In The United States Supreme Court

Re: Notice of Related Compelled Speech and Compelled Association Questions Presented and Motion That They Be Considered and Conferenced on the Same Day As They Are Inextricably Intertwined

To The Court:

Covid19 and 21st Century advances in technology have transformed modern life and the practice of law. The *Rules Enabling Act*, however, does not authorize each lower court to paddle its own canoe. Congress commanded an even playing field for local Rules, i.e., "local rules shall not abridge, enlarge, or modify any substantive right." 28 U.S.C. 2072(b). The challenged local Rules do exactly what they are prohibited from doing. They "abridge, enlarge, and modify" every freedom set for in the Bill of Rights, and they transgress multiple Congressionally enacted statutes, such as the right to counsel 28 U.S.C. § 1654 and full faith and credit 28 U.S.C. §1738 — in one fell sweep by providing a patent and monopoly to local attorneys. Lower courts have consistently side-stepped the *Rules Enabling Act* by holding local Rule discrimination against outsiders is *rational* and doubled down by holding only this Court has *supervisory* review. This Court has not granted review in a similar local Rule case since *Frazier v. Heebe*, 482 U.S. 641 (1987), where it reversed the lower court's application of rational basis review under its *supervisory* jurisdiction. Nevertheless, this Court denied review.

Petitioners filed a petition for rehearing arguing the Court's order was improvidently entered for the reasons set forth and because the challenged local Rules on their face plainly and unambiguously authorize each court by local Rules to paddle its own canoe. Per Supreme Court Rule 44, Petitioners further concurrently filed virtually the identical lawsuit in *Lawyers United v. United States*, N.D. Cal docket 22-00004 because the D.C. Circuit's one-paragraph decision is not precedent and it does not address Petitioners' authorities. Life is already sufficiently solitary, poor, brutish, nasty, and short without lower court judges systematically trespassing the *Rules Enabling Act* and providing an uneven playing field.

Petitioners recently learned of the pending cert petition in *McDonald v. Forth* 21-800. Petitioners aver this *McDonald* related petition is another compelling reason rehearing is warranted in light Rule 44 and this Court's *supervisory* jurisdiction over local Rules.

Petitioners in *Lawyers United v. United States*, docket 21-507, request the Court to take judicial notice that their petition raises the identical compelled speech and compelled association question presented in *McDonald v. Forth,* on which the Court has requested a response. That response is due on February 7, 2022. The Court has conferenced Petitioners' request for rehearing for February 18, 2022. Petitioners respectfully ask the Court to continue the February 18 conference and to grant review in both petitions.

The *McDonald v. Forth,* question presented states*:*

> Does the First Amendment prohibit a state from compelling attorneys to join and fund a state bar association that engages in extensive political and ideological activities?

The *Lawyers United Inc. v. United State* questions presented state:

> 2. The second question presented is whether Local Rules that on their face create classes of citizens and lawyers and compel the petitioners, and all similarly situated *licensed* attorneys, to subsidize, join and associate with a second, third, and fourth mandatory state bar association as a condition precedent to obtain *general* admission *licensing* privileges in the United States District Courthouse are constitutional?

Hence, the identical First Amendment compelled speech and compelled association question presented in *McDonald v. Firth* in the State context is also presented in *Lawyers United v. United States* in the local Rule context. This Court has unique *supervisory* review over local Rules and is not limited to constitutional review as in *McDonald v. Firth*.

When state mandatory bar associations violate their members' First Amendment freedoms that deprivation has unintended national consequences as our Constitution of checks and balances is compromised, not only in the forum state, but in all states and in the federal system. For example, assume this Court and every United States Court of Appeals compelled every one of its members, as a condition precedent for continued bar admission to associate with and pay annual dues to a *sua sponte* created mandatory bar association that engaged in political advocacy — the result would be a massive concentration of power and influence. Power corrupts. Absolute power corrupts absolutely. If, Petitioners here cannot be compelled to associate with and pay annual dues to a Supreme or United States Court of Appeals created mandatory bar association, it follows they cannot be compelled to associate

with and pay annual dues to multiple state bar associations to become a member of the bar of the Federal District Court.

