bar Association even the opportunity to sit for the Arizona bar examination, based on class membership rather than individual merit — violates the First and Fourteenth Amendments.

2. Whether Rule 34's categorical class-based exclusions can survive any standard of review when Arizona extends automatic license reciprocity to every other profession regardless of home-state reciprocity, and 50 U.S.C. § 4025a mandates recognition of the very attorney licenses Rule 34 refuses to recognize.

PARTIES TO THE PROCEEDINGS

Petitioner Lawyers for Fair Reciprocal Admission (“LFRA”) was plaintiff-appellant in the court of appeals.

Respondents Ann A. Scott Timmer, Chief Justice of the Arizona Supreme Court, and John R. Lopez IV, Robert Brutinel, Clint Bolick, James P. Beene, William G. Montgomery, and Kathryn King, Justices of the Arizona Supreme Court, each sued in an official capacity, were defendants-appellees in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, petitioner Lawyers for Fair Reciprocal Admission (LFRA) states that it is a nonprofit association of licensed attorneys. It has no parent corporation, and no publicly held company owns ten percent or more of any stock in it, as it issues no stock.

RELATED PROCEEDINGS

Lawyers for Fair Reciprocal Admission v. Timmer, No. 25-3551 (9th Cir.) (judgment entered May 26, 2026; petition for panel rehearing and rehearing en banc denied July 2, 2026).

Lawyers for Fair Reciprocal Admission v. Timmer, No. 2:24-cv-02175 (D. Ariz.) (orders dismissing the complaint, denying reconsideration and leave to amend, and imposing pre-filing order; judgment entered May 30, 2025).

Lawyers for Fair Reciprocal Admission v. United States, No. 23-1154 (3d Cir.) (appeal pending since January 26, 2023; petition for a writ of certiorari before judgment filed concurrently with this petition).

Lawyers for Fair Reciprocal Admission v. United States, 141 F.4th 1056 (9th Cir. 2025), *cert. denied*, 146 S. Ct. 890 (2025).

National Association for the Advancement of Multijurisdiction Practice v. Berch, 773 F.3d 1037 (9th Cir. 2014), *cert. denied*, 576 U.S. 1021 (2015).

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PETITION FOR A WRIT OF CERTIORARI

Lawyers for Fair Reciprocal Admission (LFRA) respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The memorandum disposition of the court of appeals (App. A, 1a-7a) is unpublished and is not reported. The orders of the district court dismissing the complaint, denying reconsideration and leave to amend, and imposing a pre-filing order on petitioner's counsel (App. B, 8a-68a) are unreported. The order of the court of appeals denying panel rehearing and rehearing en banc (App. C, 69a-70a) is unreported.

JURISDICTION

The court of appeals entered judgment on May 26, 2026. It denied a timely petition for panel rehearing and rehearing en banc on July 2, 2026. This petition is filed within ninety days of that denial. See Sup. Ct. R. 13.1, 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS INVOLVED

The First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution, the Supremacy Clause, U.S. Const. art. VI, cl. 2, the Servicemembers Civil Relief Act, 50 U.S.C. § 4025a, as amended by Pub. L. No. 118-159 (Dec. 23, 2024), 28 U.S.C. § 1738, A.R.S. § 32-4302, Arizona Supreme Court Rules 34, 38, and 39, and D. Ariz. LRCiv 83.1 are reproduced in Appendix D, 71a-129a.

INTRODUCTION

Robin Snyder lives in Tempe, Arizona. She graduated cum laude from a California-accredited law school, passed the California bar examination on her first attempt, and holds an active California law license in good standing. App. F, 204a-208a. For more

than thirty years she has also practiced architectural consulting; had she asked Arizona to recognize a California architect's license, state law would grant recognition automatically. A.R.S. § 32-4302. Because the license she holds is a law license, Arizona will not permit her even to sit for its bar examination in the city where she lives.

This petition and the concurrently filed petition for a writ of certiorari before judgment in *Lawyers for Fair Reciprocal Admission v. United States*, No. 26-____ (3d Cir. No. 23-1154), present the state and federal halves of a single question of national importance: Whether the right to practice law in the United States may be segregated by class status — i.e., the state that licensed an attorney and whether the ABA approved her law school — rather than allocated by individual merit.

One of Rule 34's exclusions has never been reviewed by any court. The Ninth Circuit sustained the rule in *National Association for the Advancement of Multijurisdiction Practice v. Berch*, 773 F.3d 1037 (9th Cir. 2014), in critical part because the bar examination remained open to every excluded attorney. Rule 34(b)(1)(D) closes that examination to graduates of law schools the ABA has not accredited, App. 83a — an exclusion *Berch* never examined and the decision below refused to.

Outside the courts below, the class-status question has been answered. This Court in *Chiles v. Salazar*, 146 S. Ct. 1010 (2026), held, by a vote of 8 to 1, that the professional-licensing context does not reduce First Amendment protection, abrogating the Ninth Circuit framework on which respondents' defense of Arizona Rule 34 depended. This Court held in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 231 (2023), that under the Fourteenth Amendment's Equal Protection Clause, gatekeeping decisions must turn

on an applicant's "experiences as an individual — not on the basis of" class membership. Congress amended the Servicemembers Civil Relief Act to command state recognition of military-spouse attorney licenses. 50 U.S.C. § 4025a. The Department of Justice has since notified every state licensing authority in the nation that demanding anything more "is illegal." App. 142a. Two executive orders direct the termination of class-based licensing preferences and the dismantling of the American Bar Association's accreditation monopoly. The federal antitrust enforcers have formally condemned ABA accreditation as anticompetitive. App. 159a-192a. And the Arizona legislature itself has extended automatic license reciprocity to every out-of-state professional in every occupation — save one.

This Court has also held that an out-of-state licensed attorney's opportunity to practice law across state lines is a fundamental right, *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 281 (1985), and that bar admission on motion is constitutionally protected, *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988). Exercising its supervisory authority, this Court has also invalidated a federal district court local rule that discriminated in bar admission on the basis of residence or office location, finding the discrimination neither rational nor necessary. *Frazier v. Heebe*, 482 U.S. 641 (1987). Together, *Piper*, *Friedman*, and *Frazier* reject as fiction the premise at the core of Rule 34: that an experienced attorney — licensed, examined, and in good standing in a sister state — may be presumed incompetent, and a danger to the public, until she passes another entry-level bar examination. See 470 U.S. at 285; 487 U.S. at 68-69; 482 U.S. at 646-47. Robin Snyder embodies the fiction: California's bar examiners have twice adjudicated her legal competence, and Arizona presumes her unfit even to

be tested. What Rule 34 forecloses is not an abstraction. It is the liberty this Court has long held the Fourteenth Amendment secures — the right to pursue one’s chosen calling and earn a livelihood, *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Truax v. Raich*, 239 U.S. 33, 41 (1915) — a liberty this Court has enforced in bar admission itself. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 238-39 (1957).

