

No. 26-336

IN THE
Supreme Court of the United States

JOHN C. EASTMAN, *Petitioner*,

v.

STATE BAR OF CALIFORNIA.

*On Writ of Certiorari to the
Supreme Court of California*

**BRIEF OF *AMICI CURIAE* CYRUS SANAI
AND PEYMAN ROSHAN IN SUPPORT
OF PETITIONER JOHN C. EASTMAN**

Frances L. Diaz
SB#159837
Law Offices of Frances L. Diaz
8306 Wilshire Boulevard, #263
Beverly Hills, California 90211
(310) 927-5086
francesdiaz@frontier.com

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
INTERESTS OF AMICI CURIAE.....	1
INTRODUCTION	2
SUMMARY OF ARGUMENT	3
ARGUMENT	5
A. EASTMAN’S PETITION IS A POOR VEHICLE FOR RAISING FIRST AMENDMENT CLAIMS AS THE CALIFORNIA STATE BAR COURT IS AN ADMINISTRATIVE BODY THAT IS NOT AN ARM OF THE STATE.....	5
1. <i>Relevant History of the Current California Attorney Discipline System.....</i>	<i>5</i>
2. <i>This Court Does not Have the California Supreme Court’s Rationale for Disbarment before It.</i>	<i>13</i>
B. EASTMAN RAISES SERIOUS CONSTITUTIONAL ISSUES WITHOUT THE CORRECT SUPREMACY CLAUSE FRAMING.	21
C. WHILE GRANTING EASTMAN’S PETITION AND SETTING HIS CASE FOR ARGUMENT IS NOT APPROPRIATE AT THIS TIME, THERE IS RELIEF AVAILABLE TO HIM.	24
CONCLUSION	27

TABLE OF AUTHORITIES

Cases

<i>Abbott v. Vavala</i> , No. 60, 2022 (Del. Sup. Ct. Aug. 22, 2022)(per curiam)	26, 27
<i>Arizona v. United States</i> , 567 U.S. 387 (2012).....	21, 23
<i>Barry v. State Bar</i> , 2 Cal.5th 218 (2017).....	5, 10
<i>Berg v. Davi</i> , 130 Cal.App.4th 223 (2005).....	21
<i>Buckman Co. v. Plaintiffs’ Legal Comm.</i> , 531 U.S. 341 (2001)	21
<i>Calhoon v. State Bar</i> , 9th Cir. Docket No. 24-7627 (July 20, 2026)(unpub.)	12
<i>Consumer Lobby Against Monopolies v. Public Utilities Commission</i> , 25 Cal.3d 891 (1979)14, 15, 16	
<i>Cutter v. Wilkinson</i> , 544 U.S. 709 (2005)	20
<i>Galette v. N.J. Transit Corp.</i> , 146 S.Ct. 854 (2026)	1
<i>Haywood v. Drown</i> , 556 U.S. 729 (2009).....	24, 27
<i>Hirsh v. Justices of the Supreme Court of the State of California</i> , 67 F.3d 708 (9th Cir. 1995)	10, 11
<i>In re Loney</i> , 134 U.S. 372 (1890)	21
<i>In re Rose</i> , 22 Cal.4th 430 (2000)	2, 3, 10, 11, 13, 19
<i>Jacobs v. State Bar</i> , 20 Cal.3d 191 (1977)	6, 10
<i>Kohn v. State Bar of Cal.</i> , 87 F. 4th 1021 (9th Cir. 2023) (en banc)	2, 12
<i>Napa Valley Co. v. R.R. Com.</i> , 251 U.S. 366 (1920)	2, 14, 15
<i>Reed v. Goertz</i> , 143 S.Ct. 955 (2023)	1
<i>Sheller v. Sup. Ct.</i> , 158 Cal.App.4th 1697 (2008).....	6
<i>T.M. v. Univ. of Md. Med. Sys. Corp.</i> , 146 S.Ct. 1739 (2026).....	2
<i>Williams v. Reed</i> , 145 S.Ct. 465 (2025).....	1, 2, 3, 27, 28

Statutes

18 U.S.C. §371	21
----------------------	----

42 U.S.C. §1983.....	3, 10, 24, 26, 27
18 U.S.C. §3231.....	21
Cal. Bus. & Prof. Code §6000 <i>et seq.</i>	10

Other Authorities

Historical Tidbits, Cal. State Bar, Celebrating 75 Years (2002), found at archive.calbar.ca.gov/archive/calbar/pdfs/cbj/75th- Anniversary.pdf	5
K. Beitiks, A Changing Expanding Profession Membership in Cal. State Bar, Celebrating 75 Years (2002), found at archive.calbar.ca.gov/archive/calbar/pdfs/cbj/75th- Anniversary.pdf	5

