

No. 26-326

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

SUPPLEMENTAL BRIEF FOR PETITIONER

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SUPPLEMENTAL BRIEF FOR PETITIONER

Pursuant to Rule 15.8, petitioner Lawyers for Fair Reciprocal Admission (LFRA) calls the Court’s attention to two intervening matters not available when the petition was prepared.

First, on October 5, 2026, the Third Circuit denied rehearing en banc in *MacDonald v. President, New Jersey State Board of Medical Examiners*, No. 25-2090 (3d Cir. Aug. 31, 2026) (precedential), *reh’g en banc denied* (3d Cir. Oct. 5, 2026). The panel opinion issued while the petition was in final production and is not addressed in it. *MacDonald*, now the settled law of the Third Circuit, conflicts with the decision below and with *NAAMJP v. Berch*, 773 F.3d 1037 (9th Cir. 2014), on which the decision below rests. It also removes the stated basis for the sanctions order under review.

Second, on October 19, 2026, the Court granted certiorari in *Association for Education Fairness v. Montgomery County Board of Education*, No. 26-12, to decide how courts review a facially neutral admissions criterion challenged as a means of excluding a class of applicants.

I. *MacDonald* conflicts with the decision below.

The Ninth Circuit held petitioner’s claims “squarely foreclosed” by *Berch* and applied rational-basis review. App. 1a–7a. *Berch* had sustained Rule 34 by classifying attorney admission as professional regulation subject to deferential review. 773 F.3d at 1046–47. The panel rejected petitioner’s reliance on *Chiles* and *Students for Fair Admissions* in a single sentence: Rule 34 “plainly does not ... discriminate on the basis of race, the content of speech, or a particular viewpoint.” App. 5a.

The Third Circuit now holds the opposite at every

step:

- “Requiring a license to speak is, of course, a regulation of speech.” Slip op. 7.
- Such a licensing law is “content-based.” Slip op. 12.
- Legal practice is speech. *Castille* “did not discuss whether there are aspects of legal practice that constitute speech (of course there are, *cf. Veterans Guardian*, 133 F.4th at 219), nor whether a licensure requirement to engage in that speech is a regulation of speech (of course it is).” Slip op. 14.
- Rational-basis review cannot survive *NIFLA*: “even had we held in *Castille* that licensure requirements for the speech aspects of professions always receive mere rational-basis scrutiny, the Supreme Court’s intervening decision in *NIFLA* would require us to revisit it.” Slip op. 14.

The conflict decides cases. In the Third Circuit, a rule that bars a licensed professional from speaking to clients must survive at least intermediate scrutiny; *MacDonald* sustained New Jersey’s rule only after finding its burdens “slight.” Slip op. 25. In the Ninth Circuit, under *Berch*, the same kind of rule needs only a conceivable rational basis. Both are published circuit law. *MacDonald* itself acknowledges that “[n]o precedent establishes the mode of scrutiny for such cases.” Slip op. 22. Only this Court can supply one.

Lawyers’ speech is not second-class speech. As *MacDonald* explains, *NIFLA* “held that there is no category of speech called ‘professional speech’ that receives diminished First Amendment protection.” Slip op. 14; see *Nat’l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755, 767–68 (2018); *Chiles v. Salazar*, 146 S. Ct. 1010, 1024 (2026). The Third Circuit applies

that principle to legal practice by name. The decision below withholds it from licensed attorneys.

II. Under *MacDonald*'s reasoning, Rule 34 could not survive heightened scrutiny.

MacDonald upheld New Jersey's requirement because the State left licensed out-of-state physicians a practical path. A physician licensed elsewhere under substantially equivalent standards "need not be re-examined but must submit an application"; "the fees amount to \$550"; and "the average processing time is three months." Slip op. 4. The burdens were "slight," slip op. 25, and the proposed alternatives "not substantially less burdensome on speech," slip op. 26.

Rule 34 offers no such path. Rule 34(e) grants admission on motion to attorneys licensed in thirty-nine States and the District of Columbia and categorically denies it to attorneys licensed in eleven. App. 78a–91a. The only door left open is a change of class: relicensure and relocated practice in a reciprocal jurisdiction for three of the last five years. Rule 34(e)(1)(A)(ii). Rule 34(b)(1)(D) separately bars recent graduates of non-ABA law schools from even sitting for the Arizona examination. App. 83a.

LFRA member Robin Snyder 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. 204a–208a. She lives in Tempe. She cannot sit for the Arizona bar examination in the city where she lives.

A total exclusion cannot be a "slight" burden. A path like New Jersey's own (an application, a fee, a wait) is the less restrictive alternative Rule 34 refuses. Under the standard the Third Circuit applies, the judg-

ment below could not stand.

III. *MacDonald* removes the stated basis for the sanctions order.

The district court imposed a pre-filing order barring petitioner’s counsel 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 Ninth Circuit affirmed, reasoning that “no reasonable reading of subsequent Supreme Court decisions undermines” its precedent. App. 6a–7a.

A federal court of appeals has now read those decisions exactly that way. *MacDonald* holds that *NI-FLA* would require revisiting any precedent subjecting the licensure of professional speech to mere rational-basis review, and the full Third Circuit has declined to disturb that holding. Slip op. 14. An argument that one circuit has adopted as its published law cannot be frivolous in another. The order now penalizes counsel for advancing the law of the Third Circuit, and it prevents the only litigant presenting these questions in the Ninth Circuit from presenting them again.

IV. The grant in No. 26-12 confirms the importance of the individual-merit question.

The panel set aside *Students for Fair Admissions* because Rule 34 does not “discriminate on the basis of race.” App. 5a. Petitioner does not contend that Rule 34 is a racial classification. But on October 19, 2026, the Court granted review in No. 26-12 limited to “[w]hether a plaintiff challenging a facially neutral admissions policy as racially discriminatory must establish that the targeted racial group suffered an aggregate disparate impact relative to its share of the ap-

plicant pool.” The Court is again examining gatekeeping criteria that sort applicants by group rather than judging them as individuals.

Rule 34 does that sorting openly. Admission turns on where an attorney is licensed and where she went to school, never on her competence, record, or examination history. That is the question this petition presents: whether a State may allocate the right to practice law, and so to speak as a lawyer, by class membership rather than individual merit. See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 231 (2023).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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