No. 22-1733

In the United States Court of Appeals For the Third Circuit

ZACHARY GREENBERG,
Plaintiff-Appellee,

v.

JERRY M. LEHOCKY, in his official capacity as Board Chair of the Disciplinary Board of the Supreme Court of Pennsylvania, et al.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania (No. 2:20-cv-03822)

BRIEF OF *AMICUS CURIAE* CHRISTIAN LEGAL SOCIETY IN SUPPORT OF APPELLEE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for *Amicus* certifies that Christian Legal Society is a registered non-profit and has no parent corporations, nor does any publicly held corporation own 10% or more of its stock.

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INTEREST OF *AMICUS CURIAE*[1]

Christian Legal Society (CLS) is a nondenominational association of Christian attorneys, law students, and law professors. Since its founding in 1961, CLS has ministered to Christian attorneys and law students, advocated for First Amendment freedoms for all Americans, and supported legal aid. CLS opposes harassment and discrimination against any woman or man. Women constitute a significant percentage of CLS' attorney and law student leaders and members, including two of CLS' immediate past presidents who are women and who have practiced law for a number of years. CLS membership includes persons of diverse racial and ethnic backgrounds. CLS has numerous members and attorneys in Pennsylvania, many of whom are associated with CLS chapters in Pittsburgh and Philadelphia. Additionally, CLS has student chapters at three Pennsylvania law schools. CLS – and especially its attorney members in Pennsylvania – is concerned with the outcome of this case because of its effect on the free exercise and free speech rights of individuals. CLS filed comments concerning Pennsylvania's proposed adoption of Rule 8.4(g) the three times the Disciplinary Board of the Supreme Court of Pennsylvania held a comment period but was precluded from doing so with this

[1] No counsel for any party authored this brief in whole or in part. No person or entity other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

latest version of the rule because the Disciplinary Board bypassed the usual comment period. Pennsylvania's Rule 8.4(7) will create far more problems than it will resolve.

Amicus Curiae files this Brief pursuant to Rule 29(a)(2), FRAP. All parties consent to its filing.

SUMMARY OF ARGUMENT

Pennsylvania's Rule 8.4(g) is unconstitutional under the analyses of three recent United States Supreme Court decisions.

ARGUMENT

Pennsylvania's Rule 8.4(g) is a variant of the highly controversial and deeply flawed ABA Model Rule 8.4(g), which has been rejected or abandoned by at least 15 states in the six years since its promulgation.[2] Leading scholars have determined

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[2] After six years of careful study by state supreme courts and state bar associations in many states across the country, at least 15 states have abandoned ABA Model Rule 8.4(g) or a variant thereof as unconstitutional or unworkable. States whose high court or state bar associations have rejected ABA Model Rule 8.4(g) or a variant thereof include Alaska, Arizona, Idaho, Illinois, Hawaii, Louisiana, Minnesota, Montana, Nevada, New Hampshire, North Dakota, South Carolina, South Dakota, Tennessee, and Texas. Utah has held two public comment periods but has not issued any sort of decision. Vermont and New Mexico are the only states to have adopted ABA Model Rule 8.4(g) in full. A small handful of states – Alaska, Connecticut, New York, Maine, and New Hampshire – have adopted a variant of ABA Model Rule 8.4(g), some after rejecting the model rule as unworkable.

State attorneys general have issued opinions critical of ABA Model Rule 8.4(g) in Alaska, Arizona, Louisiana, South Carolina, Tennessee, and Texas. *See. e.g.*, Tenn. Att'y Gen. Letter (Mar. 16, 2018) at 10, Letter from Attorney General Slattery to Supreme Court of Tennessee, https://www.clsreligiousfreedom.org/sites/default/files/site_files/ABA%208.4(g)/TN%20AG%20Opinion.pdf ("[T]he goal of the proposed rule is to subject to regulatory scrutiny all attorney

