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

BRIEF OF *AMICI CURIAE* TEXAS, FLORIDA, AND SIX OTHER STATES IN SUPPORT OF PETITIONER

JAMES UTHMEIER
Attorney General of Florida

RYAN D. NEWMAN
Chief Deputy Attorney General

DAVID M.S. DEWHIRST
Solicitor General

JASON J. MUEHLHOFF
Chief Deputy Solicitor General

Office of the Attorney General
State of Florida
PL-01, The Capitol
Tallahassee, FL 32399-1050

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

WILLIAM R. PETERSON
Solicitor General
Counsel of Record

Office of the Texas Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
william.peterson@oag.texas.gov
(512) 936-1700

Counsel for Amici States

TABLE OF CONTENTS

Table of Authorities ii
Interest of Amici Curiae 1
Summary of Argument 2
Argument 4
I. The First Amendment Protects Attorney Speech. 4
II. The Review Department Did Not Follow This Court's First Amendment Precedent. 11
III. This Issue Warrants Clarification by This Court 16
Conclusion 17

TABLE OF AUTHORITIES

Cases:

BE & K Constr. Co. v. NLRB,
536 U.S. 516 (2002) 13
Chiles v. Salazar,
607 U.S. 627 (2026) 2, 8, 9, 10, 12
Gentile v. State Bar of Nevada,
501 U.S. 1030 (1991) 2, 10–14
In re Primus,
436 U.S. 412 (1978) 1, 5, 6, 7, 12
Legal Services Corporation v. Velazquez,
531 U.S. 533 (2001) 1, 6, 7
Moore-King v. County of Chesterfield,
708 F.3d 560 (4th Cir. 2013) 7, 8
NAACP v. Button,
371 U.S. 415 (1963) 1–12, 14, 15, 17
Nat'l Inst. of Fam. & Life Advocs. v. Becerra,
585 U.S. 755 (2018) 2, 4, 7, 8, 12, 15, 17
Nat'l Rifle Ass'n of Am. v. Vullo,
602 U.S. 175 (2024) 17
New York Times Co. v. Sullivan,
376 U.S. 254 (1964) 6
Ohralik v. Ohio State Bar Ass'n,
436 U.S. 447 (1978) 4
Reed v. Town of Gilbert,
576 U.S. 155 (2015) 7, 15
Riley v. Nat'l Fed'n of Blind of N.C., Inc.,
487 U.S. 781 (1988) 9, 10
Turner Broad. Sys., Inc. v. FCC,
512 U.S. 622 (1994) 8

United States v. Alvarez,
567 U.S. 709 (2012) 13

INTEREST OF AMICI CURIAE

Amici curiae are the States of Texas, Florida, Alabama, Indiana, Iowa, Kansas, Louisiana and Nebraska. Collectively, Amici States employ thousands of attorneys that represent their interests every day. Amici States often find themselves involved in hotly contested disputes based on the actions of their political branches. Amici States must be able to rely on their attorneys for representation and advice, and their attorneys must be free to give it without fear of improperly imposed sanctions. Clear standards regarding attorney discipline are necessary to ensure that attorneys can provide zealous advocacy without fear of threat to their livelihoods.[1]

Amici States thus have an interest in ensuring that the First Amendment's protection of speech, which this Court has routinely applied to attorneys, *e.g.*, *Legal Services Corporation v. Velazquez*, 531 U.S. 533 (2001); *In re Primus*, 436 U.S. 412 (1978); *NAACP v. Button*, 371 U.S. 415 (1963), remains fully applicable to the attorneys within their States. Clarity about what disciplinary standards may apply and when will ensure that Amici States receive the necessary counsel from their advocates.

---

[1] On October 30, 2026, counsel of record for all parties received notice of Amici's intention to file this brief.

SUMMARY OF ARGUMENT

This Court should grant certiorari to consider the intersection of state-bar disciplinary actions and the First Amendment.

