

No. 26-406

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

SUPPLEMENTAL BRIEF FOR PETITIONER

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
SUPPLEMENTAL BRIEF FOR PETITIONER.....	1
I. <i>MacDonald</i> rejects the premises of the judgment below.....	1
II. <i>MacDonald</i> confirms that the standard of scrutiny is open, and only this Court can close it.....	3
III. <i>MacDonald</i> 's own reasoning marks the line the Local Rules cross.....	4
IV. The grant in No. 26-12 confirms the importance of the individual-merit question.....	5
CONCLUSION.....	5

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Association for Education Fairness v. Montgomery County Board of Education</i> , No. 26-12 (U.S. cert. granted Oct. 19, 2026).....	1, 5
<i>Chiles v. Salazar</i> , 146 S. Ct. 1010 (2026).....	2, 3
<i>MacDonald v. President, N.J. State Bd. of Med. Exam’rs</i> , No. 25-2090 (3d Cir. Aug. 31, 2026), <i>reh’g en banc denied</i> (3d Cir. Oct. 5, 2026).....	1, 2, 3, 4
<i>Nat’l Ass’n for the Advancement of Multijurisdiction Practice v. Castille</i> , 799 F.3d 216 (3d Cir. 2015).....	1, 2, 3
<i>Nat’l Inst. of Family & Life Advocates v. Becerra</i> , 585 U.S. 755 (2018).....	1, 3, 4
<i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard College</i> , 600 U.S. 181 (2023)....	5
<i>Veterans Guardian VA Claim Consulting LLC v. Platkin</i> , 133 F.4th 213 (3d Cir. 2025)	2
 Rules	 Page(s)
D. Del. L.Civ.R. 83.5.....	3, 4
D.N.J. L.Civ.R. 101.1	1, 4
Sup. Ct. R. 15.8	1

SUPPLEMENTAL BRIEF FOR PETITIONER

Pursuant to Rule 15.8, petitioner Lawyers for Fair Reciprocal Admission (LFRA) calls the Court's attention to intervening matter not available when the petition was prepared. On October 5, 2026, the Third Circuit denied rehearing en banc in *MacDonald v. President, New Jersey State Board of Medical Examiners*, No. 25-2090 (3d Cir. Aug. 31, 2026) (precedential), *reh'g en banc denied* (3d Cir. Oct. 5, 2026). The panel opinion issued while the petition was in final production and is not addressed in it. With rehearing denied, *MacDonald* is now the settled law of the circuit in which petitioner's appeal has been pending, unbriefed by the United States, since January 26, 2023. Petitioner also notes the Court's October 19, 2026 grant of certiorari in No. 26-12.

MacDonald matters here for three reasons. It rejects the premises on which the District Court dismissed this case. It confirms that the governing standard of scrutiny is unsettled and that only this Court can settle it. And its own reasoning marks the line the Local Rules cross.

I. *MacDonald* rejects the premises of the judgment below.

The District Court rested its First Amendment ruling on *NAAMJP v. Castille*, 799 F.3d 216 (3d Cir. 2015), and on its own earlier decision applying *Castille*. App. 14a–15a. The court acknowledged that *NIFLA v. Becerra*, 585 U.S. 755 (2018), had eliminated “professional speech” as a separate category, but held that this “change of law does not change the result,” because D.N.J. L.Civ.R. 101.1 “did not discriminate on the basis of the content of any attorney’s speech.” App. 14a–15a. It then applied rational-basis review. App. 20a.

MacDonald rejects each premise. It holds that “[r]equiring a license to speak is, of course, a regulation of speech.” Slip op. 7. It holds that a licensing law of this kind is “content-based.” Slip op. 12. And it holds that the reading of *Castille* on which the District Court relied is wrong:

“[T]he state misreads *Castille*, and its misreading would bring that case into conflict with more recent Supreme Court precedent.” Slip op. 13.

“*Castille* did not discuss whether there are aspects of legal practice that constitute speech (of course there are, *cf. Veterans Guardian*, 133 F.4th at 219), nor whether a licensure requirement to engage in that speech is a regulation of speech (of course it is). So *Castille* does not bear on the level of scrutiny we must apply here.” Slip op. 14.

“In any event, even had we held in *Castille* that licensure requirements for the speech aspects of professions always receive mere rational-basis scrutiny, the Supreme Court’s intervening decision in *NIFLA* would require us to revisit it.” Slip op. 14.

