

No. 26-____

IN THE
Supreme Court of the United States

LAWYERS FOR FAIR RECIPROCAL ADMISSION,

Petitioner,

v.

UNITED STATES, ET AL.,

Respondents.

On Petition for a Writ of Certiorari Before Judgment
to the United States Court of Appeals
for the Third Circuit

**PETITION FOR A WRIT OF CERTIORARI
BEFORE JUDGMENT**

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QUESTIONS PRESENTED

The appeal presenting these questions was docketed in the Third Circuit on January 26, 2023. In the more than three and a half years since, the United States has never filed a responsive brief, and the court of appeals has never ordered one, heard argument, or decided the appeal. A petition for a writ of certiorari is filed concurrently in *Lawyers for Fair Reciprocal Admission v. Timmer*, No. 26-____, presenting the state-law half of the same question on a final judgment of the Ninth Circuit.

The questions presented are:

1. Whether D.N.J. L.Civ.R. 101.1 and D. Del. L.Civ.R. 83.5—which categorically deny general bar admission to attorneys licensed and in good standing in the other forty-nine states, allocating the right to file, appear, and petition in the courts of the United States by class membership rather than individual merit—violate the First Amendment and the equal-protection component of the Fifth Amendment's Due Process Clause.

2. Whether the Local Rules' class-based exclusions that have nothing to do with individual merit exceed the rulemaking authority conferred by 28 U.S.C. §§ 1654, 2071, and 2072, as construed in *Frazier v. Heebe*, 482 U.S. 641 (1987), and *Siegel v. Fitzgerald*, 596 U.S. 464 (2022), or can survive any standard of review, when these are federal courts administering federal law.

PARTIES TO THE PROCEEDINGS

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

Respondents, defendants-appellees in the court of appeals, are the United States; the Attorney General of the United States, sued in an official capacity (the current Attorney General is automatically substituted as a party, *see* Sup. Ct. R. 35.3); the Judges of the Judicial Council of the Third Circuit, sued in their official capacities; and the United States District Courts for the District of New Jersey and the District of Delaware.

The individually named Respondents, defendants-appellees in the court of appeals, are ATTORNEY GENERAL MERRICK B. GARLAND, MICHAEL A. CHAGARES, CHIEF JUDGE OF THE THIRD CIRCUIT JUDICIAL COUNCIL, and his Hon. Judicial Council Colleagues THEODORE A. McKEE, THOMAS L. AMBRO, KENT A. JORDAN, THOMAS M. HARDIMAN, JOSEPH A. GREENAWAY, JR., JUAN R. SANCHEZ, MARK R. HORNAK, MATTHEW W. BRANN; FRED A. WOLFSON, CHIEF JUDGE OF THE DISTRICT OF NEW JERSEY, and her Hon. District Judge colleagues GEORGETTE CASTNER, ZAHID N. QURAISHI, PETER G. SHERIDAN, MICHAEL SHIPP, ANNE E. THOMPSON, RENEE MARIE BUMB, NOEL L. HILLMAN, ROBERT B. KUGLER, CHRISTINE P. O’HEARN, JOSEPH H. RODRIGUEZ, KAREN M. WILLIAMS, MADELINE COX ARLEO, CLAIRE C. CECCHI, STANLEY R. CHESLER, KATHARINE S. HAYDEN, WILLIAM J. MARTINI, BRIAN MARTINOTTI, KEVIN McNULTY, JULIEN XAVIER NEALS, ESTHER SALAS, JOHN MICHAEL VAZQUEZ, and SUSAN D. WIGENTON; COLM F. CONNOLLY, CHIEF JUDGE OF THE

DISTRICT OF DELAWARE, and his Hon. District Judge Colleagues LEONARD P. STARK, RICHARD G. ANDREWS, and MARYELLEN NOREIKA.

CORPORATE DISCLOSURE STATEMENT

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

RELATED PROCEEDINGS

Lawyers for Fair Reciprocal Admission v. United States, No. 23-1154 (3d Cir.) (docketed January 26, 2023; pending without judgment).

Lawyers for Fair Reciprocal Admission v. United States, No. 23-244 (U.S.) (petition for a writ of certiorari before judgment denied November 6, 2023).

Lawyers for Fair Reciprocal Admission v. United States, No. 3:22-cv-02399 (D.N.J.) (order dismissing complaint with prejudice and denying leave to amend entered January 10, 2023).

Lawyers for Fair Reciprocal Admission v. Timmer, No. 25-3551 (9th Cir.) (judgment entered May 26, 2026; rehearing denied July 2, 2026); petition for a writ of certiorari filed concurrently with this petition, No. 26-
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Lawyers for Fair Reciprocal Admission v. Timmer, No. 2:24-cv-02175 (D. Ariz.) (judgment entered May 30, 2025).

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

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PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

Lawyers for Fair Reciprocal Admission (LFRA) respectfully petitions for a writ of certiorari before judgment, pursuant to 28 U.S.C. §§ 1254(1) and 2101(e) and this Court's Rule 11, to review the judgment of the United States District Court for the District of New Jersey in a case now pending in the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The district court's opinion and order applying rational-basis review, dismissing the complaint with prejudice, and denying leave to amend (App. 1a, 24a) are unreported. The court of appeals has issued no opinion, has never ordered the government to respond, and has never ruled on petitioner's motions. The appeal has been pending, undecided, since January 26, 2023 (App. 36a-47a).

JURISDICTION

The district court entered final judgment on January 10, 2023. Petitioner filed a timely notice of appeal, and the appeal was docketed in the Third Circuit on January 26, 2023, as No. 23-1154, where it remains pending. Because the case is "in" the court of appeals, this Court has jurisdiction under 28 U.S.C. § 1254(1), which authorizes review by writ of certiorari "before or after rendition of judgment." An application for certiorari to review a case before judgment in the court of appeals "may be made at any time before judgment." 28 U.S.C. § 2101(e); *see* Sup. Ct. R. 11.

CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS INVOLVED

The pertinent constitutional, statutory, and rule provisions are reproduced at App. 26a-34a.

INTRODUCTION

This petition and the petition for a writ of certiorari filed concurrently in *Lawyers for Fair Reciprocal Admission v. Timmer*, No. 26-____, present the federal and state halves of a single question of national importance: whether the right to practice law in the United States may be allocated by class status—the state that licensed an attorney—rather than by individual merit, experience, and qualification. The *Timmer* petition presents the question as applied to a state supreme court's admission rule. This petition presents it in a form still more anomalous: local rules by which federal courts—courts of the United States, administering a uniform body of federal law on behalf of citizens of every state—close their doors to licensed attorneys of forty-nine states and reserve their bars for members of a single state's guild.