Attorney representation and advocacy are protected by the First Amendment. In *Button*, this Court held that "only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms," 371 U.S. at 438, and concluded Virginia "failed to advance any substantial regulatory interest, in the form of substantive evils flowing from petitioner's activities, which can justify the broad prohibitions which it has imposed," *id.* at 444. "[A] State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights." *Id.* at 439.

This Court has continued to reiterate that the First Amendment protects professional speech. "[T]he First Amendment's protections extend to licensed professionals much as they do to everyone else." *Chiles v. Salazar*, 607 U.S. 627, 642–43 (2026); *see also Nat'l Inst. of Fam. & Life Advocs. v. Becerra* (*NIFLA*), 585 U.S. 755, 767 (2018) ("[T]his Court has not recognized 'professional speech' as a separate category of speech. Speech is not unprotected merely because it is uttered by 'professionals.'").

Attorney speech is fully covered by these protections, although in *Gentile v. State Bar of Nevada*, this Court recognized that "the speech of *those participating before the courts* could be limited." 501 U.S. 1030, 1072 (1991). The case concerned "a lawyer who represents a defendant involved with the criminal justice system," *i.e.*, "lawyers in pending cases." *Id.* at 1071; *see also id.* at 1074

("Lawyers representing clients in pending cases are key participants in the criminal justice system[.]"). Classifying attorney speech correctly is necessary to analyze its level of First Amendment scrutiny.

Rather than perform the granular, count-by-count analysis required by strict scrutiny and this Court's precedent, the Review Department performed a high-level analysis of the First Amendment, without considering each count of misconduct separately, Pet. App. 99a–106a, and without addressing how First Amendment principles regarding falsity apply to complex constitutional litigation.

The decision below creates uncertainty in an area in which clear rules are necessary: "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *Button*, 371 U.S. at 433. "The threat of sanctions may deter [the exercise of First Amendment rights] almost as potently as the actual application of sanctions." *Id.*

The First Amendment rights of attorneys are linked to the critical role they perform within the judicial system. Zealous advocacy should not be diminished by the threat of potential sanctions. The First Amendment's impact on attorney disciplinary proceedings warrants guidance from this Court, and the petition should be granted.

ARGUMENT

I. The First Amendment Protects Attorney Speech.

This Court has long recognized that the First Amendment protects attorney speech, and it has "applied strict scrutiny to content-based laws that regulate the noncommercial speech of lawyers." *NIFLA*, 585 U.S. at 771.[2]

A. In *Button*, Virginia attempted to use its authority over the legal profession to curb the NAACP's litigation practices. 371 U.S. at 419–23. Virginia argued that its definition of improper solicitation reached the NAACP's practice of recruiting plaintiffs and underwriting the civil rights cases litigated by its staff attorneys. *Id.* at 418. The Virginia Supreme Court of Appeals held that the NAACP's activities could constitutionally be proscribed by these rules. *Id.* at 425–26; *see also id.* at 426 ("Specifically the court held that, under the expanded definition, such activities on the part of NAACP, the Virginia Conference, and the Defense Fund constituted 'fomenting and soliciting legal business in which they are not parties and have no pecuniary right or liability, and which they channel to the enrichment of certain lawyers employed by them, at no cost to the litigants and over which the litigants have no control.'").

This Court reversed, concluding that the application of these disciplinary rules to the NAACP's activities violated the First Amendment. Advising prospective clients of their rights, referring them to counsel, and advocating their causes are "modes of expression and association" protected by the First and Fourteenth Amendments,

---

[2] Commercial speech standards have been used with respect to attorney advertising and most solicitation. *See, e.g.*, *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 457–58 (1978). No advertisement or solicitation is at issue here.

and litigation undertaken to vindicate contested rights is "a form of political expression." *Id.* at 428–29. Virginia's law created "the gravest danger of smothering all discussion looking to the eventual institution of litigation on behalf of the rights of members of an unpopular minority." *Id.* at 434 (describing conduct from which NAACP lawyers might refrain if Virginia law was given effect).