Rules

Cal. R. Ct. 9.16(a)	2, 15
Tex. R. Disciplinary P. 3.06.....	11

Constitutional Provisions

Calif. Const. art. III, §3.5.....	10
Calif. Const. art. VI, §10	11
U.S. Const. art. VI, cl. 2	1, 21, 23, 24, 27

INTERESTS OF AMICI CURIAE¹

Amici Cyrus Sanai (“Sanai”) and Peyman Roshan (“Roshan”) are California attorneys who have challenged California attorney discipline proceedings. In January of 2024 this Court denied a pair of petitions, *Sanai v. Lawrence*, Case No. 24-588, and *Roshan v. Lawrence*, Case No. 24-586. Last year this Court denied their petitions for certiorari *Roshan v. Lawrence*, Case No. 24-586 and *Sanai v. U.S. Court of Appeals for the Ninth Circuit*, Case No. 25-196. Shortly thereafter, this Court issued *Williams v. Reed*, 145 S.Ct. 465 (2025) (“*Williams*”), holding that administrative proceedings which grant the *Ex Parte Young* defendants immunity under state law applicable in state court violate the Supremacy Clause. U.S. Const. art. VI, cl. 2. Both Sanai and Roshan have ongoing lawsuits against *Ex Parte Young* defendants in federal court relying upon *Williams*, but have been stymied by the Ninth Circuit’s refusal to properly apply this Court’s precedent interpreting the *Rooker-Feldman* doctrine, particularly *Reed v. Goertz*, 143 S.Ct. 955 (2023), and *Younger* abstention.

This year this Court issued *Galette v. N.J. Transit Corp.*, 146 S.Ct. 854 (2026) (“*Galette*”), which created a new test for determining whether a public corporation is an “arm of the state” entitled among other things to sovereign immunity. This case

¹ No part of this brief was written by counsel for any party. No party, or any other person or entity other than amici, monetarily contributed to the preparation or submission of this brief. The parties have received notice of the planned filing at least 10 days before the deadline

rejected the test employed by the Ninth Circuit holding that the State Bar of California is an arm of the state of California. *Kohn v. State Bar of Cal.*, 87 F.4th 1021 (9th Cir. 2023) (en banc). This Court also issued *T.M. v. Univ. of Md. Med. Sys. Corp.*, 146 S.Ct. 1739 (2026) However, the Ninth Circuit has refused to accept that *Galette* and *Williams* overrule Circuit case law and that *T.M.* explicitly limits *Rooker-Feldman* to lawsuits attacking state-court judgment. Both Sanai and Roshan have obtained extensions of time to file petitions for certiorari in follow-up litigation that sought recognition of these two decisions in the Ninth Circuit. See *Sanai v. Cardona*, Docket No. 26A271; *Sanai v. Kruger*, 26A270; *Roshan v. Lawrence*, Docket No. 26A123.

INTRODUCTION

John Eastman and his initial amici have presented a compelling case that he was wrongfully disbarred by the California Supreme Court. However, he has not presented to this Court any reasoned judicial decision for this Court to review, due to the structure of California attorney regulation. The California Supreme Court has held that based on a decision of this Court, a denial of a petition for review in an attorney discipline matter is a final decision on the merits—but what is actually decided is that the petition has failed to make an adequate showing that the State Bar Court proceedings meet one of the grounds for review set forth in Cal. R. Ct. 9.16(a). See *In re Rose*, 22 Cal.4th 430, 444 (2000) (“*Rose*”), citing *Napa Valley Co. v. R.R. Com.*, 251 U.S. 366 (1920) “*Napa Valley*”),

Eastman asserts without citation that the State Bar Court Review Department opinion is adopted in full by the denial of the petition. This is not so. In *Rose*, the majority and both dissents all agreed that summary denial of a petition for review does not result in a judicial opinion coming into existence.

This Court therefore does not have before it a reasoned judicial opinion to review. Congress has given the victims of unconstitutional administrative proceedings a workaround: 42 U.S.C. §1983. However, unlike other professional license matters, California has stripped its superior courts of jurisdiction to hear §1983 lawsuits attacking or otherwise, violating *Williams* and the case upon which it relies. Eastman has no way of presenting a judicial opinion on the constitutional issues to this Court.

SUMMARY OF ARGUMENT

Eastman's petition does not address an underlying reasoned judicial opinion. The opinion at issue is not an order of a judicial body, but a recommendation by an independent public corporation that is not deemed an arm of the state under federal law or a judicial body under California law. As a matter of practice attorneys subject to California attorney discipline virtually never receive an order from a court or full judicial consideration of their case. Congress provided a constitutionally guaranteed procedure for raising constitutional challenges to administrative and other proceedings under color of state law before a state court, 42 U.S.C. §1983. *See Williams*. However, the

California Legislature jurisdiction-stripped California courts from hearing such challenges against attorney discipline proceedings, and *Younger* abstention and the *Rooker-Feldman* doctrine have been elevated by the Ninth Circuit to cut off relief in federal court notwithstanding this Court's recent precedent.

