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UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF ARIZONA

Lawyers For Fair Reciprocal Admission, Plaintiff, v. United States, Attorney General Merrick B. Garland, et. al. Defendants, _____	Case: 22-cv-01221 PHX-MWM **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS, EXHIBITS IN SUPPORT; REQUEST FOR ORAL ARGUMENT AND EXPEDITED REVIEW** **SEPARATE STATEMENT OF MATERIAL FACTS FILED CONCURRENTLY**

This case presents a pure question of law. The undisputed material fact is the United States District Courts local rules in the Ninth Circuit for *general* admission privileges are not *uniform*. They deny *general* admission privileges to experienced

lawyers in good standing from forty-nine states. Plaintiff Lawyers For Fair Reciprocal Admission (LFRA) in this speech licensing case herewith submit their Motion for Summary Judgment. Also submitted are Declarations and Exhibits in Support. A Separate Statement of Material Facts will be concurrently filed under separate cover.

Plaintiff requests an expedited hearing and a prompt judicial decision in this speech licensing case in view of the "justice gap" and recent Supreme Court decisions directly on point. *See Students For Fair Admission v. Harvard*, __*U.S.* ___ 2022, 20-1199, filed June 29, 2023 (holding the government is barred from favoring one speaker or one viewpoint over another in college *admission* under the Fourteenth Amendment). *SIEGEL v. FITZGERALD*, 142 S. Ct. 1770 (2022) (holding similarly situated citizens in different states are entitled to *uniform* and equal access to the United States Courthouse). *Reed v. Town of Gilbert,* 135 S.Ct. 2218, 2226 (2015) (reversing the Ninth Circuit's application of intermediate review in a speech licensing case and holding the government "has no power to restrict expression because of its message, its ideas, its subject matter, or its content."). *NIFLA v. Becerra*, (reversing the Ninth Circuit's failure to apply strict scrutiny review in a speech licensing case and rejecting the "profession speech doctrine.") *Elrod v. Burns*, 427 U.S. 347, 373 (1976). ("[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.") In

City of Littleton v. ZJ Gifts D-4, LLC, 541 US 774 (2004), the Court held a delay in issuing a judicial decision, no less than a delay in obtaining access to a court, can prevent a license from being issued within a reasonable period of time. Thus, we read that opinion's reference to "prompt judicial review," …. as encompassing a prompt judicial decision. *Id*. at 781. (Cleaned up).

In sum, the speech licensing issues in this case that challenges every District Court local rule in the Ninth Circuit that blanket ban *general* admission privileges to lawyers licensed in forty-nine states offend our profound national commitment that debate on public issues should be uninhibited, robust, and wide open.

LFRA further requests oral argument be scheduled in *person* forthwith in the Arizona Courthouse, or Oregon Courthouse, or anywhere the Court chooses.

Dated: August 7, 2023

Respectfully submitted,

/ ***Joseph Robert Giannini***
Joseph Robert Giannini
For Plaintiff,
LAWYERS FOR FAIR
RECIPROCAL ADMISSION

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MEMORANDUM OF POINTS AND AUTHORITIES

RECENT SUPREME COURT DECISIONS DIRECTLY ON POINT

Students For Fair Admission v. Harvard, __*U.S.* ___ 2022, 20-1199, filed June 29, 2023, held "the student must be treated based on his or her experiences as an individual—not on the basis of race." Slip p. 40. Chief Justice ROBERTS writing for the majority quoted the first Justice Harlan in *Plessy v. Ferguson:* "[I]n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." Slip p. 39. LFRA suggests if students must be admitted to college and treated equally based on their experience under the Fourteenth Amendment, it follows sister-state attorneys must be admitted to the Federal District Court bar equally and based on their experience. The First and Fourteenth Amendment rights to association and to petition the government includes the rights to associate and to petition for rights. It would be absurd to conclude law students have superior rights to licensed lawyers.

In *Siegel v. Fitzgerald,* 142 S. Ct. 1770 (2022), "The question in this case is whether Congress' enactment of a significant fee increase that exempted debtors in two States violated the uniformity requirement." *Id.* at 1775. The Court held "Congress [does not have] free rein to subject similarly situated debtors in different States to different fees because it chooses to pay the costs for some, but not others." *Id*. at 1781. "The Court holds only that the uniformity requirement of the

Bankruptcy Clause prohibits Congress from arbitrarily burdening only one set of debtors with a more onerous funding mechanism than that which applies to debtors in other States." *Id*. at 1782. Consistent with the *uniformity* requirement specified throughout the Constitution, the *Rules Enabling Act* provides that District Court local rules shall be uniform and they shall not abridge, enlarge, or modify any substantive right. *See* 28 U.S.C. §§ 2071-22; *Fed.R.Civ.Proc*. 83. If Congress cannot subject similarly situated parties in different states to nonuniform and different taxes, duties, and imposts to access Article III courts, it follows judges by local rule cannot subject similarly situated parties in different states to nonuniform local rules and different taxes, duties, and imposts to access Article III courts.

In *NIFLA v. Becerra*, 138 S.Ct. 2361 (2018), the High Court overturned a Ninth Circuit decision in a *speech licensing* case under the so-called "*professional speech doctrine*." *Becerra* reasons

> "this Court has not recognized "professional speech" as a separate category of speech. Speech is not unprotected merely because it is uttered by 'professionals.' This Court has 'been reluctant to mark off new categories of speech for diminished constitutional protection.'" *Id*. at 2371-72.

According to *Becerra*, the Ninth Circuit mistakenly applied intermediate scrutiny review applicable to time, place, or manner restrictions in this *professional speech licensing* case. The *Becerra* Supreme Court reversed and applied strict scrutiny to the *speech* licensing content-discrimination. *Becerra* also cited with disapproval other decisions by the Third, Ninth, and Fourth Circuits upholding exceptions to full

First Amendment protection in prior "professional speech" licensing cases.[1] The Third, Fourth, Ninth, and District of Columbia Circuits previously upheld challenges to local rules relying on the so-called "professional speech" doctrine, citing each other's decisions under the professional speech doctrine, and citing each other's precedent applying rubber stamp review. They cite the same inter-circuit "professional speech" precedent the Supreme Court expressly disapproved in *Becerra*. Here, the plaintiff speakers are all *licensed* lawyers in good standing. The issue presented with this local rule challenge is *professional speech* licensing in this 21st Century concerning attorneys already admitted to practice in Article III Courts all over our Union.

Becerra holds speech uttered by professionals is protected by the First Amendment, except in two narrow circumstances, neither of which is relevant here. As stated by *Becerra*, 138 S.Ct. at 2372 (2018):

> This Court's precedents do not recognize such a tradition for a category called "professional speech." This Court has afforded less protection for professional speech in two circumstances—neither of which turned on the fact that

[1] *See Becerra*, 138 S. Ct. at 2371-72:

> Some Courts of Appeals have recognized "professional speech" as a separate category of speech that is subject to different rules. See, *e.g.*, *King v. Governor of New Jersey*, 767 F.3d 216, 232 (C.A.3 2014); *Pickup v. Brown*, 740 F.3d 1208, 1227-1229 (C.A.9 2014); *Moore-King v. County of Chesterfield*, 708 F.3d 560, 568-570 (C.A.4 2013)
>
> …
>
> But this Court has not recognized "professional speech" as a separate category of speech. Speech is not unprotected merely because it is uttered by "professionals."

> professionals were speaking. First, our precedents have applied more deferential review to some laws that require professionals to disclose factual, noncontroversial information in their "commercial speech." See, *e.g.*, *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985); *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 250, 130 S.Ct. 1324, 176 L.Ed.2d 79 (2010); *Ohralik v. Ohio State Bar Assn*., 436 U.S. 447, 455-456, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978).

The first exception is attorney *adverting disclosure* requirements:

> "In *Zauderer*, for example, this Court upheld a rule requiring lawyers who *advertised* their services on a contingency-fee basis to disclose that clients might be required to pay some fees and costs. ____. Noting that the *disclosure* requirement governed only 'commercial advertising' and required the disclosure of "purely factual and uncontroversial information about information about the terms under which . . . services will be available.'" *NIFLA v. Becerra*, 138 S.Ct. at 2372.

Milavetz is also an *advertising disclosure* case.

The second exception concerns professional speech incidental to obviously unlawful professional conduct. In *Ohralik v. Ohio State Bar Assn*., 436 U. S. 447 (1978), an attorney challenged his conviction for unethical conduct. *Ohralik* conceded that the State has a legitimate and indeed "compelling" interest in preventing those aspects of solicitation that involve fraud, undue influence, intimidation, overreaching, and other forms of vexatious conduct." *Id.* at 462. *Ohralik* argued there was no constitutional difference between attorney *solicitation* and attorney *advertising*. The Court rejected this argument, reasoning "[t]he entitlement of in-person solicitation of clients to the protection of the First Amendment differs from that of the kind of advertising approved in *Bates*, as does

the strength of the State's countervailing interest in prohibition." *Id*. at 445. The Court held "that the State—or the Bar acting with state authorization—constitutionally may discipline a lawyer for soliciting clients in person, for pecuniary gain, under circumstances likely to pose dangers that the State has a right to prevent." *Id*. at 449. The Court did not hold, however, that restraints on attorney speech are not subject to First Amendment scrutiny. The Court simply held the discipline at issue did not require reversal under the First Amendment *commercial speech* rubric that requires intermediate review. *Ohralik* is a *solicitation* case. It is speech incidental to the commission of unlawful activity that is **not** fully protected by the First Amendment. For example, if an attorney walks into a bank and says to the teller "put the money in this bag," that is speech incidental to unlawful conduct that is not constitutionally protected.

