UNITED STATES DISTRICT COURT
for the DISTRICT OF COLUMBIA

LAWYERS UNITED INC. 12016 Wilshire Blvd. Suite 5 Los Angeles, CA 90025 EVELYN AIMÉE DE JESÚS PO Box 4471 Tampa, FL 33677 Plaintiffs vs. UNITED STATES OF AMERICA Attorney General WILLIAM P. BARR, U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001 SRI SRINIVASAN, Chief Judge District of Columbia Judicial Council PATRICIA A. MILLETT, ROBERT L. WILKINS, GREGORY G. KATSAS, 333 Constitution Avenue, NW, Washington, DC 20001; ED CARNES, Chief Judge, 11th Circuit Judicial Council, and his Judicial Council Colleagues, CHARLES R. WILSON,	CIVIL ACTION NO. 19-3222 RCL AMENDED COMPLAINT FOR INJUNCTIVE & DECLARATORY RELIEF TO ABROGATE FEDERAL DISTRICT COURT "LOCAL" (sic) RULES THAT DENY EQUAL AND RECIPROCAL GENERAL ADMISSION PRIVILEGES TO LICENSED ATTORNEYS IN GOOD STANDING; 1. ARTICLE III COURT VIOLATION OF SEPARATION OF POWERS DOCTRINE; 2. 28 U.S.C. § § 2071-72; ; FRCP 83(a)(1); 28 U.S.C. § 1654, 332(d)(4) 3. SUPREMACY CLAUSE 4. 28 U.S.C. § 1738 FULL FAITH & CREDIT 5. FIRST AMENDMENT A. OVERBREADTH B. PRIOR RESTRAINT C. VIEWPOINT, CONTENT, SPEAKER DISCRIMINATION D. COMPELLED EXPRESSIVE ASSOCIATION E. PETITION THE GOV FOR REDRESS OF GRIEVANCES 6. FIFTH AMENDMENT RIGHT TO EQUAL PROTECTION 7. FIFTH AMENDMENT RIGHT TO DUE PROCESS

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MOSS, AMIT P. MEHTA, TIMOTHY J. KELLY, TREVOR N. McFADDEN, DABNEY L. FRIEDRICH, CARL J. NICHOLS 333 Constitution Avenue, NW Washington, DC 20001, Hon. Chief Judge MARK WALKER, and his active District Court colleagues on the Northern District of Florida, 111 N. Adams St. Tallahassee, Florida 32301. Chief Judge STEVEN MERRYDAY, and his active District Court colleagues on the Middle District of Florida located at the United States Courthouse. 801 North Florida Avenue Tampa, Florida 33602. Hon. Chief Judge K. MICHALE MOORE, and his active District Court colleagues on the Southern District of Florida, 400 North Miami Avenue Room 13-1 Miami, Florida 33128

Defendants

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INTRODUCTION

1A. Plaintiffs contend the disunited Local Rules in two-thirds of the Federal District Courts are unlawful because: (i) they contravene the separation of

powers doctrine by assigning to forum state officials acting under color of state law *exclusive* jurisdiction to determine bar admission in a national tribunal; (ii) this delegation of *exclusive* federal authority to forum state official is further impermissible under the separation of powers doctrine because it is made without an "intelligible standard" and without a shred of supervision; (iii) state officials acting under color of state law do not have any jurisdiction or sovereignty what-so-ever to determine the rules of practice in the United States District Court because that authority is established in the Article I § 8 enumerated powers; (iv) that this federal delegation of Article III Court *exclusive* jurisdiction and sovereignty to forum state official renders the Bill of Rights' protected freedoms of speech, assembly, counsel, and to petition for the redress of grievances a dead letter; and (iv) this delegation of federal jurisdiction and sovereignty squarely contradicts the judicial local rule-making standards set for the in 28 U.S.C. §§ 2071-2072 because they are not consistent with Acts of Congress, national rules, and they abridge, enlarge, and modify a multiplicity of constitutional and substantive rights.

1B. In *United States* v. *Windsor*, 570 U. S. 12 (2013), the Supreme Court held that the federal government cannot discriminate against same sex couples licensed lawfully married under state's law. The fundamental right to marriage is of recent vintage, while the fundamental and coordinate rights to counsel, assembly, and to petition the government is of ancient pedigree; set forth in the Bill

of Rights implicitly in the First Amendment, and explicitly in the Sixth Amendment. If the federal government is prohibited from discriminating against same sex marriages based on state law (and locally popular prejudice), it follows the federal government is prohibited from discriminating against licensed attorneys in good standing and their clients based on state law (and locally popular prejudice).

1C. Moreover, this disunited Local Rule discrimination contradicts 28 U.S.C § 1738 by providing full faith and credit to one State Supreme Court's judgment and public records (because of locally popular prejudice) and no faith and credit to the State Court judgments and public records of 49 other states (because of locally popular prejudice).

1D. This Local Rule federally sponsored prejudice undermines a core purpose of our Constitution and Union to prevent the pestilential breath of local faction from overriding national interests. This maxim of Constitutional jurisprudence is famously set forth by Madison in The Federalist No. 10. "AMONG the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction." *Ibid*. "Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens." *Ibid*.

1. Congress has provided that in all Courts of the United States that the parties may plead and conduct their own cases personally or by counsel as the rules permit. 28 U.S.C. § 1654. Congress has also provided that Federal District Court *Local Rules* "shall be consistent with Acts of Congress and rules adopted under [28 U.S.C §§] 2072. 2075." *See Federal Rule of Civil Procedure* 83(a)(1). Congress has provided in 28 U.S.C § 2072(b) that "**Such rules shall not abridge, enlarge or modify any substantive right**." (Emphasis added). This case arises from a Federal District Court *Local Rule* culture of discrimination in attorney admission to the United States Courts and a judicial conspiracy of silence that trespasses the Section 2072(b) and FRCP 83(a)1) statutory requirements that "**Such rules shall not abridge, enlarge or modify any substantive right**."

2. The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers including the lawyers who appear before them. *Theard v. United States*, 354 US 278, 281 (1957). A state court finding of bar admission disqualification does not necessarily lead to finding of federal court disqualification for bar admission. *Id*. at 282.

3. Consistent with the statutory right to counsel 28 U.S.C. § 1654, all licensed attorneys in good standing are eligible to practice before: (i) federal administrative agencies by 5 U.S.C. § 500(b) regardless of forum state admission; (ii) the United States Courts of Appeals provide general admission by FRAP 46

regardless of forum state admission; (iii) Supreme Court Rule 5 authorizes *general* admission privileges with three years of experience regardless of forum state admission; (iv) forty percent of the ninety-four Federal District Courts by *Local Rules* grant *general* admission privileges to all licensed attorneys in good standing regardless of forum state admission.[1] These federal institutions by Acts of Congress, National Rules, and *Local Rules* recognize the substantive right to counsel and do not "**abridge, enlarge or modify any substantive right.**" 28 U.S.C § 2072(b); FRCP 83(a)(1). These federal institutions in exercising jurisdiction do not find it *rational* or *necessary* to discriminate for or against any class of members of the bar in good standing.

4. The remaining 60% of the 94 Federal District Court *Local Rules* are Balkanized, with the vast majority compelling forum state bar admission as a precondition for *general* admission as in California; a few withholding general admission privileges based on principal office location as in the District of Columbia. This Local Rule patchwork corrupts the scope and purpose of the *Federal Rules of Civil Procedure* to provide uniform rules "to secure the just, speedy, and inexpensive determination of every action." FRCP 1. Plaintiffs allege this *Local Rule* patchwork flagrantly trespasses the statutory standards for judicial

[1] *United States District Court for the District of Maryland Survey of the Admission Rules in the Federal District Cour*t (Jan 2015), http://www.msba.org/uploadedFiles/MSBA/Member_Groups/Sections/Litigation/USDCTMDSurvey0115.pdf Page 1

Local Rules set forth by Congress in 28 U.S.C § 2072(b) and FRCP 83(a)(1). *See* also 28 U.S.C § 2075 bankruptcy rules "**Such rules shall not abridge, enlarge, or modify any substantive right.**"

5. Plaintiffs allege this disunited Local Rule patchwork also usurps Supreme Court precedent. *In re Lockwood,* 154 US 116 (1894), Belva A. Lockwood was admitted to practise (sic) law in the Supreme Court of the District of Columbia and the bars of several States of the Union. The Virginia Supreme Court rejected her application for admission because she was a woman, citing *In Bradwell v. The State*, 16 Wall. 130 (1873), where the Supreme Court "held that the right to practise (sic) law in the state courts was not a privilege or immunity of a citizen of the United States."

6. In *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985), the Supreme Court implicitly overruled the 19th Century decisions of *Lockwood* and *Bradwell.* The Court held:

> **The lawyer's role in the national economy is not the only reason that the opportunity to practice law should be considered a** "**fundamental right**." We believe that the legal profession has a noncommercial role and duty that reinforce the view that the practice of law falls within the ambit of the Privileges and Immunities Clause.[fn11] **Out-of-state lawyers may — and often do — represent persons who raise unpopular federal claims. In some cases, representation by nonresident counsel may be the only means available for the vindication of federal rights**. *Id*. at 281-82. (Emphasis added)

7. The upshot of *Piper* is that a licensed attorney's opportunity to practice law is a fundamental right constitutionally protected that is necessary to the vindication of federal rights protection in our more perfect Union.

8. Following *Piper, Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988) squarely holds that *bar admission on motion* (without taking another bar exam) for sister-state attorneys is a constitutionally protected Privilege and Immunity. Virginia argued Ms. Friedman could take the bar examination, and thus the Clause was not offended. The Court rejected this contention stating: "The issue instead is whether the State has burdened the right to practice law, a privilege protected by the Privileges and Immunities Clause, by discriminating among otherwise equally qualified applicants solely on the basis of citizenship or residency. We conclude it has." *Id*. at 67. The norm under the Privileges and Immunities Clause is comity, i.e. reciprocity. The Supreme Court stated, "we see no reason to assume that nonresident attorneys who, like Friedman, seek admission to the Virginia bar on motion will lack adequate incentives to remain abreast of changes in the law or to fulfill their civic duties." *Id*. at 69.

9. Similarly, in *Frazier v. Heebe,* 482 U.S. 641, 649 (1987): "The question for decision is whether a United States District Court may require that applicants for general admission to its bar either reside or maintain an office in the State where that court sits. *Id*. at 642-43. The *Frazier* Court in applying "principles of

right and justice" stated: "we hold that the District Court was not empowered to adopt its local Rules to require members of the Louisiana Bar who apply for admission to its bar to live in, or maintain an office in, Louisiana where that court sits." *Id*. at 645. *Frazier* states: "No empirical evidence was introduced at trial to demonstrate why this class of attorneys … should be excluded from the Eastern District's Bar." *Id*. at 646-47. Obviously, rational basis review does not require the introduction of empirical evidence. *Frazier* further squarely holds, "[s]imilarly, we find the in-state office requirement *unnecessary* and *irrational*. First, the requirement is not imposed on in-state attorneys." *Id*. at 649. "The Court finds that the Rules Enabling Act, 28 U. S. C. § 2072, "confirms" its power to decide whether local rules are *rational and necessary*." *Id*. at 653. *Frazier* also holds *pro hac vice* admission is not an equivalent substitute for *general* admission privileges. *Pro hac vice* attorneys cannot file cases. They are barred from ECF filing, thus duplicating and exponentially multiplying the litigant costs and burdens. *Pro hac vice* admission abridges the attorney-client privilege and it chills the freedom to petition the government. This second class status is demeaning (i.e. we will allow you to sit in the front of the bus for this one time), discretionary, not necessary, and categorically not available in many Courts. Moreover, it is significant to note that *Frazier* was decided *before* fax machines, *before* computers, *before* the internet, *before* PACER, *before* smartphones, and *before* Congress enacted 28 U.S.C. §

2072(b) and FRCP 83(a)(1) tightening the Rule standard to "**Such rules shall not abridge, enlarge or modify any substantive right**."

10. The *Frazier* Court in exercising its *supervisory* review over Federal Local Rules, under the earlier less restrictive version of Section 2072, applied a two pronged *rational* and *necessary* standard of review to invalidate the Local Rule discrimination, emphasizing the institutional difference between the state and federal courts:

> Rules that discriminate against nonresident attorneys are even more difficult to justify in the context of federal-court practice than they are in the area of state-court practice, where laws and procedures may differ substantially from State to State. *See* Comisky & Patterson, *The Case for a Federally Created National Bar by Rule or by Legislation*, 55 Temp. L. Q. 945, 960-964 (1982). There is a growing body of specialized federal law and a more mobile federal bar, accompanied by an increased demand for specialized legal services regardless of state boundaries. *See* Simonelli, *State Regulation of a Federal License to Practice Law*, 56 N. Y. State Bar J. 15 (May 1984). The Court's supervisory power over federal courts allows the Court to intervene to protect the integrity of the federal system, while its authority over state-court bars is limited to enforcing federal constitutional requirements. Because of these differences, the Court has repeatedly emphasized, for example, that disqualification from membership from a state bar does not necessarily lead to disqualification from a federal bar. 482 U.S. at 647 Fn. 7.