Under D.N.J. L.Civ.R. 101.1 and D. Del. L.Civ.R. 83.5, an attorney's eligibility for general admission to two of the nation's most consequential federal trial courts turns on one fact: membership in the forum state's bar. Individual experience is irrelevant. Federal practice is irrelevant. Examination history, discipline-free decades, and mastery of the federal law those courts exclusively administer are irrelevant. A novice admitted to the New Jersey or Delaware bar yesterday receives general admission on motion; a veteran of a thousand federal cases licensed in forty-nine states does not and cannot, except by intermittent leave granted *pro hac vice* on the

condition that the client also retain—and pay—forum-state counsel.

The regime also inverts the constitutional design. The federal courts were established, in significant part, to supply litigants a forum free of local attachments and local favoritism. The Local Rules convert that neutral forum into the local guild's franchise. District judges, themselves members of the forum-state bar, adopt their own bar's membership roll as the credential for admission to the court of the United States. They delegate the administration of that credential to state licensing bodies composed of active market participants and then sit in judgment of challenges to the rules they authored. A tribunal so structured is not fair and neutral as to the class it excludes—and the record of this appeal is the proof.

This Court has held that the professional-licensing context does not reduce First Amendment protection, *Chiles v. Salazar*, 146 S. Ct. 1010 (2026), and that gatekeepers must judge "experiences as an individual—not on the basis of" class membership, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 231 (2023). Outside the courts below, every organ of the federal government has repudiated the premise of the local-lawyer monopoly regime. Congress has commanded recognition of out-of-state attorney licenses for military spouses, 50 U.S.C. § 4025a. The Department of Justice has advised every licensing authority that demanding more "is illegal." App. 80a. The President has directed the Attorney General to identify potential civil compliance investigations of "State and local bar" associations, Exec. Order No. 14173, § 4(b)(iii) (App. 61a)—the very associations whose membership rolls the Local Rules adopt. And the federal antitrust enforcers have formally concluded that bar-admission criteria set by incumbent-controlled bodies raise

"serious competitive risks" and protect entrenched monopolies. App. 100a, 91a. The state regimes the Local Rules incorporate rest, in turn, on American Bar Association accreditation—the private credential the *Timmer* petition independently challenges.

The ordinary course would be to await the Third Circuit's judgment. But there is no judgment to await. In the three and a half years since the appeal was docketed, the United States—the appellee and defender of the challenged rules—has never filed a brief, and the court of appeals has never ordered one, calendared argument, decided the case, or ruled on petitioner's repeated motions for hearing priority and to compel a response. Petitioner's successive Rule 28(j) letters and motions placing the intervening acts of Congress, the Executive, and this Court before the panel have drawn no response from the government and no action from the court.

Meanwhile, in the companion case, the Ninth Circuit has entered final judgment sustaining the state half of the same class-based licensing regime, and this Court's review of that judgment is sought concurrently. This is the precise configuration in which the Court has granted certiorari before judgment: a case of imperative public importance whose companion is properly here, where deferring to "normal appellate practice" defers to a practice that has visibly ceased to function. See *Students for Fair Admissions, Inc. v. University of North Carolina*, 600 U.S. 181 (2023); *Gratz v. Bollinger*, 539 U.S. 244, 259-60 (2003); *United States v. Booker*, 543 U.S. 220, 229 (2005). And the cost of further delay is not administrative but constitutional. The exclusion the Local Rules work is a continuing First Amendment injury that no eventual judgment can restore. The suspension of this appeal since January 2023 has become the mechanism by which the state licensing

rules the Local Rules incorporate are insulated from any adjudication at all.

STATEMENT OF THE CASE

A. The Local Rules' Forum-State Monopoly.

The District of New Jersey conditions general admission to its bar on being "licensed to practice by the Supreme Court of New Jersey," D.N.J. L.Civ.R. 101.1(b) (App. 34a), and the District of Delaware admits on motion only attorneys "admitted to practice by the Supreme Court of the State of Delaware," D. Del. L.Civ.R. 83.5(b) (App. 34a). Neither rule permits consideration of an applicant's individual experience, competence, examination history, or disciplinary record. Both turn entirely on class membership: the state whose bar the attorney joined.

The forum-state credential the Local Rules incorporate is, at bottom, an entry-level licensing examination. The purpose of a bar examination is to measure minimum entry-level competence in order to protect the public: "A bar exam is a test of minimum competence to practice law." Rebecca White Berch, *The Case for the Uniform Bar Exam*, *The Bar Examiner*, Feb. 2009, at 12. New Jersey administers the Uniform Bar Examination—an entry-level test developed by the National Conference of Bar Examiners that does not test New Jersey law, or the law of any state, and whose portable scores more than forty jurisdictions accept. New Jersey itself accepts transferred UBE scores and admits experienced sister-state attorneys on motion, without any examination—but only those licensed in a jurisdiction that "would extend a reciprocal license by motion to New Jersey lawyers." N.J. Ct. R. 1:24-2, 1:24-4(c). The federal rule thus incorporates a credential whose availability turns not on the attorney's merit but on an

interstate bargain to which she is a stranger. Delaware layers atop its own examination the in-state clerkship, task checklist, and preceptorship described below. Neither credential measures anything about an experienced attorney that her license, examination history, and years of discipline-free practice have not already established—and this Court has repeatedly declined to presume otherwise. *Frazier v. Heebe*, 482 U.S. 641, 646-47 (1987); *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 285 (1985). The organized bar agrees: the American Bar Association recommends that every state and every federal district court admit experienced sister-state attorneys in good standing on motion, without reexamination, ABA Model Rule on Admission by Motion (rev. Aug. 2012), and in 2019 alone more than 16,000 lawyers were admitted to the bar of a second state by admission on motion or transfer of a UBE score.