Without a reasoned state court opinion, this Court has no way of knowing whether there was an adequate and independent state law basis for denying relief. Eastman's petition requires this Court to either play the role of a court of first view, not review, or scour the record to guess what the California Supreme Court might have ruled if it were required to explain its reasoning as the court of original jurisdiction for attorney discipline.

Fortunately, amici have and will be filing petitions for certiorari as to Ninth Circuit cases where relief under *Williams* was denied due to the Ninth Circuit's refusal to recognize the validity of that decision. The appropriate course of action is to grant the petitions for certiorari of amici, hold Eastman's petition, and after resolution of the amici petitions remand Eastman's petition to the California Supreme Court for reconsideration and reasoned opinion.

ARGUMENT

A. Eastman’s Petition is a Poor Vehicle for Raising First Amendment Claims as the California State Bar Court is an Administrative Body that is Not an Arm of the State

1. Relevant History of the Current California Attorney Discipline System

Prior to 1920 admission to the California Bar was by petition to the California Supreme Court. *See* K. Beitiks, A Changing Expanding Profession | Membership in Cal. State Bar, Celebrating 75 Years (2002) at 9, found at archive.calbar.ca.gov/archive/calbar/pdfs/cbj/75th-Anniversary.pdf (publication hereinafter referred to as “Celebrating 75 Years”). Prior to 1927 California’s attorney discipline system was handled exclusively by individual state courts, similar to the manner in which federal courts administer attorney discipline, and there were a total of 107 cases up to that date. Historical Tidbits, Celebrating 75 Years at 24. The State Bar Act created the California State Bar to supplement, not replace, the existing judicial California attorney discipline process.

The first major change to the California attorney discipline system came in 1951, when the California Legislature eliminated the jurisdiction of Superior Courts and Courts of Appeal in any matters involving attorney discipline, reserving such jurisdiction to the California Supreme Court. *Barry v. State Bar*, 2 Cal.5th 218, 322-3 (2017) *citing*

Jacobs v. State Bar, 20 Cal.3d 191, 196 (1977) (“In 1951, the Legislature excluded other courts from exercising such jurisdiction by striking language from section 6100 which conferred jurisdiction upon the Courts of Appeal and the superior courts”); *see also Sheller v. Sup. Ct.*, 158 Cal.App.4th 1697, 1710 (2008). Prior to this 1951 change, there were two separate pathways for attorney discipline, one involving the State Bar, and one that could be initiated in any California court in the first instance.

The next major change was that:

In 1988, the Legislature directed the board "to establish a State Bar Court, to act in its place and stead in the determination of disciplinary ... proceedings" (§ 6086.5.) Pursuant to procedures it has adopted by rule, this court appoints the judges of the State Bar Court (rule 961), which includes a hearing department and a review department (§§ 6079.1, 6086.65).

The State Bar Court Hearing Department (Hearing Department) conducts evidentiary hearings on the merits in disciplinary matters. (Rules Proc. of State Bar (hereafter, Rules of Procedure), rules 2.60, 3.16.) An attorney charged with misconduct is entitled to receive reasonable notice, to conduct discovery, to have a reasonable opportunity to defend against the charge by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. (§ 6085.)

The Hearing Department renders a written decision recommending whether the attorney should be disciplined. (Rules Proc., rule 220.) Any disciplinary decision of the Hearing Department is reviewable by the State Bar Court Review Department (Review Department) at the request of the attorney or the State Bar. (*Id.*, rule 301(a).) In such a review proceeding, the matter is fully briefed, and the parties are given an opportunity for oral argument. (*Id.*, rules 302-304.) The Review Department independently reviews the record, files a written opinion, and may adopt findings, conclusions, and a decision or recommendation at variance with those of the Hearing Department. (*Id.*, rule 305.) A recommendation of suspension or disbarment, and the accompanying record, is transmitted to this court after the State Bar Court's decision becomes final. (§ 6081; Rules Proc., rule 250.)