Although not labeling it "strict scrutiny," this Court held that "only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms." *Id.* at 438. A State may not deploy its regulatory power over attorneys to suppress that expression. And regulation in this area must be specific and narrow: "First Amendment freedoms need breathing space to survive, [so] government may regulate in [this] area only with narrow specificity." *Id.* at 433.

This Court rejected Virginia's claim that it was merely "insur[ing] high professional standards." *Id.* at 439. Reviewing the record, the Court concluded that the NAACP had "amply shown that its activities fall within the First Amendment's protections" and that Virginia "failed to advance any substantial regulatory interest, in the form of substantive evils flowing from petitioner's activities, which can justify the broad prohibitions which it has imposed." *Id.* at 444.

This Court did not confine that strict standard to *Button*'s facts. *In re Primus* set aside discipline of an ACLU cooperating lawyer who had advised a prospective litigant of her rights and offered free representation. 436 U.S. at 439. This Court held that solicitation of litigants by organizations that pursue litigation "as a form of political expression" and "political association" is

expressive conduct that government may regulate "only with narrow specificity." *Id.* at 428, 432–33. Quoting *Button*, this Court explained that "[f]or the ACLU, as for the NAACP, 'litigation is not a technique of resolving private differences'; it is 'a form of political expression' and 'political association.'" *Id.* at 428 (quoting 371 U.S. at 429, 431). The attorney's speech fell "within the generous zone of First Amendment protection reserved for associational freedoms." *Id.* at 431.

And in *Legal Services Corp. v. Velazquez*, this Court made clear that the First Amendment applies to and protects an attorney's legal arguments. 531 U.S. 533 (2001). That case involved a grant program, funded by Congress, that provided free legal assistance to indigent individuals. *Id.* at 536. The program prohibited legal representation "if the representation involve[d] an effort to amend or otherwise challenge existing welfare law," which prohibited attorneys from arguing that "a state statute conflicts with a federal statute or that either a state or federal statute by its terms or in its application is violative of the United States Constitution." *Id.* at 536–37.

Although not referencing the strict-scrutiny test, this Court held this limitation on advocacy unconstitutional. "[T]he First Amendment 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *Id.* at 548 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964)). "By seeking to prohibit the analysis of certain legal issues and to truncate presentation to the courts, the enactment under review prohibits speech and expression upon which courts must depend for the proper exercise of the judicial power." *Id.* at 545. This Court reaffirmed that government may not restrict

lawyer advocacy to keep disfavored arguments from the courts. *Id.*

Taken together, *Button*, *Primus*, and *Velazquez* confirm that attorney speech lies near the core of the First Amendment and may be curtailed only by a compelling interest pursued with narrow specificity. *See NIFLA*, 585 U.S. at 771 ("[T]his Court has applied strict scrutiny to content-based laws that regulate the noncommercial speech of lawyers." (citing *Reed v. Town of Gilbert*, 576 U.S. 155, 167 (2015) (discussing *Button* and *Primus*).

B. These decisions fit within the broader protections for professional speech. In *NIFLA*, this Court considered California's requirement that licensed crisis-pregnancy centers post notices advertising the State's own abortion-related services, which the Ninth Circuit upheld under a lower level of scrutiny it reserved for "professional speech." 585 U.S. at 766–67. Courts of appeals had defined "professionals" as "individuals who provide personalized services to clients and who are subject to 'a generally applicable licensing and regulatory regime.'" *Id.* at 767 (quoting *Moore-King v. County of Chesterfield*, 708 F.3d 560, 569 (4th Cir. 2013)). Those courts then defined "professional speech" as "any speech by these individuals that is based on [their] expert knowledge and judgment, or that is within the confines of [the] professional relationship." *Id.* (internal quotation marks and citations omitted). Such speech did not receive the protection of strict scrutiny under the First Amendment in the lower courts. *Id.*

This Court reversed, rejecting the position that "'professional speech' [i]s a separate category of speech that is subject to different rules." *Id.* (citation omitted). To the contrary, "[s]peech is not unprotected merely

because it is uttered by 'professionals.'" *Id.* This Court has been "especially reluctant to 'exemp[t] a category of speech from the normal prohibition on content-based restrictions,'" and its "precedents do not recognize such a tradition for a category called 'professional speech.'" *Id.* at 767–68. There are two narrow circumstances in which reduced scrutiny applies: (1) laws requiring professionals to disclose "factual, noncontroversial information in their 'commercial speech;'" and (2) laws that regulate professional conduct and only incidentally burden speech. *Id.* at 768.