The Delaware rule compounds the exclusion, because the state-bar prerequisite it incorporates is itself the most restrictive in the nation—and, for an attorney already licensed and practicing elsewhere, practically impossible to satisfy. Admission to the Delaware bar requires, in addition to a bar examination administered by Delaware: (i) a clerkship "in the State of Delaware" under the "direct and constant supervision" of a Delaware bar member, "aggregating substantially full-time service for at least 12 weeks' duration"—each week defined as a forty-hour work week, Del. Sup. Ct. R. 52(a)(8); (ii) completion of a Board-prescribed checklist of twenty-six legal tasks performed in Delaware—among them attending a civil trial in a Justice of the Peace Court, a criminal trial in the Court of Common Pleas, a session of arraignments in Superior Court, a hearing in the Court of Chancery, and a contested deposition, Del. Sup. Ct. R. 52(a)(9); and (iii) the vouching sponsorship

of a preceptor who has been a member of the Delaware bar for at least ten years, Del. Sup. Ct. R. 52(a)(2); Del. Bd. of Bar Exam'rs R. 10. Delaware repealed its rule for "[a]ttorneys admitted elsewhere" in 1984, Del. Sup. Ct. R. 53 (repealed Feb. 21, 1984), and offers neither admission on motion nor UBE-score transfer; its sole accommodation for sister-state attorneys waives only educational prerequisites—the examination, clerkship, and preceptorship remain. R. 52(aaa). A mid-career attorney—with clients, cases, a family, and a mortgage in another state—cannot suspend her practice for twelve weeks of full-time in-state apprenticeship, relocate to attend Delaware courtrooms task by task, and recruit an incumbent competitor willing to sponsor her, all to seek permission to appear in a federal courthouse. The requirements are calibrated to the recent graduate with no practice to abandon—the future forum insider—and they operate as an absolute exclusion of the practicing out-of-state attorney. The federal rule thus does not merely borrow a state credential; it borrows a residency-and-apprenticeship gauntlet.

The excluded attorney's only recourse is admission *pro hac vice*—case by case, by leave, and on the condition of associating (and the client paying for) forum-state counsel. The consequence for litigants is a compelled-counsel regime. Every citizen and corporation in fifty states must retain a forum-state lawyer to litigate in these federal courts, whatever counsel of their choice they have used for decades elsewhere.

The record puts a name to that exclusion—and shows the Delaware rule operating on its own residents not as a barrier but as a total bar. LFRA member Cecil R. Hoskins III was born in Delaware, resides in Delaware, and graduated from the University of Delaware. He is a 2011 graduate of ABA-

accredited Widener University School of Law and a member in good standing of the Pennsylvania and New Jersey bars. He is admitted to the bar of the United States District Court for the Eastern District of Pennsylvania. Decl. of Cecil R. Hoskins III ¶¶ 1, 5 (App. 49a-50a). Because he is not a member of the Delaware bar, D. Del. L.Civ.R. 83.5(b) denies him general admission to the federal court that sits in his home state. And because he resides in Delaware, the rule's own escape valve is closed to him: an applicant "is not eligible for permission to practice pro hac vice" if the applicant "[r]esides in Delaware." D. Del. L.Civ.R. 83.5(c)(1). The stranger to Delaware may at least appear case by case, by leave, at a client's added expense; Hoskins—licensed and in good standing for more than a decade, with clients, family, and a lifetime of ties in the district—may not appear at all. His declaration attests that satisfying the state-bar prerequisite at this stage of his career is "virtually impossible": he would have to stop practicing law to complete the required in-state clerkship and secure the ten-year preceptor described above, then sit Delaware's examination, with its \$800 fee and more than six months' processing. Id. ¶¶ 7-8 (App. 50a-51a). He attests that he "will immediately apply" for general admission if the Rule is changed, id. ¶ 1 (App. 49a), and that until then his clients and family must retain a Delaware-barred lawyer they did not choose, proceed unrepresented, or "hir[e] two lawyers to do the job of one in the United States Courthouse," id. ¶ 3 (App. 49a).

Thirty miles separate the federal courthouse in Wilmington from the federal courthouse in Philadelphia, where Hoskins is a fully admitted member of the bar. In one United States courthouse he is complete counsel; in the other—the one that sits in his home state—he may not appear at all. Same

attorney, same license, same clients, same federal law: the difference is not competence but a guild boundary. For his Delaware neighbors, the exclusion operates as a tax on the right to petition a federal court—the fee of a second, unchosen lawyer for those who can pay it, and the loss of counsel of choice, or of any counsel, for those who cannot.

B. Nonuniformity Across the Districts.

This monopoly-protecting regime is not national policy. It is local exception. The ninety-four federal district courts, all exercising the same subject-matter jurisdiction under the same Acts of Congress, administer admission rules that range from general admission for any attorney licensed in any state, to admission keyed to forum-state bar membership, to hybrid systems. The identical attorney—same license, same experience, same record—is fully admissible in some federal courts, and categorically excluded from others, not by any Act of Congress or national rule but by the happenstance of local rulemaking. Congress placed federal practice under a uniformity command: local rules "shall be consistent with Acts of Congress" and national rules, 28 U.S.C. § 2071(a); such rules "shall not abridge, enlarge or modify any substantive right," 28 U.S.C. § 2072(b); *accord* Fed. R. Civ. P. 83(a). And litigants' statutory right to conduct their causes "by counsel," 28 U.S.C. § 1654, is a single federal right, not ninety-four local ones. This Court held in *Siegel v. Fitzgerald*, 596 U.S. 464 (2022), that materially nonuniform burdens on access to the federal courts, varying by district for no reason connected to any federal interest, are constitutionally intolerable even when Congress itself creates them. Here the nonuniformity is the work of the courts' own delegated housekeeping power.

C. Congress, the Executive Branch, and the Federal Antitrust Enforcers Reject the Rules' Premise.

Multiple post-judgment developments were presented to the court of appeals in Rule 28(j) letters (App. 53a-130a), briefs, and motions. The government answered none of them.

Congress. Congress enacted Public Law 118-159, amending the Servicemembers Civil Relief Act to eliminate the statute's prior exception for attorney licenses on December 23, 2024. Under 50 U.S.C. § 4025a, a covered military spouse's out-of-state law license "shall be considered valid" in the state of new residence upon proof of orders and good standing. App. 30a-33a. On December 22, 2025, the Department of Justice's Civil Rights Division notified every state licensing authority that "anything demanded in excess of the requirements detailed in the SCRA is illegal." App. 80a. A qualifying military-spouse attorney relocated to New Jersey or Delaware therefore satisfies each Local Rule's state-bar prerequisite by operation of federal law; a district court's refusal to admit her would place its own local rule in direct conflict with an Act of Congress—the precise defect § 2071(a) forbids.

The Executive Branch. On January 21, 2025, the President signed Executive Order 14173, directing the Attorney General to identify potential civil compliance investigations of "State and local bar and medical associations," § 4(b)(iii) (App. 61a), and to issue guidance implementing Students for Fair Admissions, § 5 (App. 62a). Executive Order 14279 (Apr. 23, 2025) (App. 124a) directed the dismantling of credentialing practices that restrict professional access, and the supreme courts of Alabama, Texas, and Florida have since eliminated categorical, credential-based

conditions on bar-examination eligibility, Order on Rules III and IV (Ala. Apr. 30, 2026) (reported at App. 87a-89a); Misc. Dkt. No. 26-9002 (Tex. Jan. 6, 2026); Dkt. No. SC2025-2064 (Fla. Jan. 15, 2026)—a repudiation, by three state high courts in six months, of the class-based architecture the Local Rules embody.