The decision below stands alone against that convergence of recent authorities, and it does so without engaging them. The Ninth Circuit affirmed the dismissal of petitioner’s challenge in a five-page unpublished memorandum applying rational-basis review, without oral argument. The memorandum disposes of *SFFA* and *Chiles* — controlling authority requiring heightened scrutiny — in a single sentence. It nowhere discloses A.R.S. § 32-4302, the SCRA amendments to 50 U.S.C. § 4025a, Executive Orders 14173 and 14279, the Department of Justice’s nationwide directive, or the federal antitrust findings — all squarely presented in the merits briefing and in Rule 28(j) letters. In the same memorandum, the panel affirmed a pre-filing sanctions order against petitioner’s counsel, App. 6a-7a, 49a-68a — for advancing the strict scrutiny review position the Solicitor General of the United States was simultaneously urging upon this Court, and which this Court adopted 8-to-1.

The consequence is a closed loop: claims dismissed as “squarely foreclosed” by precedent whose foundation this Court has removed, in unpublished dispositions that generate no circuit law, under a sanctions order that bars their renewal — while the companion federal case has waited in the Third Circuit for more than three and a half years without the government ever being ordered to respond. The questions presented are not percolating in the courts

of appeals. They are being extinguished there. Only this Court can resolve them.

STATEMENT OF THE CASE

A. Rule 34's Class-Based Exclusions.

Arizona Supreme Court Rule 34, as most recently amended effective January 1, 2026, governs admission to the practice of law in Arizona. App. 78a-91a. Rule 34(e) grants admission on motion — admission without examination — to attorneys licensed in thirty-nine states and the District of Columbia whose jurisdictions extend similar privileges to Arizona lawyers. Rule 34(e)(1)(A), (e)(5). It categorically denies that privilege to attorneys licensed and practicing in eleven states: Alabama, California, Connecticut, Delaware, Florida, Hawaii, Louisiana, Nevada, Rhode Island, South Carolina, and West Virginia. The exclusion admits no individual cure; the only door left open to admission on motion is a change of class — relicensure and relocated practice in a reciprocal jurisdiction for three of five years. Rule 34(e)(1)(A)(ii). Rule 34(b)(1)(D) separately conditions eligibility on graduation from a law school “provisionally or fully approved by the American Bar Association” unless the applicant has actively practiced for three of the last five years. App. 83a. That requirement bars recent graduates of California-accredited, non-ABA law schools from even sitting for Arizona’s Uniform Bar Examination. Neither exclusion turns on the individual attorney’s competence, examination history, or disciplinary record. Both turn entirely on class membership: where the attorney is licensed (reciprocity vs. nonreciprocity states), and where she went to school (ABA-accredited vs. state-accredited).

The examination Rule 34 requires of the excluded class is the Uniform Bar Examination. The UBE is an entry-level test designed to assess the knowledge and skills every lawyer should demonstrate before

licensure. It does not test Arizona law — or the law of any state. It is uniformly administered and graded, producing a portable score accepted in more than forty adopting jurisdictions, Arizona among them. Its purpose is not in dispute: “A bar exam is a test of minimum competence to practice law.” Rebecca White Berch, *The Case for the Uniform Bar Exam*, *The Bar Examiner*, Feb. 2009, at 12. The author of that definition — then the Vice Chief Justice, and later the Chief Justice, of the Arizona Supreme Court — was the named defendant in *Berch*, the very decision on which both courts below relied. Nor does the organized bar regard the examination as necessary for experienced attorneys: the American Bar Association’s Model Rule on Admission by Motion (rev. Aug. 2012) recommends that every jurisdiction admit experienced sister-state attorneys in good standing on motion, without examination.

The Rule 34 exclusions operate on illustrative facts that were undisputed below. LFRA member Robin Snyder resides in Tempe, Arizona. She has practiced architectural consulting for more than thirty years. She graduated cum laude from Concord Law School, a California-accredited institution; passed California’s first-year law students’ examination; passed the California bar examination on her first attempt; and holds an active California law license in good standing. App. 204a-208a. Had she held a California architect’s license rather than a law license, A.R.S. § 32-4302 would entitle her to automatic Arizona recognition. As a California-licensed attorney, she cannot even sit for the Arizona bar examination in the state where she lives and works.

The exclusion’s costs fall on person and public alike. Snyder cannot counsel her Tempe neighbors, cannot appear in the courthouses of the city where she lives, and cannot serve the low-income Arizonans

who, as Justice Gorsuch has documented, see *infra* Part II.A, go without adequate legal help in the overwhelming majority of their civil legal problems. Any client who wants her judgment must hire a second, Arizona-licensed lawyer to say in court what she may not — paying two professionals to do the work of one — or go without. Appearance *pro hac vice* is no substitute: it requires case-by-case retention, Arizona counsel bearing joint responsibility, and an annual fee equal to full bar dues; and it may be denied for “repeated appearances.” Rule 39(a)(2)(C), (3), (6); App. 113a-119a. Arizona itself thus treats her two professions as two classes of citizenship: automatic recognition in architecture, categorical exclusion in law.

B. Arizona’s Universal Reciprocity Statute for Every Profession Except Law.

In 2022 — eight years after the Ninth Circuit upheld Rule 34 in *National Association for the Advancement of Multijurisdiction Practice v. Berch*, 773 F.3d 1037 (9th Cir. 2014) — the Arizona legislature enacted A.R.S. § 32-4302. App. 74a-78a. The statute grants automatic reciprocal licensing to every out-of-state licensee who has been licensed for at least one year and is in good standing, in every regulated occupation, without regard to whether the applicant’s home state offers reciprocity to Arizona licensees. California architects, accountants, nurses, physicians, and engineers receive automatic Arizona recognition. California attorneys do not: the statute excepts the judiciary’s licensing of lawyers.