Although disciplinary proceedings in the State Bar Court include quasi-judicial evidentiary hearings and decisions rendered by official adjudicators, the State Bar Court is not an ordinary administrative agency. "[The State Bar Court] is not an administrative board in the ordinary sense of the phrase. It is *sui generis*.... [¶] ... [I]n matters of discipline and

disbarment, the State Bar [Court] is but an arm of this court, and ... this court retains its power to control any such disciplinary proceeding at any step. [Citation.]" (*Brotsky v. State Bar* (1962) 57 Cal. 2d 287, 300-301 [19 Cal. Rptr. 153, 368 P.2d 697, 94 A.L.R.2d 1310]; see also *In re Attorney Discipline System, supra*, 19 Cal.4th at p. 599 [State Bar is not in the same class as state administrative agencies placed within the executive branch].) In creating the State Bar and the State Bar Court, the Legislature expressly acknowledged that this court retains all disciplinary authority the court had prior to the passage of the State Bar Act. (§§ 6087, 6100.) The State Bar may make only recommendations to this court, which undertakes an independent determination whether the attorney should be disciplined as recommended. (*In re Attorney Discipline System, supra*, 19 Cal.4th at pp. 600-601; *In re Shattuck* (1929) 208 Cal. 6, 12 [279 P. 998].) This limitation upon the State Bar's authority distinguishes the State Bar Court from other quasi-judicial or administrative agencies rendering initial decisions rather than recommendations that subsequently may be reviewed by courts of record.

Provisions regarding review of State Bar Court decisions recommending

disbarment or suspension are found in the Business and Professions Code and the California Rules of Court. The State Bar Court must file in this court a certified copy of its decision and the record of the proceeding. (§ 6081.) "Any person complained against ... may have the action of the [State Bar Court] ... reviewed by the California Supreme Court or by a California Court of Appeal in accordance with the procedure prescribed by the California Supreme Court." (§ 6082.) A petition to review, reverse, or modify a decision recommending disbarment or suspension may be filed with this court within 60 days of the decision, and the petitioner has the burden of establishing error. (§ 6083, subds. (a), (c).) "When no petition to review or to reverse or modify has been filed by either party within the time allowed therefor, or the petition has been denied, the decision or order of the State Bar Court shall be final and enforceable. In any case in which a petition to review or to reverse or modify is filed by either party within the time allowed therefor, the Supreme Court shall make such order as it may deem proper in the circumstances. Nothing in this subdivision abrogates the Supreme Court's authority, on its own motion, to

review de novo the decision or order of the State Bar Court." (§ 6084, subd. (a).) *Rose* at 438-40(footnote omitted).

The California Supreme Court has repeatedly acknowledged that under the current State Bar Act, Cal. Bus. & Prof. Code §6000 *et seq.* "this court has exclusive original jurisdiction to discipline attorneys, and the sole means of obtaining review of State Bar Court disciplinary recommendations is by a petition for review filed in this court". *Rose* at 446.²

"The California Constitution precludes the State Bar Court from considering federal constitutional claims. See Calif. Const. art. III, §3.5. However, such claims may be raised in judicial review of the Bar Court's decision." *Hirsh v. Justices of the Supreme Court of the State of California*, 67 F.3d 708, 713 (9th Cir. 1995).

It is impossible to file a 42 U.S.C. §1983 claim challenging constitutional defects in the State Bar Court hearings or of the California Supreme Court's review process in California state court. Jurisdiction of the California Superior Courts and Courts of Appeal was stripped by the California Legislature in 1951. See *Barry, supra, Jacobs, supra*. As the California Supreme Court, by statute and Constitutional proviso, cannot try a 42 U.S.C. §1983 claim, this jurisdiction stripping immunizes *Ex Parte*

² For a handful of years the California Legislature allowed review of State Bar Court decisions by the Court of Appeal, but the majority of the California Supreme Court refused to pass rules effectuating the addition of Court of Appeal jurisdiction, and that proviso was eventually repealed. See *Rose* at 465 (Kennard, J., dissenting).

Young defendants such as State Bar Court and Supreme Court jurists from all §1983 lawsuits regarding attorney discipline and admissions in California state courts. Cal. Code Civ. Proc. §395; Calif. Const. art. VI, §10 (superior courts have sole original jurisdiction in all matters except habeas corpus, mandamus, certiorari, and prohibition which are shared with Courts of appeal and Supreme Court).

Unlike some states which grant the right to a jury trial, such as Texas pursuant to Tex. R. Disciplinary P. 3.06, California law has no provision for a jury in attorney discipline proceedings.

California State Bar Court proceedings are not deemed to be judicial in nature under California state law; they constitute administrative proceeding that advise the California Supreme Court. *See Rose; Hirsh*. However, the Ninth Circuit has treated California State Bar disciplinary proceedings as “judicial in nature” under *Hirsh, supra*. This finding is based on over 40 years of precedent holding that the State Bar is “an arm of the state” and thus its proceedings are judicial in nature subject to Eleventh Amendment immunity and *Younger* abstention. As the Ninth Circuit explained:

Hirsh relied exclusively on *Lupert* for its holding. *Id.*; *see also Lupert*, 761 F.2d at 1327 (“The Eleventh Amendment bars this suit against the named agencies as the state did not consent to being sued.”).

Normally that would be the end of the story. A nearly forty-year-old precedent that largely has gone

unchallenged would control the panel's decision, and en bancs are quite rare. But this story is only getting started.

.....