ABA Model Rule 8.4(g) to be a speech code for lawyers.[3] The late Professor Ronald Rotunda, a highly respected scholar in both constitutional law and legal ethics, warned that ABA Model Rule 8.4(g) threatens attorneys' First Amendment rights.[4] Regarding the new rule, he and Professor John S. Dzienkowski wrote, in the 2017-2018 edition of *Legal Ethics: The Lawyer's Deskbook on Professional Responsibility*, "[t]he ABA's efforts are well intentioned, but ... raise problems of vagueness, overbreadth, and chilling protected speech under the First Amendment."[5] They observed that "[t]he language the ABA has adopted in Rule 8.4(g) and its associated Comments are similar to laws that the Supreme Court has invalidated on free speech grounds."[6] In a *Wall Street Journal* commentary entitled *The ABA Overrules the First Amendment*, Professor Rotunda explained:

> In the case of Rule 8.4(g), the standard, for lawyers at least, apparently does not include the First Amendment right to free speech. Consider the following form of "verbal" conduct when one lawyer tells another, in

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expression that is in any way connected with the practice of law. That approach is wholly inconsistent with the First Amendment.")

[3] Eugene Volokh, *A Nationwide Speech Code for Lawyers?*, The Federalist Society (May 2, 2017), https://www.youtube.com/watch?v=AfpdWmlOXbA.

[4] Ronald D. Rotunda, *The ABA Decision to Control What Lawyers Say: Supporting 'Diversity' But Not Diversity of Thought,* The Heritage Foundation (Oct. 6, 2016), http://thf-reports.s3.amazonaws.com/2016/LM-191.pdf. Professor Rotunda debated proponents of Rule 8.4(g) at the 2017 Federalist Society National Lawyers Convention. *Using the Licensing Power of the Administrative State: Model Rule 8.4(g)*, The Federalist Society (Nov. 20, 2017), https://www.youtube.com/watch?v=V6rDPjqBcQg.

[5] Ronald D. Rotunda & John S. Dzienkowski, *Legal Ethics: The Lawyer's Deskbook on Professional Responsibility*, ed. April 2017, "§ 8.4-2(j) Racist, Sexist, and Politically Incorrect Speech" & "§ 8.4-2(j)-2. The New Rule 8.4 and the Free Speech Problems It May Raise" in "§ 8.4-2 Categories of Disciplinable Conduct."

[6] *Id.* at "§ 8.4-2(j)-2. The New Rule 8.4 and the Free Speech Problems It May Raise."

> connection with a case, "I abhor the idle rich. We should raise capital gains taxes." The lawyer has just violated the ABA rule by manifesting bias based on socioeconomic status.[7]

Professor Josh Blackman has explained that "Rule 8.4(g) is unprecedented, as it extends a disciplinary committee's jurisdiction to conduct merely 'related to the practice of law,' with only the most tenuous connection to representation of clients, a lawyer's fitness, or the administration of justice."[8]

A thoughtful analysis of ABA Model Rule 8.4(g) by Professor Michael McGinniss, Dean of the University of North Dakota School of Law "examine[s] multiple aspects of the ongoing Model Rule 8.4(g) controversy, including the rule's background and deficiencies, states' reception (and widespread rejection) of it, [and] socially conservative lawyers' justified distrust of new speech restrictions."[9] A free society requires attorneys who speak their minds freely without fear of losing their license to practice law. In his law review article, Professor McGinniss "examine[s] multiple aspects of the ongoing Model Rule 8.4(g) controversy, including the rule's

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[7] Ronald Rotunda, "*The ABA Overrules the First Amendment: The legal trade association adopts a rule to regulate lawyers' speech*," *The Wall Street Journal,* Aug. 16, 2016, http://www.wsj.com/articles/the-aba-overrules-the-first-amendment-1471388418.

[8] Josh Blackman, *Reply: A Pause for State Courts Considering Model Rule 8.4(g),* 30 Geo. J. Legal Ethics 241, 243 (2017). *See also,* George W. Dent, Jr., *Model Rule 8.4(g): Blatantly Unconstitutional and Blatantly Political,* 32 Notre Dame J.L. Ethics & Pub. Pol'y 135 (2018).