The Court also explicitly rejected rational basis review in *Janus v. American Federal of State, County, and Municipal Employees*, 138 S. Ct. 22448, 2465 (2018) ("This form of minimal [rational basis] scrutiny is foreign to our free-speech jurisprudence.").

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STANDING

In *Students For Fair Admission v. Harvard*, __*U.S.* ___ *(*2022), 20-1199**, t**he Court held an association of students that were subjected to uneven admission standards established association standing. Plaintiff association has submitted multiple Declaration alleging that it and its members are injured by the nonuniform local rules that on their face provide unequal citizenship access rights in the Federal District Courts. There are tens of thousands of similarly situated lawyers injured by this federal discrimination.

UNDISPUTED MATERIAL FACTS

The overarching undisputed material fact is District Court local admission rules in the Ninth Circuit are not uniform. They impose widely different taxes, duties, and imposts to exercise federal substantive rights. There are subordinate facts illustrating this lack of uniformity. Almost 63,000 lawyers were admitted to the bar of a second state by admission on motion[2] or UBE transfer[3] between 2017-2021. Every one of them is categorically disqualified for reciprocal licensing by the California Supreme Court 100% subjective reinvent the wheel bar exam.[4] Many are

[2] Admissions to the Bar on Motion, 2017–2021 - National Conference of Bar Examiners (ncbex.org)

[3] Admissions to the Bar by Examination and by Transferred UBE Score, 2017–2021 - National Conference of Bar Examiners (ncbex.org)

[4] Cal Bus. & Prof Code §6062

also categorically disqualified by the Oregon and Arizona Supreme Court's tit-for-tat admission rule.[5] The reciprocal licensing numbers are increasing every year.

U.S. Supreme Court Justice Neil M. GORSUCH, "Bridging the Affordability Gap: It's Time to Think Outside the Box," 45 *Wyoming Lawyer* 16 (Apr. 2022) underscored:

> At some point just about every American will interact with our civil justice system. Whether it happens because of an eviction, a custody battle, a tort suit, or a contract claim, one thing is clear: Legal disputes are just as much a part of life as death and taxes. Yet today, legal services are increasingly difficult to obtain. A 2017 study found that low-income Americans fail to obtain adequate professional assistance with their legal problems 86% of the time. The vast majority don't even try to obtain professional help, and those who do are often turned away. According to another study, at least one party lacks legal representation in nearly 80% of civil cases in this country. The root cause for this state of affairs is not hard to discern: Legal services are expensive. Lawyers charge hundreds of dollars per hour for even the simplest of legal services. Even a single legal bill can prove financially devastating to many Americans.

The California state imposts and taxes imposed on already licensed attorneys to take the attorney's bar exam include: a registration fee of $214, moral character application of $551, laptop fee $153, attorney bar exam fee $983, moral character application $559, for a total $1,901.[6] The Arizona state imposts and taxes imposed

[5] A.R.S. Sup.Ct.Rules, Rule 34(f)

[6] https://www.calbar.ca.gov/Portals/0/documents/rules/Rules_Appendix_A_Sched-Chgs-Deadlines.pdf#page=16

on already licensed attorneys to obtain tit-for-tat reciprocity include: administrative fee $160, moral character $300, motion fee $1,800, one day seminar on Arizona law $200, for a total $2,460.[7]

Obviously, the District Court local admission rules in the Ninth Circuit that adopt nonuniform state law are not uniform. Rosa Parks was famously denied a seat on a bus based on *state* law. If Rosa Parks were alive today and she was an experienced lawyer with five, ten, twenty, or thirty or more years of experience as a lawyer in good standing, she would be denied a seat at the bar of the District Courts in the Ninth Circuit based on *state* law. The argument Rosa Parks can take the entry level licensing test in California and Arizona and then if she pays the state taxes and imposts, and passes, she can sit at the front of the bar in the United States courthouse. However, federal law requires licensing tests to conform to the nationally recognized *Standards for Educational and Psychological Testing, (2014)*. The *Standards* have been incorporated into federal law. 34 CFR 668.148(a)(2)(iv**);** *AMERICAN SOC. FOR TESTING v. Public. Resource. Org*, 896 F. 3d 437 (D.C. Cir. 2018), *Affirmed* by *Georgia v. Public. Resource. Org, Inc*., 140 S. Ct. 1498 (2020). There are three fundament testing *Standards*: *Validity*, *reliability*, *fairness*. For a licensing test to be *valid* it must also meet the interlocking *reliable* and *fairness* standards. These *Standards* are also incorporated by *Federal Rule of Evidence* 702.

[7] https://www.azbaradmissions.org/ex_feesdeadlines_aO2011-141

As to *validity*, the American Bar Association (ABA) and Uniform Bar Exam Commission (UBE) are experts in testing and attorney licensing. They have concluded licensed attorneys are *not* a threat to the public and their prior license is substantive proof they are competent. Eighty percent of the states have adopted this judgment. There is no evidence they got it wrong. The ABA and UBE have essentially concluded, without directly saying so in effect, that states should provide full faith and credit to the licensing acts, records, and judgment of competence of other states. Similarly, Federal Judicial Conference studies have concluded "(N)o one has yet devised an examination which will test one's ability to be a courtroom advocate" and there is a correlation with experience and competence. *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.

As to *reliability* there is undisputed material evidence that it "is almost impossible to get subjective graders to agree on bar exam scores." *See* Geoff Norman, "So What Does Guessing the Right Answer Out of Four Have to Do With Competence Anyway?" *The Bar Examiner*, p. 21 (Nov 2008); Susan M. Case, "Licensure In My Ideal World," *The Bar Examiner*, p. 27 November 2005. See Stephen P. Klein, "What Do Test Scores in Texas Tell Us?" (Published 2000 by RAND). Dr. Klein was the State Bar of California's primary testing expert. He 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."

The State Bar of California licensing test for already licensed attorneys is a high-stakes 100% subjective licensing test. It is not a *valid* or *reliable* test according to the State's own testing expert, Dr. Klein. Furthermore, RAND Corporation statistical reports on the exam prepared by Dr. Klein, repeatedly and going back over thirty years, prove this putative licensing test has a *standard error of measurement* shoddier than .48. *See* Exhibit B-1-15. In other words, flipping a coin would be more *reliable* measurement. The industry standard for grader agreement requires .8-.9. Exhibit B 17 ¶ 7. There is no evidence the Arizona Bar exam for already licensed attorneys is more *reliable* than California's licensing scam for already licensed attorneys.

The evidence shows the purpose and effect of these State Supreme Court imposed subjective *entry-level* licensing tests is to provide a wall against out-of-state attorney competition. This wall obstructs equal access to the United States Courthouse. The results of this putative licensing test are not admissible into evidence under *Daubert* and FRE 700 series. There is little difference between requiring Black citizens to pass a literacy test in order to vote than requiring already

licensed attorneys to pass another subjective bar exam in order to exercise their citizenship rights in the United States courthouse.

As to *fairness*, if a licensing test is neither *valid* nor *reliable*, it is not *fair*. It is arbitrary and irrational. The ABA and UBE have concluded that it is not *fair* to require already licensed attorneys to take time off from work and reinvent the wheel. Many subjects of federal law are not tested on any State's bar exam. The days when all lawyers practiced everything and were not specialists are long gone. PACER and COVID19 have revolutionized law practice in the federal courthouse. The Association of Professional Responsibility Lawyers concludes licensed lawyers should be able to represent their clients anywhere in the United States.

It is also fundamentally unfair to lump already licensed attorneys with recent law school graduates who have never practiced law because 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. The science of *expertise* and *expert performance* proves that 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. *See* Exhibit E *Cambridge Handbook of Expertise and Expert Performance.*

ARGUMENT

I. THE NONUNIFORM LOCAL RULE DELEGATION OF ARTICLE I LAW-MAKING POWER AND ARTICLE III COURT JUDICIAL DUTY TO STATE LICENSING OFFICIALS WITHOUT ANY STANDARD NULLIFIES THE SEPARATION OF POWERS DOCTRINE

As noted above, *Siegel v. Fitzgerald*, 142 S. Ct. 1770 (2022), holds because of the uniformity requirement similarly situated parties cannot be subject to dissimilar federal court access standards. The Constitution does not recognize classes of citizens. *See Students For Fair Admission v. Harvard, supra*.