Lupert and *Hirsh* were largely silent as to why the State Bar enjoyed Eleventh Amendment immunity, and *Hirsh* ignored a long line of caselaw setting out our test (often called the *Mitchell* factors) for determining whether a state agency, like the State Bar, is an arm of the state entitled to such protection....Yet we have spent little time over these decades considering whether our law accurately captures the latest Supreme Court thinking.

Kohn, supra, at 1024-1025(footnote omitted).

However, on March 4, 2026, after acknowledging *Kohn* and the D.C. Circuit opinion it adopted, this Court created a new bright-line test for entities like the State Bar which are public corporations for which the state has no responsibility for its debts. *Galette* at 864 fn.3. Such entities are never “arms of the state.” *Id.* at 868.

The California State Bar unambiguously fails to qualify as an arm of the state under *Galette*, because the State Bar is an independent public corporation the debts of which the State of California has no responsibility. *Kohn* at 1047 (diss.), 1036. Nonetheless, the Ninth Circuit refuses to apply *Galette* to the State Bar, deeming *Kohn* good law. See, e.g. *Calhoon v. State Bar*, 9th Cir. Docket No. 24-7627 (July 20, 2026)(unpub.) .

2. This Court Does not Have the California Supreme Court's Rationale for Disbarment before It.

As discussed above, the opinions of the State Bar Court are not expressions of a state court; indeed, they are not rulings at all. Eastman's contention that "the decision of the Supreme Court of California denying Eastman's petition for review" was **"thereby adopting as its own the opinion** of the Review Department" is erroneous. Notably, his first two amici both agree that the opinion they address is a product of California's State Bar Court, not its Supreme Court.

In *Rose*, the California Supreme Court adopted for attorney discipline proceedings

the United States Supreme Court's previous holding that, if a petition for writ of review in this court is the exclusive means of obtaining review of a quasi-judicial decision, our summary denial of such a petition is deemed a final judicial determination on the merits. In *Napa Valley Co. v. R.R. Com.* (1920) 251 U.S. 366, 40 S.Ct. 174, 64 L.Ed. 310 (*Napa Valley*), the high court concluded that our summary denial of a petition for review of a decision by the Railroad Commission (now known as the Public Utilities Commission, or PUC) was an adjudication on the merits for purposes of res judicata.

Rose at 444.

In *Napa Valley* the Supreme Court addressed whether limited review of decisions by a judicial body, the California Public Utilities Commission,³ by the California Supreme Court, had any preclusive effect, and if so, as to what issues:

[T]he review is confined to an inquiry "whether the commission has regularly pursued its authority" or whether its order or decision "violates any right of the petitioner under the constitution of the United States or of the State of California."

....

We may presume it was circumstantial in its exposition of the proceedings before the Commission and of the latter's decisions and orders, and exhibited and submitted to the court the questions it was authorized to entertain — whether the Commission "pursued its authority, including a determination of whether the order or decision" violated "any right" of the company "under the constitution of the United States or of the State of California."

Whether upon such an exhibition of the proceedings and questions the court was required to pursue the details of the section or decide upon

³ Unlike the California State Bar, the Commission is a judicial body under the California Constitution and exercises judicial power. *Consumer Lobby Against Monopolies v. Public Utilities Commission*, 25 Cal.3d 891, 900 (1979). (*"Consumer Lobby"*).

the petition was a matter of the construction of the section and the procedure under it. And the Supreme Court has so decided. [CITATIONS.] In those cases the applications for writs of certiorari were denied, which was tantamount to a decision of the court that the orders and decisions of the Commission did not exceed its authority or violate any right of the several petitioners under the Constitution of the United States or of the State of California.....And we agree with the District Court that "the denial of the petition was necessarily a final judicial determination, ...

Napa Valley at 370-4 (citations omitted).

Accordingly, in the state bar context, the decision on the merits by the California Supreme Court is not adoption of the Review Department opinion in full, but rather a judicial determination that Eastman failed to convince the Court that his petition met any of the tests under Cal. R. Ct. 9.16(a).

The California Supreme Court revisited this issue as it pertained to summary denials in *Consumer Lobby*. The Court first acknowledged that under *Napa Valley*, summary denials constitute a "final judicial determination on the merits" that have the effect of res judicata, i.e. claim preclusion. *Consumer Lobby* at 901. However, such denial does not have collateral estoppel or stare decisis effect. *Id.* at 901-3. That is because the denial of the petition for

review could be based on independent state law procedural grounds, including failure to meet procedural prerequisites in terms of form, failure to preserve the issue; “general principles of law governing judicial review of administrative proceedings may also require us to deny an entire petition for writ -- or reject a particular ground thereof -- without reaching its substantive issues.” *Id.* at 903.