Federal Antitrust Enforcement. On April 30, 2026, the Directors of the Federal Trade Commission's Office of Policy Planning and Bureau of Competition, Deputy Assistant Attorneys General of the Department of Justice's Antitrust Division, and the United States Attorney for the Middle District of Tennessee jointly advised the Supreme Court of Tennessee that delegating bar-admission gatekeeping to incumbent-controlled bodies "raises serious competitive risks," that such bodies are dominated by practitioners with "strong incentives to limit the supply of lawyers," and that regulatory barriers propping up entrenched monopolies should be eliminated. In re ADM2025-01403 (Apr. 30, 2026) (App. 90a-123a; quotations at 100a, 95a, 91a). The signatory Antitrust Division is counsel for the appellees in this appeal.

D. Proceedings in the District Court.

Petitioner LFRA, an association of licensed attorneys, sued the United States, the Attorney General, the Judges serving on the Third Circuit Judicial Council, *see* 28 U.S.C. § 332(d)(4), and the Judges of the Districts of Delaware and New Jersey. The complaint challenged the Local Rules on their face and as applied under the First Amendment, the equal-protection component of the Fifth Amendment, the separation of powers, 28 U.S.C. §§ 2071(a) and 2072(b) (the Rules Enabling Act), and 28 U.S.C. §

1738. Seven member declarations under oath established standing—among them the Hoskins declaration attesting to the total exclusion described above, App. 48a—and LFRA moved for summary judgment on a documentary record.

The district court held that LFRA had established standing (App. 9a-12a) but excused the defendants from responding to the summary-judgment motion and denied oral argument. It dismissed the Delaware judges for want of personal jurisdiction by reference to New Jersey's state long-arm statute rather than the federal officer venue and service provisions. App. 8a. It dismissed the Attorney General as insufficiently connected to the rules' enforcement, App. 12a, and dismissed the complaint with prejudice under Rule 12(b)(6). App. 23a. It denied leave to amend on the ground that petitioner's history of "singular lack of success" rendered amendment futile. App. 23a. Every decision in that history applied rational-basis review; none adjudicated petitioner's consistent contention that heightened scrutiny governs. *See infra* Part VII. The court did not cite or address *TRI-M Group, LLC v. Sharp*, 638 F.3d 406 (3d Cir. 2011), pressed throughout petitioner's briefing, in which the Third Circuit invalidated Delaware's virtually parallel refusal to recognize out-of-state apprenticeship credentials as facially discriminatory against out-of-state competitors.

Each pillar of that Rule 12(b)(6) rational-basis disposition has since been undermined by an intervening act of a coordinate branch. The futility holding rests on precedents whose doctrinal footing this Court removed in *Chiles* and *Students for Fair Admissions*. Congress has enacted, in § 4025a, substantially the relief the court deemed futile to seek; and the Attorney General's asserted disconnection from bar-admission enforcement was

overtaken by Executive Order 14173's express command that he investigate the incorporated bar associations.

E. Three and a Half Years of Silence in the Court of Appeals.

Petitioner's appeal was docketed on January 26, 2023, and its opening brief and joint appendix were filed on April 15, 2023. App. 40a. The United States has never filed an opposition brief. The court of appeals has never ordered the government to respond. It has never calendared oral argument or ruled on petitioner's motions for hearing priority and to compel an opposition brief. Petitioner has repeatedly supplemented the record, including with Rule 28(j) letters presenting Students for Fair Admissions (ECF 45) (App. 65a), Executive Order 14173 (ECF 44) (App. 53a), the FY2025 NDAA amendment of the SCRA and the Department of Justice's nationwide directive (ECF 46) (App. 69a), and the Alabama Supreme Court's order, Executive Order 14279, and the joint FTC/DOJ/USAO letter signed by appellees' own counsel (ECF 49) (App. 83a). It has also filed supplemental motions presenting this Court's decision in *Chiles v. Salazar* (ECF 47, 48) (App. 46a-47a). None has drawn a response. Under Federal Rule of Appellate Procedure 31(c), an appellee who fails to file a brief may not be heard at argument—but there is no argument at which to enforce the default, and no decision through which to review it. The appeal is not being decided slowly. It is not being decided.

F. The Companion State Case.

The state half of the question presented arrives concurrently on a final judgment. In *Lawyers for Fair Reciprocal Admission v. Timmer*, No. 25-3551 (9th

Cir.), the court of appeals affirmed—in a five-page unpublished memorandum applying rational-basis review issued without oral argument—the dismissal of petitioner's challenge to Arizona Supreme Court Rule 34, which categorically denies admission on motion to attorneys licensed in eleven states and bars non-ABA graduates from sitting for the Arizona examination—an exclusion the *Timmer* petition presents as an independent question no court has ever reviewed—together with a pre-filing sanctions order against petitioner's counsel for advancing the position this Court adopted 8-to-1 in *Chiles*. Rehearing was denied July 2, 2026, and a petition for a writ of certiorari is filed concurrently with this petition. The Ninth Circuit's memorandum and the order denying rehearing are reproduced in the appendix to the *Timmer* petition.

The two cases present complementary aspects of a single question: whether state supreme court professional speech licensing restrictions for sister-state attorneys, and the federal local rules that incorporate them—restrictions that concededly turn on class status, not individual merit—are subject to rational-basis review, as the courts below held, or to strict scrutiny, as this Court's precedents require. *Chiles v. Salazar*, 146 S. Ct. 1010 (2026); *National Institute of Family and Life Advocates v. Becerra* (NIFLA), 585 U.S. 755 (2018); *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010).

REASONS FOR GRANTING THE PETITION

I. This Case Satisfies Rule 11's Standard for Certiorari Before Judgment.

Certiorari before judgment is reserved for cases "of such imperative public importance as to justify

deviation from normal appellate practice and to require immediate determination in this Court." Sup. Ct. R. 11. Both elements are satisfied.

A. The Question Presented Is of Imperative Public Importance.

The question is who may practice in the courts of the United States—and by what measure. How the government classifies lawyers and the clients they serve is a question at the apex of this Court's supervisory jurisdiction.