The separation of powers doctrine, like the First Amendment, is a constitutionally protected American citizenship privilege and immunity. *General* admission licensing privileges provide a public office that has value to the Plaintiff, as an association of licensed lawyers, individual lawyers, and clients, and to citizens who may want to choose affordable counsel from a nationwide market of legal know-how. Citizens also have a substantive right to counsel and to petition federal courts with counsel. 28 U.S.C. § 1654 *Appearance personally or by counsel* provides:

> In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

The question presented, whether the *nonuniform* local rules trespass the separation of powers doctrine has never been addressed by any district, appellate, or Supreme Court opinion. The precedents that prove this local tule delegation of federal *legislative* power and *judicial* authority without any standards to forum state licensing officials — who have not been appointed by the President and confirmed by the Senate, and who have not subscribed to a federal oath of office —trespass Article I § 8 and the separation of powers doctrine are clear and unambiguous.

In *WEST VIRGINIA v. EPA*, No. 20–1530, Decided 6-3 on June 30, 2022, Justices GORSUCH with ALITO concurring, describe the separation of powers doctrine: "One of the Judiciary's most solemn duties is to ensure that acts of Congress are applied in accordance with the Constitution in the cases that come before us." Slip Op. 2.

Justice GORSUCH writes:

> In Article I, "the People" vested "[a]ll" federal "legislative powers . . . in Congress." Preamble; Art. I, § 1. As Chief Justice Marshall put it, this means that "important subjects . . . must be entirely regulated by the legislature itself," even if Congress may leave the Executive "to act under such general provisions to fill up the details." ….the Constitution's rule vesting federal legislative power in Congress is "vital to the integrity and maintenance of the system of government ordained by the Constitution." *Marshall Field & Co. v. Clark*, 143 U. S. 649, 692 (1892).

> It is vital because the framers believed that a republic— a thing of the people—would be more likely to enact just laws than a regime administered by a ruling class of largely unaccountable "ministers." The Federalist No. 11, p. 85 (C. Rossiter ed. 1961) (A. Hamilton). From time to time, some have questioned that assessment.1 But by vesting the lawmaking power in the people's elected representatives, the Constitution sought to ensure "not only that all power [w]ould be derived from the people," but also "that those [e]ntrusted with it should be kept in dependence on the people." Id., No. 37, at 227 (J. Madison). The Constitution, too, placed its trust not in the hands of "a few, but [in] a number of hands," ibid., so that those who make our laws would better reflect the diversity of the people they represent and have an "immediate dependence on, and an intimate sympathy with, the people." Id., No. 52, at 327 (J. Madison). Today, some might describe the Constitution as having designed the federal lawmaking process to capture the wisdom of the masses. GORSUCH Slip Op. 3-4.

In addition to the citizenship rights provided by the separation of powers doctrine, Article I § 8 provides Congress with the power to lay and collect taxes and it provides that "*all duties, imposts and excises shall be uniform throughout the United States*". (Emphasis added). Article I § 8 provides a list of eighteen enumerated federal legislative subjects. For example, "*To make all Laws which shall be necessary and proper* for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."…"To establish a *uniform* Rule of Naturalization, and *uniform* Laws on the subject of Bankruptcies throughout the United States. "

It can be fairly said the purpose of our more perfect Union and establishment of Justice for all the People requires "*uniform*" laws. The challenged local rules are

not *uniform*. They tax the People's rights to association and to petition and subject these federal rights to access the Article III Courthouse to multiple and various non-uniform *state taxes, duties, and imposts*. The non-uniform and balkanized local rules violate the Art. I. § 8 Congressional powers to *uniformly* legislate.

Moreover, state officials do not have a shred of jurisdiction over many of the Article I § 8 enumerated powers including admiralty, bankruptcy, copyrights, federal taxation (individual, partnership, corporation, estate, and gift tax), immigration, patents, trademarks, or to prescribe rules *necessary and proper for the adjudication of federal claims in the federal courts.* Whole swaths of law are not tested on any states' bar exam, or considered or not considered in state reciprocal admission prerequisites.

Moreover, Congress has narrowly and meticulously cabined local tule making discretion. In 1988, Congress enacted 28 U.S.C. § 332(d)(4) expanding the role of the Circuit Judicial Council requiring the Council to periodically review District Court local Rules. *See* Exhibit A1-2 Reporter's Comment. Section 332(d)(4) provides:

> Each judicial council shall periodically review the rules which are prescribed under section 2071 of this title by district courts within its circuit for consistency with rules prescribed under section 2072 of this title…

According to the Congressional Reporter, the "amendment § 332 to add a new paragraph (d)(4) was a consequence of widespread discontent," communicated to

Congress, about "a proliferation of local Rules." (Exhibit A1). Congress found that the rule-making procedures "lacked sufficient openness" and that local Rules often "conflict with national rules of general applicability." *Ibid.* Congress also placed on the judicial councils a mandatory periodic duty of review because it concluded "effective appellate review of such a [local] rule [is] impossible sometimes, impractical most times, and impolitic always" (Exhibit A2) because the judges who enact the local Rules decide whether they are lawful. "*There is no such thing as a rule's becoming sacrosanct merely for having passed judicial scrutiny the first time. It is subject to ongoing scrutiny*." *Id*. (Emphasis added)

Congress also legislated an interlocking standard of review for District Court local rule-making discretion. Section 2071(a) provides:

> The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. *Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.* (Emphasis added)

28 U.S. Code § 2072 (b) provides:

> *Such rules shall not abridge, enlarge or modify any substantive rights*. (Emphasis added)

Additionally, *Federal Rule of Civil Procedure* 83(a)(1) was amended in 1995. Rule 83. *Rules by District Courts,* provides*:*

> "A local rule must be consistent with—but not duplicate—federal statutes and rules adopted under 28 U.S.C. §§2072 …,."

Thus, the standard of review set forth in § 2071(a) for local rules is incorporated by reference into the standard of review for nationally promulgated rules set forth in § 2072(b). This stricter than strict scrutiny standard is doubled-down and further set forth in 28 U.S.C. 332(d)(4) and FRCP 83(a)(1). It is stricter than strict scrutiny because it applies to all substantive rights, not just constitutional rights. This standard makes perfect sense because judges are not legislators. Congress commanded that local rules shall provide an even playing field. The home team does not get to start the game with a grand-slam lead. Judges are supposed to call balls and strikes; not legislate. Not favor one religion over another. Not favor one political organization over another. Not favor one citizen over another.

The law *is* what the law *says*. The law *says* local rules "shall not abridge, enlarge, or modify any substantive rights." (§ 2072(b)). The law *says* local rules "shall be consistent with Acts of Congress." (§ 2071(a)). The challenged local rules directly contradict what the law *is* and what the law *says*. Reasonable minds cannot differ what the law *says*. The nonuniform local rules abridge, enlarge, and modify the substantive rights set forth by the First Amendment, the Constitution, 28 U.S.C. § 1738, the United States Code, the *Federal Rules of Civil Procedure*, and the *Federal Rules of Evidence* in one fell swoop.

More particularly, the *Federal Rules of Civil Procedure* "*govern the procedure in all civil actions and proceedings in the United States district courts*."

FRCP 1. They are civil practice rules proscribed by the Supreme Court in conformity with Section 2072. The purpose is to provide ***uniform*** federal rules. The scope applies to all federal civil actions and proceedings. The purpose is "to *secure the just, speedy, and inexpensive determination of every action* and proceeding**.** (Emphasis added). FRCP 1. The challenged local rules are not uniform and they do not "secure the *just*, *speedy*, and *inexpensive* determination of every action:*"* (i) when all lawyers in one-third of the District Courts can obtain *general* admission privileges by filing a certificate of good standing and paying a District Court admission fee of $200; (ii) other lawyers admitted in tit-for-tat states, such as Oregon and Arizona, can obtain federal admission by reciprocity or UBE transfer and paying a $1,800 admission on motion tax and duty, and a District Court admission fee of $200; (iii) and lawyers in California can obtain *general* admission privileges by filing a certificate of good standing, paying a District Court admission fee of $200, paying an $2,500 tax to reinvent the wheel in California and pass its 100% subjective entry-level competence licensing tests that is less reliable than flipping a coin. Obtaining counsel to petition the United States District Court is filled with *unnecessary* costs, *unjust* lengthy delays that are sometimes *impossible* to overcome, and always *expensive.* As a direct result, two lawyers are often needed to do the job of one. As Justice GORSUCH has emphasized affordable access to justice is outside the reach of most Americans.

Why is it that defense counsel ignores the practical effect of these disunited local rules is arbitrary and irrational? For example, the California and Arizona local Rules are mirror opposites. If a citizen from California sues a citizen from Arizona on a federal claim in federal court in California, the Arizona citizen or corporation is also a party. If the first to file or venue is in California, it is arbitrary and capricious to compel the Arizona citizen to hire a California lawyer. Likewise, if venue is in Arizona, it is equally arbitrary to compel the California citizen to hire an Arizona lawyer on the identical federal claims. The same holds true on jurisdiction based on diversity. Diversity claims are also governed by the *Federal Rules of Civil Procedure*. The purpose of diversity jurisdiction is to provide a neutral forum. The purpose of the *Federal Rules of Civil Procedure* is defeated by the Local Rule reliance on forum state law or office location on both federal and diversity claims in the district courts.