In short, although a summary denial by this court of a petition for writ of review is "a decision on the merits" for res judicata purposes (*Western Air Lines*), it is not stare decisis. As we have seen, the merits of the decision may well be procedural rather than substantive; yet because there is no opinion, its ratio decidendi does not appear on its face. It would therefore be sheer speculation for litigants to rely on such decisions as precedents. In addition, such reliance may well prove a trap for the unwary: members of the public who have potentially meritorious petitions for review to present to this court may be dissuaded from doing so by the mere fact that we declined to take an earlier case allegedly raising the same question.

Consumer Lobby at 904.

Former California Supreme Court justice and D.C. Circuit Judge Janice Rogers Brown⁴ agreed that the summary disposition was not a judicial opinion:

As the court itself has acknowledged only recently, changes in our own rules made in the wake of legislative amendments to the administrative procedures governing bar discipline proceedings "relieve the court of the burden of intense scrutiny of all disciplinary recommendations." (Cal. Supreme Ct., Invitation to Comment — Proposed Adoption of Rule 951.5, Cal. Rules of Court (Nov. 23, 1999) p. 2; see also Cal. Supreme Ct., Practices and Proc. (1997 rev.) pp. 3, 18-19, 25-26.) Moreover, **the matrix of grantable issues identified in California Rules of Court, rule 954 appears to truncate the scope of our review.** And in cases where no writ is sought, we usually content ourselves with less than that measure of "review." **Unless, by dint of skill or luck, the issues are framed so they are deemed to fall within the ambit of rule 954, an attorney facing suspension or disbarment from the right to practice her profession gets no hearing, no opportunity for oral argument, and no written statement of reasons — from this or any other**

⁴ Brown filed a amici brief in favor of Eastman in the State Bar proceedings and was identified as a witness in his favor.

article VI court. (Cal. Const., art. VI, § 14; hereafter article VI.) Instead, she gets a summary denial of review, the one-line order. Is that enough? Regrettably, it seems that, for now at least, it will have to do.

We should not, however, pretend the current legal order does not mark a transformation in the attorney discipline process, one in which a constitutional touchstone — meaningful judicial review by an article VI court — has been jettisoned.

...

What petitioner can legitimately ask from us is founded on the rock of the constitutional right to meaningful judicial review of government acts intended to deprive someone of the means of livelihood. Review by a constitutional court, review by real judges whose allegiance is to the judiciary, to its standards and ideals — to the rule, in short, of law. Review, moreover, that is *seen*, observed in the form of reasoned judicial opinions, and in the ritual of oral argument. In combination, these features make up hallowed ground, for they comprise a signal feature of our democracy — the protection of the individual from executive and legislative overreaching by neutral magistrates, magistrates whose decisions are constrained by objective principles of

judicial reasoning and by precedent, and whose rulings are an open book. (See Bickel, *The Morality of Consent* (1975) p. 26 ["Confined to a profession, the explication of [legal] principle is disciplined, imposing standards of analytical candor, rigor, and clarity."].) Lacking, as Alexander Hamilton wrote, "either the sword or the purse," the judiciary exists by virtue of "merely judgment." (Hamilton, *The Federalist* No. 78 (Rossiter ed.1961) p. 465; see also Scalia, *The Rule of Law as a Law of Rules* (1989) 56 U. Chi. L.Rev. 1175.) *That* is the essence of the judicial function; *that* is what is missing in this sui generis special proceeding over which we exercise an inherent authority. (See, maj. opn., *ante*, *passim*.)

Judicial judgment — *reasoned decisions*, rather than *decisions with reasons* — is the constitutional counter to the appetitive coordinate branches of government, implicit in the architecture of state as well as federal government. We expect, and justifiably so, a different discipline from a court than from a bureaucracy.

Rose at 466-68 (Brown, J., diss., italicized emphasis in original, footnotes omitted, bold emphasis added).

Justice Brown makes clear that the recommendation which Eastman attacks is not a judicial opinion and cannot on its own be ascribed as

the views of the Supreme Court. Indeed, there is normally no judicial opinion whatsoever. Her colleague agreed:

But attorneys do not have recourse to administrative mandate proceedings because their licenses are suspended or revoked not by an administrative determination, but by this court's orders. As a consequence, under the majority's decision today, only attorneys can have their licenses suspended or revoked without a *judicial* hearing and a written *judicial* decision. This disparate treatment of attorneys raises serious due process and equal protection questions.

Rose at 434 (Kennard, J, diss., emphasis in original).

Without a written judicial opinion of the California Supreme Court, it may have been the case that the petition for review was denied for an adequate and independent state ground. Likewise this Court does not normally address questions that were not discussed by the lower court, as this is a Court “of review, not first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718, n. 7 (2005). Eastman requests review of multiple constitutional issues that have no state court analysis to address. That is not something this Court normally undertakes. *Id.* If it were to grant this petition, it would have to devote its inquiry into thorough examination of Eastman’s compliance with the sui generis procedural rules to exclude any independent and adequate state law grounds for denial of his petition.