11. The Supreme Court has never squarely ratified or rejected the Local Rule patchwork presented by this deplorable Balkanization,[2] which causes many members of the bar and citizens to question the integrity of the judicial system

[2] "A simple order denying a petition for writ of certiorari is not designed to reflect the Court's views either as to the merits of the case or as to jurisdiction to hear the case." Shapiro, *Supreme Court Practice* 10th Ed. Section 5.7 p. 335

because the People's statutory right to counsel in the United States Courts and the substantive Bill of Rights' protected freedoms to speech, expressive association, counsel, and to petition the government for the redress of grievances in our Union evaporate at the state boundary line in 60% of the 94 Federal District Courts. The consequence of this *Local Rule* fiefdom is hometown monopoly protection and the national deprivation of constitutional rights that is irreparable. Our Founding ideals such as all "men are created equal" and "no taxation without representation" have become a dead letter by this balkanization. American servicemen and servicewomen members of the bar are sent off to fight American wars and treated as 3/5 of a citizen when they return to civilian life by this balkanization. As in *United States v. Virginia*, 518 US 515 (1996) abrogating gender discrimination in access to the Virginia Military Institute, many trustees of an institution refuse to change with modern times and current law solely because of tradition and stubborn inertia.

12. Plaintiff whistle-blowers challenge on their face and as applied the Local Rules of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California that shrink *general* bar admission privileges and the right to counsel of choice to members of the bar of the California Supreme Court. *General* bar admission privileges confer important legal rights and benefits. These Local Rules mean that novice lawyers who passed the California bar exam

yesterday are categorically eligible for *general* admission privileges while all experienced federal practice specialists licensed outside of California are categorically ineligible. This means that all experienced attorneys licensed outside of California in order to obtain *general* admission privileges have to reinvent the wheel and take and pass the infamous State Bar of California's bar exam for experienced attorneys that is a 100% subjective and not a valid or reliable test as numerous nationally respected testing experts have concluded. This completely subjective test, exam after exam going back to the 1980s, has a *standard error of measurement* greater than fifty percent. *See* Exhibit A. This amorphous entirely subjective test is by custom and habit used to disqualify two out of three experienced attorneys on the July bar exam. The State Bar of California's own testing expert Dr. Stephen P. Klein from the RAND Corporation has concluded that 100% subjective tests should never be used in isolation for high-stakes licensing decisions. The effect of this monopoly protectionist District Court licensing wall is attorney protection and not public protection because already licensed attorneys have demonstrated they possess a minimum level of competence and are bound by the Professional Rules of Conduct. This substantive evidence has been alleged and presented in several federal lawsuits and appeals filed in California and also in petitions to the Ninth Circuit Judicial Council and repeatedly covered-up by federal judges in conformity with a well-entrenched conspiracy of

silence. There is no meaningful federal check and balance or opportunity for meaningful judicial review for California's state licensing wall because the federal judges in California have married the California State Bar Association for better or worse. This culture of federal judge discrimination is further cemented because the California Supreme Court has repeatedly held that it does not have any jurisdiction over the Federal District Courts' admission rules.

13. Plaintiff whistle-blowers challenge on their face and as applied the United States District Court for the District of Columbia's LCvR 83.8 that limit *general* bar admission privileges based on the location of the lawyer's principal office. This is locally known as the *POLD* clause, principal office location disqualification. Lawyers admitted in the territorial District of Columbia, government counsel, or in-house corporate counsel are exempt from the POLD clause. However, *Frazier holds* "the location of a lawyer's office simply has nothing to do with his or her intellectual ability or experience in litigating cases in Federal District Court." *Id*. at 649. *Frazier* holds, "[s]imilarly, we find the in-state office requirement *unnecessary a*nd *irrational*. First, the requirement is not imposed on in-state attorneys." *Id*. at 649. Thus, the DC Local Rules discriminate on the basis of principal office location in direct contravention of the Supreme Court's express holdings in *Frazier v. Heebe*. Targeting an unpopular class is not rational. It is beyond cavil that it is constitutionally prohibited to single out and

disadvantage an unpopular group. *United States v. Windsor*, __ U.S. __, 133 S.Ct. 2675 (2013).

14. Plaintiff whistle-blowers further challenge on their face and as applied the Local Rules *per se* in our more perfect Union that constrict *general* bar admission privileges to forum state licensed attorneys. Plaintiffs aver that this discrimination and favoritism constitutes Article III Court structural error. The State Bar of California is a trade union, *Keller v. State Bar of Cal.,* 496 US 1 (1990), its Committee of Bar Examiners, and its licensing officials are entirely regulated by active market participants. The majority of State Bar Associations are integrated trade unions actively self-controlled by active market participants. These integrated bar associations controlled by lawyers are dangerous. Such associations have an inherent conflict of interest because they are both a regulator of and "trade association" for lawyers. "When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest." *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101, 1114 (2015). State agencies controlled by active market participants pose the very risk of self-dealing. *Ibid*. These active market participants are not angels. There is no active supervision when Federal District Courts by Local Rules vicariously and blindly

adopt one state's active market participant conclusions and wholly reject the Acts and judgments of other state supreme courts and federal courts.

15. Likewise, in *Janus v. AMERICAN FEDERATION OF STATE,* __U.S. __, 138 S. Ct. 2448 (2018), the Court held that public-sector agency-shop arrangements violate the First Amendment and it over-ruled *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977) As Jefferson famously put it, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical." *Id.* at 2465. Accordingly, plaintiffs aver compelling all licensed attorneys in good standing to join and pay dues to one state's bar association to obtain *general* admission privileges in the Federal District Court subverts the Bill of Rights' protected freedoms of speech, expressive association, counsel, and to petition the government for the redress of grievances. It also violates 28 U.S.C § 1738 by providing full faith and credit to one State Supreme Court's judgment and no faith and credit to the State Court judgments of 49 other states. This Local Rule discrimination further impermissibly shrinks Article III Court jurisdiction by providing forum state lawyers with a monopoly on federal court access. It is well established that procedural rules created by the judiciary cannot shrink or expand the scope of federal jurisdiction. *See Owen Equip. & Erection Co. v. Kroger,* 437 U.S. 365, 374 (1978)("The limits upon federal jurisdiction, whether imposed by

the Constitution or by Congress, must be neither disregarded nor evaded."). The challenged Local Rules are procedural rules created by the judiciary that impermissibly shrink and withdraw District Court jurisdiction without Congressional approval.

16. In sum, notwithstanding the exemplary reputation and perceived infallibility of federal judges, plaintiffs aver the disunited Local Rules in 60% of the Federal District Courts that discriminate in bar admission based on forum state law or office location are *ultra vires* acts that trespass the standards set forth by Congress in 28 U.S.C. § 2072(b), FRCP 83(a)(1), Supreme Court precedent, and Article III Court jurisdiction by delegating federal jurisdiction to state actors and market participants without any supervisory review.

17. Similar to the 15 former law clerks that leveled sexual misconduct charges, ranging from harassment to assault, against former Ninth Circuit Chief Judge Alex Kozinski, and the 850 federal law clerks that have filed a 2017 petition complaining about an abusive work environment and sexual misconduct created by a power imbalance by those who wear a federal robe, this case demonstrates the branch of government whose core purpose is equal justice under law, the Judiciary has not held itself to the highest standards of conduct and civility to maintain the public trust.

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JURISDICTION AND VENUE

18. This Court has jurisdiction under 28 U.S.C. § 1331. Venue is appropriate in our nation's capital the District of Columbia.

PARTIES

19. Plaintiff whistle-blower LAWYERS UNITED INC. is a corporation organized under California law with offices in Los Angeles, CA. Plaintiff, like other corporations and specifically like the corporation in *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010) (holding corporations have First Amendment rights), is engaged in interstate commerce and advocacy throughout the United States. First, plaintiff alleges the challenged Local Rules are facially invalid and overbroad because a small contingent of District Judges are not authorized to enact Local Rules by vote that deprive the vast majority of Americans of their civil rights, including their statutory right to choose their own counsel by Local Rules and popular vote, just as they are not authorized to choose spouses of American citizens by Local Rules and popular vote. Second, this Local Rule culture of discrimination and favoritism as applied contravenes plaintiffs' statutory right to choose its own counsel and its public purpose to vindicate federal rights of itself and its members. Third, as a consumer of legal services, plaintiff is directly injured by the Local Rules compelled association and compelled payments to a State public union required to exercise its federal rights in the United States

Courthouse by decreasing access to the courts and driving up litigation costs. Plaintiff's public purpose may be locally unpopular in some Federal Courts but they have a right to counsel, advocate, petition, and persuade on political matters of public concern. "An association can bring claims on behalf of its members." *See Summers v. Earth Island Inst*., 555 U.S. 488, 494, (2009). Plaintiff also asserts association and third-party standing because many of its members are irreparably injured by this Article III court structural error and discrimination in the right to counsel. They object to being treated as a second class citizen. Many members want to remain anonymous for fear of blowback and client conflicts of interest. These members have been handicapped and deprived of their substantive and constitutional rights by federal discrimination in *general* admission privileges in the U.S. District Courts in California, the District of Columbia, and in other Federal District Courts.

20. Plaintiff EVELYN AIMÉE DE JESÚS graduated from the University of Massachusetts at Amherst. She is an American citizen, a graduate of an ABA accredited law school, and a well-qualified Hispanic-American lawyer in good standing since 2002. She is a member of the LAWYERS UNITED INC. She is admitted to the bar of the Puerto Rico Supreme Court, United States Court of Appeals for the First Circuit, and the United States District Court of Puerto Rico. She has practiced law in these federal courts *pro bono* and as a civil rights' activist

and is bilingual. Latinos make up 15.8% of the population but only 2.8% of attorneys are Hispanic. Plaintiff alleges this LR discrimination is overbroad and facially invalid. Supreme Court Justice SONIA SOTOMAYOR has criticized the judiciary for a lack of diversity in every areas of the legal profession at American University's Washington College of Law.[3] According to a study by Microsoft, *Raising the Bar: An Analysis of African-American and Hispanic/Latino diversity in the legal profession*, "The gap between diversity in the law profession and diversity in the U.S. has worsened over the past 9 years. … Similar professions do a better job reflecting U.S. diversity."[4] Licensed attorney DE JESÚS was domiciled in Puerto Rico and forced to move after hurricane Maria devastated the island, knocking out water and electricity in October 2017. Her second floor office was flooded and rendered inhabitable. She does not want a handout. She wants the opportunity to practice her profession and serve her Hispanic-American community. Plaintiff is injured as applied by the District of Columbia Local Rule because she does not have her principal office in a forum where she is licensed,

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[3] ABA Journal November 21, 2013
http://www.abajournal.com/news/article/sotomayor_says_judiciary_is_missing_a_huge_amount_of_diversity/?utm_source=maestro&utm_medium=email&utm_campaign=daily_email

[4] https://blogs.microsoft.com/on-the-issues/2013/12/10/raising-the-bar-exploring-the-diversity-gap-within-the-legal-profession/

and she is disabled by other District Court Local Rules such as in California and Florida which require her to re-invent the wheel and take another state bar exam to obtain general admission privileges. Plaintiff would apply for admission if these Local Rules were amended in conformity with 28 U.S.C § 2072(b) and FRCP 83(a)(1). Plaintiff is also injured as a consumer of legal services by antiquated Local Rules that abridge and modify her substantive rights to choose her own counsel, expressive association, and petition in the Federal District Courts.

21. Plaintiff whistle-blower LAWYERS UNITED INC. also has other members and associates who have been deprived of their civil rights by the challenged Local Rules willing to submit Declarations and testify in open Court under oath about their injures including blacks, patent lawyers, former military veterans, federal practice specialists, and members of the bar in good standing who maintain their principal office in a state where they are not licensed.

22A. The Constitutional provisions that require a separation of powers and that prohibit the government from enacting any law that abridges the First Amendment freedoms are hijacked by disunited Local Rules.

23B. Plaintiffs aver that it is neither necessary nor proper to name as a defendant every single member of the every Judicial Council or District Judge functioning under Local Rules that have been mistakenly ratified and that have mistakenly not been abrogated. Mistakes happen. No man is perfect. We cannot

expert perfection from imperfect men. *See* The Federalist 85 ("I never expect to see a perfect work from imperfect man.")