As noted above, Article I § 8 provides Congress with the power to lay and collect taxes and it provides that "*all Duties, Imposts and Excises shall be uniform throughout the United States*." (Emphasis added). Judges do not have discretion to exceed Article I § 8 under the guise of local rules. Period. Full stop. Plaintiffs respectfully submit they are entitled to Judgment.

****

Under the Constitution, Article III Court judges are prohibited from delegating their constitutional duties and fiduciary responsibilities. Article III § 1 provides: The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Article I § 10, provides: "*No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws*." (Emphasis added). The *non-uniform* rules are "*not absolutely necessary for executing its inspection Laws*" because many District Courts, including every District Court in the Seventh Circuit, provide *general* admission privileges to all sister-state attorneys in good standing.

Federal district courts are national courts and have jurisdiction over cases arising under the Constitution. United States District Judges are nominated by the President and confirmed by the Senate. They take an oath of office. Article III Court jurisdiction and power is necessary, according to the Great Chief Justice John Marshall because "the mere necessity of uniformity in the interpretation of the national laws decides the question. Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed." *Cohens v. Virginia*, *supra*, 19 U.S. 264, 415-416 (1821). "[L]ocal Courts must be excluded from a

concurrent jurisdiction in matters of national concern, else the judicial authority of the Union may be eluded at the pleasure of every plaintiff or prosecutor." *Id*. at 420. The federal delegation of power to the state to tax out-of-state lawyers abridges the separation of powers doctrine. The power to tax constitutes the power to destroy. *McCullough v. Maryland*, 17 US 316 (1819) The rights to counsel and petition are taxed by state actors that have nothing to do with its state inspection laws.

More particularly, States have no *extraterritorial power to govern bar admission in other states or in the federal courts*. The right to practice law before federal courts is not governed by State court rules. *Theard v. United States*, 354 U.S. 278, 280 (1956; *Winterrowd v. American Gen. Annuity Ins. Co*. 556 F.3d 815, 820 (9th Cir. 2009). *Birbrower, Montalbano, Condon & Frank v. Superior Ct*., 17 Cal. 4th 119, 130 (1998). States have no *extraterritorial* power to tell citizens of other states who they may choose as their counsel, in the same way States do not have power to tell their own citizens or citizens of another state which religion to worship, or who to marry, or who to associate with, and what petitions for redress of grievances to file. This nonuniformity is a hydra of confusion and contradiction.

The Supreme Court has also held "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 exact risk of self-dealing. *Ibid*. These active market participants are not angels. Even assuming the irrational propositions that federal district judges can delegate their Article III Court judicial duties solely to one state's licensing officials, that have no jurisdiction or application outside of the forum state, this federal delegation is annexed without a shred of supervision and without any *intelligible standard*. These local rules have no consistent standard, let alone an *intelligible standard*. This is delegation running riot.

In *United States v. Windsor*, 133 S.Ct. 2675 (2103), the Court held the federal government is required to accord same sex citizens equal rights and their marriage licenses full faith and credit. The rights to counsel, association, and petition are textually embedded in the Constitution. They predate the fundamental right to marriage equality by over two hundred years. If citizens have a fundamental right to choose their spouse, regardless of race, national origin, or gender, LFRA avers they have a fundamental right to choose their counsel. A citizen's right to choose their independent counsel is priceless. Without the right to independent counsel the right to petition is an empty promise.

The nonuniform local rules promote faction. They pit citizens of one state against citizens of another. See *The Federalist #80* ("the peace of the WHOLE ought not to be left at the disposal of a PART.") The *Code of Conduct for United States Judges*, Canon 2 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. "

These speech-licensing local rules, on their face stem from a social, political, and financial relationship with forum state public trade unions that regularly engage in lobbying and litigation on political matters of public concern in the federal courthouse. The *Code of Conduct for United States Judges* prohibits this partnership with political trade unions. The evidence in this case is that the California State Bar Associations and California state judges have admitted failing to provide public protection and lining their pockets with hundreds of thousands of stolen dollars *See* Exhibit F. This local rule partnership between federal judges and state bar associations undermines respect for federal judiciary. It creates the appearance of federal partisan bias.

II. THE NONUNIFORM LOCAL RULES THAT ON THEIR FACE DO NOT PROVIDE FULL FAITH AND CREDIT TO STATE COURT RECORDS AND JUDGMENTS FOR LAWYERS LICENSED IN FORTY-NINE STATES ARE VOID

Congress has enacted a statute 28 U.S.C. §1738 that is a corollary to the separation of powers doctrine. LFRA is not aware of any Court adjudicating their argument that the nonuniform local rules trespass 28 U.S.C. §1738. The purpose of the Full Faith and Credit Clause, the Supreme Court said in *Allstate Insurance Co.*

v. Hague 449 US 302, 322 (1981), was "to transform the several states from independent sovereignties into a single, unified Nation." The great Justice Robert Jackson, who made himself something of a scholar of the Clause, argued that "[w]here there is a choice under the full faith and credit clause, the one should be made . . . which best will meet the needs of an expanding national society for a modern system of administering . . . a more certain justice." Robert H. Jackson, *Full Faith and Credit: The Lawyer's Clause of the Constitution*, 45 Colum. L. Rev. 1 (1945). *See* also *Baker v. General Motors Corp.*, 522 US 222, 231 Fn. 3 (1998)("For a concise history of full faith and credit, see Jackson, Full Faith and Credit—The Lawyer's Clause of the Constitution.")

There, Justice Jackson writes, "the Supreme Court deals with one clause of the Constitution which seems to me peculiarly a lawyer's clause….. The practicing lawyer often neglects to raise questions under it, and judges not infrequently decide cases to which it would apply without mention of it. For these reasons I hope to stimulate, rather than to satisfy, inquiry upon a subject which has impressed me as being both important and obscure to the profession." Justice Jackson states:

> "But the full faith and credit clause is the foundation of any hope we may have for a truly national system of justice, based on the preservation but better integration of the local jurisdictions we have. If I have any message to the legal profession worthy of the occasion it is this: that you must not suffer this lawyer's clause to become the orphan clause of the Constitution.
>
> What is at issue in this case is truly a national system of justice.

In *VL v. EL*, 136 S. Ct. 1017 (2016), the Supreme Court unanimously overturned a State Supreme Court decision that did not provide Full Faith and Credit to another state's judgment rendered in a judicial proceeding. That judgment was reversed. The Supreme Court reasoned:

> The Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const., Art. IV, § 1. That Clause requires each State to recognize and give effect to valid judgments rendered by the courts of its sister States. It serves "to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation." *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 277, 56 S.Ct. 229, 80 L.Ed. 220 (1935). 136 S.Ct. at 1030.
>
> With respect to judgments, "the full faith and credit obligation is exacting." *Baker v. General Motors Corp.*, 522 U.S. 222, 233, 118 S.Ct. 657, 139 L.Ed.2d 580 (1998). "A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Ibid.* A State may not disregard the judgment of a sister State because it disagrees with the reasoning underlying the judgment or deems it to be wrong on the merits. On the contrary, "the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." *Milliken v. Meyer*, 311 U.S. 457, 462, 61 S.Ct. 339, 85 L.Ed. 278 (1940). Ibid.

28 U.S.C. § 1738 *State and Territorial statutes and judicial proceedings; full faith and credit*, in pertinent part provides:

> "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."

The case at bar concerns the preclusive Full Faith and Credit — due to state judgments of attorney competence entered by State Supreme Courts — in the United States District Courts across our land. States have comprehensive schemes for investigating and admitting lawyers by a judicial court order and public acts and records. States have jurisdiction over the subject matter of attorney competence and the party admitted to the bar. States require the attorney to demonstrate knowledge and competence of the Constitution and federal law as a precondition for admission. Likewise, States require the attorney to demonstrate good moral character and to take an oath of office to support and defend the Constitution.

Section 1738 demands that valid state supreme courts acts and records are entitled to full faith and credit in every United States District Court. The District Courts are not free to ignore state court records and judgments. "Regarding judgments, … the full faith and credit obligation is exacting." *Baker by Thomas v. General Motors Corp.*, *supra*, 522 U.S. 222, 233 (1998). There is "no roving 'public policy exception' to the full faith and credit due *judgments*." *Ibid.* (emphasis in original). Even hostility to valid judgments rendered by one state do not excuse the Article III Courts from providing them Full Faith and Credit.

As Justice Robert Jackson observes, "The practicing lawyer often neglects to raise questions under it, and judges not infrequently decide cases to which it would apply without mention of it." That observation is evident in this case.