The Local Rules govern access to the federal forums for the nation's corporate-law capital and one of its busiest districts, and they exemplify a pattern replicated in districts nationwide. Every federal litigant's statutory right to counsel of choice under 28 U.S.C. § 1654, every excluded attorney's livelihood, and the uniformity of federal practice that § 2071(a), § 2072(b), Rule 83(a), and *Siegel* command are implicated in every one of those districts, every day. This Court has repeatedly treated questions concerning the uniform administration of federal law as warranting its prompt intervention. *See, e.g., Trump v. CASA, Inc.*, 606 U.S. 831 (2025); *Siegel*, 596 U.S. at 468. And the question's importance is certified by the political branches themselves. Congress has legislated it in Public Law 118-159. The President issued two executive orders reaching it. Federal antitrust enforcers have formally condemned the incumbent-controlled gatekeeping it embodies.

Nor is the exclusion confined to civil practice in the district courts. Both districts' bankruptcy bars are derivative—they consist of the attorneys admitted to the district court, D.N.J. LBR 9010-1; D. Del. Bankr. L.R. 9010-1—so the class-based exclusion extends automatically to the bankruptcy courts that

administer the Nation's largest corporate reorganizations, where compelled "Delaware counsel" must file every paper, including the petition, and attend every proceeding. The exclusion reaches criminal cases as well: an attorney not admitted in Delaware may defend an accused only *pro hac vice*, through the same compelled local counsel—a class-based surcharge on the Sixth Amendment right to counsel of choice. See *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2006).

The importance is measured, finally, in what the exclusion costs the public. Justice Gorsuch has described the Nation's justice gap in terms that admit of no dispute:

At some point just about every American will interact with our civil justice system. . . . Yet today, legal services are increasingly difficult to obtain. A 2017 study found that low-income Americans fail to obtain adequate professional assistance with their legal problems 86% of the time. . . . According to another study, at least one party lacks legal representation in nearly 80% of civil cases in this country. The root cause for this state of affairs is not hard to discern: Legal services are expensive. Neil M. Gorsuch, *Bridging the Affordability Gap: It's Time to Think Outside the Box*, 45 *Wyoming Lawyer* 16 (Apr. 2022).

The Local Rules aggravate that crisis twice over. They adopt wholesale the state licensing regimes of New Jersey and Delaware—two of the roughly thirty that condition bar-examination eligibility on graduation from an ABA-approved law school—and thereby extend into the courts of the United States the

very credentialing monopoly that Executive Order 14279 condemns and that the federal antitrust enforcers have found is "dominated by practicing attorneys, who have strong incentives to limit the supply of lawyers competing to provide legal services." App. 95a. And their compelled-counsel regime doubles the cost Justice Gorsuch identified as the root of the gap: every litigant with out-of-state counsel of choice must "hir[e] two lawyers to do the job of one in the United States Courthouse." App. 49a. Rules that exclude licensed, examined, discipline-free attorneys from the federal forum—and double litigants' cost of appearing there—in a country where at least one party already lacks representation in nearly 80% of civil cases, do not protect the public. They enlarge the justice gap. A credential the Executive Branch has condemned as anticompetitive even for aspiring lawyers cannot rationally be demanded of attorneys already licensed, examined, and in good standing.

B. The Companion Petition Makes Joint Consideration Possible Now—and Only Now.

This Court's settled practice is to grant certiorari before judgment where a companion case presenting a complementary aspect of the same question is properly before the Court, so that the question may be resolved whole. The Court granted before judgment in *Students for Fair Admissions, Inc. v. University of North Carolina*, 600 U.S. 181 (2023), to decide the North Carolina program alongside the Harvard case; in *Gratz v. Bollinger*, 539 U.S. 244, 259-60 (2003), to consider undergraduate admissions alongside *Grutter's* law-school program; and in *United States v. Fanfan*, to decide the Guidelines' fate alongside *Booker*, 543 U.S. 220, 229 (2005).

The same logic governs here. The *Timmer* petition presents the state-rule half of the question on a final judgment; this case supplies the federal-rule half. Resolving one without the other would leave the identical class-based architecture standing on the other side of the state-federal line—indeed, would leave federal courts enforcing by local rule what state authorities could no longer enforce directly.

C. Deviation from Normal Appellate Practice Is Justified Because Normal Appellate Practice Has Failed.

Rule 11 asks whether departure from the normal course is justified. The normal course presupposes an adversarial appeal moving toward judgment: briefs, argument, decision. Here there has been none of the three for more than three and a half years. No brief has been filed or ordered; no ruling has issued on petitioner's repeated motions for hearing priority or to compel an opposition. Petitioner's right to petition the government for the redress of grievances has been subverted by the court's inaction. The intervening authorities—an Act of Congress, two executive orders, an 8-to-1 decision of this Court, and formal findings of the appellees' own counsel—have been lodged and met with silence.

Certiorari before judgment has always been the Court's instrument when awaiting the court of appeals would serve no function commensurate with the cost of delay. *United States v. Nixon*, 418 U.S. 683, 686-87 (1974); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 584-85 (1952); *Mistretta v. United States*, 488 U.S. 361, 371 (1989); *Department of Commerce v. New York*, 588 U.S. 752, 767 (2019). Where three and a half years of waiting have produced no brief, no argument, and no prospect of a decision—

while the companion case arrives on final judgment—further waiting is not deference to the appellate process. It is the abandonment of the questions to it.

Nor does the denial of petitioner's earlier petition for certiorari before judgment in this appeal, No. 23-244 (November 6, 2023) (App. 44a), counsel a different course. A denial of certiorari "imports no expression of opinion upon the merits." *United States v. Carver*, 260 U.S. 482, 490 (1923). And that denial answered a different case. The appeal was then nine months old, and denial rested on the ordinary premise that the Third Circuit would brief, hear, and decide it in due course. Three additional years of default have refuted that premise, and every consideration this petition presses—*Chiles*, § 4025a, the executive orders, the enforcement record, and the *Timmer* final judgment that first made joint consideration possible—arose after the denial. The 2023 denial deferred to normal appellate practice; this petition is filed because there is no longer any such practice to defer to.

D. The Court of Appeals' Failure to Render a Decision Works Irreparable Injury and Forecloses Any Challenge to the State Licensing Rules the Local Rules Incorporate.

Rule 11 asks not only whether the question is important but whether it "require[s] immediate determination." It does, because the injury of delay is irreparable and compounding. The exclusion the Local Rules work is a continuing deprivation of First Amendment rights—the rights of LFRA's members to speak, appear, and petition in the federal courts, and the rights of litigants to counsel of their choice—and the loss of such freedoms "for even minimal periods of time, unquestionably constitutes irreparable injury."