23C. Plaintiffs aver they have a right to present their claims in this case on behalf of all Americans and against all Article III judges who have mistakenly ratified or have mistakenly continue ratify Local Rules that abridge, enlarge, and modify national interests, constitutional and substantive rights. *See* The Federalist No. 84 ("It ought also to be remembered that the citizens who inhabit the country at and near the seat of government will, in all questions that affect the general liberty and prosperity, have the same interest with those who are at a distance, and that they will stand ready to sound the alarm when necessary, and to point out the actors in any pernicious project.") I

23D. It is alleged, on information and belief, that the Seventh Circuit and the District Court within it do not discriminate for or against any class of citizens in its Local Rules.

23E. Defendant United States is being sued. The representative defendants is Attorney General WILLIAM P. BARR, U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-000. The Attorney General is sued in the same representative capacity as in *Shelby County v. Holder*, 133 S.Ct. 2612 (2013), and *Holder v. Humanitarian Law Project*, 561 U.S.1, 130 S. Ct. 2705 (2010).

23F. The defendants in this case and controversy sued in their official capacity are members of the District of Columbia Judicial Council, and include the Honorable Chief Judge SRI SRINIVASAN, and his Honorable Colleagues PATRICIA A. MILLETT, ROBERT L. WILKINS, GREGORY G. KATSAS, 333 Constitution Avenue, NW, Washington, DC 20001. These defendants have a statutory duty under 28 U.S.C. 332(d)(4) to periodically review all Local Rules and to abrogate any Local Rules that abridge, enlarge, or modify any substantive right or that are inconsistent with any Acts of Congress or national rules. Defendants have breached this statutory duty, as have the other named Judicial Council and District Judges names hereinafter, as these disunited Local Rules are plainly and unambiguously invalid under the separation of powers doctrine, the First Amendment, and the narrowly cabined Local Rule standards delegated and set forth in 28 U.SC. 2071-72.

24A. Defendants in this case sued in their official capacity are ED CARNES CHIEF JUDGE of the ELEVENTH CIRCUIT JUDICIAL COUNCIL, his Hon. Associate Judicial Council Judges: CHARLES R. WILSON, WILLIAM H/ PRYOR Jr, BEVERLY B. MARTIN, ADELBBERTO JORDAN, ROBIN S. ROSENBAUM, JILL PRYOR, KEVIN C. NEWSON, and BRITT C. GRANT. They are located at 56 Forsyth St, NW, Atlanta, GA 30303.

24B. Plaintiffs aver that the defendants as members of the multiple Judicial Councils, have a direct supervisory nature of the Local Rules in their respective circuits. These Honorable Circuit Judicial Councils are at liberty to officially review and hold that the Local Rules in their Federal District Courts that discriminate in bar admission are lawful and grant the relief Plaintiffs request. This national issue presented impacts the viability of the United States of American as a single entity. This issue grows more important every day. Tens of thousands of lawyers from all over the United States are categorically disqualified and their clients and associates irreparably punished by these Local Rules that were born, technologically speaking, almost two decades before television swept America in the 1950s. This case presents a pure issue of law. As federal jurisdiction cannot be delegated to state actors, the members of the Judicial Council cannot delegate away their Article III Court jurisdiction over the integrity of the federal system and their duty enforce the rule of law.

24. Defendants in this case sued in their official capacity are SYDNEY R. THOMAS, CHIEF JUDGE of the NINTH CIRCUIT JUDICIAL COUNCIL, and the Hon. Associate Judicial Council Judges, RANDY SMITH, MARY H. MURGUIA, MILAN D. SMITH, JR., MORGAN CHRISTEN, JAY S. BYBEE, BARRY MOSKOWITZ, VIRGINIA A. PHILLIPS, J. MICHAEL SEABRIGHT, OKI MOLLWAY, RICHARD S. MARTINEZ. These defendants are sued under

the 28 U.SC. § 332(d)(4) Circuit Judicial Council statutory and supervisory responsibility to periodically review Federal District Court Local Rules within the Ninth Circuit and to abrogate any Local Rules that contradict the standards set forth in 28 U.S.C. § 2072(b) and FRCP 83(a)(1), and their repeated and unyielding failure to comply with this substantive law. These defendants have refused to exercise their *supervisory* and statutory jurisdiction. *See* for example, Exhibit B, where legal scholar Alan B. Morrison of George Washington University School of Law and Mark Chavez, Esq. filed petitions in the District Courts of California and in the Ninth Circuit requesting these Federal Courts to change the Local Rules, arguing they served no reasonable purpose. These petitions were filed on behalf of Public Citizen Litigation Group, American Civil Liberties Union, Association of Corporate Counsel, Cato Institute, Center for Constitutional Litigation, Competitive Enterprise Institute's Center for Class Action Fairness, Consumers for a Responsive Legal System, Earthjustice, Natural Resources Defense Council, Pacific Legal Foundation, Robert S. Peck, Public Justice, and John Vail, Esq. These Courts rejected this petition. This illustrates that meaningful judicial review without Supreme Court justice supervision, as Congress has judged, is "impossible sometimes, impractical most times, and impolitic always." *See* David D. Siegel, *Commentary on 1988 Revision,* following text of 28 U.S.C. § 2071 p. 130-32. Many of these 9th Circuit judges have been actively engaged in covering-up the

evidence that the California bar exam for experienced attorneys is not a *valid* or *reliable* test and the law presented in this case.

25. Defendants in this case sued in their official capacity are PHYLLIS J. HAMILTON, Chief Judge of the Northern District of California, and the Hon. Associate Judges, YVONNE GONZALEZ ROGERS, JON S. TIGAR, JEFFREY S. WHITE, 1301 Clay Street Oakland, CA 94612; WILLIAM ALSUP, EDWARD CHEN, VINCE CHHABRIA, JAMES DONATO, WILLIAM ORRICK, RICHARD SEEBORG 450 Golden Gate Ave., San Francisco, CA 94012; EDWARD J. DAVILA, BETH LABSON FREEMAN, LUCY H. KOH, 280 South First Street, San Jose, CA 95113.

26. Defendants in this case sued in their official capacity are VIRGINA A. PHILLIPS, CHIEF JUDGE OF THE CENTRAL DISTRICT OF CALIFORNIA, and the active DISTRICT JUDGES sitting on this Honorable Court; it would be superfluous to individually name as defendants these twenty or more public officials as they are represented by the Chief Judge and the challenged Local Rules.

27. Defendants in this case sued in their official capacity are LAWRENCE J. O'NEILL, Chief Judge of the Eastern District of California, and Associate Judges DALE A. DROZD, MORRISON C. ENGLAND, JR., JOHN A. MENDEZ,

KIMBERLY J. MUELLER, TROY L. NUNLEY, 501 I St. #4-200, Sacramento, CA 95814.

28. Defendants in this case sued in their official capacity are LARRY ALAN BURNS, CHIEF JUDGE OF THE SOUTHERN DISTRICT OF CALIFORNIA, and Hon. Associate Judges MICHAEL M. ANELLO, CYNTHIA A. BASHANT, ANTHONY J. BATTAGLIA, ROGER T. BENITEZ, GONZALO P. CURIEL, WILLIAM B. ENRIGHT, WILLIAM Q. HAYES, JOHN A. HOUSTON, MARILYN L. HUFF, M. JAMES LORENZ, M. MARGARENT McKEOWN, JEFFREY T. MILLER, BARRY TED MOSKOWITZ, DANA M. SABRAW, JANIS L. SAMMARTINO, THOMAS J. WHELAN, 333 West Broadway San Diego, CA 92101.

29. Defendants in this case sued in their official capacity are BERYL A. HOWELL, CHIEF JUDGE FOR THE DISTRICT OF COLUMBIA, DISTRICT JUDGES EMMET G. SULLIVAN, COLLEEN KOLLAR-KOTELLY, JAMES E. BOASBERG, AMY B. JACKSON, RUDOLPH CONTRERAS, KETANJI B. JACKSON, CHRISTOPHER R. COOPER, TANYA S. CHUTKAN, RANDOLPH D. MOSS, AMIT P. MEHTA, TIMOTHY J. KELLY, TREVOR N. McFADDEN, DABNEY L. FRIEDRICH, and CARL J. NICHOLS.

29A. Defendants in this case sued in their official and representative capacity are the Hon. Chief Judge MARK WALKER, and his active District Court

colleagues on the Northern District of Florida located at the United States Courthouse 111 N. Adams St. Tallahassee, Florida 32301.

29B. Defendants in this case sued in their official and representative capacity are the Hon. Chief Judge STEVEN MERRYDAY, and his active District Court colleagues on the Middle District of Florida located at the United States Courthouse. 801 North Florida Avenue Tampa, Florida 33602.

29C. Defendants in this case sued in their official and representative capacity are the Hon. Chief Judge K. MICHALE MOORE, and his active District Court colleagues on the Southern District of Florida located at the United States Courthouse 400 North Miami Avenue Room 13-1 Miami, Florida 33128.

FACTS

A. THE ORIGIN OF THIS LOCAL RULE CULTURE[5] OF INEQUALITY[6]

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[5] See *Priestley v. Astrue*, 651 F. 3d 410 (4th Cir. 20111), Circuit Judge Davis concurring:

> "I have previously acknowledged that "**local legal culture** drives [certain] practices," [citation omitted], and recognize that "**local legal culture**" certainly can influence a district court's local rules. This case poses an important question as to the extent the application of those rules should be influenced by "**local legal culture**." *Id*. at 420 (Emphasis added)

[6] *Some* of facts in this sub-section have been excerpted from the petition filed in the District Courts in the Ninth Circuit and the Ninth Circuit Judicial Council to change the Local Rules filed by legal scholars on behalf of a dozen who's who legal advocates which was rejected. *See* Exhibit B attached. Exhibit B argues

30. In 1938, shortly after the *Federal Rules of Civil Procedure* became effective, a committee of Federal District Judges, chaired by Judge John Knox of the Southern District of New York, prepared a report, FED. JUDICIAL CONFERENCE, REPORT ON LOCAL DISTRICT COURT RULES (1940), reprinted in 4 Fed R. Serv. 969 (1941) ("*Knox Report*"). The Report concluded that bar admission rules were appropriate for local adoption. The *Knox Report* model rule on bar admission is noteworthy in that it did not suggest that the federal courts require admission to the bar of the state in which the federal court was located. Rather, it would have allowed admission for any attorney who was admitted by the highest court of "this state . . . or any other state" with one proviso: that the applicant "must show that at the time of his admission to the bar of that [other] court, the requirements for admission to that bar were not lower than those that were at the same time in force for admission to the bar of this state." *Knox Report* Appendix at 29

31. In this 21st Century, the requirement for forum State Bar admission does not bear any reasonable relationship to actual practice in the Federal District Court because the procedures followed are established by federal rules and the substantive law issues in the vast majority of the cases in the Federal District Court arise under federal, not state law. Federal courts apply *federal procedural rules*.

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these Local Rules serve no reasonable purpose and are antiquated in this 21st Century.

Before 1938, federal courts applied local procedural rules, and so knowing state procedures might have made sense then, but that is no longer the case.

32. Likewise, on the substantive side, criminal cases are governed by federal criminal statutes, the *Federal Rules of Criminal Procedure*, and the United States Constitution.

33. Likewise, on the civil substantive side, cases fall into two major categories: cases arising under federal substantive law and diversity. There is no reason to believe one state's lawyers are more qualified in federal substantive law than another state's lawyers. Most laws at issue in bankruptcy and admiralty proceedings are exclusively federal. In diversity cases, the parties will always be from at least two jurisdictions. With the laws of two or more jurisdictions a possibility, there is no particular reason to think that forum state law would apply even in a diversity case in federal court rather than another state's law. Even in that subset of diversity cases, there is no reason to presume that private lawyers who practice outside of the forum State are not fully qualified to represent their clients in those cases.

34. Moreover, the 1941 Knox Report presumption that one state's licensing policies should be presumed superior to another state's licensing polices stems from the "separate but equal era" culture. Since *Brown v. Board of Education*, 347 US 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), the Constitution and Bill of

Rights does not discriminate for or against any class of citizen. FRAP 46 and 5 U.S.C. § 500 were adopted in the 1960s and do not discriminate for or against any class of citizens. Likewise, the Supreme Court has squarely held bar admission on motion is constitutionally protected. *See Supreme Court of Virginia v. Friedman*, *supra*, 487 U.S. 59 (1988)(holding admission on motion is a constitutionally protected Privilege and Immunity, and the Supreme Court will not presume that non-resident attorneys or citizens are not fully qualified for bar admission on motion.) When the reason for a Local Rule ceases, so should the Rule.

