

No. 26–336

In the Supreme Court of the United States

JOHN C. EASTMAN,
Petitioner,

v.

STATE BAR OF CALIFORNIA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

**MOTION FOR LEAVE TO FILE THE BRIEF
AND BRIEF OF BRUCE JACOBS, ESQ.
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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Unopposed Motion for Leave to File the Brief of *Amicus Curiae*

**UNOPPOSED MOTION FOR LEAVE TO FILE
THE BRIEF OF *AMICUS CURIAE***

Amicus curiae Bruce Jacobs moves this Court pursuant to this Court's Rule 21 for leave to file the attached brief as *amicus curiae*. This Court's Rule 37 provides that all parties must receive notice of the intent of *amicus curiae* to file a brief in support of a petition 10 days before the due date. Counsel of record for all parties received notice of *amicus*'s intention to file this brief on October 6, 2026, eight days before the due date. Counsel for petitioner and counsel for respondent have each confirmed in writing that their clients do not object to the shortened notice period and consent to the filing of this brief. The brief of *amicus curiae* will assist this Court in considering the Petition for reasons explained herein. Accordingly, because all parties consent and none will be prejudiced, *amicus curiae* requests leave be granted to file the attached brief.

INTEREST OF *AMICUS CURIAE*¹

Amicus Bruce Jacobs is a member of the Bar of this Court. He practiced law in Florida for twenty-five years, as a prosecutor and then as counsel to homeowners in foreclosure cases. He was also admitted to the New York and New Jersey bars. He has been permanently disbarred in Florida. New York and

¹ No counsel for a party authored this brief in whole or in part, and no person other than *amicus* made a monetary contribution to its preparation or submission.

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New Jersey are now deciding whether to give that judgment reciprocal effect.

The conduct was argument in filings for his clients: a motion for rehearing en banc, a response to a petition for writ of prohibition, and motions to disqualify, each addressed to the court whose ruling it challenged. He was found guilty under a standard that required him to prove an objective factual basis for his statements. Under that test, the Bar did not have to prove that the statements were false or that he knew or recklessly disregarded that they were. It had only to show his statements concerned the qualifications or integrity of judges; the burden then shifted to him.

Amicus writes because he is one of at least eight Florida lawyers disciplined under Florida’s standard in the past three years,² and because those judgments

² *Florida Bar v. Jacobs*, 370 So. 3d 876 (Fla. 2023) (statements in court filings; no finding of falsity; ninety-one days), and Fla. S. Ct. order of May 6, 2025 (same kind of filings; permanent disbarment); *Florida Bar v. Mirabal*, 390 So. 3d 1172 (Fla. 2024) (letter to the Bar about a judge; disbarment); *Florida Bar v. Rohe*, No. SC2022–1349 (Fla. Jan. 21, 2025) (letter filed in his own foreclosure case; reckless disregard found by the referee; six months); *Florida Bar v. Leigh*, 405 So. 3d 347 (Fla. 2025) (appellate brief accusing a judge of bias; objective test applied, 405 So. 3d, at 358; disbarment on six counts); *Florida Bar v. Girley*, 417 So. 3d 230 (Fla. 2025) (two lawyers; social media posts and online interviews; reckless disregard found; thirty days each), cert. denied, 607 U.S. ____ (Feb. 23, 2026); *Florida Bar v. Metroka*, No. SC2024–1794 (Fla. Jan. 22, 2026) (default; filing concerning an arbitrator; the referee’s report finds “no reasonable basis in the record evidence” for the allegations, Report of Referee at 52–53, without separately finding knowing or reckless falsity as to those allegations; disbarment on four counts), cert. denied, 608 U.S. ____ (May 4, 2026), reh’g denied 610 U.S. ____ (Oct. 5, 2026);

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stand. He writes because his record happens to contain what a petition for certiorari most needs and rarely has: the Florida Supreme Court saying, in a published opinion, that the test of *New York Times Co. v. Sullivan*, 376 U. S. 254 (1964), “does not apply” to a lawyer disciplined for speech about a judge, and that “the burden shifts to the respondent.” *Florida Bar v. Jacobs*, 370 So. 3d 876, 883 (Fla. 2023).