Elrod v. Burns, 427 U.S. 347, 373 (1976) (plurality opinion). Every day the appeal sits undecided, LFRA's members are barred from two federal courthouses, clients are compelled to retain and pay forum-state counsel they did not choose, and engagements, cases, and years of professional life are lost that no eventual judgment can restore. For a member like Hoskins—resident in the district, barred from its federal court in any capacity—the deprivation is total. App. 49a-51a. Three and a half years of that injury have already accrued. A remedy that arrives only after the injury can no longer be redressed is not a remedy; it is an epitaph.

The suspension does more than delay relief. It forecloses it. The Local Rules operate by incorporation: the licensing rules of New Jersey and Delaware are adopted wholesale as the standard of admission to the federal courts. This appeal is the vehicle through which that incorporation, and the state licensing rules as incorporated, can be adjudicated. While the appeal is held in suspension, the incorporated state regime is immunized from review. It cannot be challenged in state court, which did not adopt the federal rule. It cannot be challenged in the district court, which dismissed the challenge with prejudice. It cannot be challenged in the court of appeals, which will not decide. The companion litigation closes the other jaw of the vise: in the Ninth Circuit, petitioner's direct challenge to a state licensing rule was dismissed and its counsel placed under a pre-filing order barring renewal of the claims. A party barred by sanctions from renewing the state-law challenge in one circuit and barred by indefinite non-decision from obtaining review of the federal incorporation of state rules in another has not been slow to obtain relief. It has been foreclosed from seeking it.

Petitioner does not ask this Court to attribute motive to the court of appeals. But after three and a half years, the distinction between deliberate inaction and indefinite default has ceased to matter. Whatever its cause, the effect is indistinguishable from a refusal to adjudicate. A refusal to adjudicate is precisely what certiorari before judgment exists to answer. The eventual judgment, moreover, is foreclosed by circuit precedent sustaining the New Jersey rule, *Matter of Roberts*, 682 F.2d 105 (3d Cir. 1982); *Nat'l Ass'n for the Advancement of Multijurisdiction Prac. v. Simandle*, 658 F. App'x 127 (3d Cir. 2016); only this Court can supply a different answer. Immediate determination in this Court is necessary and proper.

II. The Local Rules Exceed the Statutory Rulemaking Authority and Cannot Be Reconciled with *Frazier v. Heebe* or *Siegel v. Fitzgerald*.

The judgment below sustained rules that conflict with relevant decisions of this Court—the touchstone of certiorari on review of any final judgment, *cf.* Sup. Ct. R. 10(c), and no less so on review before one. District courts possess no inherent power over bar admission unconstrained by Congress. Their local rules exist by delegation, 28 U.S.C. §§ 1654, 2071, 2072. The delegation carries a consistency command: local rules "shall be consistent with Acts of Congress" and the national rules, 28 U.S.C. § 2071(a), and "shall not abridge, enlarge or modify any substantive right," § 2072(b). *Accord* Fed. R. Civ. P. 83(a) (adopting § 2072's standard).

Congress did not leave the consistency command to self-enforcement. Each judicial council "shall periodically review" the local rules of the district courts within its circuit for consistency with the rules

prescribed under § 2072, and "may modify or abrogate any such rule found inconsistent." 28 U.S.C. § 332(d) (4) (App. 28a-29a). The Local Rules have stood for decades; the Third Circuit Judicial Council—whose judges are respondents here—has never modified or abrogated them. The check Congress designed has failed because the reviewing body is a defendant. What § 332(d)(4) commits to the council, only this Court can now supply.

In *Frazier v. Heebe*, 482 U.S. 641 (1987), this Court struck down a district court's local rule requiring bar applicants to reside or maintain an office in the forum state, holding the requirements "unnecessary and irrational," *id.* at 645-49, in an exercise of its supervisory authority that did not reach the Constitution. The Local Rules here are *Frazier's* defect in stronger form. They do not merely demand an in-state office. They demand membership in the forum state's bar—in Delaware's case, a credential obtainable only through twelve weeks of in-state clerkship—a categorical proxy that excludes every out-of-state attorney regardless of expertise and individual fitness, the very vice *Frazier* condemned. *See id.* at 646-47. Indeed, the Delaware rule preserves the office requirement outright: no attorney may appear except in association with "Delaware counsel" who "maintains an office in the District of Delaware for the regular transaction of business." D. Del. L.Civ.R. 83.5(d).

Frazier does not stand alone. In *Piper*, this Court rejected, as unsupported by any evidence, the presumption that out-of-state attorneys are less competent or less ethical than local attorneys. 470 U.S. at 285. And in *Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 68-69 (1988), it held that a state may not require experienced nonresident attorneys to pass its bar examination while admitting

equally experienced residents on motion, because the state's own exemption for experienced attorneys refutes any claim that the examination is necessary to assure competence. The Local Rules' own exemptions supply the same refutation: both admit attorneys licensed in any state to appear for the United States, D.N.J. L.Civ.R. 101.1(f); D. Del. L.Civ.R. 83.5(f)(1), and New Jersey's rule admits non-forum patent attorneys, R. 101.1(e). On the rules' own terms, a sister-state license assures competence in federal practice—unless the client is a private citizen.

Together the trilogy rejects as fiction the premise on which the Local Rules rest: that an already licensed, experienced attorney must pass another entry-level examination—a test of minimum competence designed for the novice—before the public may safely encounter her practice. The Local Rules embrace the fiction in its purest form: the newly sworn forum-state admittee receives general admission automatically; the attorney with decades of discipline-free federal practice, licensed anywhere else, is excluded categorically. A regime that prefers the untested novice to the proven veteran measures guild membership, not competence.

The court of appeals whose judgment petitioner would ordinarily await has itself already condemned the architecture the Delaware Local Rule incorporates. In *TRI-M Group, LLC v. Sharp*, 638 F.3d 406 (3d Cir. 2011), *aff'g* 705 F. Supp. 2d 335 (D. Del. 2010), the Third Circuit invalidated Delaware's refusal, under its prevailing-wage regime, to recognize out-of-state-registered apprentices. It held that the refusal facially discriminated against out-of-state firms, fell "within the forbidden paradigm" of state action conferring "a commercial advantage" on local private actors, *id.* at 426, and could not survive the demanding scrutiny that facial discrimination

triggers. The Delaware attorney-admission regime the Local Rule adopts is virtually the same architecture applied to lawyers: an in-state apprenticeship (the twelve-week clerkship), in-state task performance (the twenty-six-item checklist), and incumbent sponsorship (the ten-year preceptor), each refusing recognition to out-of-state training and licensure however complete. *TRI-M* arose under the dormant Commerce Clause and so ran against the State. But its holding bears here in two respects the district court never engaged. It establishes, as the considered judgment of the circuit, that Delaware's in-state apprenticeship architecture is protectionist in character and effect, and that Delaware's proffered quality justifications for it do not withstand scrutiny. And it exposes the anomaly of the federal rule: what the Third Circuit forbade Delaware to demand of out-of-state apprentice contractors, the District of Delaware demands by local rule—as the credential for admission to a court of the United States—of out-of-state licensed attorneys. Neither *Frazier's* requirement of necessity nor § 2071(a)'s consistency command tolerates a federal court's adoption of a scheme bearing its own circuit's mark of condemnation—least of all where the precedent was pressed below and passed over in silence.