Berch sustained Rule 34 under rational-basis review on two asserted interests: regulating the bar and using reciprocity as leverage to secure reciprocal treatment for Arizona attorneys elsewhere. 773 F.3d at 1044-45. A.R.S. § 32-4302 is a legislative declaration that Arizona itself no longer credits either interest as a basis for excluding qualified out-of-state

professionals. The state extends universal recognition based on individual qualification — unilaterally, without demanding reciprocity from anyone. What remains of Rule 34, after § 32-4302, is a single carve-out — from Arizona’s own declared general policy — that disadvantages one profession’s out-of-state competitors and no one else’s.

C. Congress and the Executive Branch Reject Categorical Class-Based Attorney Licensing.

Three further developments postdate *Berch*; each was presented to the courts below; none is acknowledged in either court’s disposition.

Congress. First, on December 23, 2024, Congress enacted Public Law 118-159, amending the Servicemembers Civil Relief Act, 50 U.S.C. § 4025a (App. 72a-74a), to eliminate the statute’s prior exception for attorney licenses and its active-use requirement. Under the amended statute, a military spouse who holds a covered professional license in good standing, relocates under military orders, and submits proof of those orders with an affidavit of good standing holds a license that “shall be considered valid” in the state of new residence. On December 22, 2025, the Department of Justice’s Civil Rights Division issued a notification letter to all state licensing authorities confirming that states “shall” recognize covered licenses and that “anything demanded in excess of the requirements detailed in the SCRA is illegal,” including demands for “transcripts or test scores.” App. 134a-144a. Yet Arizona Supreme Court Rule 39(d), App. 120a, conditions military-spouse practice on graduation from an ABA-accredited law school, an MPRE score, an Arizona law course, the absence of a disqualifying examination history, a character investigation and fees, association with local counsel, supervision requirements, annual Arizona-specific CLE, and a

one-year renewable term. Each is a demand in excess of the federal statute. Rule 39(d) thus conflicts on its face with the SCRA and is preempted under the Supremacy Clause.

The Executive Branch. On January 21, 2025, the President signed Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, directing all federal agencies to terminate categorical, classification-based preferences and to advance individual merit as the governing standard for professional opportunity. App. 148a-155a. On April 23, 2025, Executive Order 14279, *Reforming Accreditation to Strengthen Higher Education*, directed the Attorney General and the Secretary of Education to investigate and terminate unlawful discrimination embedded in ABA accreditation standards and directed the Secretary to assess whether to suspend or terminate the federal recognition of the ABA’s Council as an accreditor.

Federal Antitrust Enforcement. On April 30, 2026, the Directors of the Federal Trade Commission’s Office of Policy Planning and Bureau of Competition, Deputy Assistant Attorneys General of the Department of Justice’s Antitrust Division, and the United States Attorney for the Middle District of Tennessee jointly wrote to the Supreme Court of Tennessee. App. 159a-192a. The federal enforcers concluded that the ABA “goes far beyond what is reasonably necessary ‘to protect the public and to ensure competent representation’”; that the ABA is “dominated by practicing attorneys, who have strong incentives to limit the supply of lawyers competing to provide legal services”; and that state reliance on ABA accreditation “raises serious competitive risks by broadly delegating” the state’s gatekeeping authority to a private monopolist with a documented history of antitrust violations. App. 191a, 164a, 169a.

Together, these actions reflect a common federal policy: Professional licensing should be based on individual merit qualifications rather than categorical exclusions, and reliance on ABA accreditation as a barrier to entry warrants constitutional scrutiny.

D. Chiles v. Salazar and Students for Fair Admissions.

On March 31, 2026, this Court decided *Chiles v. Salazar*, 146 S. Ct. 1010. By a vote of 8 to 1, the Court held that speech “does not become conduct” merely because the State describes it as “a ‘treatment,’ a ‘therapeutic modality,’ or anything else,” and that the professional-licensing context does not reduce constitutional protection. *Chiles*, 146 S. Ct. at 1023. The Court abrogated the Ninth Circuit’s professional-speech framework of deferential review, see *Tingley v. Ferguson*, 47 F.4th 1055 (9th Cir. 2022), and reaffirmed that viewpoint-based restrictions “are not subject to mere rational-basis review or intermediate scrutiny” but “represent ‘an egregious form of content discrimination’” where First Amendment concerns are at their most “blatant.” 146 S. Ct. at 1024 (quoting *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995)).

Chiles removed the doctrinal foundation of *Berch*. *Berch* sustained Rule 34 by characterizing it as professional regulation subject to deferential review, 773 F.3d at 1046-47, in reliance on the *Pickup/Tingley* line this Court abrogated. See *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014). When the district court entered its judgment and pre-filing order in this case, the Solicitor General of the United States was arguing to this Court in *Chiles* that deferential review does not apply to professional-speech licensing restrictions. This Court agreed four months later.

Likewise, in *SFFA*, 600 U.S. 181 (2023), this Court overturned a long line of precedent and held that, under the Fourteenth Amendment’s Equal Protection

Clause, admission decisions must be based on individual merit rather than class-based stereotypes. The Court subjected class-based admission criteria to strict scrutiny. It held that separate cannot be equal. Rule 34, on its face and as applied, discriminates against licensed attorneys in good standing from eleven states based on class status alone; it has nothing whatsoever to do with individual merit. How the government classifies lawyers and the clients they serve is a question at the apex of this Court's supervisory jurisdiction.

E. Proceedings Below.

Petitioner LFRA, an association of licensed attorneys, brought this action under 42 U.S.C. § 1983 against the Justices of the Arizona Supreme Court in their official capacities, alleging that Rule 34 violates the First and Fourteenth Amendments. The district court found organizational standing but dismissed the complaint with prejudice, App. 9a-48a, on the authority of *Berch* and *Lawyers for Fair Reciprocal Admission v. United States*, 141 F.4th 1056 (9th Cir. 2025) ("*LFRA I*"). It denied leave to amend to add five member declarations detailing individual qualifications and injuries, concluding that no additional facts could cure the complaint's reliance on legal theories the court deemed foreclosed. The district court applied rational-basis review. It refused to address LFRA's First Amendment arguments. It likewise did not address A.R.S. § 32-4302, *SFFA*, 50 U.S.C. § 4025a, or the Executive Orders cited herein. It then imposed a pre-filing order on petitioner's counsel, barring him from filing any complaint "regarding admission to and the regulation of practice of law" in Arizona without prior judicial screening, on the ground that the claims were frivolous. App. 49a-68a.