[9] Michael McGinniss, *Expressing Conscience with Candor: Saint Thomas More and First Freedoms in the Legal Profession*, 42 Harv. J.L. & Pub. Pol'y 173, 173 (2019), https://law.und.edu/_files/docs/features/mcginnissexpressingconsciencewithcandor-harvardjlpp-2019.pdf.

background and deficiencies, states' reception (and widespread rejection) of it, [and] socially conservative lawyers' justified distrust of new speech restrictions."[10]

Professor Margaret Tarkington, who teaches professional responsibility at Indiana University Robert H. McKinney School of Law, has raised strong concerns about ABA Model Rule 8.4(g)'s impact on attorneys' speech. She stresses that "[h]istorically it has been disfavored groups and minorities that have been negatively affected—and even targeted—by laws that restrict lawyers' First Amendment rights, including African Americans during desegregation, alleged terrorists following 9/11, communists in the 1950s, welfare recipients, debtors, and criminal defendants."[11] She insists that "lawyer speech, association, and petitioning" are "rights [that] must be protected" because they "play a major role in checking the use of governmental and non-governmental power in the United States."[12]

But liberal lawyers should also be concerned about the proposed rule's disturbing implications for their ability to practice law. For example, attorneys who serve on their firms' hiring committees and make employment decisions in which, in order to achieve diversity goals, even modest preference in hiring or promotion is given based on race, sex, religion, or sexual orientation would be in violation of Rule

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[10] *Id.* at 173.
[11] Margaret Tarkington, *Throwing Out the Baby: The ABA's Subversion of Lawyer First Amendment Rights*, 24 Tex. Rev. L. & Pol. 41, 80 (2019).
[12] *Id.*

8.4(g).[13] Or an attorney who tweets a common but hurtful sexual term aimed at the President's spokeswoman could be subject to discipline under the proposed rule.[14] Or a law professor whose comments to the media employ racial and gender stereotypes to describe the critics of ABA Model Rule 8.4(g) could be subject to discipline under the proposed rule.[15] Because the terms "harassment" and "discrimination" are difficult to define and hold greatly dissimilar meanings for different people, ABA Model Rule 8.4(g) and Pennsylvania's Rule 8.4(g) threaten attorneys' speech across the political, ideological, social, and religious spectrum.

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[13] Thomas Spahn, a highly respected professional ethics expert, has concluded that ABA Model Rule 8.4(g) "prohibits such discrimination as women-only bar groups or networking events, minority-only recruitment days or mentoring sessions, etc." He further concluded that ABA Model Rule 8.4(g) would prohibit any discrimination in hiring practices:

> Many of us operating under the old ABA Model Rules Comments or similar provisions either explicitly or sub silentio treated race, sex, or other listed attributes as a "plus" when deciding whom to interview, hire, or promote within a law firm or law department. That is discrimination. It may be well-intentioned and designed to curry favor with clients who monitor and measure law firms' head count on the basis of such attributes – but it is nevertheless discrimination. *In every state that adopts the new ABA Model Rule 8.4(g), it will become an ethics violation.*

The District of Columbia Bar, Continuing Legal Education Program, Civil Rights and Diversity: Ethics Issues 5-7 (July 12, 2018) (emphasis supplied).

[14] Debra Cassens Weiss, *Big Law Partner Deletes Twitter Account after Profane Insult Toward Sarah Huckabee Sanders*, ABA Journal, Oct. 1, 2018 (attorney, honored in 2009 by the ABA Journal "for his innovative use of social media in his practice," apologized to firm colleagues, saying no "woman should be subjected to such animus").

[15] Eugene Volokh, *Professor Stephen Gillers (NYU) Unwittingly Demonstrates Why ABA Model Rule 8.4(g) Chills Protected Speech*, The Volokh Conspiracy, June 17, 2019, https://reason.com/2019/06/17/professor-stephen-gillersnyu-unwittingly-demonstrates-why-aba-model-rule-8-4g-chills-protected-speech/. The article explains that in a media interview regarding ABA Model Rule 8.4(g), a proponent of the Rule (inaccurately) stereotyped critics of the Rule by race and gender, and suggests that the same comment made in the context of a bar association debate might be grounds for discipline under ABA Model Rule 8.4(g).