35. In 1995, Congress tightened the Local Rule standards when it promulgated *Federal Rule of Civil Procedure* 83(a)(1), consistent with its 1988 amendments to 28 U.S.C. §§ 2071-72 and the 1988 promulgation of 28 U.S.C. 332(d)(4). The challenged Local Rules in this 21st Century have not kept abreast with the congressionally imposed amendments to the law. The 21st Century standard of review for Local Rules is not "rational basis." The standard of review for Local Rules is **"[s]uch rules shall not abridge, enlarge or modify any substantive right.**" 28 U.S.C. § 2072(b); FRCP 83(a)(1).

B. RECENT FEDERAL LOWER COURT DECISIONS UPHOLDING ARTICLE III COURT LOCAL RULE DISCRIMNATION AS "RATIONAL" WHITEWASH THE EVIDENCE AND THE ALLEGATIONS OF FACT AND LAW CITED

36. The American Law Institute observed, the requirement of local bar membership "is inconsistent with the federal nature of the court's business." RESTATEMENT OF LAW, THIRD, THE LAW GOVERNING LAWYERS § 3 comment g (AM. LAW INST. 2000).

37. The US Supreme Court has held professional norms articulated by the American Bar Association are "(s)tandards to which we have referred as 'guides to determining what is reasonable.'" *Wiggins v. Smith*, 539 US 510, 524 (2003). The ABA has recommended that the U.S. District Court policy of restricting practice privileges to lawyers who are admitted to the State bar in which the district is located should be eliminated. Recommendation 8A was adopted by the ABA House of Delegates in 1995. The ABA concluded that "Given the global nature of law practice today, parochial local rules are inefficient, unduly costly to clients and/or lawyers and anti-competitive."

38. What is the purpose of a bar exam? "Tests used in credentialing are designed to determine whether the essential knowledge and skills have been mastered by the candidate. The focus is on the standards of competence needed for effective performance." *See Standards for Educational and Psychological Testing* (Published by the American Educational Research Association, American Psychological Association, and the National Council on Measurement in

Education) (*Standards*) (2014) p. 175. The goal of the selection system is to predict performance immediately upon or shortly after hire. *Id*. at 170.

39. These challenged Local Rules contravene modern legal industry licensing standards set forth by the ABA. "A bar exam is a test of minimum competence to practice law." *See* Rebecca White Berch, "The Case for the Uniform Bar Exam, "*The Bar Examiner*, Feb 2009 p. 12. The purpose of this entry level licensing test is public protection. The District of Columbia and forty-two states have adopted the American Bar Association (ABA) recommendations for admission on motion.[7] The State Supreme Courts that require already licensed attorneys to reinvent the wheel, take another bar exam, and do not provide reciprocal admission on motion are California, Delaware, Florida, Hawaii, Louisiana, Nevada, Rhode Island, and South Carolina. [8] Over 8,500 attorneys have been admitted on motion to a state supreme court each year since 2014.[9]

40. The *ABA Commission on Ethics 20-20* (2012) entered a factual finding that there was no evidence that experienced lawyers were a threat to the public or

[7] NCBE, ABA, Comprehensive Guide to Bar Admission Requirements (2019); http://www.ncbex.org/assets/BarAdmissionGuide/NCBE-CompGuide-2019.pdf

[8] *Id*. Charts 12 & 13.

[9] See *National Conference of Bar Examiners Statistics*; https://thebarexaminer.org/statistics/2018-statistics/admissions-to-the-bar-on-motion-2014-2018/

needed to take another bar exam. [10] The ABA squarely recommends that in light of ever-increasing advances in technology that all states should adopt bar admission on motion for lawyers with three years of experience. The *Commission on Ethics 20-20* "found no reason to believe that lawyers who have been engaged in the active practice of law for three of the last seven years will be any less able to practice law in a new jurisdiction than a law school graduate who recently passed the bar." The ABA concluded the failure to have admission on motion injures the public and the profession; **women lawyers are further disproportionately injured**.

41. The ABA further squarely recommends abolishing "you get reciprocity if we get reciprocity" restraints.[11] If by law, a layman is presumed to know the law,

[10] "The Commission also found unpersuasive the concern that passage of the bar examination is necessary to demonstrate knowledge of the law of the jurisdiction in which the lawyer is seeking admission. As explained above, more than 65,000 lawyers have obtained admission by motion in the last ten years, and there is no evidence from disciplinary counsel or any other source that these lawyers have been unable to practice competently in the new jurisdiction or have been unable to identify and understand aspects of the new jurisdiction's law that differ from the law of the jurisdiction where those lawyers were originally admitted. The Commission also concluded that the "local law" concern rests on the incorrect assumption that passage of the bar examination demonstrates competence in local law. In fact, an increasing number of jurisdictions use the Uniform Bar Examination, which typically does not require any knowledge of local law. And in jurisdictions that do test local law, the local law portion of the test is usually sufficiently small that bar passage does not turn on it."

[11] "The Commission believes that such varied additional restrictions only serve to sustain outdated and parochial purposes at a time when the relevance of borders to the competent practice of law has and will continue to erode."

or can presumptively find it, and is presumptively capable of representing herself — *a fortiori* an experienced licensed attorney can do the same. The presumption that an experienced lawyer after crossing a state line is presumptively incompetent is a fairy-tale.

42. The ABA has also obviously considered Supreme Court precedent. There is a presumption "that the lawyer is competent to provide the guiding hand that the defendant needs" applies even to young and inexperienced lawyers in their first jury trial and even when the case is complex. *United States v. Cronic*, 466 U. S. 648, 658, 664 (1984).

43. Likewise, the Uniform Bar Examination (UBE) is a standardized bar examination in the United States, recently developed by the National Conference of Bar Examiners (NCBE) that offers portability of scores across state lines. As of February 2019, the Uniform Bar Exam has been adopted in 35 jurisdictions: 33 states, the District of Columbia, and the US Virgin Islands. The UBE does not test state law. A novice lawyer admitted in any UBE state is eligible for reciprocal licensing in all UBE states. Exam scores are transferable depending on the reciprocal jurisdiction from 25-60 months. The UBE unfairly punishes experienced lawyers who were admitted before it was adopted by concluding novice lawyers are qualified for transfer but experienced lawyers from the same jurisdictions are disqualified. Thus, experience as an attorney in good standing is

punished on the basis of a test that has always been designed to measure entry level competence. This hypocrisy and age discrimination is vicariously and blindly adopted by many Federal District Court Local Rules that compel forum state admission.

C. RECENT FEDERAL COURT DECISIONS UPHOLDING LOCAL RULE DISCRIMINATION AS "RATIONAL" COVER-UP SCIENTIFIC EVIDENCE THAT PROVES THAT THE ALLEGED GRANDDADDY OF BAR EXAMS FOR EXPERIENCED ATTORNEYS IS NOT A VALID OR RELIABLE LICENSING TEST

44. The California Bar Exam for experienced attorneys is widely considered the granddaddy of bar exams. Few have not heard of its interstate and intrastate reputation as the putative gold standard for measuring attorney competence. The former Dean of Stanford Law School Kathleen Sullivan famously failed this entry level test for alleged public protection. One-half of this bar exam consists of a performance test where the applicant is given cases and required to write a memorandum. The other half is essay tests. For example, on contracts, torts, evidence, constitutional law, professional responsibility, etc., that a recent law school graduate should know. Kathleen Sullivan is one of the most skilled lawyers in America. The fact she failed this entry level test proves that the results are not *valid* or *reliable*. This 100% subjective licensing test for already licensed attorneys

is virtually identical to the 16th Century practice of licensing printing presses based on *content*. It violates ABA legal industry licensing findings of fact and national testing *Standards*, *infra*, and it waters down Supreme Court holdings that an attorney's opportunity to practice law should be considered a fundamental right.

45. The Ninth Circuit and the District of Columbia Circuit, (in a decision written by former California Supreme Court associate justice Janice Rogers Brown) repeatedly turned a blind eye to allegations of fact and substantive evidence that proves beyond any doubt that the results of the California licensing exam for experienced attorneys is not *valid* or *reliable*, and it is designed and administered to provide monopoly protection. At least ten separate lines of scientific based evidence confirm the wisdom of the ABA's recommendation for reciprocal admission on motion and prove that the results of the California licensing test are neither *valid* nor *reliable*, and thus should not be used as an exclusive proxy for federal bar admission. Virtually all the following factual allegations and substantive evidence have been presented to Ninth Circuit federal judges and covered-up.

46. First, Dr. Susan Case, the Director of Testing for the National Conference of Bar Examiners (NCBE), avows that non-multiple choice format tests, such as essay and performance tests "because of their limitations, such as low reliability, lack of anonymity, and lack of standardization, should not be used in

isolation." *See* Susan M. Case, "Licensure In My Ideal World," *The Bar Examiner*, p. 27 November 2005. The challenged California Federal District Court Local Rules are exclusively based on a 100% subjective format that is used in isolation. These test results are not *valid*.

47. Second, Dr. Geoff Norman is a nationally recognized testing expert with over 30 years of experience. Dr. Norman is one of the experts writing a chapter in the *Cambridge Handbook of Expertise and Expert Performance*. Dr. Norman writes:

> "Study after study has shown that it is almost impossible to get judges to agree on scores for essay answers."

See "So What Does Guessing the Right Answer Out of Four Have to Do With Competence Anyway?" *The Bar Examiner*, p. 21 (Nov 2008).

48. Third, "(N)o one has yet devised an examination which will test one's ability to be a courtroom advocate." *Report and Tentative Recommendations of the Committee to Practice in the Federal Courts in the Judicial Conference of the United States*. 79 F.R.D. 187, 196. "Lawyers with previous trial experience are much more likely to turn in very good performances, and it permits the inference that experience improves the quality of trial performance." *Id*. at 196. There is a correlation between the quality of trial performance and the prior experience of the attorneys evaluated. 83 F.R.D. at 222.

49. Fourth, *The Standards for Educational and Psychological Testing* (2014) were developed to "provide criteria for the development and evaluation of tests and testing practices and to provide guidelines for assessing the validity of interpretations of test scores for the intended test uses…. All professional test developers, sponsors, publishers, and users should make reasonable efforts to satisfy and follow the *Standards* and should encourage others to do so. All applicable standards should be met by all tests and in all test uses unless a sound professional reason is available to show why a standard is not relevant or technically feasible in a particular case." *Id*. at 1. This means Federal District Court Local Rules should also rely on the *Standards* unless sound professional reasons counsel that a particular *Standard* is not relevant.

50. The *Standards* provide, "**Each profession or occupation should periodically reevaluate the knowledge and skills measured in its examination used to meet the requirements of the credential**." *Id*. at 175 The ABA and UBE have concluded one bar exam is enough. Forty-two states have adopted reciprocal admission on motion for experienced attorneys. The UBE that has been adopted in 35 jurisdictions also does not test state law. The state and federal judiciary are separate and distinct; forum state law and procedure, in general, have little to do with federal practice. *Cf.* 5 U.S.C. § 500, FRAP 46, Supreme Court Rule 5, which do not discriminate in bar admission based on forum state admission

or office location. Defendants who have adopted or supervised the challenged Local Rules have not periodically reviewed the hometown protectionist Local Rules, and they have not provided sound professional reasons for rejecting the ABA and UBE professional judgments.

51. This *supervisory* breach of duty contravenes *Standards for Credentialing, Standard* 11.13: "The content domain to be covered by a credentialing test should be defined clearly and justified in terms of the importance of the content for credential-worthy performance in an occupation or profession. A rationale and evidence should be provided to support the claim that the knowledge or skills being assessed are required for credential-worthy performance in that occupation and are consistent with the purpose for which the credentialing program was instituted." *Id*. at 181-82.

52. Under the *Standards*, *validity* analysis addresses the question of whether the proposed interpretations and uses of the test scores make sense and are justified. *Validity* refers to the degree to which evidence and theory support the interpretations of test scores for proposed uses of tests. *Validity* is the most fundamental consideration in developing tests and evaluating tests. It is the interpretations of test scores for proposed uses that are evaluated, not the test itself. *Id*. at 11. *Validity* concerns the question — does the test score measure what it is supposed to measure? For example, if you are testing for AIDS and the test results

consistently demonstrate two out of three heterosexual married individuals have AIDS and another AIDS test demonstrates that they don't have AIDS, the *validity* of these tests is questionable. Identifying the propositions implied by a proposed test interpretation can be facilitated by considering rival hypotheses that may challenge the proposed interpretation. *Id*. at 12. "As in all scientific endeavors, the quality of the evidence is paramount. A few pieces of solid evidence regarding a particular proposition are better than numerous pieces of evidence of questionable quality." A given interpretation may not be warranted either as a result of insufficient evidence in support of it or as a result of credible evidence against it. *Id*. at 13. No evidence has been presented that the 100% subjective California bar exam for experienced attorneys is a valid licensing test for Federal District Court admission.