Petitioner’s case presents the question from California. *Amicus*’s case shows that once the burden shifts, no breathing space is left to protect free speech. The concern is not only that States disagree. It is that a growing majority of them have replaced this Court’s rule with one of their own, and that the replacement leaves a lawyer’s speech none of the breathing space the First Amendment requires. Lawyers in Florida are learning to fear that asserting a client’s right to a fair tribunal can end in personal and professional ruin. Only this Court can restore the constitutional order those decisions are displacing, State by State.

SUMMARY OF THE ARGUMENT

The State Bar of California will describe this as a case about one lawyer and the events of the 2020 election. The question this case presents is not so limited.

Florida Bar v. Ferro, Nos. SC2024–0156 and SC2024–0613 (Fla. Apr. 13, 2026) (campaign website; referee found reckless disregard; three years). The sanctions in *Leigh* and *Metroka* also rest on other violations. The referee’s reports, motions, and orders cited in this brief that do not appear in a reporter are available on The Florida Bar’s public discipline docket, <https://www.floridabar.org/public/acap/>, under the case numbers given.

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The question is whether a State may discipline a lawyer for speech, even speech that impugns a judge, without proving the speech was false and the lawyer knew or recklessly disregarded that it was false.

By the count in the most recent petition to present this First Amendment question, more than thirty jurisdictions apply an objective standard that asks something else. Petition for Certiorari in *Pierre v. Attorney Grievance Comm’n*, No. 23–747, p. 14, and n. 7 (Jan. 8, 2024). Petitioner was disciplined under that standard in California. *Amicus* was disciplined under it in Florida and had the burden to prove an objectively reasonable factual basis for his statements. So were seven other Florida lawyers in the last three years, for speech both in and out of court. Neither result is consistent with this Court’s precedents.

Rule 8.2(a) and its state analogues say that a lawyer may not make a statement about a judge “that the lawyer knows to be false or with reckless disregard as to its truth or falsity.” Three versions of that rule now exist, as this brief describes them. Under the first, the rule as adopted, the State proves falsity and knowing or reckless disregard, as *New York Times Co. v. Sullivan* and *Garrison v. Louisiana*, 379 U.S. 64 (1964), require.

Under the second, the State proves that a reasonable lawyer would not have said it. Under the third, which is Florida’s, the State proves that the lawyer spoke about a judge, and the lawyer must then prove an objectively reasonable factual basis for what he said: “the burden shifts to the respondent.” *Jacobs*, 370 So. 3d, at 883. Only the first follows *Sullivan*. Only the third combines both departures.

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The defect is cumulative. The objective test strips away the speaker's state of mind, and the burden shift then makes the speaker prove his entitlement to speak. A rule that punishes a lawyer for what he believes to be true, unless he can later prove it, leaves none of the breathing space *Sullivan, Garrison*, and *Speiser v. Randall*, 357 U.S. 513 (1958), require, and it cannot become the majority rule by accumulation when this Court's precedent is clear and controlling.

The situation is getting worse. In March 2026, *Chiles v. Salazar*, 607 U.S. 627 (2026), held that a professional license does not diminish the protection. In July 2026, the Florida Supreme Court applied *Chiles* to the same rule and held it subject to strict scrutiny with the burden on the Bar, *Florida Bar v. Crowley*, No. SC2020–0529, slip op., at 10–12, and n. 9 (Fla. July 9, 2026). Yet the same day, without comment, it denied rehearing to a lawyer it had suspended for three years under the old standard for political speech. *Florida Bar v. Ferro*, Nos. SC2024–0156 & SC2024–0613 (Fla. July 9, 2026) (order denying rehearing). The eight Florida judgments imposing discipline for attorney speech stand, and other States are deciding on reciprocal discipline.

The petition presents the question from California, whose disciplinary court applied “an objective, reasonableness standard” to petitioner, App. 103a. The other amici address his public political speech and the vagueness of California's statutes. This brief takes up what they leave: what must the State prove before it punishes a lawyer's speech, even about a judge, and who must prove it.

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ARGUMENT

I. Three Rules Now Go by the Name of Rule 8.2(a), and Only One of Them Follows *Sullivan*

As written, Rule 8.2(a) tracks *Sullivan*: speech believed to be true is protected. States must prove falsity and a culpable state of mind to overcome the First Amendment. The Supreme Court of Florida said “the language of rule 4-8.2(a) closely tracks the subjective ‘actual malice’ standard of *New York Times v. Florida Bar v. Ray*, 797 So. 2d 556, 558 (Fla. 2001).