The problem with this authority for California courts is that this definition of the meaning of a summary denial of an attorney discipline petition for review makes reciprocal discipline difficult or impossible to apply. So the Court of Appeal issued an erroneous opinion ignoring the controlling Supreme Court precedent, *Berg v. Davi*, 130 Cal.App.4th 223 (2005). One of Roshan's petitions indirectly presents this issue.

B. Eastman Raises Serious Constitutional Issues Without the Correct Supremacy Clause Framing.

Eastman's second and third questions presented raise serious constitutional issues with an incomplete Supremacy Clause framing.

Eastman argues that the State Bar Court's invocation of 18 U.S.C. §371, conspiracy to defraud the United States, as grounds for disbarment raises troubling First Amendment concerns. But there is a more clear-cut problem. State courts lack jurisdiction to adjudicate federal criminal law claims and certain civil claims such as patent litigation. See e.g., 18 U.S.C. §3231; *In re Loney*, 134 U.S. 372 (1890). They also lack the authority to impose punishment or impose liability for taking actions that arguably violate federal law where the area is one of exclusive federal concern. *Arizona v. United States*, 567 U.S. 387 (2012).

In particular, state courts cannot adjudicate claims of fraud against the United States, whether civil or criminal. See *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 US 341 (2001). States have no authority to interpose their views on what is or is not

fraud to the relationship between the federal government and third parties:

Given this analytical framework, we hold that the plaintiffs' state-law fraud-on-the-FDA claims conflict with, and are therefore impliedly pre-empted by, federal law. The conflict stems from the fact that the federal statutory scheme amply empowers the FDA to punish and deter fraud against the Administration, and that this authority is used by the Administration to achieve a somewhat delicate balance of statutory objectives. The balance sought by the Administration can be skewed by allowing fraud-on-the-FDA claims under state tort law. *Id.* at 348 (footnotes omitted).

The reasons for barring state entities from imposing liability for uniquely federal wrongs are obvious:

the State would have the power to bring criminal charges against individuals for violating a federal law even in circumstances where federal officials in charge of the comprehensive scheme determine that prosecution would frustrate federal policies.

There is a further intrusion upon the federal scheme. Even where federal authorities believe prosecution is appropriate, there is an inconsistency between [state law] and federal law with respect to penalties.

Arizona, supra at 402-3.

The State Bar asserted that it can disbar attorneys for a sitting president and presidential candidate for an alleged conspiracy which was never proved in federal court. Eastman discusses the risks this poses from a First Amendment perspective, but the potential injury to American federalism is greater.

This conduct constitutes an indirect means for regulating the conduct of clients in federal court through their attorneys. In the case of California, authority for prosecuting politicized cases is wielded by a state-created corporation alleged to act under color of state law but not entitled to arm-of-the-state immunity, and that is only accountable to a single judicial body whose decision-making process and rationales are completely secret. This allows a public corporation to intimidate attorneys in the performance of their duties for highly politicized lawsuits, allowing findings of criminal activity without the public scrutiny and safeguard of a jury trial.

In the absence of any conviction or sanction by a federal court, the Supremacy Clause strips California of jurisdiction to directly or indirectly determine that an attorney has committed fraud on the court.

Eastman does invoke the Supremacy Clause in his third question presented, and he is correct. The State Bar's initiation of attorney discipline without supporting orders or referrals from the federal court is an indirect mechanism for regulating the conduct of persons like President Trump through their attorneys. It violates the Supremacy Clause by allowing a public corporation to influence ongoing or

future litigation behavior that is arguably appropriate to the federal court.

C. While Granting Eastman’s Petition and Setting his Case For Argument is Not Appropriate at this Time, there is Relief Available to Him.

Eastman cannot present a strong petition for certiorari because he lacks a reasoned judicial opinion to review his constitutional issues based on the structure of California’s attorney discipline system. However, states are not allowed to shield themselves from all federal scrutiny through sovereign immunity or jurisdiction-stripping their courts from hearing claims under 42 U.S.C. §1983.

This Court held that a state violates the Supremacy Clause if its courts of general jurisdiction are barred from hearing §1983 claims against particular state defendants. *Haywood v. Drown*, 556 U.S. 729 (2009). The state courts of Washington and Delaware split on the question of whether this rule applies to attorney discipline proceedings.

Haywood v. Drown, 556 U.S. 729, 129 S.Ct. 2108, 173 L.Ed.2d 920 (2009) also controls our review of subject matter jurisdiction.... The United States Supreme Court held the New York legislation unconstitutional because the exceptional treatment of a limited category of § 1983 claims was inconsistent with the supremacy clause of the United States Constitution. Although States retain substantial leeway to establish the contours of their judicial systems, they lack authority to nullify a

federal right or cause of action deemed inconsistent with their local policies. The state of New York impermissibly thwarted Congress' judgment that all persons who violate federal rights under color of state law be held liable for damages. A state may not employ a jurisdictional rule to undermine federal law.