The court of appeals ordered the case submitted without oral argument on May 21, 2026, and issued a

five-page unpublished memorandum disposition on May 26, 2026, applying rational-basis review. App. 1a-7a. The panel held that petitioner’s claims were “squarely foreclosed” by *Berch* and *LFRA I*. It acknowledged petitioner’s argument that intervening decisions of this Court — including *Chiles*, *Students for Fair Admissions*, *Reed*, and *Fulton* — abrogated those precedents and rejected the argument in a single sentence: “none of these cases deals with reciprocal admission rules, and Rule 34 plainly does not — as was the case with the schemes challenged in those cases — discriminate on the basis of race, the content of speech, or a particular viewpoint.” App. 5a. The memorandum does not cite or mention A.R.S. § 32-4302, 50 U.S.C. § 4025a, the Department of Justice’s December 22, 2025, notification letter, Executive Order 14173, Executive Order 14279, or the April 30, 2026, FTC/DOJ letter — each of which was presented in the merits briefing and in Rule 28(j) letters filed January 16, April 24, and May 8, 2026 (ECF 31, 43, 51). App. 130a-203a. The panel affirmed the pre-filing order, reasoning that “no reasonable reading of subsequent Supreme Court decisions undermines” circuit precedent, and denied petitioner’s motion for judicial notice. App. 6a-7a. The court also denied petitioner’s request for oral argument and its motion for leave to file supplemental authorities. Petitioner sought panel rehearing and rehearing en banc, presenting each of the developments described above. Panel rehearing and rehearing en banc were denied on July 2, 2026. App. 69a-70a.

F. The Companion Federal Case.

The same Rule 34 class-based architecture governs admission to the federal district court. The District of Arizona limits its bar to active State Bar of Arizona members and makes any attorney who resides or practices in Arizona ineligible even to

appear pro hac vice, D. Ariz. LRCiv 83.1(a), (b)(2) (App. 126a-129a) — so Robin Snyder, a Tempe resident, is excluded from the federal courthouse in her home district by both doors. In *Lawyers for Fair Reciprocal Admission v. United States*, No. 23-1154 (3d Cir.), petitioner challenges the local rules of the United States District Courts for the District of New Jersey and the District of Delaware, which categorically deny general admission to attorneys licensed outside the forum state — regardless of individual experience — while granting it automatically to every novice forum-state admittee. That appeal has been pending since January 26, 2023. In more than three and a half years, the government has never filed an opposition brief, and the court of appeals has never ordered one. A petition for a writ of certiorari before judgment, see 28 U.S.C. § 2101(e); Sup. Ct. R. 11, is filed concurrently with this petition, so that the state and federal dimensions of the question presented may be considered together.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Cannot Be Reconciled with *Chiles v. Salazar* or This Court’s Speaker-Discrimination Precedent.

Certiorari is warranted because the court of appeals “has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c). The conflict here is not inferential. Seven weeks before the panel ruled, this Court held 8-to-1 that the professional-licensing context does not reduce constitutional protection and abrogated the very Ninth Circuit framework — the *Pickup/Tingley* line of deferential review for professional regulation — on which *Berch* rests. The panel applied *Berch* anyway and disposed of *Chiles* in one sentence.

A. Berch's Foundation Is Gone, and the Panel Was Not Free to Apply It.

A court of appeals is bound to apply intervening decisions of this Court, *Hicks v. Feiock*, 485 U.S. 624, 630 (1988), and the Ninth Circuit's own en banc rule provides that a three-judge panel is not bound by circuit precedent whose "reasoning or theory" an intervening higher-court decision has "undercut," *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc). *Berch* sustained Rule 34 by classifying attorney admission as professional regulation subject to deferential review. 773 F.3d at 1046-47. That is the precise analytical move *Chiles* condemned: "The First Amendment is no word game," and "the rights it protects cannot be renamed away or their protections nullified by 'mere labels.'" *Chiles*, 146 S. Ct. at 1023. Once *Chiles* removed *Berch*'s doctrinal foundation, the panel's obligation was to conduct the constitutional analysis itself under the correct standard. It did not.

LFRA I — the second precedent the panel invoked — supplies no firmer footing. That decision misapplied the same deferential rational-basis framework; it did not address *Students for Fair Admissions*, A.R.S. § 32-4302, § 4025a, or the federal enforcement record presented here; and, decided months before *Chiles*, it never confronted the standard of review this Court has now announced. Two precedents that apply the wrong standard and never engage the controlling authorities cannot "squarely foreclose" anything.

B. Rule 34 Is a Speaker-Based Restriction Subject to Heightened Scrutiny.

The panel's single-sentence answer — that Rule 34 "plainly does not . . . discriminate on the basis of race, the content of speech, or a particular viewpoint," App. 5a — misreads both *Chiles* and this Court's speaker-discrimination precedent. *Chiles* did not

confine heightened scrutiny to racial or viewpoint discrimination; it held that professional-licensing restrictions on speech receive full First Amendment scrutiny. And this Court has repeatedly held that laws singling out particular speakers are constitutionally suspect without regard to whether they target a message. *Reed v. Town of Gilbert*, 576 U.S. 155, 170 (2015); *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 564 (2011) (laws that “impose a burden based on the content of speech and the identity of the speaker” are content-based); *Rosenberger*, 515 U.S. at 828 (speaker-based restrictions are “a means to control content”).