When describing the lengthy history of protecting the First Amendment rights of professionals, *NIFLA*'s first example was attorneys: "[T]his Court has applied strict scrutiny to content-based laws that regulate the noncommercial speech of lawyers." *Id.* at 771 (citing *Button*, 371 U.S. at 438). "[R]egulating the content of professionals' speech 'pose[s] the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information.'" *Id.* (quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994)). *NIFLA* confirms that sanctions imposed on attorneys for noncommercial speech must survive strict scrutiny.

The Court addressed the First Amendment freedoms of professionals most recently in *Chiles*. In that case, the Tenth Circuit had affirmed the denial of a preliminary injunction regarding a Colorado law that barred licensed counselors from engaging in "conversion therapy" with minors, including talk therapy that used only speech, as a regulation of professional conduct subject only to rational-basis review. 607 U.S. at 636–38. This Court began by acknowledging that "the First Amendment protects the inalienable right of every individual to decide for

himself 'how best to speak,'" regardless of whether that speech is "illuminating and inspiring" or "misguided" and "offensive." *Id.* at 640 (quoting *Riley v. Nat'l Fed'n of Blind of N.C., Inc.*, 487 U.S. 781, 791 (1988)). And the government cannot discriminate based on viewpoint because that is "an egregious form of content regulation" from which the government "must nearly always abstain." *Id.* at 640–41 (internal quotation marks omitted).

This Court rejected Colorado's attempts to lower the First Amendment standard to something less than strict scrutiny and reversed and remanded for application of the correct standard. For example, Colorado argued that its law reached only "conduct," "treatment," or a "therapeutic modality," but this Court held that what matters is whether the law regulates speech, not how the government chooses to describe it. *Id.* at 645. Speech "does not become conduct just because the State may call it that," and First Amendment rights "cannot be renamed away or their protections nullified by 'mere labels.'" *Id.* at 645 (quoting *Button*, 371 U.S. at 429). Colorado's law did not fall within a "long tradition of permissible content regulation" concerning the licensing of the practice of medicine, informed consent, and malpractice suits. *Id.* at 650. Finding the historical examples too generalized, this Court declined to create a new "First Amendment Free Zone" for speech that a State deems substandard. *Id.* at 651.

"History is littered with examples of official efforts to manipulate and control professional speech—including the content of doctor-patient discourse—in ways designed to increase state power, suppress minorities, and muzzle unpopular ideas." *Id.* at 647 (internal quotation marks omitted).

These professional-speech decisions confirm that noncommercial attorney speech receives First Amendment protection. The First Amendment reflects "a judgment that every American possesses an inalienable right to think and speak freely, and a faith in the free marketplace of ideas as the best means for discovering truth." *Id.* at 655. Attorneys possess those inalienable rights, and the "best means for discovering truth" requires allowing them to freely advocate for their clients and causes without the threat of unnecessary sanctions.

C. This Court recognized narrower First Amendment protections for specific types of attorney speech in *Gentile*, 501 U.S. at 1030, in which an attorney was disciplined for holding a press conference after his client was indicted on criminal charges. *Id.* at 1033.