The Third Circuit has thus said, in a precedential opinion it has now declined to rehear, that legal practice is speech; that a license to engage in it is a regulation of speech; and that rational-basis review of such a license cannot be squared with *NIFLA* and *Chiles v. Salazar*, 146 S. Ct. 1010, 1024 (2026). See also *Veterans Guardian VA Claim Consulting LLC v. Platkin*, 133 F.4th 213, 219–20 (3d Cir. 2025) (legal advice is speech; there is no separate category of professional

speech).

The Local Rules are licenses to speak in exactly that sense. Without general admission, an attorney licensed and in good standing in forty-nine States may not sign a pleading, argue a motion, or petition a federal court in the District of New Jersey or the District of Delaware, except case by case, by leave, and at the client's added expense. For a Delaware resident such as LFRA member Cecil R. Hoskins III, even that route is closed. D. Del. L.Civ.R. 83.5(c)(1); App. 49a. The judgment below upheld that regime under the rational-basis review that *MacDonald* now says the First Amendment does not permit.

II. *MacDonald* confirms that the standard of scrutiny is open, and only this Court can close it.

MacDonald states the problem plainly: “No precedent establishes the mode of scrutiny for such cases.” Slip op. 22. The panel declined to choose between strict and intermediate scrutiny, holding only that New Jersey’s law “survives even under intermediate scrutiny.” Slip op. 24.

That is the question this petition presents. Whether rules that exclude licensed attorneys from federal practice by class membership receive rational-basis review, as the courts below held, or the heightened scrutiny that *NIFLA*, *Chiles*, and now *MacDonald* require, is unresolved in the Third Circuit and in the Nation. A panel of the Third Circuit cannot resolve it in petitioner’s favor without confronting *Castille*. The full court has just declined to take the question up. And in the three and a half years since this appeal was docketed, the United States has filed no brief and the court of appeals has ordered none.

Awaiting a judgment would add years to an injury that accrues every day a qualified attorney is turned away from the courthouse in his own district. It would also leave the federal courts of the Third Circuit enforcing these Rules under a standard of review that their own court of appeals has now said *NIFLA* forecloses. Certiorari before judgment exists for a case in this posture.

III. *MacDonald's* own reasoning marks the line the Local Rules cross.

MacDonald sustained New Jersey's telemedicine licensing requirement because the State left licensed out-of-state physicians a practical door. A physician licensed in another State with substantially equivalent standards "need not be reexamined but must submit an application." Slip op. 4. "[T]he fees amount to \$550," and "the average processing time is three months." *Ibid.* The panel called the resulting burdens "slight," slip op. 25, and held that the plaintiffs' proposed alternatives were "not substantially less burdensome on speech," slip op. 26.

The Local Rules have no such door. General admission turns on a single credential: membership in the forum State's bar. D.N.J. L.Civ.R. 101.1(b); D. Del. L.Civ.R. 83.5(b); App. 34a. Individual experience, federal practice, and decades of good standing elsewhere are irrelevant. An attorney licensed in forty-nine States cannot obtain general admission on any showing, at any price, after any wait. For Hoskins, the exclusion is total.

The distance between a \$550 application and a closed courthouse is the distance between *MacDonald* and this case. Under *MacDonald's* own analysis, a total exclusion of licensed practitioners cannot be

a “slight” burden, and a path like New Jersey’s own (an application, a fee, a wait) is the less restrictive alternative the Local Rules refuse. The intermediate scrutiny that saved New Jersey’s law would condemn these Rules; strict scrutiny would condemn them more surely. Either way, the rational-basis disposition below cannot stand.

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

On October 19, 2026, the Court granted review in *Association for Education Fairness v. Montgomery County Board of Education*, No. 26-12, limited to “[w]hether a plaintiff challenging a facially neutral admissions policy as racially discriminatory must establish that the targeted racial group suffered an aggregate disparate impact relative to its share of the applicant pool.” Petitioner does not contend that the Local Rules are racial classifications. But the Court is again examining gatekeeping criteria that sort applicants by group rather than judging them as individuals.

The Local Rules do that sorting openly. General admission turns on membership in the forum State’s bar, never on an attorney’s competence, federal practice, or record. That is the question this petition presents: whether the right to practice in the courts of the United States, and so to speak there as a lawyer, may be allocated by class membership rather than individual merit. See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 231 (2023).

CONCLUSION

The petition for a writ of certiorari before judgment should be granted.

Respectfully submitted,

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