Presently, many local rules in the Ninth Circuit do not provide full faith and credit to records and judgments entered by State Supreme Courts from forty-nine states. These nonuniform rules treat lawyers licensed in forty-nine states as orphans, second-class citizens. These nonuniform rules are evidence of animus and hostility against other states' records and judgments which is constitutionally prohibited by 28 U.S.C. § 1738.

Moreover, 28 U.S.C. § 1738 is provides substantive rights. The *Rules Enabling Act* prohibit local rules from abridging, enlarging, or modifying any substantive right. *Ibid*. These nonuniform local rules are inconsistent with other Acts of Congress and national rules. *See* 28 U.S.C. 530 (federal government attorneys can be licensed or have their office anywhere); 5 U.S.C. 500 (b) (all lawyers eligible to practice before federal administrative agencies); Supreme Court Rule 5 (all lawyers in good standing with three years of experience eligible for *general* admission); *Federal Rule of Appellate Procedure* 46 (all lawyers in good standing eligible for *general a*dmission). Over 16,000 lawyer per year are provided full faith and credit reciprocal admission in a second State. Every one of them is denied *general* admission in the District Courts in California. Thousands of them are denied *general* admission in the other District Courts in the Ninth Circuit, including Arizona and Oregon.

III. THE NONUNIFORM LOCAL RULES TRESPASS OUR PROFOUND NATIONAL COMMITMENT THAT DEBATE ON PUBLIC ISSUES SHOULD BE UNINHIBITED, ROBUST, AND WIDE OPEN

A. INTRODUCTION: HISTORY, TEXT, TRADITION

The Preamble to the Constitution provides**:**

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The purpose of the Constitution is clear. It is for the benefit of the People with the goals to: (i) to form a more perfect Union; (ii) establish Justice; (iii) provide for the common defense, (iv) promote the general Welfare; (v) and secure the Blessings of Liberty to ourselves and our Posterity. Each of these central purposes, intended for the People, are defeated by local rules that manifest a disunited Union, favor some citizens over others in establishing Justice, disconnect the common defense of life, liberty, and property, and secure the Blessings of Liberty for some citizens, but not others, in some United States Courthouses, but not others.

Likewise, the First Amendment, in pertinent part provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Thus, the Preamble's central purposes to form a more perfect Union for the benefit of all People, establish Justice, provide for the common defense, promote the

general welfare, and secure the Blessings of Liberty in perpetuity for all People are fixed again as birthrights, particularly promised, and given life in the text of the First Amendment.

In *West Virginia Bd. of Ed. v. Barnette*, 319 US 624, 638 (1943), the great Justice Robert Jackson famously summarized First Amendment gospel:

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Equally important:

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *Id*. at 642.

LFRA respectfully suggests *Barnette* means District Judges cannot legislate and rely on local rules to prescribe First Amendment orthodoxy for any class of citizens. If Congress shall make no law abridging the freedoms to speech, association, and petition, neither can judges abridge these freedoms under the guise of local rules.

Defendant Attorney General MERICK B. GARLAND and the United States Attorney GARY M. RESTAINO for the District of Arizona ask this Honorable Court to close his eyes to Supreme Court precedent directly on point. In *Holder v. Humanitarian Law Project*, *supra*, 561 U.S. 1, 130 S.Ct. 2705 (2010), restrictions

imposed by Congress on providing material support to foreign terrorist organizations were at issue. Some plaintiffs were lawyers. The Attorney General was a defendant there because it was his job to defend and enforce the law. The Attorney General argued these provisions were subject to intermediate review. Chief Justice ROBERTS writing for the majority reasoned, "Plaintiffs want to speak [to the Foreign Terrorists Organizations] and whether they may do so under … depends on what they say, " *Id*. at 2723-24, thus since the regulation is related to expression all nine justices applied strict scrutiny. *Holder* makes clear that restrictions on lawyer speech imposed by judges are subject to First Amendment strict scrutiny review and not intermediate or rational basis review, even if those speech restrictions are relevant to lawyers representing foreign terrorists. Here, the Honorable defendant MERRICK B. GARLAND and the Honorable United States Attorney GARY M. RESTAINO invite this Honorable Court to ratify the identical argument they offered that the Supreme Court rejected in *Holder*.

LFRA members are not terrorists. They are citizens. There are well known exceptions to First Amendment protections.[8] LFRA members, as licensed attorneys

[88] *U.S. v. Stevens*, 559 US 460 (2010),
"From 1791 to the present," however, the First Amendment has "permitted restrictions upon the content of speech in a few limited areas," and has never "include[d] a freedom to disregard these traditional limitations." (Internal cites omitted) These "historic and traditional categories long familiar to the bar," (Internal cites omitted)— including obscenity, (Internal cites omitted) defamation, (Internal cites omitted) fraud, (Internal cites omitted) incitement, and speech integral to

in good standing do not come within these exceptions. They do not present an immediate clear and present danger of imminent unlawful action that would warrant an exception to First Amendment protection. They will not be dancing nude, publishing defamatory remarks, engaging in fraud, or inciting the public to riot in the United States Courtroom. "[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." *Citizens United v, FEC*, 130 S.Ct. 876, 905 (2010). There is no difference between *speech* and *speaker*.

B. THE NONUNIFORM LOCAL RULES BORROWED FROM WILDLY DISPARATE STATE LICENSING STANDARDS ARE A PRIOR RESTRAINT

"[I]t has been generally, if not universally, considered that it is the chief purpose of the [First Amendment's] guaranty to prevent previous restraints upon publication. " *Nebraska Press Assn. v. Stuart*, 427 US 539, 557 (1976). In its simple, most blatant form, a prior restraint is a law which requires submission of speech to an official who may grant or deny permission to utter or publish it based upon its contents. *Alexander v. United States*, 509 U.S. 544, 550 (1993). "Court orders that

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criminal conduct, (Internal cites omitted) — are "well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem," (Internal cites omitted). *Id*. at 1584.

…..

In *Stevens*, the Court rejected an exception for depictions of animal cruelty. *Id*. at 1583.

actually forbid speech activities—are classic examples of prior restraints." *Ibid.* A prohibition targeting speech that has not yet occurred is a prior restraint. *Ibid*. "[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Where First Amendment protected speech is suppressed, the harm is certain, irreparable, and in some cases ongoing. See *CBS, Inc. v. Davis*, 510 U.S. 1315, 1317 (1994) "A prior restraint, by contrast and by definition, has an immediate and irreversible sanction." *Nebraska Press*, 427 U.S. at 559

In *New York Times Co. v. United States*, 403 US 713 (1971), the United States sought to enjoin the New York Times and the Washington Post from publishing the contents of a classified study The Pentagon Papers. The Supreme Court unanimously denied this request and held:

> Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." *Bantam Books, Inc.* v. *Sullivan*, 372 U. S. 58, 70 (1963); see also *Near* v. *Minnesota*, 283 U. S. 697 (1931). The Government "thus carries a heavy burden of showing justification for the imposition of such a restraint." *Organization for a Better Austin* v. *Keefe*, 402 U. S. 415, 419 (1971). *Id.* at 714

The local rules are a prior restraint because they compel LFRA members, and all similarly situated licensed attorneys, to either obtain a state waiver or pass a second. third, and fourth state administered, content-based licensing exam, a prerequisite virtually identical to the licensing of printing presses in the 17th Century, in order to exercise their First Amendment freedoms to speak as a lawyer, associate

with their client as a lawyer, and petition the government as a lawyer, in some United States Courthouses. This draconian, costly, and time-consuming burden of getting admitted in a second, third, and fourth state to practice law in the District Court, and the requirement of passing a second entry-level licensing test is prior restraint.

Similarly, in *Citizens United v. Federal Election Comin*, *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. Lawyers have a constitutional duty and petition the government 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*. (internal cites omitted). 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." (internal cites omitted). 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)

The Supreme Court held these FEC prior approval regulations, on their face chilled the corporation's speech. There is no qualitative difference in compelling speakers to obtain a favorable advisory opinion from the FEC than a favorable opinion on a second, third, and fourth state's entry-level bar exam, or a waiver from taking that second, third, and fourth state's bar exam.

Similarly, there can be no disagreement on an initial premise: Assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment. Indeed, "`it has long been a basic tenet of national communications policy that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."` *Turner Broadcasting System, Inc. v. FCC*, 512 US 622, 664 (1994). The touchstone is uninhibited, robust, and wide-open.

C. THE NONUNIFORM LOCAL RULES BORROWED FROM WILDLY DISPARATE STATE LICENSING STANDARDS TRESPASS THE FIRST AMENDMENT RIGHT TO PETITION THE GOVERNMENT

In *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49 (1993), in construing the right to *petition*, the Court 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. LFRA submits the local rules, on their face, violate the Petition Clause because they constitute a prior restraint and presume all licensed lawyers from forty-nine states will file sham petitions for an anti-competitive purpose and only file sham petitions.