Given the current climate, lawyers who hold classical liberal, conservative, libertarian, or religious viewpoints, understandably are unwilling to support a black letter rule that could easily be misused to deprive them of their license to practice law. As a nationally recognized First Amendment expert has warned, ABA Model Rule 8.4(g) is a speech code that threatens attorneys' speech.[16]

Pennsylvania's Rule 8.4(g) provides, in part,

> It is professional misconduct for a lawyer to:
>
> ...
>
> (g) in the practice of law, knowingly engage in conduct constituting harassment or discrimination based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status.... This paragraph does not preclude advice or advocacy consistent with these Rules.
>
> [3] For the purposes of paragraph (g), conduct in the practice of law includes (1) interacting with witnesses, coworkers, court personnel, lawyers, or others while appearing in proceedings before a tribunal or in connection with the representation of a client; (2) operating or managing a law firm or law practice; or (3) participation in judicial boards, conferences, or committees; continuing legal education seminars; bench bar conferences; and bar association activities where legal education credits are offered. The term "practice of law" does not include speeches, communications, debates, presentations, or publications given or published outside the contexts described in (1)-(3).
>
> [4] "Harassment" means conduct that is intended to intimidate, denigrate or show hostility or aversion toward ....

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[16] Volokh, *supra* note 3.

> [5] "Discrimination" means conduct that a lawyer knows manifests an intention: to treat a person as inferior …; to disregard relevant considerations of individual characteristics or merit …; or to cause or attempt to cause interference with the fair administration of justice ….

Like its predecessor, Pennsylvania's newest Rule 8.4(g) is unconstitutional under current United States Supreme Court precedent. The rule not only ignores, but also fails to meet the standards set forth in, three Supreme Court cases: *Iancu v. Brunetti*, 588 U.S. ---, 139 S. Ct. 2294 (2019); *Nat'l Inst. of Family and Life Advocates v. Becerra (NIFLA)*, 585 U.S. ---, 138 S. Ct. 2361 (2018); and *Matal v. Tam*, 582 U.S. ---, 137 S. Ct. 1744 (2017).

The First Amendment fully protects offensive, derogatory, or demeaning speech. Any state effort to single out such speech for sanction is a viewpoint-based speech restriction and is subject to the strictest First Amendment scrutiny. *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019); *Matal v. Tam*, 137 S. Ct. 1744 (2017). Such a speech restriction survives First Amendment scrutiny only if the government actually demonstrates that the restriction serves a compelling state interest that cannot be achieved in a more narrowly tailored manner. *Id.* Additionally, the First Amendment analysis does not change simply because the speech restriction is imposed on an attorney. "Derogatory" or "demeaning" speech is not subject to decreased constitutional protection simply because it is spoken by an attorney in a setting "related to the practice of law." The First Amendment protects "professional

speech" as fully as it does speech by nonprofessionals. *NIFLA*, 138 S. Ct. at 2371-72.

I. *National Institute of Family and Life Advocates v. Becerra* Protects Attorneys' Speech from Content-based Speech Restrictions like Pennsylvania's Rule 8.4(g)

As the District Court correctly found, under the U.S. Supreme Court's analysis in *NIFLA*, Pennsylvania's Rule 8.4(g) is an unconstitutional content-based restriction on attorneys' speech. Dist. Ct. Op., 55-57. "Content-based regulations 'target speech based on its communicative content.'" *NIFLA*, 138 S. Ct. at 2371 (quoting *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015)). In *NIFLA*, the Court held that government restrictions on professionals' speech – including attorneys' professional speech – are content-based speech restrictions and are, therefore, "*presumptively unconstitutional*." *Id.* at 2371 (emphasis added) (finding petitioners likely to succeed on the merits of their claim that requiring clinics serving primarily pregnant women to provide certain notices violated the First Amendment). The *NIFLA* Court firmly rejected the idea that professional speech is less protected by the First Amendment than other speech, stressing that it "*has not recognized 'professional speech' as a separate category of speech. Speech is not unprotected merely because it is uttered by 'professionals.'*" *Id.* at 2371-72 (emphasis added).