Reckless disregard, in this Court’s cases, is a fact about the speaker’s mind: “[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication,” and “reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing.” *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). “The standard is a subjective one.” *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989).

A. The Original, Now Minority Rule: The *Sullivan* Test

The original rule, now the minority rule, has been applied for almost five decades: courts enforce Rule 8.2(a) as adopted, under *Sullivan*. California’s Supreme Court applied *Garrison* to a lawyer’s criticism of judges in *Ramirez v. State Bar*, 28 Cal. 3d 402, 411 (1980). Colorado requires the disciplinary authority to prove falsity and actual malice. *In re Green*, 11

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P. 3d 1078, 1085–1086, and n. 7 (Colo. 2000) (leaving open how recklessness is measured).

B. The Majority Rule: The State Proves an Objective Standard

The second and now majority rule began in Minnesota and New York in 1990 and 1991. *In re Graham*, 453 N. W. 2d 313, 322 (Minn. 1990); *In re Holtzman*, 78 N. Y. 2d 184 (1991); *In re Westfall*, 808 S. W. 2d 829, 837 (Mo. 1991); *Office of Disciplinary Counsel v. Gardner*, 793 N. E. 2d 425, ¶¶ 25–26, 31 (Ohio 2003) (adopting “an objective standard to determine whether a lawyer’s statement about a judicial officer is made with knowledge or reckless disregard of its falsity”); *Board of Professional Responsibility v. Parrish*, 556 S. W. 3d 153 (Tenn. 2018); see generally Petition for Certiorari in *Pierre v. Attorney Grievance Comm’n*, No. 23–747, pp. 14–17, and nn. 7–8, 31, n. 11 (collecting decisions of over thirty jurisdictions and eleven denials of certiorari).

Courts may say they are defining reckless disregard. They are replacing it. Many States leave the burden where this Court put it. Ohio adopted the objective test in a case where the disciplinary authority “bore the burden of proof.” *Gardner*, ¶ 32. The Ninth Circuit, though it uses an objective test, holds that “the disciplinary body bears the burden of proving falsity” and reversed where a court, “[b]y presuming falsity,” had “unconstitutionally relieved the Standing Committee of its duty to produce evidence on an element of its case.” *Standing Comm. on Discipline v. Yagman*, 55 F. 3d 1430, 1438, 1441 (CA9 1995).

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C. The Florida Rule Shifting the Burden and the Standard

The third rule is Florida's.

“[W]e have held that the defamation test articulated in *New York Times Co. v. Sullivan* . . . does not apply in these circumstances. Instead, we use an objective test, asking if the lawyer had an objectively reasonable factual basis for making the statements. Thus, once the Bar presents evidence establishing that a lawyer made statements concerning the qualifications or integrity of a judge, the burden shifts to the respondent to provide an objectively reasonable factual basis for making the statements.” *Jacobs*, 370 So. 3d, at 883 (citations and internal quotation marks omitted).

Under that test, the Bar proves one fact: that the lawyer spoke about a judge's integrity. Everything else is the lawyer's burden to prove. The test requires no finding of falsity or of knowing or reckless disregard, and in *Jacobs* none was made.

The burden shift entered Florida law in a footnote. *Ray* adopted the objective test in the body of its opinion, 797 So. 2d, at 559, and shifted the burden in footnote 3, where the Florida Supreme Court said the point “merit[ed] only a brief discussion” as it “see[s] no error in the burden then shifting to Ray.” *Id.*, at 558, n. 3. The footnote cites a state summary-judgment case, no decision of this Court, and does not mention this Court assigned the burden to the State in *Speiser*.

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In *Ray*, the Florida Supreme Court said, “Our resolution of this case does not limit an attorney’s legitimate criticism of judicial officers,” and it upheld discipline on a record containing express findings that the accusations were “utterly false” and made “at a minimum . . . with reckless disregard for the truth.” 797 So. 2d, at 560, 558.