Similarly, in *Legal Services Corp. v. Velazquez*, 531 US 533 (2001), the constitutionality of prior restrictions on attorney speech enacted by Congress was at issue. The Court held the Congressionally imposed restriction on attorney speech is *facially unconstitutional*. *Id*. at 549. (Emphasis added)

D. THE DEATH AND BURIAL OF THE SO-CALLED *PROFESSIONAL SPEECH* DOCTRINE

As noted above, *NIFLA v. Becerra*, 138 S.Ct. 2361 overturned another Ninth Circuit decision in a *speech licensing* case under the so-called "*professional speech doctrine*." *Becerra* buried the professional speech doctrine.

Williams-Yulee v. Florida Bar, 575 U. S. 433, ___, 135 S.Ct. 1656, 1665, 191 L.Ed.2d 570 (2015), is also a professional speech case. There, the Supreme Court applied strict scrutiny review and upheld restrictions on attorney speech in the context of a judicial election. The question at issue was whether an attorney running for a judgeship could request money directly from a campaign contributor or whether the solicitation must be made by the candidate's election committee. The Court held a State may assure its people that judges will apply the law without fear or favor — and without personally asking anyone for money. It thus affirmed the judgment of the Florida Supreme Court imposing professional misconduct under the strict scrutiny standard of review.

LFRA asks this Court to consider that the challenged local rules restrict professional speech and are presumptively and obviously unlawful because the

government cannot meet its strict scrutiny and narrow tailoring burden of proof. The Court also rejected rational basis review in *Janus v. American Federal of State, County, and Municipal Employees*,138 S. Ct. 22448, 2465 (2018) ("This form of minimal [rational basis] scrutiny is foreign to our free-speech jurisprudence.").

E. *CONTENT DISCRIMINATION* AND THE OTHER SIDE OF THE COIN *NEUTRAL* AND *GENERALLY APPLICABLE*

In *Reed v. Town of Gilbert,* 135 S.Ct. 2218 (2015), the Supreme Court reversed the Ninth Circuit decision in another speech licensing case. That judgment provides authoritative interpretative direction on *content-discrimination*. In *Reed,* the Ninth Circuit applied intermediate scrutiny, concluding the speech restrictions on the signs were content-neutral, and thus subject to time, place, or manner speech review. It held the different sign categories were *content-neutral* because the government did not adopt the various categories because of animus or disagreement with the messages on the signs. The issue before the Supreme Court was the interpretative difference between *content-neutral* and *content-discrimination*. The Supreme Court held:

> But this analysis skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. **A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of "animus toward the ideas contained" in the regulated speech**. *Id*. at 2228 (Emphasis added)

The Supreme Court held under the First Amendment:

> Under that Clause, a government, including a municipal government vested with state authority, "**has no power to restrict expression because of its message, its ideas, its subject matter, or its content**." (internal cites omitted) Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. (internal cites omitted) *Id*. at 2226. (Emphasis added.)

In this local rule challenge, the *subject matter* is federal law and federal procedure. The *content* at issue is federal law and federal procedure. There is no constitutional difference between *content* on a sign and *content* in a pleading. They both contain *messages* and *ideas*. They seek to persuade. *See Reed*, "Because [s]peech restrictions based on the identity of the speaker are all too often simply a means to control content," … we have insisted that "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference." *Id*. at 2230. As the multiple sign-code targeted speech *content* categories and *messages* in *Reed* were held presumptively unconstitutional and subject to strict review, LFRA avers the disparate local rules targeting attorney speech, association, and petition freedoms are presumptively unconstitutional and subject to strict scrutiny review. The government has the burden of proof. LFRA avers the nonuniform local rules cannot pass the strict scrutiny test because one-third of the ninety-four federal district courts authorize *general* admission privileges to all sister-state attorneys in good standing. The local rules are the opposite of narrow tailoring.

The other side of the *content discrimination* coin, or perhaps another label for the same concept, is *neutral* and *generally applicable*. In *Fulton v. City of Philadelphia*, 141 S.Ct. 1868 (2021), the City of Philadelphia refused to allow a Catholic Services organization to continue to place adopted children in homes unless the religious organization agreed to certify same sex marriage couples as foster parents. Petitioner challenged this law under the First Amendment free *speech* and free *exercise* clauses. The District Court and the Third Circuit upheld this law as a *neutral* and *generally applicable* law. The Supreme Court unanimously invalidated this law under the free exercise clause, and thus did not address the free speech claim. The Court ruled that "it is plain that the City's actions have burdened CSS's religious exercise by putting it to the choice of curtailing its mission or approving relationships inconsistent with its beliefs." *Id*. at 1874. Concerning *neutrality*, "Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature. *Id*. 1877. Concerning *general applicability*, the Court held, "A law is not generally applicable if it "invite[s]" the government to consider the particular reasons for a person's conduct by providing "'a mechanism for individualized exemptions.'" *Id*. at 1877. "The question, then, is not whether the City has a compelling interest in enforcing its non-discrimination policies generally, but whether it has such an interest in denying an exception to CSS." *Id*. at 1881.

Here, LFRA avers the nonuniform rules are not *neutral* and *generally applicable* because they favor the *viewpoints* and the *speech* of forum state lawyers, and they are intolerant and disfavor the *viewpoints* and *speech* of lawyers licensed in forty-nine other states. They are not *neutral* because they compel all citizens to put their faith in a forum state attorney or forfeit their substantive right to counsel. They are not *generally applicable* because there are a wide array and host of exceptions to admission under the local rules and under the state laws including tit-for-tat provisions that some District Courts vicariously adopt. For example, federal government lawyers can be admitted anywhere. 28 U.S.C. § 530. LFRA further alleges the compelling question here is not whether District Judges have a compelling interest in preserving their *general* admission local rules; rather, the question is whether they have a compelling interest in not providing an exception for admission to lawyers licensed in forty-nine states, when one-third of the District Courts do not restrict *general* admission privileges to forum state lawyers. LFRA suggests there is no constitutionally analytical difference between government-imposed restrictions on free *exercise* and the right to freely *petition the government* for the *redress of grievances*. If the government is prohibited from compelling citizens to exercise a specific religion, it is prohibited from compelling citizens to associate and petition the government with a specific bar association member.

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F. THE UNITED STATES IS BARRED FROM ENGAGING IN VIEWPOINT DISCRIMINATION

The First and Fourteenth Amendments embody our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co.* v. *Sullivan*, 376 U. S., 254, 270. To prohibit all sides from criticizing their opponents makes a law more viewpoint based, not less so. *Matal v. Tam*, 137 S.Ct. 1744, 1766 (2017). "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).

The District Courts in Arizona and California have the same subject matter jurisdiction over the same content (Constitution, United States Code, Supreme Court precedent). The government, by enforcing disparate licensing rules, suppresses the viewpoints of a disfavored class of licensed lawyers, citizens, and corporations. The central component of the First Amendment, to allow the People to make their own choices and represent themselves is — abridged, enlarged, and modified by local rules that deny general admission licensing privileges to lawyers licensed in forty-nine states; but they always allow the viewpoint of government lawyers (*See* 28

U.S.C. § 530). In this case: "Who may speak and who may not in the federal courthouse is left to the unbridled discretion of a state licensing official." *Ibid*. By definition, this is content and viewpoint discrimination.

G. THE UNITED STATES IS BARRED FROM FAVORING ONE SPEAKER OVER ANOTHER

This Court has *de novo* review. In *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010):

> 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. *Citizens United*, 130 S.Ct. at 890
>
> …
>
> 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 (Emphasis added)

LFRA submits the nonuniform local rules deprive them of their basic rights of citizenship, dignity, and "deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration." *Ibid*. These nonuniform local rules are constitutionally infirm because they favor one speaker over another in the United States Courtroom.

H. THE LOCAL RULES MAKE THE RIGHT TO ASSOCIATION AND TO AVOID COMPELLED ASSOCIATION ILLEGAL

Freedom of expression includes the citizen's right to advocate and the right to join with his fellow citizens in an effort to make that advocacy effective. *Thomas* v. *Collins*, 323 U. S. 516; *NAACP* v. *Alabama*, 357 U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 516. It includes the right to join together for purposes of obtaining judicial redress. *NAACP v. Button*, 371 US 415, 453 (1963).

MINE WORKERS v. ILLINOIS BAR ASSN., 389 U.S. 217 (1967) holds union members have a right, protected by the First and Fourteenth Amendments, to join together and assist one another in the assertion of their legal rights. It would be difficult to find a more broad and less precise regulation than the challenged local rules that categorically inhibit the First Amendment freedoms to speech, association, and petition of lawyers licensed in forty-nine states in the United States Courthouse. They further often put citizens to the Hobson's choice of retain two lawyers to do the job of one; or, forfeit their right to counsel.

The right to associate also includes a right not to associate. LFRA submits the local rule compulsion that anyone who wants to petition the United States District Court for the redress of grievances must subsidize and associate with a second, third, and fourth bar association or forfeit their right to *general* bar admission privileges in the District Courts contradicts *Janus v. AFSCME*, 138 S.Ct. 2448 (2018).