In an opinion authored by Justice Kennedy, five justices held that "[a]s interpreted by the Nevada Supreme Court, the Rule is void for vagueness." *Id.* at 1048. One reason for the prohibition against vague regulation of speech is "the need to eliminate the impermissible risk of discriminatory enforcement." *Id.* at 1051. A rule is impermissible when its imprecision makes "discriminatory enforcement . . . a real possibility." *Id.*

Based on its restriction of speech, Justice Kennedy would have reviewed the interpretation and application of the rule for strict scrutiny and held it unconstitutional. *Id.* at 1054–55 (opinion of Kennedy, J.); *see also id.* at 1034 (opinion of Kennedy, J.) ("[T]his case involves punishment of pure speech in the political forum. Petitioner engaged not in solicitation of clients or advertising for his practice[.]").

In an opinion authored by Chief Justice Rehnquist, five justices held that lesser protection applies "to

speech by a lawyer whose client is a defendant in a criminal proceeding." *Id.* at 1065. "It is unquestionable that in the courtroom itself, during a judicial proceeding, whatever right to 'free speech' an attorney has is extremely circumscribed." *Id.* at 1071. "Even outside the courtroom, . . . lawyers in pending cases were subject to ethical restrictions on speech to which an ordinary citizen would not be." *Id.* This Court distinguished "between participants in the litigation and strangers to it." *Id.* at 1072–73. "[T]he speech of lawyers representing clients in pending cases may be regulated under a less demanding standard than that established for regulation of the press[.]" *Id.* at 1074. This is because lawyers' "extrajudicial statements pose a threat to the fairness of a pending proceeding since lawyers' statements are likely to be received as especially authoritative." *Id.*

Restricting the speech of lawyers representing clients in pending cases was narrowly tailored to protect the integrity and fairness of the judicial system. *Id.* at 1075. This Court noted the narrowness of the rule it upheld: "it applies only to speech that is substantially likely to have a materially prejudicial effect; it is neutral as to points of view, applying equally to all attorneys participating in a pending case; and it merely postpones the attorneys' comments until after the trial." *Id.* at 1076.

II. The Review Department Did Not Follow This Court's First Amendment Precedent.

Despite appearing to acknowledge that "strict scrutiny is the applicable standard when examining core political speech," Pet. App. 102a, the Review Department did not apply the granular, count-by-count analysis indicated by this Court's decision in *Button*. Instead, largely grouping all of the different counts together, it

performed a high-level analysis of First Amendment issues, Pet. App. 100a–106a, not the detailed analysis required.

A. The Review Department first discussed the First Amendment rights of attorneys, Pet. App. 100a–101a. It acknowledged "that strict scrutiny is the applicable standard when examining core political speech and that Eastman's charged statements involved core political speech." Pet. App. 102a. But its opinion appears to treat "false statements" as a category wholly outside the First Amendment. *See* Pet. App. 102a n.93 ("Regarding the point of law that false statements do not enjoy First Amendment protection . . .").

The Review Department thus concluded that because petitioner made "multiple false and misleading statements in his professional capacity," the "First Amendment defenses . . . do not bar a finding of culpability and discipline." Pet. App. 103a-104a. The Review Department also noted that one count charged petitioner "with conduct and statements made in furtherance of a criminal scheme." Pet. App. 104a. It then rejected petitioner's argument regarding the right to petition for redress of grievances. Pet. App. 105a–106a.

B. Amici acknowledge that the First Amendment does not prohibit sanctioning attorneys for misconduct. *E.g.*, *Gentile*, 501 U.S. at 1074–76; *NIFLA*, 585 U.S. at 769. But when the alleged misconduct includes noncommercial speech by an attorney not representing a client in litigation, *Button*, *Primus*, *NIFLA*, and *Chiles* require that the sanctions survive strict scrutiny. *Button*, 371 U.S. at 438; *Primus*, 436 U.S. at 432; *NIFLA*, 585 U.S. at 771; *Chiles*, 607 U.S. at 642–43.