In *Jacobs*, the Florida Supreme Court made *Ray* dispositive in a case where no such finding was made. Between *Jacobs* and *Crowley*, the Supreme Court of Florida applied the third rule to eight lawyers in three years, *amicus* twice. See note 2, *supra*. The lawyer’s “personal belief in the accuracy of the statement does not constitute an objectively reasonable factual basis,” *Florida Bar v. Mirabal*, 390 So. 3d 1172, 1185 (Fla. 2024), and *New York Times* is “precedent unrelated to the Bar disciplinary proceedings,” *Florida Bar v. Ferro*, Nos. SC2024–0156 & SC2024–0613, Report of Referee at 35 (Fla. Apr. 28, 2025).

Florida’s rule departs twice from *Sullivan*: it drops the state of mind the First Amendment requires and shifts the burden of proof the First Amendment places on the State to the attorney. The rule permits discipline for failing to prove a reasonable factual basis without requiring proof of knowing or reckless falsity. Failure of proof is not proof of recklessness. This Court has never said it is. Yet an attorney in Florida takes a deep breath and risks professional ruin when deciding to file a motion, sworn by the client, to protect that client’s right to a fair and impartial tribunal. Fla. R. Gen. Prac. & Jud. Admin. 2.330(c)(3).

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II. The Second and Third Rules Contravene This Court’s Precedent, and the Premise for Both Is Gone

Under *Sullivan* and *Garrison*, the lawyer who believed what he said and cannot be proven reckless is protected. Under Florida’s test, the lawyer who believed what he said and cannot prove a reasonable factual basis for it is disciplined. The two rules do not differ in degree. They assign the risk of uncertainty to opposite parties. *Garrison* explained why that assignment is constitutional law and not a matter of state preference: a standard keyed to “ordinary care” rather than to the speaker’s “high degree of awareness of their probable falsity” punishes speech the First Amendment protects, 379 U. S., at 74, 79, and a test of reasonable belief “is not the same as the reckless-disregard-of-truth standard.” *Id.*, at 79.

Under *Speiser*, the burden shift invokes due process: “the man who knows that he must bring forth proof and persuade another of the lawfulness of his conduct necessarily must steer far wider of the unlawful zone,” so “where the transcendent value of speech is involved, due process certainly requires . . . that the State bear the burden of persuasion.” 357 U. S., at 526.

This Court applied the same two principles to a category of unprotected speech in *Counterman v. Colorado*, 600 U. S. 66, 73, 75, 78 (2023), and described negligence as “an objective standard, of the kind we have just rejected.” *Id.*, at 79, n. 5. A federal court said Florida’s rule “can be constitutionally applied to false statements about judges made with knowledge of falsity or with reckless disregard for their truth.”

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Thompson v. Florida Bar, 526 F. Supp. 2d 1264, 1281 (SD Fla. 2007). *Jacobs*, slip op., at 8, cited *Thompson* and applied the rule without that element.

The objective-test courts do not disagree with this Court about what *Sullivan* requires. They say lawyers are different: “[M]embers of the Bar are viewed by the public as having unique insights into the judicial system,” so public confidence in the judiciary “supports applying a different standard than that applicable in defamation cases.” *Ray*, 797 So.2d, at 559. That is a description of what *Sullivan* does for everyone. These courts hold that it should not do it for lawyers, because they are lawyers.

This Court has now answered that argument. *Chiles* rejected the proposition that speech by a licensed professional receives “diminished constitutional protection” or occupies a “separate category,” *Chiles*, 607 U. S., at 647, and held that a licensing regime “does not automatically entail a right to dictate a professional’s point of view.” *Id.*, at 652.

The Supreme Court of Florida recently applied *Chiles* to Rule 4-8.2(a): the rule is content based, “presumptively unconstitutional,” subject to strict scrutiny with the burden on the Bar. *Crowley*, slip op., at 10–12. That has been the law for over sixty years: “a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights.” *NAACP v. Button*, 371 U. S. 415, 439 (1963), quoted in *Crowley*, slip op., at 11, n. 9.

Crowley concerned a lawyer’s statements about a candidate for state attorney, and the court said the Bar’s interest would justify restricting speech that “recklessly impugns” sitting judges. *Crowley*, slip op.,

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at 12–13. Reckless is *Sullivan*’s word. *Crowley* did not say whether Florida will now give it *Sullivan*’s meaning or keep the objective test, under which recklessness has never had to be proved.