53. Chapter 2 of the *Standards* focuses on *Reliabilty/Precision and Errors of Measurement*. In interpreting and using test scores, it is important to have some indication of their *reliability*. *Standards,* at p. 33. The term has been used in a general sense, to refer to the consistency of scores across replications of a testing procedure, regardless of how this consistency is estimated or reported (e.g., in terms of standard errors, reliability coefficients per se. …The reliability/precision of measurement is always important. However, the need for precision increases as the consequences of decisions and interpretations grow in importance. *Ibid*. Bar

exams for already licensed attorneys are obviously high-stakes licensing tests. Inter-grader disagreement as to the quality of 100% subjective tests are not *reliable* according to Dr. Case and Dr. Norman because it is almost impossible to get graders to agree on the quality of an answer. This is measurement error. It is not *rational* to compel the passage of a test that is not valid.

54. Standard 2.0, provides: "Appropriate evidence of reliability/precision should be provided for the interpretation for each intended score use." *Id.* at 42. The State Bar of California prepares a report on each bar exam for the California Supreme Court. The State Bar provides an estimate of the reliability of inter-grader agreement by way of a correlation coefficient. That is, the degree by which the graders on the subjective test sections agree with themselves. The measurement error is another way of referencing the correlation coefficient.

55. Fifth, the Report(s) to the California Supreme Court on the California Bar Examination prepared by the State Bar Association documents the reader correlation on the 100% eight-question subjective tests given to experienced attorneys as follows:

February 2001 reader correlation .41

July 2001 reader correlation .48

February 2002 reader correlation .38

July 2002 reader correlation .40

February 2003 reader correlation .48

February 2004 reader correlation .39

July 2004 reader correlation .41

56. These California State Bar Reports prepared by the Rand Corporation have been consistent from exam to exam going back for over 40 years. As Dr. Norman writing in the *Bar Examiner* states, it is almost impossible to get graders to agree with each other. These test results verify Dr. Case's conclusions.

57. Sixth, Dr. Phillip L. Ackerman is a Professor of Psychology at Georgia Institute of Technology; the Editor, Journal of Experimental Psychology: Applied; a Fellow of the American Psychological Association and a member of the American Educational Research Association and the National Council on Measurement in Education (these are the three organizations that generate the Standards on Psychological and Educational Testing). Dr. Ackerman wrote the chapter on testing in K. Anders Ericsson, Ed., *The Cambridge Handbook of Expertise and Expert Performance*, and he is one of the leading testing experts in the world. Dr. Ackerman has reviewed the State Bar's Report to the California Supreme Court on the California Bar Examination and other material he deemed necessary to form an expert opinion.

58. Dr. Ackerman's professional opinion is that the Attorney's Examination for experienced sister-state attorneys fails to meet the *Standards for Educational*

and Psychological Testing. Multiple Standards have not been met. More particularly, Dr. Ackerman declares, under oath:

> "The scores on the Attorney's Examination are determined in a manner that is not consistent with professional standards. The reliability of the test scoring procedures fails to reach a level that would be acceptable for high-stakes testing. (Specifically, inter-rater agreement is quite low, a correlation of .48 between raters indicates only 23% shared variance among ratings; source: Klein & Bolus; Gansk & Associates 2003.) An acceptable level of reliability for such high-stakes testing would be shared variance in the neighborhood of 70% or higher (corresponding to reliability of about .84 or higher).
>
> …
>
> When the goal of inter-rater reliability is preferably in the range of .8 to .9 as noted by Dr. Kane, and the inter-rater reliability of the California Attorney's Examination is consistently reported to be below .5, there can be little doubt that the reliability of the decisions made on the basis of the scores is extremely low, and not acceptable.

59. Dr. Ackerman further concludes the "Attorney's Examination lacks content-related validity," and it "has never been demonstrated to have criterion related validation, in terms of evaluating the scores on the test and comparing them to performance of practicing attorneys."

60. Seventh, Dr. Gary H. McClelland, a professor at the University of Colorado at Boulder is also an expert on statistics and measurement. Dr. McClelland previously studied the Colorado bar examination and based on that study wrote "Assessing Bias in Professional Licensing Examinations by Checking Internal Consistency," 9 *Law and Human Behavior*, No. 3, p. 305 (1985). Dr. McClelland declares, under oath:

> I have reviewed Dr. Phillip L. Ackerman's "Evaluation of the Psychometric Adequacy of the California Attorney's Examination" dated February 15, 2008, and generally agree with it. Dr. Ackerman is a credible psychometrician as well. In my opinion, the lack of an explicit equating procedure for the Essay and Performance Test sections is a fatal flaw. The degree of inter-rater agreement is dreadful. I do not believe any scientist would ever publish data based on such low inter-rater agreement.

61. Eighth, Dr. Stephen P. Klein prepares the reports noted above for the California Supreme Court on each bar exam. Dr. Klein in other writings, however, emphasizes the danger caused by using 100% subjective high-stakes tests in isolation. *See* Stephen P. Klein, "What Do Test Scores in Texas Tell Us?" (Published 2000 by RAND) Dr. Klein admits:

> "Our research results illustrate the danger of relying on statewide test scores as the sole measure of student achievement when these scores are used to make high-stakes decisions about teachers and schools as well as students. We anticipate that our findings will be of interest to local, state, and national educational policymakers, legislators, educators, and fellow researchers and measurement specialists."

62. This Dr. Stephen P. Dr. Klein evidentiary admission proves California's 100% subjective bar exam for experienced attorneys is fundamentally flawed because it is used as the sole measure of competence for experienced attorneys.

63. Dr. Klein also admits, "While many bar exam graders believe they can recognize a passing answer when they see one, there is strong empirical evidence to the contrary." *See* Stephen P. Klein, "Essay Grading: Fictions, Facts and Forecasts," *The Bar Examiner* p. 23, 25 (August 1985).

64. Ninth, according to the ABA's "MacCrate Commission," nine out of ten fundamental lawyering skills cannot be tested on a pen and paper bar exam. [12] There are two types of memory, declarative and non-declarative. Declarative memory refers to recollection of persons, places, and events. Non-declarative memory is skill memory like riding a bike, swinging a golf club, writing a memorandum, researching the law, or managing a client interview, case or a law practice. Some fundamental legal specialties such as federal taxation, patent law, and admiralty law are not tested on any State's bar exam. Some fundamental legal skills such as oral argument and trial practice cannot be tested on a bar exam and involve non-declarative memory.

65. Finally, the cognitive science of *expertise* and *expert performance* proves excellence is the product of experience and that it cannot be predicted. *See* K. Anders Ericsson, Ed., *The Cambridge Handbook of Expertise and Expert Performance* (Cambridge University Press 2006). K. Anders Ericsson is the leading pioneer in this cross-disciplinary field. Cognitive scientists have concluded that it takes 10,000 hours to develop true expertise in any field, taking the brain this long to assimilate all that it needs to know to achieve true mastery.

[12] *See* Bedford T. Bentley, Jr. "Rethinking the Purpose of the Bar Examination," *The Bar Examiner*, February 2009 p. 17("The bar examination cannot and does not test many of the skills identified by the MacCrate Report as fundamental to the successful practice of law.") Nine out of the ten skills identified as fundamental are not tested on the bar exam.

Experienced experts surpass novices, those new to a profession, in seven major ways: (a) generating the best solution; (b) pattern recognition; (c) qualitative analysis; (d) self-monitoring skills in terms of their ability and knowing what they do not know; (e) choosing appropriate strategies; (f) seeing and exploiting opportunities; and (g) cognitive effort, meaning they work faster, with less effort, and greater control. *Id*. at 27. True expertise is based on pattern recognition skills that are intuitive and developed with experience, much like an athlete's skill increases from beginner, to novice, to professional.

66. Cognitive scientists have further concluded major scientific and societal advancements are often the product of cross-pollination between fields. Science has proven diversity increases fitness (more minds at work), innovation (creativity), levels of trust, and robustness in organizations; diversity reduces error because all of us together are smarter than any of us individually; it prevents dominant coalitions from taking over because everyone has the opportunity to participate.[13] This principle and benefit of diversity is famously set forth by Madison in the *Federalist Paper 10*.[14]

[13] Scot E. Page, *Understanding Complexity*, Lecture Four "Why Different is More," Lecture Six "Emergence I – Why More is Different" (The Teaching Company 2009)

[14] *The Union as a Safeguard Against Domestic Faction and Insurrection*, "AMONG the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction."

67. Clear and compelling evidence from ten separate strands of converging relevant evidence proves the California bar exam for experienced attorneys fails to satisfy testing *Standards*. This licensing exam that the California Local Rules compel all experienced attorneys to take and pass should be shelved in the same way licensing officials stopped licensing printing presses based on content centuries ago. The test results for this licensing exam do not comply with professional *Standards* and are inadmissible as evidence under the *Federal Rules of Evidence* 701 series and the *Daubert* standards because the test results are neither *valid* nor *reliable*, and they contradict the ABA legal industry licensing standard of reciprocity.

FIRST CAUSE OF ACTION

SEPARATION OF POWERS DOCTRINE

68. The preceding allegations and the allegations in the subsequent causes of action are incorporated in this cause of action.

69. In the famous words of Chief Justice ROBERTS, judges are supposed to call balls, strikes, and make sure the rules are followed. They are not authorized by Local Rules to legislate, and by this legislation tell the parties appearing before them who to choose or not choose as their counsel, any more than a baseball umpire is authorized to tell the manager of a baseball team who to play or not play or what position. They also do not have sovereignty and jurisdiction to delegate

their Article III Court judicial duties to decide cases and say what the law is. The separation of powers doctrine has been turned upside and violated, when as here District Judges have assigned their Article III Court jurisdiction to state actors, and have delegated this Article III Court jurisdiction to state actors without any "intelligible standard" and without a shred of supervision. The rules of the game have been violated by the judicial umpires who have nominated by the President, confirmed by Congress, provided life-time tenure, and paid by the United States of America.

70. The integrity of the federal system has been called into question by the facts and law presented in this case and controversy. The members of the Judicial Councils, as trustees of our federal system have supervisory review over the Local Rules. This is a non-delegable fiduciary duty. They have failed to exercise this supervisory review. The right to counsel in the United States Courts set forth by 28 U.S.C. § 1654 is of profound national importance because attorneys have a constitutional duty to vindicate federal rights. The right to counsel and the right to petition in our more perfect Union are at the apex of constitutional rights. They are as fundamental as the liberty to choose one's spouse. These fundamental rights have been delegated to state actors in private practice without any supervision by the defendant District Judges and the Judicial Council members.

71. Congress enacted 28 U.S.C. 2072(b) in 1988 and FRCP 83(a)(1) in 1995 tightening the Rule standard to "**Such rules shall not abridge, enlarge or modify any substantive right**." This standard is presently abridged by Local Rules in 60% of the Federal District Courts. Plaintiff whistle-blowers, in the interest of judicial economy, should not have to file lawsuits in 60% of the ninety-four Federal District Courts when lower federal courts have repeatedly held they do not have either *subject matter* or *supervisory jurisdiction* over the Local Rule patchwork when the purpose of the *Federal Rules of Civil Procedure* is to provide uniform rules "to secure the just, speedy, and inexpensive determination of every action." FRCP 1. This substantive right is abridged and modified when LRs compel all citizens to hire two attorneys if they choose a non-forum state lawyer as counsel.

72. The Supreme Court has held the denial of out-of-state licensed counsel of choice in the District Court implicates the overall fairness of a trial and that the wrongful deprivation of choice of counsel is "structural error," immune from review for harmlessness, because it "pervades the entire trial." *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2011). Thus, the LRs in 60% of the Federal District Courts thwart the federal system and constitute structural error.

73. In *Hanna v. Plumer*, 380 U.S. 460, 463 (1965), a lower court decision holding that service in a diversity case was to be determined by state law rather

than the *Federal Rules of Civil Procedure* was reviewed and reversed under the Court's supervisory responsibility "[b]ecause of the threat to the goal of uniformity of federal procedure posed by the decision below." As such, supervisory jurisdiction is warranted in the first instance because of pervasive structural error; 60% of the Federal District Court Local Rules are not uniform and hold state law governs federal procedure rather than the *Federal Rules of Civil Procedure*.

74. The operations of the courts and the judicial conduct of judges are matters of utmost public concern. *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 839 (1978). Litigation is a form of political expression. *In re Primus*, 436 U.S. 412, 428.

75. The First Amendment protects "litigation [as] a means for achieving the lawful objectives of equality by all government." *NAACP v. Button*, 371 U.S. 415, 429 (1963). It is thus a form of political expression. *Ibid*. "It is no answer to the constitutional claims … that the purpose of these regulations was merely to insure high professional standards and not to curtail free expression." *Id*. at 438-39.

76. Regulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid. *Procuier v. Martinez*, 416 U.S. 396, 419 (1974).

77. As noted above, in *Alfriend v. Northern District of California*, 9th Cir. Docket# 14-15347, Supreme Court docket 1610 *cert denied*, the Ninth Circuit

dismissed a similar challenge to the Northern District of California Local Rules in a nonpublished three page decision under Rule 12(b)(1) **holding it did not have *subject* matter jurisdiction under the doctrines of sovereign and judicial immunity**. Virtually all the allegations of fact, including Exhibit A attached hereto, the ten separate lines of converging evidence, submitted in this complaint were submitted in *Alfriend* and covered-up by Ninth Circuit judges. Likewise, the federal rule-making standards set forth in 28 U.S.C. § 2072(b) and FRCP 83(a)(1), and Supreme Court precedent submitted in this complaint were conveniently covered-up. The Ninth Circuit's three page wink and nod judgment holding **that it does not have *subject* matter jurisdiction over Local Rules under the doctrines of sovereign and judicial immunity** is the product of a conspiracy of silence and an intentional abuse of public trust by federal judges who have sworn an oath of office to follow the law and preserve the Constitution.

78. This Ninth Circuit no subject matter/immunity decision illustrates bar admission challenges filed anywhere in the Ninth Circuit by experienced attorneys are futile because in the Ninth Circuit, federal judges, like Kings, have immunity for their Local Rules and are above the rule of law. This no subject matter/immunity holding contravenes *Frazier v. Heebe*, and a host of other Supreme Court decisions holding every man subject to the rule of law and judicial review. Federal laws that prohibit lawyer speech and advice even to foreign

terrorists are First Amendment protected and subject to strict scrutiny review. *Holder v. Humanitarian Law Project*, 561 U.S.1, 130 S. Ct. 2705 (2010).

79. This no subject matter/immunity holding is an artifice and pretextual ploy. This decision shows absolute power corrupts absolutely. Why? The State Bar of California is the most powerful compulsory union in California, with a budget historically over 100 million dollars per year. The State Bar of California has historically retained and paid registered lobbyists almost a million dollars per year to secure its wall and legislation that benefits its members. High ranking State Bar of California officials have pled guilty to criminal election law violations. The State Bar of California public union has been the Ninth Circuit's biggest fan in its quest to avoid being split. There is a financial motivation to maintain the status quo. Many federal judges leave office early or retire and go work as California Appeals Court judges, where the State salary is much higher and the docket is much smaller. Some former federal judges draw a federal pension and state judge salary at the same time and vice versa. The Ninth Circuit would rather cover-up the evidence and apposite law, rather than to admit that it has made a mistake for its Local Rules' exclusive reliance on a public union as a proxy for federal court admission. This no *subject matter* jurisdiction holding anywhere in the Ninth Circuit warrants supervisory review by the Honorable Supreme Court justices that do have supervisory review.

80. What was true when *Frazier* was decided under supervisory review and 28 U.S.C. § 2072 over thirty years ago concerning the growing body of specialized federal law and a more mobile federal bar, accompanied by an increased demand for specialized legal services regardless of state boundaries in today's Information Age where ninety-five percent of Americans have smart phones dialed into the world wide web has exploded exponentially. Thirty years ago, the World Wide Web, PACER, and smart phones had yet to be born. The immunity decision here nullifies *Frazier v. Heebe* and it is an egregious misapplication of 28 U.S.C. § 2072(a) and FRCP 83(a)(1), and the rule of law.

81. While the Ninth Circuit has held it does not have *subject matter* jurisdiction over Local Rule challenges, many other United States Courts of Appeal[15] in a similar conspiracy of silence have ducked the issues presented with a "circle the wagons" mindset by *ad hominem* attacks on counsel, holding they also do not have *supervisory* review, and LR federal discrimination is rational.

[15] *NAAMJP v. Simandle*, 658 Fed.Appx. 127, 130 (3d Cir. 2016), ("The assumptions underlying these rationales may be erroneous, but the very fact that they are arguable is sufficient, on rational-basis review, to immuniz[e] the [rule] from constitutional challenge.") Supreme Court docket16-525 ; *cert denied; Thaw v. Sessions*, 9th Cir. Docket 16-15777(applying rational basis review), Supreme Court docket 17-594 *cert denied; NAAMJP v. Lynch,* 826 F.3d 191 (4th Cir. 2016) (applying rational basis review) Supreme Court docket 16-404 *cert denied*.

82. In *NAAMJP v. Howell*, 851 F. 3d 12, (DC Cir, 2017), Supreme Court docket 17-409 *cert. denied* (2017), a Local Rule principal office location disqualification provision was upheld in a decision written by the panel chair and former California Supreme Court Justice Janice Rogers Brown. Exhibit A attached hereto establishing that the California bar exam for experienced attorneys has a standard error of measurement greater than fifty percent, and that it is not a valid or reliable test was presented to the Hon. Janice Rogers Brown while serving in *NAAMJP v. Howell*. Judge Brown was also previously a named defendant in more than one federal lawsuit challenging the California bar exam for experienced attorneys. *See McKenzie v. George*, ND California docket #97-0403 contending that the State of California's failure to provide reciprocity in bar admissions is unconstitutional. Judge Brown covered-up this scandalous evidence. Likewise, Judge Brown held "**a single judge or appellate panel does not have *supervisory* review over Local Rules**." *Id*. at 18.

83. The Hon. Janice Rogers Brown's decision in *NAAMJP v. Howell*, which holds the "Principal Office Provision is properly subject to rational basis review" *Id*. at 18, contradicts *Frazier* which holds the direct opposite; that the office location disqualification is *irrational* and not *necessary*. *Frazier* applies a two pronged heightened scrutiny *rational* and *necessary* standard of review, which parallels the Constitutional *necessary* and proper clause set forth to apply to

Congress's enumerated powers. Panel chair Judge Brown goes on to hold that the right to counsel set forth in 28 § U.S.C. 1654, the right to federal full faith and credit of state judgments set forth in 28 § U.S.C. §1738, and the Bill of Rights' protected freedoms of speech, expressive association, counsel, and to petition the government for redress of grievances are not substantive rights and thus the statutory standards set forth in 28 U.S.C. § 2072(b) and FRCP 83(a)(1) are inapplicable. She holds that there may be good public policy reason for federal reciprocal general admission, *Id*. at 20, but fails to disclose them. Judge Brown's decision in purpose and effect resurrects the 19th Century *Belva Lockwood* decision, *i.e*. that experienced attorneys seeking bar admission in another jurisdiction do not have any constitutional rights. Judge Brown resigned shortly after her decision.

84. U.SC. 455 (b) provides: a judge "shall also disqualify himself in the following circumstances: **(1)** Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." The Hon. Janice Rogers Brown should have disqualified herself in light of her previously being a named defendant as a justice of the California Supreme Court and the submission to her of Exhibit A concerning the California bar exam in *Howell*. She should have also disqualified herself under 455 (3) "Where he has served in governmental employment and in such capacity

participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy" for the same reasons.

85. The DC Court of Appeals panel chair the Hon. Janice Brown should have also disqualified herself under Section 455(a) as her appearance as judge might reasonably be questioned in view of her prior experience as a defendant justice on the California Supreme Court concerning the California bar exam for experienced attorneys that has a *standard error of measurement* greater than fifty percent. On information and belief, Judge Brown is drawing a retirement pension from California and the federal judiciary. A reasonable person might conclude she was biased.

86. "Bias is easy to attribute to others and difficult to discern in oneself." *Williams v. Pennsylvania*, __U.S. __. 136 S. Ct. 1899 (2016). "No man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome." *Id*.at 1905. There, the Supreme Court stated,

> … a serious question arises as to whether the judge, even with the most diligent effort, could set aside any personal interest in the outcome. There is, furthermore, a risk that the judge "would be so psychologically wedded" to his or her previous position as a prosecutor that the judge "would consciously or unconsciously avoid the appearance of having erred or changed position." [internal cites omitted] In addition, the judge's "own personal knowledge and impression" of the case, acquired through his or her role in the prosecution, may carry far more weight with the judge than the parties' arguments to the court. Ibi*d*.

87. The Appellate Court decisions noted herein are consistent with the cavalier judicial attitude and reckless indifference that led to the filing of charges by fifteen women against former Ninth Circuit Chief Judge Alex Kozinksi and the petition signed by 850 federal law clerks complaining about a behind closed doors hostile and demeaning work environment by federal judges wearing a robe.

88. The integrity of the federal system has been called into question. The majority of State Bar Associations are integrated trade unions actively self-controlled by active market participants. "When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest." *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101, 1114 (2015). State agencies controlled by active market participants pose the very risk of self-dealing. *Ibid*. The majority of the United States District Courts have Local Rules that delegate federal jurisdiction and authority over the *Federal Rules of Civil Procedure* to self-interested state actors without any standards or active supervision. There is no active supervision when Federal District Courts by Local Rules vicariously and blindly adopt one state's active market participant conclusions and wholly reject the contradictory conclusions of other state and federal courts.

89. Likewise, in *Janus v. AMERICAN FEDERATION OF STATE,* __U.S. __, 138 S. Ct. 2448 (2018), the Court held that public-sector agency-shop arrangements violate the First Amendment and it over-ruled *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977) As Jefferson famously put it, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical." *Id.* at 2465. Plaintiff whistle-blowers, accordingly allege, compelling all licensed attorneys in good standing to join and pay dues to one one's state's bar association by Local Rules to obtain *general* admission privileges in the Federal District Court subverts the statutory right to counsel 28 U.S.C. § 1654, the Bill of Rights' protected freedoms of speech, expressive association, counsel, and to the petition the government for the redress of grievances. It also violates 28 U.S.C § 1738 by providing full faith and credit to one State Supreme Court's judgment and no faith and credit to the State Court judgments of 49 other states. It further impermissibly shrinks Article III Court jurisdiction by providing forum state lawyers with a monopoly on federal court access.

90. This case also presents the supervisory question of whether the challenged Local Rules contravene the *Code of Conduct for United States Judges,* Canon 2 which provides,

> "A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities"

> "(B) Outside Influence. A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. "

91. Plaintiffs allege the challenged federal discrimination and preferential Local Rule treatment contravenes the *Code of Conduct for United States Judge* because there is an appearance of pervasive federal judge compelled orthodoxy and bias by the LRs' pledging allegiance to the forum state flag.

92. This case is not foreclosed by the Ninth Circuit's non-published decision providing immunity everywhere in the Ninth Circuit for LR challenges. This case or controversy challenging the District of Columbia Local Rule's principal office location disqualification provision should not be foreclosed by the law of the case, or claim or issue preclusion doctrines because of the appearance of bias by the District of Columbia Court of Appeals, new plaintiffs who will aver they are disabled by the POLD clause, the *Code of Conduct for United States Judges*, and the recent landmark Supreme Court decision in *Janus*.

93. Supervisory review is further necessary and proper because of structural error since the federal courts themselves are being deprived of information, advocacy, and viewpoints they have a right and duty to hear. In *Legal Services Corporation v. Velasquez*, 531 US 533 (2001), the Court was confronted with a statue providing financial support for legal assistance in noncriminal proceedings

to persons financially unable to afford legal assistance, but it prohibited the use of funds to provide representation involving any effort to amend or otherwise challenge existing welfare law. *Id*. at 537. The Court concluded: "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. Congress cannot wrest the law from the Constitution which is its source" *Id*. at 545. The Court concluded: "The restriction imposed by the statute here threatens severe impairment of the judicial function, *Id*. at 546. It is fundamental that the 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. There can be little doubt that the restrictions imposed by the Balkanized Local Rules interfere with the judicial function.

94. The generic question presented is what is the appropriate standard of review for LRs and when is that standard applicable. Plaintiffs maintain the over-arching fundamental error in *Howell* and in other cases upholding Local Rule federal discrimination in access to the Article III Courts is the application of *rational basis* review. This application of rational basis review warrants supervisory review because it is tantamount to voiding judicial review. Judges are legislating the law and serving as judges in upholding their legislation as reviewing

judges. They are wearing two hats. Rational basis review is not consistent with the standards set forth in 28 U.S.C § 2072, the credentialing and licensing *Standards*, *Piper*, *Friedman*, *Frazier*, modern First Amendment precedent, and the Article III courts' jurisdiction. As famously set forth by Justice Cardozo, plaintiffs were "received into that ancient fellowship for something more than private gain. He became an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice." *Theard v. United States*, *supra*, 354 US 278, 281 (1957). This Local Rules discrimination affords disfavored members of the bar with second class citizenship rights in our more perfect Union in this 21st Century. As Exhibit B further demonstrates this discrimination serves no useful purpose.