Rule 34 determines which licensed attorneys may speak in Arizona’s courts — may file, argue, counsel, and petition on behalf of clients — based on the identity of the speaker: her state of licensure and the ABA pedigree of her legal education. The rule’s structure is not neutral and generally applicable; it is riddled with class-based exclusions — of attorneys from eleven states and of non-ABA graduates — and with exceptions. Rule 38 provides limited, temporary, status-based admission for in-house counsel, full-time law professors, and certified pro bono counsel for legal defense organizations. App. 91a-113a. Rule 39 adds temporary, limited exceptions for military-spouse attorneys (now compelled by federal law) and for appearance pro hac vice. App. 113a-126a. Neither Rule 38 nor Rule 39 requires reciprocal licensing; attorneys from the eleven disfavored states are not excluded. Yet Rule 38 requires ABA graduation of in-house counsel and law professors; Rule 39(d) demands an ABA degree of military spouses, in direct conflict with 50 U.S.C. § 4025a; and Rule 39(a) requires no ABA degree for appearance pro hac vice. The Ninth Circuit itself has held that a licensing scheme “riddled with exceptions” keyed to the content of speech or the identity of the speaker is content-

based and demands heightened scrutiny. *Pacific Coast Horseshoeing Sch., Inc. v. Kirchmeyer*, 961 F.3d 1062, 1071-72 (9th Cir. 2020). And under *Fulton v. City of Philadelphia*, 593 U.S. 522, 533-34 (2021), a rule that grants individualized and categorical exemptions undermining its asserted interests is not generally applicable and must survive strict scrutiny. The panel engaged none of this. Whether *Chiles* governs attorney-licensing restrictions — the largest and oldest system of professional speech licensing in the nation — is a question only this Court can now settle in this circuit. The panel’s contrary answer is unpublished, non-precedential, and insulated from en banc correction by the July 2, 2026, denial.

II. Whether the Practice of Law May Be Allocated by Categorical Class Status Rather than Individual Merit Is a Question of Exceptional National Importance.

A. The ABA-Accreditation Prong Presents an Independent Ground No Court Has Ever Addressed — and One That Every Branch of the Federal Government, and a Growing Number of States, Have Repudiated.

Berch sustained Rule 34 in critical part on the ground that attorneys from nonreciprocal states retained an alternative path to admission by sitting for the Uniform Bar Examination. 773 F.3d at 1044, 1047-48. Rule 34(b)(1)(D) forecloses that alternative for graduates of law schools not accredited by the American Bar Association: absent three years’ prior law practice, they may not sit for the Arizona examination at all, and no measure of experience or achievement ever opens the nonexamination paths, which Rule 34(e)(1)(B) and (g)(1)(B) reserve to ABA graduates alone. The exam alternative on which *Berch* rested does not exist for this class, and no decision of any court — not *Berch*, not *LFRA I* — has

ever examined the exclusion. The panel’s reliance on those precedents to dismiss it as “squarely foreclosed” was therefore doubly erroneous. The exclusion falls principally on the graduates of California-accredited law schools — institutions regulated, inspected, and examined by the State Bar of California.

The premise of the exclusion — that a private accreditor’s approval is a rational proxy for fitness — has now been rejected by every branch of the federal government. The Department of Justice sued the ABA under the Sherman Act in 1995 for using accreditation to restrain competition, resolving the case through a ten-year consent decree that the ABA was held in contempt for violating in 2006. On April 30, 2026, the FTC’s Office of Policy Planning and Bureau of Competition, the DOJ Antitrust Division, and a United States Attorney jointly concluded that ABA accreditation standards go beyond what is reasonably necessary to prepare lawyers to practice; that the ABA is dominated by practicing attorneys with strong incentives to limit the supply of competing lawyers; and that state reliance on its accreditation delegates public gatekeeping power to a private body with anticompetitive incentives. See Statement C, *supra*; App. 191a, 164a, 169a. The Executive Branch has translated those findings into directives: Executive Order 14173 orders the termination of categorical, classification-based preferences in favor of individual merit as the governing standard for professional opportunity. Executive Order 14279 directs the Attorney General and the Secretary of Education to investigate and terminate unlawful discrimination embedded in ABA accreditation standards — which the Attorney General has concluded violate this Court’s decision in *Students for Fair Admissions* — and to assess whether to suspend or terminate the ABA Council’s federal recognition as an accreditor altogether. The

Department of Education has begun recognizing competing accreditors. Congress, for its part, has fixed an individual-qualification floor in 50 U.S.C. § 4025a.

The exclusion does not merely lack a rational basis; it deepens the Nation's justice gap. Justice Gorsuch has described that gap in terms that admit of no dispute:

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.

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

The root cause Justice Gorsuch identified — the scarcity and cost of legal services — is the direct product of the supply restriction the federal antitrust enforcers have condemned. Some thirty states,

Arizona among them, condition bar-examination eligibility on graduation from an ABA-approved law school. Whatever that credential may claim as applied to an untested aspirant, it claims nothing as applied to an attorney a sister state has already licensed, examined, and found fit — twice, in Robin Snyder’s case. A rule that forbids such attorneys even to sit for the examination does not protect consumers of legal services; it rations their supply of counsel in a market where low-income Americans already go without adequate legal assistance 86% of the time. The ABA-graduation requirement the Executive Orders condemn is thus not anticompetitive merely in the abstract: demanded of already licensed attorneys, it enlarges the justice gap while measuring nothing about individual fitness.

The States are following. The supreme courts of Texas (January 6, 2026), Florida (January 15, 2026), and Alabama (April 30, 2026) have each eliminated ABA-only accreditation as a condition of bar-examination eligibility, and Tennessee and Ohio have opened formal reassessments. In eighteen months, Congress, the Executive, the federal antitrust enforcers, the Department of Education, and three state supreme courts have each repudiated the credential on which Rule 34 stakes its gate. A state does not act rationally when it outsources its constitutional gatekeeping over who may speak in its courts to a private monopolist whose standards federal antitrust enforcers have condemned as anticompetitive, whose federal recognition the Executive Branch is actively considering revoking, and whose approval three sister supreme courts have already discarded. That is doubly true when the delegation runs to “active market participants” with a direct financial stake in excluding the competitors the rule excludes. *N.C. State Bd. of Dental Exam’rs v. FTC (N.C. Dental)*, 574 U.S. 494, 505-06 (2015). Rule

34(b)(1)(D), (e)(1)(B), and (g)(1)(B) hand that gatekeeping line to the ABA outright, and no sovereign actor actively supervises the accreditation judgments that draw it — the precise arrangement *N.C. Dental* holds forfeits even state-action antitrust immunity. Whether such a delegation can supply a rational basis for categorically barring licensed, examined, discipline-free attorneys from even sitting for a bar examination is a question of first impression in every court of appeals, and it warrants this Court’s review.