The decision below asserted, categorically, that "false statements do not enjoy First Amendment protection," Pet. App. 102a n.93, without grappling with how that principle might apply in the context of complex constitutional litigation. *Cf. BE & K Constr. Co. v. NLRB*, 536 U.S. 516, 532 (2002) (recognizing that unsuccessful suits "promote the evolution of the law by supporting the development of legal theories that may not gain acceptance the first time around" and "ad[d] legitimacy to the court system as a designated alternative to force"). Even where there is consensus about a matter, "the truth is served by allowing that consensus to be challenged without fear of reprisal." *United States v. Alvarez*, 567 U.S. 709, 752 (2012) (Alito, J., dissenting). "If some false statements about historical events may be banned, how certain must it be that a statement is false before the ban may be upheld? And who should make that calculation?" *Id.* "[T]he potential for abuse of power in these areas is simply too great." *Id.*

Rather than recognize the difficulties in this area, as exemplified by the fractured opinions in *Alvarez*, the decision below erroneously treated all false statements as falling categorically outside of First Amendment protections. Pet. App. 102a–103a n.93.

C. Moreover, the Review Department's high-level, abstract analysis of the First Amendment is inconsistent with this Court's precedent. The Review Department found petitioner culpable for ten different counts of misconduct, Pet. App. 5a, involving different alleged acts and audiences and requiring different analyses under the First Amendment.

Some counts might, for example, fall within *Gentile*'s holding that there can be a "substantial state interest in

preventing prejudice to an adjudicative proceeding by those who have a duty to protect its integrity," 501 U.S. at 1076, although the Review Department does not appear to suggest that petitioner's out-of-court speech threatened to affect the impartiality of jurors, *id.* at 1075. Rather than speech "in the courtroom itself, during a judicial proceeding," *id.* at 1071, other counts appear to concern non-public advice and communications with a client and public statements not linked to pending litigation.

Each of these counts should have been considered, separately, with a different First Amendment analysis applied to each alleged form of misconduct. *Button* provides a model for the analysis. First, this Court considered whether the prohibition "as construed limits First Amendment freedoms." 371 U.S. at 437. Rather than look at "bare statutory language," this Court considered its application "as applied in a detailed factual context." *Id.* at 432. In that analysis, it was not necessary "to decide whether the activities of the petitioner deemed unlawful by the Supreme Court of Appeals are constitutionally privileged" but only whether "the line drawn by the decree between the permitted and prohibited activities of the NAACP, its members and lawyers is an ambiguous one." *Id.*

This Court then considered whether the State's interest "justif[ied] the prohibition of the NAACP activities disclosed by this record." *Id.* at 439. This Court's analysis focused on the specific activities that were the subject of discipline. "There has been no showing of a serious danger here of professionally reprehensible conflicts of interest which rules against solicitation frequently seek to prevent. . . . And the aims and interests of NAACP have not been shown to conflict with those of its members and

nonmember Negro litigants[.]" *Id.* at 442–43; *see also id.* at 443 ("Lawsuits attacking racial discrimination, at least in Virginia, are neither very profitable nor very popular."). This Court did not scrutinize the language of the disciplinary provision in the abstract but instead considered whether the discipline was justified in light of the specific activities being prohibited.

The Review Department did nothing similar. It labeled petitioner's speech "false and misleading," Pet. App. 103a, and thus concluded that his statements were wholly outside of First Amendment protection. Pet. App. 102a. Despite appearing to acknowledge strict scrutiny as the governing standard, Pet. App. 102a, the Review Department did not perform a count-by-count analysis of (1) the applicable First Amendment standard and (2) whether, for counts subject to strict scrutiny, the prohibition as applied to particular conduct was "narrowly tailored to serve compelling state interests." *NIFLA*, 585 U.S. at 766 (quoting *Reed*, 576 U.S. at 163).

Nor did the Review Department seriously grapple with the vagueness concerns, despite appearing to acknowledge that "no case law exists with analogous facts to support a section 6106 culpability finding." Pet. App. 55a; *see also id.* ("A section 6106 violation is not limited to fact patterns detailed in prior decisions. Our culpability determination is based upon the plain language of section 6106 and case law guidance on how to analyze whether particular conduct falls within the broad scope of section 6106."). *But see Button*, 371 U.S. at 432 ("[S]tandards of permissible statutory vagueness are strict in the area of free expression.").