Florida’s burden-shifting test does not ask whether the State proved the lawyer crossed *Sullivan*’s line; it asks whether the lawyer can establish an objectively reasonable factual basis for his statement. The premise of the second and third rules, that attorney speech has less protection, is gone. The rules are not.

The result in Florida is an inversion. Under *Crowley*, a lawyer’s campaign speech about a candidate for prosecutor receives strict scrutiny with the burden on the Bar. Under *Jacobs*, a lawyer’s motion to disqualify the judge in his client’s case receives the objective test with the burden on the lawyer.

Tennessee applies an objective standard to “an attorney’s in-court speech” in terms. *Parrish*, 556 S. W. 3d, at 166. The Fifth Circuit reads the rule not to reach “a lawyer’s in court comments concerning the judge’s actual performance,” as “[a]ttorneys should be free to challenge, in appropriate legal proceedings, a court’s perceived partiality.” *United States v. Brown*, 72 F. 3d 25, 28–29 (CA5 1995) (leaving accusations of dishonesty to the rule). Even *Gentile*’s lesser standard for out-of-court comment on a pending case is a showing the State must make. *Gentile v. State Bar of Nevada*, 501 U. S. 1030, 1075 (1991).

Nor would the third rule survive the scrutiny *Crowley* applied to the same rule. A litigant’s right to an impartial judge is a due process right, *Caperton v. A. T. Massey Coal Co.*, 556 U. S. 868, 876 (2009), asserted by a motion the client must swear to and file within

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twenty days of discovering the grounds, ten when *amicus's* motions were filed. Fla. R. Gen. Prac. & Jud. Admin. 2.330(c)(3), (g) (formerly 2.330(e)). It must be raised before anyone has decided whether it is well founded. A Florida lawyer who raises it at the risk of later having to establish to a referee an objectively reasonable factual basis for it decides at that moment whether his client's rights are worth his license. The "breathing space" *Sullivan* said the First Amendment requires, *New York Times*, 376 U. S., at 272, is removed from the one place a lawyer is required to speak.

The codes governing judges forbid retaliation against those who report judicial misconduct through the proper channels (cf. ABA Model Code of Judicial Conduct R. 2.16(B); Rules for Judicial-Conduct and Judicial-Disability Proceedings 4(a)(4)), and the motion is the channel provided inside a case. A rule under which the lawyer's protection depends not on whether the State can prove knowing or reckless falsity but on whether the lawyer can later establish an objectively reasonable factual basis for the allegation he was required to raise does not regulate lawyers. It makes lawyers reasonably fear their clients' right to a fair judge puts their license at risk.

The Supreme Court of Florida itself has said that attorneys "play an important role in exposing valid problems within the judicial system." *Ray*, 797 So.2d, at 560. The third rule disables them. Neither a State's "interest in protecting the reputation of its judges" nor "its interest in maintaining the institutional integrity of its courts" justifies punishing speech, because "injury to official reputation is an

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insufficient reason ‘for repressing speech that would otherwise be free.’” *Landmark Communications, Inc. v. Virginia*, 435 U. S. 829, 841–842 (1978).

The State’s interest in public confidence in the judiciary is real, but none of the decisions cited in this brief shows that punishing a lawyer for reporting, in the forum provided, what he believes to be judicial misconduct or partiality, without proving knowing or reckless falsity, is narrowly tailored to it.

III. The Problem Is Getting Worse. Only This Court Can Correct It

This Court has denied review of this question at least fourteen times, in *Ray* itself, 535 U. S. 930 (2002); in *Pierre*, 601 U. S. 1024 (2024) (cert. denied); and in two Florida judgments entered under *Jacobs, Girley v. Florida Bar*, 607 U. S. ____ (Feb. 23, 2026), and *Metroka*, 608 U. S. ____ (May 4, 2026). Every denial of certiorari but the last came before *Chiles*. Every denial came before *Crowley*. Eleven denials between 1980 and 2018, from *In re Terry*, 394 N. E. 2d 94 (Ind. 1979), through *In re MacDonald*, 906 N. W. 2d 238 (Minn. 2018), and including *Graham*, *Holtzman*, *Westfall*, *Ray*, and *Gardner*, are collected in the *Pierre* petition at 31, n. 11.