B. The Question Affects Hundreds of Thousands of Licensed Attorneys and the Public They Would Serve.

The class Rule 34 excludes is not marginal. The eleven disfavored states include California, home to the largest attorney population in the nation, and the exclusion of non-ABA graduates reaches every graduate of California’s state-accredited law schools. Those institutions educate roughly one quarter of California’s law students, disproportionately working adults, parents, and military families who cannot leave employment for a residential ABA program. These attorneys did the work, passed the examinations, and practiced without discipline. Rule 34 does not ask who they are or what they have done. It asks only whether they were licensed in a reciprocal state and whether they attended an ABA-accredited school. That is the definition of class-based gatekeeping, and it is irreconcilable with this Court’s instruction that an applicant “must be treated based on his or her experiences as an individual — not on the basis of” class membership. *Students for Fair Admissions*, 600 U.S. at 231. A century and a half ago this Court permitted the categorical exclusion of a qualified applicant from the bar on the basis of class status rather than individual capacity, holding that the opportunity to practice law was not a privilege or

immunity of national citizenship at all. *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 139 (1873). Justice Bradley’s concurrence supplied the candor that class-based exclusion rarely commits to writing: the “natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.” *Id.* at 141 (Bradley, J., concurring). Myra Bradwell had read the law, passed her examination, and founded the leading legal newspaper of the West; none of it mattered, because the rule asked only what she was, never what she had done.

The Nation has repudiated that reasoning everywhere else, and this Court has since held that a licensed attorney’s opportunity to practice law in a second state is fundamental and constitutionally protected. *Piper*, 470 U.S. at 281; *Friedman*, 487 U.S. at 65-67. Yet the decision below — resting on *Berch*’s premise that the exclusion of licensed attorneys by class deserves only rational-basis deference — treats Robin Snyder as *Bradwell* treated Myra Bradwell: as a second-class citizen holding second-class constitutional rights, defined by her class credentials rather than judged on her individual record. The question whether that logic survives in attorney licensing warrants this Court’s plenary review.

C. The Premise That Experienced, Licensed Attorneys Must Pass Another Entry-Level Bar Examination to Protect the Public Is a Fiction This Court Rejected in *Piper*, *Friedman*, and *Frazier*.

Rule 34’s examination requirement rests on a single factual premise: that the public cannot be protected from an experienced sister-state attorney unless she first passes another entry-level test of minimum competence. That premise is a fiction. A bar examination measures whether a novice possesses the minimum knowledge and skill to begin practicing

law — nothing more. See Rebecca White Berch, *The Case for the Uniform Bar Exam*, *The Bar Examiner*, Feb. 2009, at 12. An attorney who has passed a bar examination, survived a character-and-fitness adjudication, and practiced for years without discipline has already demonstrated everything the examination purports to predict, and more. The examination, meanwhile, is not even a reliable instrument for what it purports to measure. See Geoffrey Norman, *So What Does Guessing the Right Answer Out of Four Have to Do With Competence Anyway?*, *The Bar Examiner*, Nov. 2008, at 21 (“Study after study has shown that it is almost impossible to get judges to agree on scores for essay answers.”). And the cognitive science of expert performance confirms that professional excellence is the product of accumulated experience — the very attribute Rule 34 refuses to consider. See *The Cambridge Handbook of Expertise and Expert Performance* (K. Anders Ericsson et al. eds., 2006).

This Court has rejected that fiction each time it has been offered. In *Piper*, New Hampshire defended the categorical exclusion of nonresident attorneys on the ground that they would be less competent and less ethical than local attorneys; the Court found no evidence to support the presumption and struck the rule. 470 U.S. at 285. In *Friedman*, Virginia required experienced nonresident attorneys to pass its bar examination while admitting equally experienced resident attorneys on motion; this Court held the discrimination indefensible, because Virginia’s own willingness to admit experienced attorneys without examination refuted any claim that the examination was necessary to assure their competence. 487 U.S. at 68-69. And in *Frazier*, the Court invalidated a federal district court rule that discriminated among licensed attorneys, holding the exclusion “unnecessary and irrational” and declining to presume out-of-state

attorneys less qualified. 482 U.S. at 645-49. Rule 34 replicates the vice *Friedman* condemned. Arizona admits experienced attorneys licensed in thirty-nine states and the District of Columbia without any examination — a standing concession that the examination is unnecessary to protect the public from experienced practitioners. Yet it requires the identically qualified attorney licensed in California to pass an entry-level test that does not examine Arizona law. A requirement Arizona waives for the many cannot be defended as indispensable as to the few; the selective exemption is itself the proof that Rule 34 measures class membership, not competence.

The organized bar's own studies are in accord. The American Bar Association — the body whose accreditation judgments Rule 34(b)(1)(D) treats as conclusive — has concluded that experienced attorneys establish their competence by their admission and demonstrate their fitness by their discipline-free practice, and it recommends that every state and every federal district court admit sister-state attorneys in good standing on motion, without reexamination. ABA Model Rule on Admission by Motion (rev. Aug. 2012). Arizona thus credits the ABA absolutely when its accreditation standards exclude, and ignores the ABA entirely when its considered judgment would admit. Neither rationality nor deference attaches to a rule that demands of proven practitioners a test the state's own Chief Justice defined as measuring nothing more than minimum competence to begin the practice of law.

D. After § 32-4302 and the SCRA Amendments, Rule 34 Fails Any Standard of Review.

This case does not require the Court to choose a tier of scrutiny to resolve it, because the second question presented is whether Rule 34 survives even rational-basis review. It does not. *Berch's* two

rationales — bar regulation and reciprocity leverage — cannot be maintained after Arizona’s own legislature extended automatic, unilateral, nonreciprocal recognition to every other licensed profession. A California-licensed architect in Tempe receives automatic Arizona recognition under § 32-4302; a California-licensed attorney in Tempe cannot sit for the examination. No conception of professional regulation distinguishes the two: both hold state licenses, both passed state examinations, both have years of practice, both are in good standing. Differential treatment of similarly situated persons that cannot be explained by any legitimate purpose is the paradigm of invidious classification. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446-47 (1985).

Rule 34’s arbitrariness is confirmed by its treatment of sister-state judgments. Arizona accepts the licensure determinations of thirty-nine state supreme courts as conclusive proof of fitness to practice, while giving the identical determinations of eleven state supreme courts — reached through the same character-and-fitness adjudications and the same examinations — no weight whatsoever. A classification that credits or discredits identical judicial determinations based solely on the issuing court’s location is not measuring fitness; it is measuring class membership.