SECOND CAUSE OF ACTION

VIOLATION OF 28 U.S.C. §§ 2071-72, § 332(d)(4), § 1654, FRCP 83

95. The preceding allegations and the allegations in the subsequent causes of action are incorporated in this cause of action.

96. As noted above, Congress has provided that in all Courts of the United States that the parties may plead and conduct their own cases personally or by counsel as the rules permit. 28 U.S.C. § 1654. Congress has also provided that Federal District Court *Local Rules* "shall be consistent with Acts of Congress and rules adopted under [28 U.S.C §§] 2072, 2075." *See* FRCP 83(a)(1). Congress has

provided in 28 U.S.C § 2072(b) that "Such rules shall not abridge, enlarge or modify any substantive right." This is a standard of review higher than strict scrutiny because it applies to any substantive right, not just constitutional rights.

97. The challenged Local Rules compelling forum state admission disable the mandatory constraint (*shall*) set forth in 28 U.S.C. § 2072(b) and FRCP 83(a)(1) because they categorically modify and enlarge the privileges of members of the bar of forum state attorneys by granting them general admission privileges; and they categorically modify and abridge the substantive rights of the Plaintiffs, and other members of the bar by denying them general admission privileges. The substantive right to counsel provided by 28 U.S.C § 1654 has been abridged, enlarged, and modified in one fell swoop.

98. The challenged Local Rules compelling forum state admission further abridge and modify the substantive rights of Americans: to counsel, the right to association, and the right to petition the government for the redress of grievances by categorically excluding Plaintiffs and other highly qualified lawyers; and they categorically enlarge the substantive rights of the members of the bar of the favored few.

99. The challenged Local Rules disable the mandatory constraint (*shall*) set forth in 28 U.S.C. § 2072(b) and FRCP 83(a)(1) because the Supreme Court has held that admission on motion is a constitutionally protected Privilege and

Immunity, and the Supreme Court will not presume that non-resident attorneys or citizens are not fully qualified for bar admission on motion. *See Supreme Court of Virginia v. Friedman, supra*, 487 U.S. 59 (1988).

100. The challenged Local Rules disable the constraint (shall) set forth in 28 U.S.C. § 2072(b) and FRCP 83(a)(1) because the Supreme Court has held "the location of a lawyer's office simply has nothing to do with his or her intellectual ability or experience in litigating cases in Federal District Court." *See Frazier v. Heebe, supra*, 482 U.S. 641, 649 (1987).

101. The challenged Local Rules further disable the following substantive and constitutional rights that will be enumerated hereinafter. A constitutional right is obviously a substantive right.

THIRD CAUSE OF ACTION
VIOLATION OF THE SUPREMACY CLAUSE

102. The preceding allegations and the allegations in the subsequent causes of action are incorporated in this cause of action.

103. Plaintiffs aver the Appellate Court theory that federal judges can incorporate or adopt state law as federal law and thus the Supremacy Clause is not violated is clearly erroneous. It is well established that procedural rules created by the judiciary cannot shrink or expand the scope of federal jurisdiction. *See Owen Equip. & Erection Co. v. Kroger, supra*. 437 U.S. 365, 374 (1978)("The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress,

must be neither disregarded nor evaded."). The challenged Local Rules are procedural rules created by the judiciary that impermissibly shrink and withdraw District Court jurisdiction without Congressional approval.

104. Plaintiffs aver the challenged delegation of licensing for already licensed attorneys to forum state law or actors in private practice violates the Supremacy Clause because it contravenes 28 U.S.C §§2072, 2075 and *Federal Rules of Civil Procedure* 1 and 83(a)(1).

105. Plaintiffs aver Judge Brown and other federal courts that have upheld federal judge discrimination in access to the Courts as "rational" have uniformly refused to cite the Supreme Court precedent that has been submitted. Instead, the courts have cited some other lower court decision, often from over thirty years ago allegedly interpreting the Constitution when the facts and law submitted were less developed. This practice of relying on lower court precedent is similar to relying on blood-type evidence and rejecting newly developed admissible DNA that has been confirmed as reliable and valid by experts.

106. In *Bond v. United States*, 131 S.Ct. 2355 (2011), the Court explained that "the individual liberty secured by federalism is not simply derivative of the rights of the states…. When government acts in excess of its lawful powers, that liberty is at stake. Federalism is enhanced by the creation of two governments, not one……. By denying any one government complete jurisdiction over all the

concerns of public life, federalism protects the liberty of the individual from arbitrary power." *Id*. at 2264. Plaintiffs aver the Federal Courts by this Local Rule delegation to state actors has lost oversight over its duty and functions.

107. State licensing requirements which purport to regulate private individuals who appear before a federal instrumentality are invalid. *Sperry v. Florida*, 373 U.S. 379, (1963) is the leading case. The Supreme Court held that a "State may not enforce licensing requirements which . . . give the State's licensing board a virtual power of review over the federal determination that a person or agency is qualified and entitled to perform certain functions," and found that the state's licensing requirements could not govern practice before the PTO. *Id*. at 385, 388. The Supreme Court concluded that applying state licensing requirements to practitioners appearing before the PTO would have a "disruptive effect," given that one-quarter of the attorney practitioners before the PTO would have been disqualified because they were not licensed in the state in which they were practicing." *Sperry*, 373 U.S. at 401.

108. The disparate Local Rules for the same reasons have a "disruptive effect" by vicariously adopting state laws that unlawfully trump the Supremacy Clause; the practical effect of this Rule is to limit counsel of choice, shrink Article II Court jurisdiction, and invert the Supremacy Clause.

109. In *Augustine v. Dept. of Veterans Affairs*, 429 F.3d 1334, 1341 (Fed. Cir. 2005), the question of whether federal law may adopt or incorporate state law standards as its own, was expressly raised and rejected. There, the Court held incorporation "is controlled by the will of Congress. In the absence of a plain indication to the contrary . . . it is to be assumed when Congress enacts a statute that it does not intend to make its application dependent on state law." *Id*. at 1340. The presumption here again is that federal law does not incorporate state standards. *Id*. at 1342. The Court further held that the purpose of the Congressional fee-shifting statute can be served only by allowing fees for representatives who are licensed as attorneys in any state or federal jurisdiction, without regard to the state licensing requirements of the state in which services were rendered. Id. at 1343. By the same reasoning, plaintiffs aver District Court Local Rules that incorporate state bar admission rules from favored States "impose . . . additional conditions" not contemplated by Congress. *Sperry*, supra, 373 U.S. at 385. These additional conditions further are squarely opposed to the *Rules Enabling Act*, Sections 2071-72 noted above.

FOURTH CAUSE OF ACTION
VIOLATION OF 28 U.S.C. § 1738

110. The preceding allegations and the allegations in the subsequent causes of action are incorporated in this cause of action.

111. Plaintiffs aver the balkanized Local Rules further abridge, enlarge, and modify other acts of Congress including 28 U.S.C. § 1738, the Full Faith and Credit statute, which provides, in pertinent part:

> "the records of any Court or State are admissible in evidence, and such records shall have the same full faith and credit in every court within the United States as they have by law or usage in the Courts of any such State from which they are taken."

112. Consistent with forum state licensed lawyers, plaintiffs were admitted to the bar via a judgment and court order of a state supreme court. "Regarding judgments, … the full faith and credit obligation is exacting." *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 233 (1998). A state is constitutionally required to honor a sister state's judgment even if it disagrees with that judgment: there is "no roving 'public policy exception' to the full faith and credit due *judgments*." *Ibid.* (emphasis in original).

113. Plaintiffs aver the challenged Local Rules modify and abridge 28 U.S.C. § 1738 by rejecting and denying full faith and credit to the states in which plaintiffs are licensed by Judicial Acts of sister-state Supreme Courts, and it enlarges the substantive Full Faith and Credit rights of forum state lawyers. The same holds true with the POLD disqualification because District of Columbia licensed attorneys, government, and in-house counsel are not subject to this provision.

114. If gays and lesbians have a constitutional right to have their state-licensed marriage recognized by the District Courts, then it follows that attorneys and their clients have a substantive right to have their attorney-client relationship recognized by the District Court. *United States* v. *Windsor*, 570 U. S. 12 (2013); *Obergefell v. Hodges*. __ U.S. ___ (2015)

FIFTH CAUSE OF ACTION
FIRST AMENDMENT

115. The preceding allegations and the allegations in the subsequent causes of action are incorporated in this cause of action.

A. *Overbreadth*

112. Plaintiffs aver First Amendment review necessitates *de novo* review of the facts and law. De novo review has not occurred. A state law may be deemed constitutionally invalid if it is substantially overbroad. *Broadrick v. Oklahoma*, 413 U.S. 601 (1973). A government regulation is substantially overbroad if it suppresses substantially more speech than necessary to achieve its goal. *Id*. at 612. In 60% of the Federal District Courts all attorneys in good standing from 49 States who are white, black, Hispanic, Asian, Jewish, catholic, protestant, atheist, experienced or inexperienced, young or old, male or female, democrat or republican are categorically ineligible. The right to counsel is thereby chilled.

113. The Local Rules chill more speech than necessary by categorically discriminating amongst otherwise qualified lawyers on the basis of forum state law

or office location when 40% of the other Federal District Court Local Rules do not discriminate, and neither does practice requirements before federal administrative agencies, the Courts of Appeal, and the Supreme Court.

114. Plaintiffs aver this forum state only disqualification is patently overbroad, not narrowly tailored, and therefore unconstitutional.

B. *Prior Restraint*

115. Prior restraints on First Amendment rights are presumptively unconstitutional. *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558, (1975). 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*, *supra*, 509 U.S. 544, 556. (KENNEDY dissenting). Requiring all licensed attorneys to request permission to speak in the Federal District Courts by passing a 100% subjective test is a prior restraint and unconstitutional. Similarly, requiring already licensed attorneys in good standing to obtain a second state license in the forum state is a prior restraint.

116. In *Citizens United v. Federal Election Com'n*, *supra*, 558 U.S. 310, 130 S. Ct. 876, 891 (2010), the corporation was barred from publishing its view in a film about Hilary Clinton. The First Amendment freedoms to advocacy, association, petition, and press are inextricably intertwined. Lawyers have a

constitutional duty to vindicate federal rights and function much like the press. In *Citizens United* the Court affirmed:

> "**These onerous restrictions thus function as the equivalent of prior restraint by giving the FEC power analogous to licensing laws implemented in 16th- and 17th-century England, laws and governmental practices of the sort that the First Amendment was drawn to prohibit**. See *Thomas v. Chicago Park_Dist.*, 534 U.S. 316, 320, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002); *Lovell v. City of Griffin*, 303 U.S. 444, 451-452, 58 S.Ct. 666, 82 L.Ed. 949 (1938); *Near, supra*, at 713-714, 51 S.Ct. 625. Because the FEC's "business is to censor, there inheres the danger that [it] may well be less responsive than a court—part of an independent branch of government—to the constitutionally protected interests in free expression." *Freedman v. Maryland*, 380 U.S. 51, 57-58, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965). When the FEC issues advisory opinions that prohibit speech, "[m]any persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech—harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas." 130 S.Ct. at 895-96. (Emphasis added)

117. The Supreme Court held these FEC prior approval regulations on their face chilled the corporation's speech.

118. In the same way, the Local Rules restrain the speech of LAWYERS UNITED INC. and the other plaintiffs, and it chills otherwise qualified attorneys from exercising their right to engage in speech in the Federal District Court concerning matters of public concern, solely because they are members of the bar of disfavored states.

C. *Content, Viewpoint, and Speaker Discrimination*

119. The Supreme Court has recognized that the basic analysis under the First Amendment has not turned on the motives of the legislators, but on the effect of the regulation. *Young v. American Mini Theaters*, 427 U.S. 50, 78 (1975) The true motive behind the creation and adoption for favored son Local Rules does not change the First Amendment analysis; it is its effect that we must look to in determining its constitutionality.

120. Plaintiffs aver the challenged Local Rules constitute, *content, viewpoint,* and *speaker discrimination*. The *content* is federal procedure and substantive law. The First Amendment guards against laws "targeted at specific subject matter," a form of speech suppression known as content based discrimination. *Reed v. Town of Gilbert*, 576 U.S. ___, ___, 135 S.Ct. 2218, 2230, 192 L.Ed.2d 236 (2015). Under the Local Rules, favored attorneys are exempt from taking a second State licensing test and disfavored attorneys are not exempt from this unbridled discretion. Favored forum state attorneys are afforded a *content* copyright on federal law and federal procedure by LRs.