Crowley now supplies a reason none of those petitions could offer: the Florida Supreme Court has called the premise used to discipline *amicus* wrong. In permanently disbarring *amicus*, that court adopted a referee’s report that disposed of his First Amendment defense in one sentence: “The practice of law is a privilege, not a right.” Amended Report of Referee at 12. The same court has now said: “To the extent

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the Bar suggests that it can broadly regulate attorney speech because licensure is a conditional privilege, it is wrong.” *Crowley*, slip op., at 11, n. 9.

Yet the disciplinary judgments against all eight Florida lawyers remain standing. *Amicus* faces reciprocal discipline in other States. Those continuing consequences give urgency to two constitutional questions: (1) whether a State may impose on the speaker the burden this Court’s precedents assign to the State, and (2) whether a State may punish otherwise protected attorney speech without proving that the statement was false and that the lawyer knew it was false or recklessly disregarded its falsity.

Florida disciplined eight lawyers under the third version of Rule 8.2(a) before it acknowledged a constitutional problem with the rule at all. See note 2, *supra*; *Crowley*, slip op., at 10–12, and n. 9. Two of them asked the court to explain the standard. *Rohe* asked it to “Write an Opinion on the Merits of Respondent’s Case”; it declined. Order Denying Motion to Vacate, *Rohe*, No. SC2022–1349 (Fla. Feb. 26, 2025). *Ferro* asked it to decide “whether members of the Florida Bar have the right of protected political speech in contested elections,” Motion for Rehearing at 3, *Ferro*, Nos. SC2024–0156 & SC2024–0613 (Fla. Apr. 24, 2026), and on July 9, 2026, the day it decided *Crowley*, the same court denied the motion without comment. Order (Fla. July 9, 2026). *Crowley* cited one of those judgments, *Girley*, as an example of speech that “recklessly impugns” sitting judges. *Crowley*, slip op., at 12–13 (citing *Girley*, 417 So. 3d, at 238–239).

In *Girley*, *Ferro*, and *Rohe*, a recklessness finding was made alongside the objective test. *Girley*, 417

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So. 3d, at 238–239; *Ferro*, Report of Referee at 10–11; *Rohe*, Report of Referee at 12. In *Jacobs*, *Leigh*, and *Metroka*, the opinion or report contains none. *Jacobs*, slip op., at 12, 15; *Leigh*, 405 So. 3d, at 358; *Metroka*, Report of Referee at 35, 37, 52–53. *Crowley* cited the first kind and said nothing of the second. *Crowley* did not say if it affects the eight attorneys’ discipline.

The division now runs inside jurisdictions as well as among them: California applied *Garrison* in 1980, *Ramirez*, 28 Cal. 3d, at 411, and an objective standard to petitioner in 2025. Florida stated the third rule in 2023 and applied strict scrutiny in 2026, with every judgment in between left standing. Whether a lawyer’s speech, even about a judge, is presumptively protected now depends on the State, the year, the circumstance, and, in Florida, which lawyer is asking.

The petition’s first question is the vehicle. The Review Department assessed petitioner under “an objective standard, not a subjective one,” App. 94a, applied “an objective, reasonableness standard” as its First Amendment framework, App. 103a, and asked whether he had a “reasonable factual or legal basis,” App. 104a. The petition argues that the Review Department did not distinguish the statements by count or forum in its First Amendment analysis. Pet. 11, 19–22. The petition says the framework “shifted the practical burden from the State to the speaker.” Pet. 20. Petitioner also argues that, because the sanction rested on all ten counts, a constitutional defect in any count taints the sanction. Pet. 39–40. What the State must prove, and who must prove it, is this case.

Professors Roiphe, Strossen, and Volokh address petitioner’s public statements and take “no position”

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on his “statements in legal proceedings.” Liberty Legal Foundation and its co-amici address the vagueness of California’s “moral turpitude” and “support the Constitution” provisions.

Neither addresses Rule 8.2(a) as the States enforce it, the *Garrison* and *Speiser* line, or any lawyer disciplined for what he said in court. The third rule does not depend on petitioner’s politics, his client, or the 2020 election.