LFRA members' association and freedom of conscience rights are abridged and modified as some members, and many similarly situated lawyers, object to paying union dues and saluting state flags that stand for partisan politics and monopoly protecting practices with which they disagree.

IV. CONCLUSION

LFRA avers the challenged local rules are facially unlawful as they trespass the separation of powers doctrine, the full faith and credit statute, and the First Amendment. The government has failed to meet its burden of proof. LFRA requests Summary Judgment be entered in their favor consistent with their Amended Complaint prayer for relief.

Dated: August 7, 2023

Respectfully submitted,

/s/ *Joseph Robert Giannini*
Joseph Robert Giannini
Counsel for Plaintiff
LAWYERS FOR FAIR
RECIPROCAL ADMISSION

CERTIFICATE OF COMPLIANCE WITH OREGON LOCAL RULES

This brief complies with Oregon local Rule word-volume limits. It contains 10,931 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

August 7, 2023

s/ ***Joseph Robert Giannini***
Joseph Robert Giannini

PROOF OF SERVICE

All parties to this proceeding receive notice of this pleading and are served by ECF filing.

August 7, 2023

s/ ***Joseph Robert Giannini***
Joseph Robert Giannini

APPENDIX

Arizona F.R.Civ.P. 83. Rules by District Courts; Judge's Directives

LRCiv 83.1

ATTORNEYS

(**a) Admission to the Bar of this Court**. Admission to and continuing membership in the bar of this Court is limited to attorneys who are active members in good standing of the State Bar of Arizona.

Attorneys may be admitted to practice in this District upon application and motion made in their behalf by a member of the bar of this Court.

Every applicant must first file with the Clerk a statement on a form provided by the Clerk setting out the applicant's place of birth, principal office address and city and state of principal residence, the courts in which the applicant has been admitted to practice, the respective dates of admissions to those courts, whether the applicant is active and in good standing in each, and whether the applicant has been or is being subjected to any disciplinary proceedings.

Motions for admission will be entertained upon the convening of the Court at the call of the law and motion calendar. The applicant must be personally present at the time and, if the motion is granted, will be admitted upon being administered the following oath by the Clerk, Magistrate Judge, or a District Judge:

> "I solemnly swear (or affirm) that I will support the Constitution of the United States; that I will bear true faith and allegiance to the Government of the United States; that I will maintain the respect due to the courts of justice and judicial officers; and that I will demean myself as an attorney, counselor, and solicitor of this Court uprightly."

Thereafter, before a certificate of admission issues, the applicant must pay an admission fee to the Clerk, U.S. District Court. The amount of the fee is available on the District Court's website.

(b) **Practice in this Court**. Except as herein otherwise provided, only members of the bar of this Court may practice in this District.

(1) U.S. Government Attorneys. Any attorney representing the United States Government in an official capacity, or who is employed by the office of the Federal Public Defender in an official capacity, and is admitted to practice in another U.S. District Court may practice in this District in any matter in which the attorney is employed or retained by the United States during such period of federal service. Attorneys so permitted to practice in this Court are subject to the jurisdiction of this Court to the same extent as members of the bar of this Court.

(2) **Pro Hac Vice**. An attorney who is admitted to practice in another U.S. District Court, and who has been retained to appear in this Court may, upon written application and in the discretion of the Court, be permitted to appear and

participate in a particular case. Unless authorized by the Constitution of the United States or an Act of Congress, an attorney is not eligible to practice pursuant to this subparagraph (b)(2) if any one or more of the following apply: (i) the attorney resides in Arizona, (ii) the attorney is regularly employed in Arizona, or (iii) the attorney is regularly engaged in the practice of law in Arizona. The pro hac vice application must be presented to the Clerk and must state under penalty of perjury (i) the attorney's principal office address and city and state of principal residence as well as current telephone number, facsimile number and electronic mailing address, if any, (ii) by what courts the attorney has been admitted to practice and the dates of admissions, (iii) that the attorney is in good standing and eligible to practice in those courts, (iv) that the attorney is not currently suspended, disbarred or subject to disciplinary proceedings in any court, and (v) if the attorney has concurrently or within the year preceding the current application made any other pro hac vice applications to this Court, the title and number of each action in which such application was made, the date of each application, and whether each application was granted. The pro hac vice application must also be accompanied by payment of a pro hac vice fee to the Clerk, U.S. District Court and a current, original certificate of good standing from a federal court. The amount of the fee is available on the District Court's website. If the pro hac vice application is denied, the Court may refund any or all of the fee paid by the attorney. If the application is

granted, the attorney is subject to the jurisdiction of the Court to the same extent as a member of the bar of this Court. Attorneys admitted to practice pro hac vice must comply with the Rules of Practice and Procedure of the United States District Court for the District of Arizona.

(3) Tribal Attorneys. An attorney who represents a tribal government entity in a full time official capacity may apply to appear pro hac vice under subparagraph 2 above in any matter in which the attorney is employed or retained by the tribal government entity during such period of tribal service notwithstanding the attorney's residence in, regular employment in, or regular practice in Arizona.

(4) Certified Students. Students certified to practice under Rule 83.4, Local Rules of Civil Procedure, may practice in this District as provided in that Rule.

(**c) Subscription to Court Electronic Newsletters**. Registered users of the Court's Electronic Case Filing (ECF) system must subscribe to the USDC District of Arizona News (at www2.azd.uscourts.gov/subscribe) to receive email notices relating to new or updated local rules, general orders, and electronic case filing procedures.

(**d) Association of Local Counsel**. Nothing herein shall prevent any judicial officer from ordering that local counsel be associated in any case.

(e) Disbarment or Suspension. An attorney who, before admission or permission to practice pro hac vice has been granted, unless specially authorized by one of the judges, or during disbarment or suspension exercises any of the privileges of a member of this bar, or who pretends to be entitled to do so, is subject to appropriate sanctions after notice and opportunity to be heard.

(f) Sanctions for Noncompliance with Rules or Failure to Appear.

(1) When Appropriate. After notice and a reasonable opportunity to be heard, the Court upon its own initiative may impose appropriate sanctions upon the party, attorney, supervising attorney or law firm who without just cause:

(A) violates, or fails to conform to, the Federal Rules of Civil or Criminal Procedure, the Local Rules of Practice and Procedure for the District, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules and/or any order of the Court; or

(B) fails to appear at, or be prepared for, a hearing, pretrial conference or trial where proper notice has been given. The Court may impose sanctions against a supervising attorney or law firm only if the
Court finds that such supervising attorney or law firm had actual knowledge, or reason to
know, of the offending behavior and failed to take corrective action.

(2) Sanctions; Generally. The Court may make such orders as are just

under the circumstances of the case, and among others the following:

(A) An order imposing fines;

(B) An order imposing costs, including attorneys' fees;

(C) An order that designated matters or facts shall be taken to be established for the purposes of the action;

(D) An order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters or facts in evidence;

(E) An order striking, in whole or in part, pleadings, motions or memoranda filed in support or opposition thereto; and

(F) An order imposing sanctions as permitted by Rule 83.2, Local Rules of Civil Procedure, Disbarment, for violations of the applicable ethical rules, incorporated into these Local Rules by Rule 83.2(d), Local Rules of Civil Procedure. The Court may also refer the matter to the relevant bar association(s) for appropriate action. For violations of form, sanctions will be limited generally to fines, costs or attorneys' fees awards. Local rules governing the form of pleadings and other papers filed with the Court include, but are not limited to, the provision of Rule 7.1, Local Rules of Civil Procedure. Attorneys' fees may only be assessed for a violation of a Local Rule when the Court finds that the party, attorney,

supervising attorney or law firm has acted in bad faith or has willfully disobeyed Court orders or rules.

(3) Sanctions; Repeated Violations in Civil Cases. If, in a civil case, the Court finds that an attorney, party, supervising attorney or law firm has committed repeated serious violations without just cause, such finding may result in the imposition of more serious sanctions, including but not limited to, increased fines, fines plus attorneys' fees and costs, contempt, or the entry of judgment against the offending party on the entire case. Judgment against the offending party will not be entered unless the Court also finds there are no other adequate sanctions available.

(4) Scope; Enforcement. Nothing in this Local Rule is intended to modify, or take the place of, the Court's inherent powers, contempt powers or the sanctions provisions contained in any applicable federal rule or statute. Further, nothing in this Local Rule is intended to confer upon any attorney or party the right to file a motion to enforce the provisions of this Local Rule. The initiation of enforcement proceedings under this Local Rule is within the sole discretion of the Court.

Central District of California

L.R. 83-2 Attorneys; Parties Without Attorneys

L.R. 83-2.1 Attorneys

L.R. 83-2.1.1 Appearance Before the Court

L.R. 83-2.1.1.1 **Who May Appear.** Except as provided in L.R. 83-2.1.3, 83-2.1.4, 83-2.1.5, and 83-4.5, L.Bankr.R. 8, J.P.M.L. R. 2.1(c), and F.R.Civ.P. 45(f), an appearance before the Court on behalf of another person, an organization, or a class may be made only by members of the Bar of this Court, as defined in L.R. 83-2.1.2.