In that "the peace of the WHOLE ought not to be left at the disposal of a PART," *The Federalist* 80, this Court ought not grant review in PART (*McDonald*) without granting review in the WHOLE (*Lawyers United*) as the Federal Courts often vicariously adopt mandatory state bar association protocol in the 30 states that compel citizens to associate and pay annual dues for speech they disagree.

More particularly, a central component of Petitioners in *Lawyers United v. United States*, docket 21-507, was their repeated reliance on this Court's decision in *Janus v. AFSCME* 138 S. Ct. 2448 (2018). Petitioners further repeatedly argued that the challenged local Rule exclusive reliance on forum state mandatory bar associations to determine federal *general* admission rules also trespasses the *Code of Conduct for United States Judges* and Fifth Amendment notions of Due Process and Equal Protection. Petitioners also argue these local Rules reliance on mandatory bar associations trespass *Federal Rules of Civil Procedure* 1, 83(a)(1) because they are not uniform and they do not "secure the just, speedy, and inexpensive determination of every action." FRCP 1. These nonuniform local Rules in light of 21st Century technology and Covid19 are unjust, cause unnecessary delay, and double the time and expense to secure access to the United States Courthouse.

In *Lawyers United v. United States*, the District Court and the D.C, Circuit refused to address these fundamental compelled speech and compelled association issues. Petitioners aver the courts below circled their wagon carrying their individual canoes and suppressed Petitioners' reliance on *Janus* and the *Code of Conduct for United States Judges* in order to conceal the blatant misconduct of D.C. Court of Appeals Judge *Janice Rogers Brown*. Judge Brown wrote the panel decision in *NAAMJP v. Howell, supra*, on March 14, 2017. The one paragraph D.C. Circuit (2021) decision below affirms Judge Brown's 2017 decision.

As set forth in Petitioners' Supplemental Brief, Judge Brown should have recused herself under 28 U.S.C. § 455 because of her close personal and direct financial interest as a retired California Supreme Court judge. Judge Brown retired on August 31, 2017. Judge Brown's refusal to recuse herself is consistent with the *Wall Street Journal* findings that federal judges are repeatedly violating the recusal statute. Judge Brown is now collecting a double pension from the California and the United States Judiciary. A reasonable person would conclude that Judge Brown knew she was going to retire and knew she should have recused herself when she wrote the panel decision in *Howell*.

Even assuming, Judge Brown did not directly violate the recusal statute, there is a substantial appearance that she was biased when she concealed the evidence set forth in Petitioners' App. 45-82 proving the California bar exam that experienced attorneys are required to take and pass to obtain general admission privileges in the four California Federal District Courts and in the United States District Court for the District of Columbia — is not a valid or reliable licensing tests. This putative licensing test has a *standard error of measurement* shoddier than .48. Judge Brown deliberately suppressed this evidence and deliberately side-stepped the *Rules Enabling Act* and Congressionally enacted statutes. Judge Brown's decision authorizes each court to paddle its own canoe based on any *rational* political reason. Judge Brown's decision emanating from the most prestigious Circuit in our Union is essentially carved in stone. These local Rules are identical to a sign on the United States Courthouse door saying BLACKS and JEWS barred from entering. Based on Judge Brown's decision these signs are *rational*.

At this time, retired Janice Rogers Brown is tantamount to the Chief Justice and Supreme Court of the United States of America. Based on Judge Brown's decision, every year 16,000 lawyers are provided admission on motion privileges in another state and every one of them is categorically disqualified for general admission privileges by the challenged judge-legislated local Rules. Judge Brown retired before this Court's decision in *Janus* and before *McDonald* was decided.

Judge Brown is not the trustee of our Constitution. This Court is the trustee of our Constitution. "A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior." *Pegram v. Hendrich*, 530 U.S. 211, 225 (2000). This Honorable Court cannot deny rehearing and review without undermining its sacred fiduciary duty as a trustee to decide cases equally to rich and poor alike. Under the *Rules Enabling Act*, each district court is not authorized to paddle its own canoe. Equal justice under law requires equal justice in all of the United States Courthouses.

Respectfully submitted,

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