IV. *Amicus*’s Case Shows What the Third Rule Can Do to Even a Lawyer Who Believed and Had Support for What He Said

The opinion that stated the third rule is the opinion that first suspended *amicus*. *Jacobs*, 370 So. 3d, at 883. The Florida Supreme Court recorded that *amicus* “only denies that his statements were false or made with reckless disregard for the truth,” *Jacobs*, slip op., at 12, and never ruled on the denial. It cited testimony from judges and lawyers that *amicus* was “a true believer” whose arguments “were made in good faith,” and that testimony “might suggest that Jacobs had a basis to believe” his legal positions were correct, *Jacobs*, slip op., at 13–15.

The court found him guilty because “the question before us is not whether Jacobs was right The question is whether Jacobs was entitled to impugn the integrity of judges who ruled against him.” *Jacobs*, slip op., at 13. He was disciplined because he “did not meet his burden.” *Jacobs*, slip op., at 15.

The Florida Supreme Court recorded evidence bearing on what *Sullivan* required the State to prove: falsity, and knowing or reckless disregard of falsity. It

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decided neither. Instead, it weighed that testimony under its objective test. It never asked the *Sullivan* question. The Bar may say testimony supported *amicus*'s legal theories and his sincerity, not his accusations about judges. That is the point.

The absence of corroboration for an accusation does not alone establish a lawyer knew it was false or recklessly disregarded whether it was. Yet Florida required the lawyer to establish a reasonable factual basis for the accusation rather than requiring the State to prove knowing or reckless falsity. That is the constitutional defect: Florida placed on the speaker the burden this Court's precedents place on the State.

The opinion fixed ninety-one days as the sanction and rejected a longer term because *amicus* had no prior discipline. *Jacobs*, slip op., at 20–22. He already served a six-month suspension in New York as reciprocal discipline for Florida's ninety-one-day suspension. *Matter of Jacobs*, 242 A. D. 3d 90, 91, 96–97 (2025). Before Florida's first suspension, a second case concerning the same kind of arguments, all made before his first suspension, was pending. In May 2025, the Florida Supreme Court permanently disbarred *amicus* on those charges. *Florida Bar v. Jacobs*, No. SC2022–0893, order at 1 (Fla. May 6, 2025).

Seven weeks later, two lawyers whose statements were expressly found to be made “with reckless disregard of their truth or falsity” received a suspension of thirty days, citing *amicus*'s ninety-one days as the comparator. *Girley*, 417 So. 3d, at 238–239; *id.*, slip op., at 14, 23. Florida knows how to find recklessness. It found it in the case that got thirty days, and not in

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the case that produced its standard, or in the one that ended in permanent disbarment.

Amicus seeks nothing here about his own judgment. The lawyer who files a motion sworn to by a client, who fears the judge is not impartial, in Florida still must fear his speech is not protected. Even with a good-faith belief and testimony of judges and lawyers who vouched for his good faith, his license may be forfeit unless a referee finds he proved a reasonable factual basis for his statements that impugned a judge.

Whether a State may do that is a question only this Court can resolve as States have answered three ways for more than thirty years, and Florida's Supreme Court has answered two ways in the last three years.

* * *

This Court has told the Florida Bar that “[t]here are circumstances in which we will accord speech by attorneys on public issues and matters of legal representation the strongest protection our Constitution has to offer.” *Florida Bar v. Went For It, Inc.*, 515 U. S. 618, 634 (1995). This is one of them. The reason is not solicitude for lawyers. It is that courts cannot do their work without them: “An informed, independent judiciary presumes an informed, independent bar,” and a rule that restricts what lawyers may present to the courts “distorts the legal system by altering the traditional role of the attorneys.” *Legal Services Corp. v. Velazquez*, 531 U. S. 533, 544–545 (2001).

A lawyer who tells a court, in the motion the rules provide, that a judge should not sit is performing a critical role, as an officer of the court, at the point where the integrity of the judiciary is directly at stake.

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A test for disciplining attorney speech should be built as if the integrity of the judiciary depended on getting it right. Only this Court can decide what a State must prove to punish a lawyer's speech, and who must prove it. The standard that ensures breathing room for the First Amendment requires the State to prove the statement false and that the lawyer knew or recklessly disregarded that it was false. The First Amendment should most strongly protect attorneys compelled to raise legitimate criticisms about a judge.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted.

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