Application of the First Amendment to attorney disciplinary proceedings of the type at issue here is

complex. The Review Department's brief and high-level analysis, Pet. App. 99a–106a, falls far short of what this Court's precedent requires.

III. This Issue Warrants Clarification by This Court.

The need for clear rules and robust First Amendment protection for attorneys advocating for controversial causes is of particular importance to Amici States. Attorneys employed by a State are in a unique position: their clients and legal positions are chosen for them. A state legislature may pass a controversial bill that an attorney must defend. A state executive may be sued by political opponents. Attorneys representing a State must work on these cases knowing that, sometimes, the legal positions they must press will be unpopular or politically inconvenient. But state actors are entitled to zealous advocacy on their behalf no less than any other party in court.

The First Amendment issues at stake here are recurring and of national importance because grievances against attorneys in politically charged matters are increasingly filed by complainants with no connection to the underlying dispute.

The danger posed by this matter is heightened because the alleged misconduct involves misrepresentations of law. *See* Pet. App. 102a (stating that attorneys' First Amendment rights "d[o] not extend to making knowing or reckless false statements of . . . law"). Although the Review Department stated that an "attorney's conduct is assessed under an objective, reasonableness standard," Pet. App. 103a, its analysis of culpability appears to be based, in part, on its findings regarding petitioner's subjective beliefs about the law. *See* Pet. App. 43a (finding that petitioner "had a longstanding belief that Congress counts the electoral votes and is the sole

entity to resolve any disputes"); Pet. App. 44a–45a & n.43 (criticizing whether sufficient research supported a change in views). An attorney's subjective beliefs about the correctness of a legal position cannot be a ground for discipline: counsel may (and often must) raise good-faith legal arguments on behalf of a client with which the attorney might personally disagree.

The First Amendment "prohibits government officials from wielding their power selectively to punish or suppress speech, directly or . . . through private intermediaries." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 198 (2024). Failing to apply strict scrutiny to the regulation of attorney speech creates a danger of content or viewpoint discrimination in the implementation of the rules. *See NIFLA*, 585 U.S. at 771. The First Amendment ensures the robust exchange of ideas, and regulation of attorney speech should be narrowly tailored so that courts and clients receive the benefit of zealous advocacy. The potential for chilling speech is not limited to petitioner alone: "The threat of sanctions may deter [the exercise of First Amendment rights] almost as potently as the actual application of sanctions." *Button*, 371 U.S. at 433.

Application of the First Amendment to matters of attorney discipline is far from straightforward, and this Court's precedent requires a far more detailed analysis than the Review Department provided. Further guidance from this Court is warranted.

CONCLUSION

For these reasons, this Court should grant the petition for writ of certiorari.

Respectfully submitted.

JAMES UTHMEIER
Attorney General
of Florida

RYAN D. NEWMAN
Chief Deputy Attorney General

DAVID M.S. DEWHIRST
Solicitor General

JASON J. MUEHLHOFF
Chief Deputy Solicitor General

Office of the Attorney General
State of Florida
PL-01, The Capitol
Tallahassee, FL 32399-1050

KEN PAXTON
Attorney General
of Texas

BRENT WEBSTER
First Assistant Attorney General

WILLIAM R. PETERSON
Solicitor General
Counsel of Record

Office of the Texas Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
william.peterson@oag.texas.gov
(512) 936-1700

Counsel for Amici States

November 16, 2026

ADDITIONAL SIGNATORIES

STEVE MARSHALL
Attorney General
of Alabama

KRIS W. KOBACH
Attorney General
of Kansas

THEODORE E. ROKITA
Attorney General
of Indiana

LIZ MURRILL
Attorney General
of Louisiana

BRENNA BIRD
Attorney General
of Iowa

MICHAEL T. HILGERS
Attorney General
of Nebraska