L.R. 83-2.1.1.2 Effect of Appearance. Any attorney who appears for any purpose submits to the discipline of this Court in all respects pertaining to the conduct of the litigation.

L.R. 83-2.1.1.3 Form of Appearance - Professional Corporations and Unincorporated Law Firms.
No appearance may be made and no pleadings or other documents may be signed in the name of any professional law corporation or unincorporated law firm (both hereinafter referred to as "law firm") except by an attorney admitted to the Bar of or permitted to practice before this Court. A law firm may appear in the following form of designation or its equivalent:

John Smith
A Member of Smith and Jones, P.C.
Attorneys for Plaintiff

L.R. 83-2.1.2 The Bar of this Court

L**.R. 83-2.1.2.1 In General**. Admission to and continuing membership in the Bar of this Court are limited to persons of good moral character who are active members in good standing of the State Bar of California. If an attorney admitted to the Bar of this Court ceases to meet these criteria, the attorney will be subject to the disciplinary rules of the Court, infra.

L.R. 83-2.1.2.2 Admission to the Bar of this Court.
Each applicant for admission to the Bar of this Court must complete an Application for Admission to the Bar of the Central District of California (Form G-60) and

submit it to the Court electronically through the Court's website, together with the admission fee prescribed by the Judicial Conference of the United States and such other fees as may from time to time be required by General Order of this Court. The completed Application for Admission to the Bar of the Central District of California must include certification that the applicant is familiar with the Court's Local Civil and Criminal Rules and with the Federal Rules of Civil Procedure, Criminal Procedure, and Evidence.

L.R. 83-2.1.2.3 Continuing Membership in the Bar of this Court. Each attorney admitted to the Bar of this Court must, in order to remain a member of the Bar of this Court, pay the annual renewal fee imposed by General Order of the Court.

L.R. 83-2.1.3 Pro Hac Vice Practice

L.R. 83-2.1.3.1 Who May Apply for Permission to Practice Pro Hac Vice. An attorney who is not a member of the State Bar of California may apply for permission to appear pro hac vice in a particular case in this Court if the attorney:

(a) is a member in good standing of, and eligible to practice before, the bar of any United States Court, or of the highest court of any State, Territory, or Insular Possession of the United States;

(b) is of good moral character;

(c) has been retained to appear before this Court; and

(d) is not disqualified under L.R. 83-2.1.3.2

L.R. 83-2.1.3.2 Disqualification from Pro Hac Vice Appearance. Unless authorized by the Constitution of the United States or Acts of Congress, an applicant is not eligible for permission to practice pro hac vice if the applicant:

(a) resides in California;

(b) is regularly employed in California; or

(c) is regularly engaged in business, professional, or other similar activities in California.

L.R. 83-2.1.3.3 How to Apply for Permission to Appear Pro Hac Vice.

(a) Each applicant for permission to appear pro hac vice must complete an Application of Nonresident Attorney to Appear in a Specific Case (Form G-64, available on the Court's website), which must include:

(1) certification that the applicant is familiar with the Court's Local Civil and Criminal Rules and with the Federal Rules of Civil Procedure, Criminal Procedure, and Evidence;

(2) identification of Local Counsel as required by L.R. 83-2.1.3.4; and

(3) a list of all pro hac vice applications made to this Court in the previous three years.

(b) The completed Application of Nonresident Attorney to Appear in a Specific Case must be electronically filed by the identified Local Counsel in each case in which the applicant seeks to appear, together with the following:

(1) a separate proposed Order;

(2) the pro hac vice fee set by General Order of the Court (unless the applicant is employed by the United States or any of its departments or agencies, in which case no fee is required); and

(3) a Certificate of Good Standing from each state bar in which the applicant is a member, issued no more than 30 days before filing the Application of Nonresident Attorney to Appear in a Specific Case.

(c) Approval of the applicant's pro hac vice application will be at the discretion of the assigned judge in each case in which an application is submitted.

By practicing in this Court, the registered pro hac vice attorney submits to the disciplinary authority of the Central District of California.

L**.R. 83-2.1.3.4 Designation of Local Counsel**. Every attorney seeking to appear pro hac vice must designate as Local Counsel an attorney with whom the Court and opposing counsel may readily communicate regarding the conduct of the case and upon whom documents may be served. An attorney may be designated as Local Counsel only if he or she: (1) is a member of the Bar of this Court and (2) maintains an office within the District for the practice of law, in which the attorney is physically present on a regular basis to conduct business.

L.R. 83-2.1.3.5 Designation of Co-Counsel. A judge to whom a case is assigned may, in the exercise of discretion, require the designation of an attorney who is a member of the Bar of this Court and who maintains an office within the District as co-counsel with authority to act as attorney of record for all purposes.

L.R. 83-2.1.4 Attorneys for the United States or Its Departments or Agencies

L.R. 83-2.1.4.1 Attorney for the United States or its Departments or Agencies. (a) Any person who is eligible for admission to the Bar of this Court under L.R. 83-2.1.2 and who is employed by the United States or any of its departments or agencies may practice in this Court in all actions or proceedings within the scope of his or her employment by the United States without being admitted to the Bar of this Court and without paying any associated admission fee. To register for permission to practice under this L.R. 83-2.1.4.1(a), the federal government attorney must comply with the other requirements of L.R. 83-2.1.2, including completion of an Application for Admission to the Bar of the Central District of California (Form G-60), which must be submitted to the Court electronically through the Court's website.

(b) Any person who is not eligible for admission under L.R. 83-2.1.2 or 83-2.1.3, who is employed within this state and is a member in good standing of, and eligible to practice before, the bar of any United States Court, the District of Columbia Court of Appeals, or the highest court of any State, Territory or Insular Possession of the United States, and is of good moral character, may be granted leave of court to practice in this Court in any matter for which such person is employed or retained by the United States or its departments or agencies. The application for such permission must

include a certification filed with the Clerk showing that the applicant has applied to take the next succeeding Bar Examination for admission to the State Bar of California for which that applicant is eligible. No later than one year after submitting the foregoing application, the applicant must submit to this Court proof of admission to the State Bar of California. Failure to do so will result in revocation of permission to practice in this Court.

L.R. 83-2.1.4.2 Special Assistant United States Attorneys. Notwithstanding L.R. 83-2.1.4.1, any United States Armed Forces attorney who has been appointed a Special Assistant United States Attorney under 28 U.S.C. sections 515 and 543 may handle misdemeanor matters before this Court. Attorneys employed by the United States Department of Justice specially appointed by the United States Attorney General to conduct any kind of legal proceeding, civil or criminal, under 28 U.S.C. § 515(a), may appear without filing an Application of Nonresident Attorney to Appear in a Specific Case.

L.R. 83-2.1.5 Registered Legal Services Attorney. A registered legal services attorney authorized to appear in the state courts of California under California Rules of Court, Rule 9.45, may apply for permission to appear in a case before this Court under the conditions set forth in that rule. Such an applicant must complete an Application of Registered Legal Services Attorney to Practice Before the Court (Form CV-99, available on the Court's website), which must include:

> (a) certification that the applicant is a registered legal services attorney authorized to practice law in the state courts of California pursuant to California Rules of Court, Rule 9.45 (or a successor rule);
>
> (b) certification that the applicant is familiar with the Court's Local Civil and Criminal Rules and with the Federal Rules of Civil Procedure, Criminal Procedure, and Evidence; and
>
> (c) identification of a supervising attorney who is a member in good standing of the Bar of this Court, and who must appear with the registered legal services attorney as one of the attorneys of record. The completed Application of Registered Legal Services Attorney to Practice Before the Court must be electronically filed by the supervising attorney in each case in which the applicant seeks to

appear, together with a separate proposed Order. Approval of the application will be at the discretion of the assigned judge in each case in which an application is submitted. By practicing in this Court, the registered legal services attorney submits to the disciplinary authority of the Central District of California.

L.R. 83-2.2 Parties Without Attorneys

L.R. 83-2.2.1 Individuals. Any person representing himself or herself in a case without an attorney must appear pro se for such purpose. That representation may not be delegated to any other person -- even a spouse, relative, or co-party in the case. A non-attorney guardian for a minor or incompetent person must be represented by counsel.

L.R. 83-2.2.2 Organizations. Only individuals may represent themselves pro se. No organization or entity of any other kind (including corporations, limited liability corporations, partnerships, limited liability partnerships, unincorporated associations, trusts) may appear in any action or proceeding unless represented by an attorney permitted to practice before this Court under L.R. 83-2.1.

L**.R. 83-2.2.3 Compliance With Federal Rules**. Any person appearing pro se is required to comply with these Local Rules, and with the F.R.Civ.P., F.R.Crim.P., F.R.Evid. and F.R.App.P

L**.R. 83-2.2.4 Sanctions**. Failure to comply with the rules enumerated in L.R. 83-2.2.3 may be grounds for dismissal or judgment by default