The nonuniformity is an independent statutory defect. Section 1654 confers one national right to conduct causes by counsel. The district-by-district lottery the Local Rules create—full admissibility here, categorical exclusion there, for the identical attorney—is inconsistent with that Act of Congress and with the uniformity principles this Court enforced in *Siegel*, 596 U.S. at 479-80. A litigant's access to counsel of choice in a United States court should not depend on which side of the Delaware River the courthouse stands.

III. The Local Rules Ration Federal-Court Advocacy by Categorical Class Status, Not Individual Merit, in Violation of the First and Fifth Amendments.

Practicing law in federal court is speech and petitioning in their most concentrated form: filing, arguing, counseling, and seeking redress on behalf of clients. Rules determining which licensed attorneys may do so are speaker-based restrictions, and after *Chiles*, the professional-licensing label supplies no discount from full First Amendment scrutiny. 146 S. Ct. at 1024-25 ("The Constitution does not protect the right of some to speak freely; it protects the right of all."); see *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 564 (2011); *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819, 828 (1995). This Court applied exacting scrutiny to restrictions on attorneys' advocacy in *Holder v. Humanitarian Law Project*, 561 U.S. 1, 27-28 (2010). And this Court has held that an attorney's opportunity to practice law, including bar admission on motion, is a constitutionally protected privilege and immunity. *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 281 (1985); *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988). The Local Rules silence a defined class of licensed, examined, discipline-free speakers in the federal forum—and compel the citizens of fifty states to retain forum-state counsel as the price of petitioning a court of the United States—based solely on the speakers' class credential.

What remains for the excluded speaker is a permission regime—the paradigm of prior restraint. "In its simple, most blatant form, a prior restraint is a law which requires submission of speech to an official who may grant or deny permission to utter or publish it based upon its contents." *Alexander v. United*

States, 509 U.S. 544, 556 (1993) (Kennedy, J., dissenting). An out-of-state attorney may advocate in these federal forums only upon advance application, case by case, to an official with discretion to grant or deny leave—and in Delaware, a resident attorney like Hoskins may not even apply. Systems of prior restraint come to this Court "bearing a heavy presumption against" their "constitutional validity." *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558 (1975). In more than three and a half years, no court has required the government even to address that presumption, and the government has never filed a brief.

The presumption underlying that permission regime inverts this Court's petitioning jurisprudence. Under *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49, 60-61 (1993), petitioning is presumed genuine and constitutionally protected; it may be condemned as a "sham" only upon a demanding, case-specific showing that a particular filing was "objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits" and, separately, was subjectively aimed at abusing the governmental process itself rather than seeking its outcome. The Local Rules run that presumption backwards, and run it class-wide: they treat every attorney licensed outside the forum state—licensed, examined, and in good standing—as though her advocacy on behalf of her clients were presumptively unworthy of the federal forum, tolerable only by case-by-case leave or not at all. A charge this Court requires to be proven filing by filing, against a single litigant, cannot rationally be presumed wholesale against the bar of an entire Nation.

The classification fails even rational-basis review under the equal-protection component of the Fifth

Amendment. *Bolling v. Sharpe*, 347 U.S. 497 (1954). These are federal courts administering federal law. Familiarity with forum-state law cannot rationally justify excluding attorneys from federal-question practice. The rules do not even attempt tailoring—the novice forum admittee with no federal experience enters, while the out-of-state federal specialist is barred. Classifications that credit identical qualifications differently based solely on their source measure class membership, not fitness. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 446-47 (1985). And the interest that remains—protecting forum incumbents from competition—is not legitimate. *N.C. State Bd. of Dental Exam'rs v. FTC*, 574 U.S. 494, 505-06 (2015); *FTC v. Ind. Fed'n of Dentists*, 476 U.S. 447, 462-63 (1986). That is not petitioner's characterization but the documented conclusion of the FTC and the Department of Justice's Antitrust Division. Under *Students for Fair Admissions*, gatekeeping must turn on "experiences as an individual" and not class status. 600 U.S. at 231.

Congress has made that principle statutory. Under 28 U.S.C. § 1738, the acts, records, and judicial proceedings of every State "shall have the same full faith and credit in every court within the United States"—the federal courts emphatically included—as they have at home. Each attorney's bar admission is a final judgment of a state supreme court adjudicating that applicant's qualifications, character, and fitness, and "the full faith and credit obligation is exacting." *V.L. v. E.L.*, 577 U.S. 404, 407 (2016) (per curiam) (quoting *Baker v. General Motors Corp.*, 522 U.S. 222, 233 (1998)). Federal courts owe preclusive respect even to the unreviewed adjudications of state administrative agencies acting in a judicial capacity. *University of Tennessee v. Elliott*, 478 U.S. 788, 799 (1986). The Local Rules invert the statute: they give

conclusive effect to the licensure judgments of one state supreme court and no effect to the identical judgments of the other forty-nine. Petitioner pleaded this § 1738 claim below and preserves it here; it independently confirms that the classification measures the identity of the rendering court, not the fitness of the attorney.

The pedigree of the contrary premise should give pause. The last time this Court sustained the categorical exclusion of a concededly qualified applicant from the practice of law, it reasoned that the opportunity to practice law was no privilege of citizenship at all, *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 139 (1873), and the concurrence explained that the excluded class could be dismissed because the "natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life." *Id.* at 141. That is what class-based licensing sounds like when its reasoning is written down: it defines the excluded by what they are and never asks what they have done. The Local Rules speak more politely, but they ask the same question and no other—not whether Cecil Hoskins is fit to appear in the United States courthouse in his home state, but whether he belongs to the favored class. The Constitution does not tolerate two classes of citizens holding two classes of constitutional rights, and it does not consign the licensed attorneys of forty-nine states—or the litigants who would choose them—to the second class.

IV. Federal Courts Are Not Fair and Neutral Tribunals When They Adopt State Licensing Rules as the Credential for Admission to Their Own Bars.

The Due Process Clause forbids adjudicative structures that offer even the temptation of self-interest. *Tumey v. Ohio*, 273 U.S. 510, 532 (1927); *Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 883-84 (2009). "[N]o man can be a judge in his own case." *In re Murchison*, 349 U.S. 133, 136 (1955). The Local Rules place the federal district courts on the wrong side of that line three times over.