Congress has codified that obligation. Under 28 U.S.C. § 1738, the judicial proceedings of every State “shall have the same full faith and credit in every court within the United States” as they have at home. “[T]he full faith and credit obligation is exacting”: a final judgment rendered by a court with adjudicatory authority over the subject matter and the parties “qualifies for recognition throughout the land,” and a State “may not disregard the judgment of a sister State because it disagrees with the reasoning

underlying the judgment or deems it to be wrong on the merits.” *V.L. v. E.L.*, 577 U.S. 404, 407 (2016) (per curiam) (quoting *Baker v. General Motors Corp.*, 522 U.S. 222, 233 (1998), and *Milliken v. Meyer*, 311 U.S. 457, 462 (1940)). Each LFRA member’s admission is a final judgment of a sister-state supreme court adjudicating that attorney’s qualifications, character, and fitness. Rule 34 honors those judgments when thirty-nine supreme courts render them and disregards the identical judgments of eleven — reviving, for one profession, the regime of “independent foreign sovereignties” that the Full Faith and Credit Clause and § 1738 were adopted to end. *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 277 (1935). Petitioner preserves this statutory ground; the selective nonrecognition of sister-state judgments independently confirms that Rule 34 fails any standard of review.

The explanation that remains is the one the federal antitrust enforcers have documented: incumbent protection by a body dominated by practicing attorneys with strong incentives to limit the supply of competing lawyers. See Statement C, *supra*. Protecting incumbent practitioners from competition is not a legitimate state interest. *N.C. Dental*, 574 U.S. at 505-06; *FTC v. Ind. Fed’n of Dentists*, 476 U.S. 447, 462-63 (1986). And the federal statutory floor confirms the point: Congress has now mandated, in 50 U.S.C. § 4025a, that Arizona recognize military-spouse attorney licenses on individual-qualification grounds alone. The Department of Justice has declared that any state demand beyond the statute “is illegal.” Arizona Rule 39(d) imposes at least eight such demands, App. 120a-122a, each preempted under the Supremacy Clause. *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372-73 (2000). Federal law thus compels Arizona to recognize out-of-state attorney licenses on

the very individual-merit basis Rule 34 declares inadequate for identically qualified civilian attorneys. A rule cannot be rational when the state's own legislature, and the Congress of the United States, have each rejected its premise.

E. Attorney Licensing Occupies a Unique Constitutional Position.

Attorneys are not simply another licensed occupation. They are the instruments through which citizens exercise the rights to petition courts, to associate with counsel, and to obtain access to justice — rights this Court has long treated as lying near the core of the First Amendment and of interstate citizenship. See *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 281 (1985) (the opportunity to practice law across state lines is a fundamental right and constitutionally protected); *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988) (bar admission on motion is constitutionally protected). Restrictions on who may practice law are, functionally, restrictions on who may speak in the forums where constitutional rights are vindicated. The rationing of that speech by class status — enforced by the very incumbents who benefit from reduced competition, see *N.C. Dental*, 574 U.S. at 505 — presents the questions of self-interested gatekeeping and access to justice in their starkest form. Justice Gorsuch has documented that justice gap. See Neil M. Gorsuch, *Access to Affordable Justice*, 100 *Judicature* 46 (2016); *supra* Part II.A. Rules that exclude experienced, licensed, discipline-free attorneys from the markets and the clients they serve deepen that gap while serving no competency interest at all.

Rule 34 cannot pass rational-basis review because a state's desire to protect its own lawyers, or to retaliate against attorneys from eleven states, is not a legitimate state interest. The practice of law is the

core vehicle to secure constitutional rights, and restrictions on it demand more careful justification, not less.

III. The Questions Presented Are Being Extinguished, Not Percolated: Unpublished Dispositions That Do Not Disclose the Controlling Developments, Followed by Sanctions That Foreclose Their Renewal.

This Court ordinarily awaits the considered judgments of the courts of appeals. That process presupposes that the courts of appeals will engage the intervening acts of Congress, the Executive, and this Court that bear on the question. That is not happening here, and the manner of decision below is itself a reason to grant review.

Consider what the record before the panel contained, and what its disposition discloses. The merits briefing and three Rule 28(j) letters placed before the court: (1) *Chiles*, decided 8-to-1 seven weeks before submission, abrogating the circuit authority underlying *Berch*; (2) A.R.S. § 32-4302, the post-*Berch* statute that eliminates both of *Berch*'s rationales; (3) Public Law 118-159 and 50 U.S.C. § 4025a, the post-*Berch* Act of Congress mandating recognition of the very licenses Rule 34 rejects, together with the Department of Justice's nationwide directive that exceeding the statute "is illegal"; (4) two executive orders condemning class-based licensing preferences and directing the dismantling of the ABA accreditation monopoly; (5) the April 30, 2026, joint letter of the FTC, the DOJ Antitrust Division, and a United States Attorney concluding that ABA accreditation is anticompetitive; and (6) the orders of the Texas, Florida, and Alabama Supreme Courts eliminating ABA-only requirements. The panel's five-page memorandum applying rational-basis review, issued five days after submission without oral argument, does not mention items (2)

through (6) at all, and addresses item (1) in a single sentence. The court denied leave to file supplemental authorities, denied judicial notice, and denied rehearing without any judge calling for a response to the record the petition assembled.

Petitioner does not ask this Court to attribute motive. It asks the Court to recognize the structural consequence. Under Ninth Circuit Rule 36-3, the memorandum is not precedent; the constitutional questions it resolves therefore generate no circuit law, create no acknowledged conflict, and are invisible to the ordinary indicia this Court uses to identify questions ripe for review. The pre-filing order then prohibits petitioner's counsel from presenting the claims to the district court again without leave — enforcing, prospectively, the very precedents whose foundations this Court has removed. And in the companion federal case, the identical questions have sat in the Third Circuit for more than three and a half years without the government ever being required to respond. The combined effect is that no court of appeals has issued, or will issue, a reasoned, citable decision applying *Chiles*, § 4025a, or § 32-4302 to attorney licensing. When the ordinary process of percolation has been displaced by unpublished non-engagement on one coast and indefinite suspension on the other, this Court's intervention is not premature. It is the only avenue left.

If a five-page unpublished disposition can decline to apply an 8-to-1 decision of this Court, an intervening Act of Congress, and the state's own superseding statute — and is thereafter immune from citation, rehearing, and renewed litigation — then the supremacy of this Court's decisions depends entirely on this Court's willingness to grant certiorari. Review is warranted for that reason alone.