The WSBA cites three out-of-state cases to support its contention that the superior court lacks subject matter jurisdiction: *Smith v. Mullarkey*, 121 P.3d 890 (Colo. 2005), *Barnard v. Sutliff*, 846 P.2d 1229 (Utah 1992), *Jacobs v. State Bar of California*, 20 Cal.3d 191, 570 P.2d 1230, 141 Cal. Rptr. 812 (1977). All cases support the WSBA's position that superior courts lack jurisdiction to review state bar disciplinary proceedings. Nevertheless, as state court decisions, the trio of opinions lack value in the face of United States Supreme Court decisions addressing federal law.

.....The *Sutliff*, *Jacobs*, and *Smith* courts, however, did not address the federal law's requirement that state courts of general jurisdiction remain open for civil rights suit.

The WSBA notes that an attorney may raise and adjudicate constitutional challenges within the scope of the lawyer discipline system with ultimate and independent review by the state Supreme Court. *In re Disciplinary Proceeding Against Smith*, 170 Wash.2d 721, 729, 246 P.3d 1224 (2011); see *In re Disciplinary Proceeding*

Against Blanchard, 158 Wash.2d at 330-31, 144 P.3d 286 (2006). We recognize this feature of the disciplinary process, but the feature does not wrest jurisdiction from the superior court over federal civil rights claims. Marc Feldman and Edward Hickey also argued constitutional claims before the District of Columbia Court of Appeals. *Eugster v. Wash. State Bar Assoc.*, 198 Wash.App. 758, 397 P.3d 131, 143-4 (2017).

Eugster and the case law it analyzed were presented to the Delaware Supreme Court, which rejected *Eugster* and affirmed the Court of Chancery's holding that its trial courts could not hear 42 U.S.C. §1983 lawsuits concerning attorney discipline. *Abbott v. Vavala*, No. 60, 2022 (Del. Sup. Ct. Aug. 22, 2022)(per curiam)(“*Abbott*”) slip. op. at 9-10, fn. 31. In so doing it explicitly considered *Eugster*, but held that “[t]o the extent that case law from other states reaches a different conclusion regarding the supervision of lawyers in those states, we decline to follow it because that case law is inconsistent with Delaware law” as such law stripped jurisdiction from the relevant trial court (the Delaware Court of Chancery) to hear challenges to attorney discipline. *Abbott* at 87, fn. 31. Thus prior to *Williams*, state courts were divided as to whether it was constitutional to strip jurisdiction from trial courts to hear 42 U.S.C. §1983 claims seeking injunctive relief as to attorney discipline under *Haywood*.

In 2025 this Court decided *Williams*. It held that any procedural barrier which effectively immunizes a class of state defendants under 42 U.S.C. §1983 in

state court violates the Supremacy Clause even if it is assertedly jurisdictional in nature. Under *Williams* and *Haywood*, California's procedural barriers to filing state court §1983 claims arising from disciplinary matters render the entire scheme unconstitutional.

Roshan has filed and Sanai will be filing petitions for certiorari raising the *Haywood/Williams* Supremacy Clause issue. Accordingly, the best option for relief for Eastman is to hold his case, grant the petitions filed by amici, and then upon disposition remand the case to the California Supreme Court for consideration in light of this Court's judgment as to the Supremacy Clause issue and to articulate its reasoning otherwise.

CONCLUSION

Eastman has raised a serious as-applied Supremacy Clause issue while missing the facial issue which is partially responsible for his inability to present a reasoned judicial opinion concerning the constitutional issues he raises. His first First Amendment issue is also serious, but there is no way to know whether the out-of-court statements that are its focus were relied upon by the California Supreme Court when it imposed discipline.

As this Court ruled in *Williams* and the Washington Court of Appeals recognized in *Eugster*, litigants such as Eastman have the right to present their constitutional issues to a state court of general jurisdiction to obtain judicial opinions on constitutional issues. However, California's Legislature eliminated the jurisdiction of the courts of

general jurisdiction to hear such lawsuits. Eastman fell into a trap created by recondite California Supreme Court case law explaining the consequences of a summary denial of a petition for review in attorney discipline and public utilities cases, which should not bar him relief. Instead, this Court should grant the petitions filed and to be filed by amici to eliminate this defect in California law then consider Eastman's case.

Dated this October 7, 2026.

Respectfully submitted,

Frances L. Diaz SB#159837
Law Offices of Frances L. Diaz
8306 Wilshire Boulevard, #263
Beverly Hills, California 90211
(310) 927-5086
francesdiaz@frontier.com
counsel for Amici