The judges who promulgate the rules are themselves members of the forum-state bar whose roll the rules adopt as the credential of admission. The rules are then construed, applied, and enforced by the same courts that authored them. And an out-of-state attorney who challenges her exclusion must plead her case to a bench drawn exclusively from the class the rules prefer—the authors and beneficiaries of the exclusion sitting in judgment of its validity. *Cf. Williams v. Pennsylvania*, 579 U.S. 1, 8-9 (2016) (an adjudicator with significant involvement in a decision may not sit in review of it).

The delegation deepens the defect. By adopting state bar membership wholesale, the federal courts surrender their gatekeeping over their own bars to state licensing bodies—boards of bar examiners, preceptor committees, and character-and-fitness panels staffed by active market participants with a direct pecuniary interest in limiting entry. This Court has twice refused to treat such bodies as neutral. *Gibson v. Berryhill*, 411 U.S. 564, 578-79 (1973), held that a licensing board of practitioners with a financial stake in excluding competitors was constitutionally

disqualified from adjudicating their exclusion. *North Carolina State Board of Dental Examiners v. FTC*, 574 U.S. 494, 505-06 (2015), held that boards of active market participants forfeit even antitrust immunity absent supervision precisely because their private interests cannot be presumed aligned with the public's. Delaware's regime is the paradigm: general admission to a court of the United States ultimately requires the sponsorship of a preceptor who has been a member of the Delaware bar for ten years—an incumbent competitor's personal permission slip. The delegation runs deeper still: the state regimes the Local Rules adopt condition eligibility on graduation from a law school accredited by the American Bar Association, N.J. Ct. R. 1:24-1; Del. Sup. Ct. R. 52(a) (4)-(5)—so that admission to a court of the United States rests on the accreditation roll of a private trade association no federal actor actively supervises. A federal court that conditions admission to its own bar on the approval of bodies the Due Process Clause deems too interested to adjudicate has not adopted a qualification. It has abdicated its neutrality to the very interests neutrality exists to check.

The abdication inverts the federal courts' historic function. The federal judiciary was designed, from the founding, to supply a forum secure against local favoritism. Rules that reserve the federal bar to the local guild convert the constitutional haven from parochialism into its citadel. That structural inversion also provides the answer to any suggestion that these questions should await further lower-court development. The courts positioned to develop them are the courts whose own rules, memberships, and rulemaking prerogatives the questions put in issue. A question of the federal judiciary's own structural self-interest is uniquely a question for this Court.

V. The Local Rules Conflict with the Servicemembers Civil Relief Act.

Section 2071(a)'s consistency command supplies an independently sufficient statutory ground. Congress has mandated that a qualifying military spouse's out-of-state law license "shall be considered valid" in her new state of residence, 50 U.S.C. § 4025a(a) (App. 30a), and the Department of Justice has instructed the states that exceeding the statute's requirements "is illegal." App. 80a. The Local Rules, by conditioning federal admission on forum-state bar membership as administered through the states' ordinary gauntlets—examinations, clerkships, preceptors—demand of covered military spouses precisely what federal law forbids demanding. A local rule of a federal court that conflicts with an Act of Congress is void by the terms of its own enabling statute. The point also answers the district court's futility rationale: Congress has enacted substantially the recognition principle petitioner sued to establish. A claim whose remedy Congress adopts is not futile.

VI. The United States' Own Enforcement Position Confirms That Only This Court Can Resolve the Question.

The posture of the United States in this litigation is itself extraordinary. As appellee, the government has declined for three and a half years to file a brief defending the Local Rules. As enforcer, its Antitrust Division has concluded, in a filing signed while this appeal sat unbriefed, that incumbent-controlled bar-admission criteria raise "serious competitive risks." App. 100a. Its Civil Rights Division has declared demands exceeding § 4025a "illegal." App. 80a. Its principal officer is under presidential directive to investigate the bar associations the Local Rules

incorporate. The United States, in short, condemns in every other forum the professional licensing restrictions it silently maintains in this one. When the Executive Branch will not defend the rules and the Judicial Branch will not adjudicate them, the questions presented do not percolate; they languish. Only this Court can supply the decision the parties and the courts below have declined to produce.

VII. This Petition and the Companion Petition Present an Ideal Vehicle.

The questions presented are pure questions of law. The material facts—the texts of the Local Rules, the Delaware admission requirements they incorporate, § 4025a, § 2071(a), and § 2072(b), and the federal enforcement record—are documentary and undisputed. Standing was found below on seven sworn member declarations. The district court's judgment is final; nothing remains below but a decision that three and a half years have failed to produce. Granting this petition together with the petition in *Timmer* will permit the Court to resolve, in a single sitting, two sides of the same coin. The question is whether attorney-admission rules in the United States, state and federal—rules that implicate the First Amendment freedoms of speech, association with counsel of choice, and petition for the redress of grievances—must comport with the individual-merit principles of *Students for Fair Admissions* and the strict-scrutiny principles set forth in *Chiles*, *NIFLA v. Becerra*, and *Holder v. Humanitarian Law Project*.

Finally, the uniformity of the decisions below is not a reason to withhold review; it is the reason review is necessary. Every decision the district court invoked against petitioner, App. 2a-3a, applied rational-basis review; none adjudicated the claims under the

heightened scrutiny petitioner has consistently maintained is required. A consensus built on a shared premise is only as sound as the premise, and only this Court can examine it. *Chiles* is the proof: the lower courts had long reviewed professional-licensing regulations of speech under diminished scrutiny, until this Court held otherwise, 8-to-1. Unsuccessful petitioning is not sham petitioning, *Professional Real Estate Investors*, 508 U.S. at 60-61, and a dismissal that rests on the advocate's record rather than the argument's merit replicates the defect of the Local Rules themselves: it asks who is speaking, not whether the speaker is right.

CONCLUSION

The petition for a writ of certiorari before judgment should be granted and the case consolidated or coordinated with the concurrently filed petition in *Lawyers for Fair Reciprocal Admission v. Timmer*, No. 26-____. In the alternative, the Court should hold this petition pending the disposition of *Timmer*, No. 26-____, or grant the petition and hold the challenged local rules invalid in the exercise of its supervisory authority over the lower federal courts. See *Frazier v. Heebe*, 482 U.S. 641 (1987).

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 September 1, 2026

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the foregoing Petition for a Writ of Certiorari Before Judgment contains 8,870 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

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

Executed on September 1, 2026.

Joseph Robert Giannini
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