IV. The Sanctions Affirmance Confirms the Need for Review.

Petitioner does not present the sanctions affirmance as a standalone question. It is addressed because it bears directly on the importance of the questions presented and on this petition's fitness as a vehicle: the pre-filing order is the instrument by which those questions are being extinguished below. See Part III, *supra*. It is also fairly included in them, because reversal on the merits removes the frivolousness premise on which the sanctions rest. See Sup. Ct. R. 14.1(a). The panel affirmed a pre-filing order sanctioning petitioner's counsel on the ground that LFRA's claims were frivolous — “squarely foreclosed” by circuit precedent that “no reasonable reading of subsequent Supreme Court decisions undermines.” App. 6a. The chronology refutes the premise. The courts below hold that counsel is vexatious and has filed frivolous lawsuits; yet the standard of review counsel advanced — strict scrutiny, not rational basis — is the one this Court's precedent commands. When the district court entered the order, the Solicitor General of the United States was arguing the same strict scrutiny standard-of-review position to this Court in *Chiles*. Four months later, this Court adopted it, 8-to-1, and abrogated the circuit precedent the sanctions order enforced. A legal position simultaneously advanced by the United States and subsequently adopted by this Court is, by definition, “a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.” Fed. R. Civ. P. 11(b)(2). A court “would necessarily abuse its discretion if it based its ruling on an erroneous view of the law,” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). The order below rests on precisely such a view.

The error is compounded twice over. Petitioner's A.R.S. § 32-4302 argument could not have been "foreclosed" by *Berch*, because the statute did not exist when *Berch* was decided; no precedent had ever addressed it. Petitioner's SCRA preemption argument could not have been foreclosed by anything, because Congress did not enact Public Law 118-159 until after the district court's dismissal; counsel was sanctioned over a federal claim that the prior statute expressly excluded and the amended statute now compels. Sanctions cannot rationally attach to arguments that no existing law forecloses.

This Court's right-to-petition jurisprudence confirms the point. Even where litigation is alleged to be an anticompetitive weapon, genuine petitioning is immune from penalty: a lawsuit may be condemned as a "sham" only if it is "objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits," and, separately, subjectively aimed at using the governmental process itself — rather than the outcome of that process — as a weapon. *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49, 60-61 (1993). Advocacy that pressed the same standard-of-review position the Solicitor General was simultaneously urging upon this Court, and that this Court adopted 8-to-1 four months later, is the antithesis of objective baselessness. If *Professional Real Estate* shields such petitioning even from antitrust liability, it cannot coherently supply the predicate for personal sanctions.

The remedy compounds the constitutional defect, because a prospective pre-filing injunction is a prior restraint on petitioning. "In its simple, most blatant form, a prior restraint is a law which requires submission of speech to an official who may grant or deny permission to utter or publish it based upon its contents." *Alexander v. United States*, 509 U.S. 544,

566 (1993) (Kennedy, J., dissenting). The order below requires exactly that: any future filing raising these constitutional questions must be submitted for advance judicial permission, which may be withheld based on the filing's content. Systems of prior restraint come to this Court "bearing a heavy presumption against" their "constitutional validity," *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558 (1975), and this one restrains the single form of expression the First Amendment names expressly — a petition for the redress of grievances — in order to enforce circuit precedent this Court has since abrogated.

Left standing, the decision below teaches that an attorney who presses constitutional test litigation in reliance on developments this Court has yet to confirm does so at the risk of a personal pre-filing injunction — even when the Solicitor General shares his position and this Court vindicates it. It burdens the right to petition and the adversarial testing of precedent on which this Court's certiorari practice depends. Nearly every landmark reversal of circuit authority in this Court began as an argument some lower court deemed foreclosed. If "foreclosed by circuit precedent" is a sanctionable offense, the pipeline of vehicles to this Court closes. The Court should grant review to make clear that Rule 11 and the inherent powers do not reach good-faith advocacy for positions the law is actively reconsidering — least of all positions the law then adopts.

V. This Petition and the Companion Petition in *LFRA v. United States* Present an Ideal Vehicle.

The questions presented are pure questions of law. The material facts — the text of Rule 34, the text of § 32-4302, the text of § 4025a, the federal enforcement record, and Robin Snyder's qualifications — are documentary and undisputed. Standing was found

below. The case arrives on a final judgment after the denial of rehearing en banc, with every issue pressed and passed upon.

The concurrently filed petition for certiorari before judgment in *LFRA v. United States*, No. 26-____ (3d Cir. No. 23-1154), presents the federal analogue: district-court local rules that allocate general admission by forum-state licensure rather than individual qualification. Granting both petitions would permit the Court to resolve, in a single sitting, whether attorney licensing in the United States, state and federal, must comport with the individual-merit principles this Court announced in *Students for Fair Admissions* and the First Amendment principles it announced in *Chiles*. This Court has a supervisory responsibility to protect the integrity of the federal system — an integrity compromised when state and federal courts refuse to adhere to the First Amendment freedoms of speech, association with counsel, and petition for the redress of grievances.

Finally, the views of the United States are already a matter of public record. The Department of Justice has declared that conditioning attorney-license recognition on more than § 4025a permits “is illegal”; its Antitrust Division and the Federal Trade Commission have formally condemned the ABA-accreditation gatekeeping Rule 34 enforces; and two executive orders direct the termination of class-based licensing preferences. On the accreditation question in particular, the United States has already spoken.

CONCLUSION

The Ninth Circuit’s decision applying rational-basis review cannot be reconciled with this Court’s decisions, Acts of Congress, and Executive Branch Orders. The petition for a writ of certiorari should be granted and consolidated or coordinated with the concurrently filed petition in *Lawyers for Fair Reciprocal Admission v. United States*, No. 26-____

(petition for a writ of certiorari before judgment; 3d Cir. No. 23-1154). In the alternative, the Court should summarily reverse or should vacate the judgment below and remand for reconsideration in light of *Chiles v. Salazar*, 146 S. Ct. 1010 (2026), which requires heightened scrutiny rather than the rational-basis review the Ninth Circuit applied.

Respectfully submitted,
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September 1, 2026

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the foregoing Petition for a Writ of Certiorari contains 8,885 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 1, 2026.

Joseph Robert Giannini
Counsel of Record
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