121. Viewpoint discrimination is also afoot. “A law or policy permitting communication in a certain manner for some but not for others raises the specter of content and viewpoint censorship. This danger is at its zenith when the determination of who may speak and who may not is left to the unbridled discretion of a government official.” *Lakewood v. Plain Dealer Publishing Co*, 486

U.S. 750, 763 (1988). A subject that is first defined by content and then regulated or censored by mandating only one sort of comment is not viewpoint neutral. To prohibit all sides from criticizing their opponents makes a law more viewpoint based, not less so. *Matal v. Tam*, __ U.S. __. 137 S. Ct. 1744, 1766 (2017). The LR's are viewpoint discrimination because the federal government does not discriminate in its counsel of choice based on state law or office location. *See* 28 U.S.C. § 517, attorneys representing the federal government may appear in any court, federal or state. The federal government which is not protected by the Bill of Rights can freely state its view while the plaintiffs who are protected by the Bill of Rights cannot freely state their views. This viewpoint discrimination is poison to a free society.

122. The Local Rules allow some otherwise qualified members of the bar in good standing to obtain a license and petition the courts and speak; whereas, it categorically prohibits attorneys from disfavored jurisdictions the same precious freedoms. This is not a time, place, and manner restriction because it is not viewpoint and content neutral.[16] The Local Rules permits licensing and debate by

[16] To be upheld as a constitutional time, place or manner restriction a permit requirement applying to First Amendment activity must "(1) be content-neutral, (2) be narrowly tailored to serve a significant government interest, and (3) leave open ample alternative channels of expression." *Ward v. Rock Against Racism*, 491 U.S. 781, 789-90 (1989). The Local Rule restrictions are not time, place or manner restrictions because they are not content neutral.

one group of otherwise qualified experienced attorneys while denying another group of otherwise qualified attorneys the same precious freedoms. Therefore, they are content and viewpoint discrimination

123. Moreover, distinctions in the right to exercise First Amendment freedoms are subject to strict scrutiny. In *Citizens United v. Federal Election Commission*, 130 S.Ct. 876, (2010), the Court held:

> Quite apart from the purpose or effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each. *Id*. at 890
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> …
>
> Any effort by the Judiciary to decide which means of communications are to be preferred for the particular type of message and speaker would raise questions as to the courts' own lawful authority. Substantial questions would arise if courts were to begin saying what means of speech should be preferred or disfavored. *Id*. at 890

124. The basic premise underlying the Court's ruling in *Citizens United* is the proposition that the First Amendment bars regulatory distinctions based on a *speaker's identity, including its "identity" as a corporation*. *Id*. at 930 (Justice STEVENS in dissent). Courts, too, are bound by the First Amendment. *Id*. at 891.

125. The Local Rules make differential licensing distinctions based on a speaker's identity as a member of a favored or disfavored state bar. The hypothesis that a layman is presumptively competent to represent themselves, unless he or she is mentally ill, while on the other hand, Plaintiff experienced lawyers are presumptively incompetent is not rational. It is content and viewpoint discrimination.

D. *Violation of the Substantive First Amendment Right of Freedom of Association*

126. This case implicates multiple twin aspects of the freedom of association and non-association. First, the freedom to not be compelled to join a union that is engaged in political advocacy on matters of public concern in order to exercise substantive rights in the Federal District Courts. Second, the freedom is choose one's counsel. The attorney-client privilege is at stake in petitioning the government for the redress of grievances.

127. First, before the Bill of Rights was adopted the State of Virginia had a law that taxed everyone for the benefit of the clergy. Virginia received the money and then distributed the proceeds to various churches and clergymen. Jefferson and Madison opposed this religious compulsion practice. Their opposition to this tyranny is veiled behind the First Amendment free exercise and establishment clause. The Supreme Court in *Janus* has outlawed the practice of establishing compulsory union dues for unions that engage in political lobbying. Hence, the

Local Rules forum state only restriction violates plaintiffs' freedom to not associate with integrated State Bar Associations that are engaged in political lobbying on controversial matters of public concern.

128. Second, "[t]he First Amendment's protection of association prohibits a State from excluding a person from a profession or punishing him solely because he is a member of a particular political organization or because he holds certain beliefs." *Baird v. State Bar of Ariz.*, 401 U.S. 1, 4-6, 8 (1971)

129. "The Court has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment — speech, assembly, petition for the redress of grievances, and the exercise of religion." *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984). The Court has long recognized that, because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State. *Ibid*. "Moreover, the constitutional shelter afforded such relationships reflects the realization that individuals draw much of their emotional enrichment from close ties with others. Protecting these relationships from unwarranted state interference therefore safeguards the ability to independently define one's identity that is central to any concept of liberty." *Ibid*. An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be

vigorously protected from interference by the State unless a correlative freedom to engage in a group effort toward those ends were not also guaranteed. *Id*. at 622. Government actions that may unconstitutionally infringe upon this freedom can take a number of forms. Among other things, government may seek to impose penalties or withhold benefits from individuals because of their membership in a disfavored group. *Ibid*.

130. The right to associate also includes a right *not* to associate. *Roberts v. United States Jaycees*, *supra*, 468 U.S. at 622. Here, as in *Roberts*, the Local Rules impose penalties and withhold privileges based solely on plaintiffs' licensing in disfavored jurisdictions. As such, the defendants bear the burden of proving the validity of their Local Rules, which they cannot meet because the U.S. Supreme Court has already held that admission on motion is a constitutionally protected Privilege and Immunity. *Supreme Court of Virginia v. Friedman, supra*, 487 U.S. 59 (1998). The Supreme Court has held that the location of a lawyer's office simply has nothing to do with his or her intellectual ability or experience in litigating cases in Federal District Court." Therefore, the disparate Local Rules are invalid because they abridge Plaintiffs' rights to associate, and their other First Amendment rights.

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E. *Violations of the Substantive First Amendment Right to Petition*

131. The right to petition is constitutionally protected conduct, not unlike the right to burn a flag is constitutionally protected conduct. In *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc*., 508 U.S. 49 (1993), the Court, in construing the right to petition held that litigation could only be enjoined when it is a sham. To be a sham, first, it must be objectively baseless in the sense that no reasonable litigant could expect success on the merits; second, the litigant's subjective motive must conceal an attempt to interfere with the business relationship of a competitor …through the use of government process — as opposed to the outcome of that process — as an anti-competitive weapon. *Id*. at 60-61.

132. Plaintiffs aver the Local Rules violate the Petition Clause because they arbitrarily and irrationally presume that the Plaintiffs, and all experienced lawyers from disfavored jurisdictions, will file sham petitions for an anti-competitive purpose, and only file sham petitions for an anti-competitive purpose unless they are admitted in the forum state. There is no empirical evidence that experienced attorneys in good standing from 49 state jurisdictions will violate their professional responsibilities and file sham petitions for an anti-competitive purpose. Moreover, it would be irrational to believe that these experienced attorneys would violate

their professional responsibilities and sacrifice their good standing and reputation in the states they are licensed.

SIXTH CAUSE OF ACTION

VIOLATION OF THE 5th AMENDMENT RIGHT

TO EQUAL PROTECTION

133. The preceding allegations and the allegations in the subsequent causes of action are incorporated in this cause of action.

134. The Court has held licensed attorney bar admission is constitutionally protected and the norm is comity. The Local Rules trespass the norm because Federal District Judges are unwilling to adhere to this precedent,

135. Congress has provided that Local Rules shall not abridge, enlarge, or modify any substantive right. The Local Rules trespass this standard. The application of rational basis review encourages Federal District Judges to operate under the theory they have unfettered discretion to legislate bar admission in their courts much like admission in a private club.

136. In *Romer v. Evans*, 517 U.S. 620 (1996), the Court held that an amendment to a state constitution, ostensibly just prohibiting any special protections for gay people, in truth violated the Equal Protection Clause, under even a rational basis analysis. In *Romer*, the Supreme Court struck down Colorado's Constitutional Amendment 2 because, the Court held, "[w]e cannot say

that Amendment 2 is directed to any identifiable legitimate purpose or discrete objective. It is a status-based enactment divorced from any factual context from which we could discern a relationship to legitimate state interests; it is a classification of persons undertaken for its own sake, something the Equal Protection Clause does not permit." *Id*. at 635. The Supreme Court deemed this "class legislation ... obnoxious to the prohibitions of the Fourteenth Amendment." *Ibid*.

138. Plaintiffs aver that requiring some but not all experienced attorneys to take and pass another bar exam as a precondition to obtain general admission under the Local Rules abridges, enlarges, and modifies plaintiffs' substantive rights to equal protection. An attorney's opportunity to practice law is a fundamental right that is constitutionally protected.

139. Requiring some but not all experienced attorneys to take and pass another bar exam that has a *standard error of measurement* greater than fifty percent as a precondition to obtain general admission under the Local Rules in the California Federal District Courts abridge, enlarge, and modify plaintiffs' substantive rights to equal protection. It is identical to the 16th Century practice of licensing printing presses.

140. The challenged Local Rules, similar to the laws targeting gays and lesbians, is obnoxious status-based rule making enacted to target an unpopular

group; not even based on the qualifications of that group, but on the geographical location of the group's bar admission and principal office location and it constitutes discrimination for the sake of discrimination, and is not a legitimate governmental interest.

SEVENTH CAUSE OF ACTION

VIOLATION OF THE 5TH AMENDMENT RIGHT TO DUE PROCESS

141. The preceding allegations and the allegations in the subsequent causes of action are incorporated in this cause of action.

142. In 1988, Congress revised the *Rules Enabling Act*, by amending 28 U.S.C. § 2072-72, and enacting 28 U.S.C. 332(d)(4) placing on each Circuit Judicial Council a continuing duty to periodically review the Local Rules for consistency with 28 U.S.C. §2072. Congress concluded that the rulemaking procedures "lacked sufficient openness," there was no meaningful opportunity for judicial review because the judges who make the rules decide whether they are valid, "and of course the barrier to interlocutory appeal built into Federal rule practice …. made effective appellate review of such a rule impossible sometimes, impractical most times, and impolitic always." *See* David D. Siegel, *Commentary on 1988 Revision*, following text of 28 U.S.C. § 2071 p. 130-32; following text of

28 U.S.C. § 332 p. 94-95 (West U.S.C.A. 2006). Mr. Siegel was the Reporter for Congress.

143. Public Law 100-702 (1988) added 28 U.S.C. § 332(d)(4), and it amended Section 2071 "thus place[ing] on each Judicial Council a mandatory continuing duty to periodically review the federal district court "*local" rules promulgated on the authority of § 2071 to conform to the requirements of § 2072 instead of merely to rules promulgated by the Supreme Court*." (Emphasis added). *See* Siegel, *Commentary on Revision*, *supra*. There is no such thing as a Federal District Court "local" Rule becoming sacrosanct merely for passing initial Judicial Council review the first time. *Ibid*.

144. The Congressional holding that obtaining effective judicial review over Local Rule is "impossible sometimes, impractical most times, and impolitic always" is aptly illustrated by this case where plaintiff whistle-blowers have been compelled to invoke the Supreme Court's supervisory review in the first instance because of an ongoing federal judge white-wash and conspiracy of silence.

145. It is a legal maxim that no man should be a judge in his own case. Plaintiffs' substantive right to due process is abridged, enlarged, and modified by the Local Rules because federal judges in upholding their own local Rules have judged their own case. The alleged neutral judges assigned in *Alfriend* and *Howell* are the same judges who have earlier served as former Chief Judges and supervised

the same balkanized Local Rules. This right to due process is abridged, enlarged, and modified because these judges are wearing judge, jury, and defense counsel hats.

146. As noted above and set forth in Exhibit B, learned counsel Alan B. Morrison of George Washington University School of Law and Mark Chavez, Esq. filed petitions in the District Courts of California and the Ninth Circuit requesting these Federal Courts to change the Local Rules arguing they served no reasonable purpose on behalf a dozen advocacy groups. These Courts rejected this petition. This illustrates that meaningful judicial review without Supreme Court justice supervision is impossible.

147. Plaintiffs assert their right to injunctive and declaratory relief under 28 U.S.C. §2201. There is an actual controversy of sufficient immediacy and concreteness relating to the legal rights of the Plaintiffs and their injury, and their relation to and the duties of the Defendants, to warrant relief under 28 U.S.C. § 2201.

148. Plaintiffs therefore request the following relief:

- A preliminary injunction invalidating the Local Rules that deny general bar admission to plaintiffs in California and Florida on the basis of state law and in the District of Columbia on the basis of office location.

- An Order and Judgment declaring District Courts are not empowered to adopt local Rules that require its members to be admitted to the bar of the forum state, or to maintain a principal office in the state of admission.

- An Order and Judgment declaring the Local Rules that deny general bar admission privileges to otherwise qualified attorneys in good standing based on forum state law or principal office location are unlawful and providing injunctive relief enjoining such Local Rules.

- Costs.

- Attorney fees.

- Grant such other relief as may be just and proper.

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