The District Court below correctly found that Pennsylvania's Rule 8.4(g) is a content-based speech restriction that depends on the communicative content of an

attorney's speech. Comment [3] to Pennsylvania's Rule 8.4(g) explains that "discrimination" includes "conduct that … manifests an intention[] to treat a person as inferior" and "harassment" includes "conduct that is intended to intimidate, denigrate or show hostility or aversion." By redefining both "harassment" and "discrimination" in terms of actions, Pennsylvania's Rule 8.4(g) attempts to remove words and verbal conduct – in other words, speech – from its purview. In actuality, it fails. Comment [3] also defines the term "practice of law" as not including "speeches, communications, debates, [and] presentations … outside the contexts described in (1)-(3)." If Rule 8.4(g) does not include each of these forms of verbal communication outside of the specified contexts, then it necessarily includes speeches, communications, debates, presentations – again all verbal communications – given within the context of (1)-(3). Pennsylvania's Rule 8.4(g)'s definition of "practice of law" reveals the rule's focus on speech. As such, the rule impermissibly regulates professional speech based on the content of the speech.

Content-based laws "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *NIFLA*, 138 S. Ct. at 2371. The Court reaffirmed that its "precedents have long protected the First Amendment rights of professionals" and "has applied strict scrutiny to content-based laws that regulate the noncommercial speech of lawyers." *Id.* at 2374. As the Court observed, "[t]his stringent standard reflects the

fundamental principle that governments have "'no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" *Id* at 2371 (quoting *Police Dept. of Chicago v. Mosely*, 408 U.S. 92, 95 (1972)). The Court was clear that a state regulation of attorney speech would be subject to strict scrutiny to ensure that any regulation is narrowly tailored to achieve a compelling interest.

Here, the district court below conducted a strict scrutiny analysis and correctly found the Disciplinary Board's "nebulous good" in enacting Rule 8.4(g) "insufficient to serve as a compelling interest" in restricting attorneys' freedom of speech. Dist. Ct. Op. at 61. Nor, as the district court found, is Rule 8.4(g) – with its broad scope reaching attorney speech outside the courtroom, the context of a pending case, and the administration of justice – narrowly tailored to serve the Board's interest using the least restrictive means. As such, there can be no denying that Pennsylvania's Rule 8.4(g) regulates professional speech in violation of *NIFLA*'s analysis and ruling.

II. Under *Matal v. Tam* and *Iancu v. Brunetti*, Pennsylvania's Rule 8.4(g) Invites Unconstitutional Viewpoint Discrimination

Separately, the broad definitions of "harassment" and "discrimination" render Pennsylvania's Rule 8.4(g) unconstitutional under the U.S. Supreme Court's decisions in *Matal* and *Iancu*. The Supreme Court, first in *Matal* and again in *Iancu*, ruled that government officials may not determine whether speech is "derogatory or demeaning" because that invites viewpoint discrimination; therefore, laws or rules

violate the First Amendment if they create opportunities for viewpoint discrimination and chilling speech. Thus, here the district court correctly found that Pennsylvania's Rule 8.4(g) constitutes viewpoint discrimination in violation of the First Amendment.

It is a "core postulate of free speech law: The government may not discriminate against speech based on ideas or opinions it conveys." *Iancu*, 139 S. Ct. at 2299 (internal citation omitted). "At its most basic, the test for viewpoint discrimination is whether—within the relevant subject category—the government has singled out a subset of messages for disfavor based on the views expressed." *Matal*, 137 S. Ct. at 1766.

In *Matal*, all nine justices struck down a provision of a longstanding federal law, the Lanham Act, declaring it unconstitutional because it allowed government officials to deny trademarks for terms that may "disparage or bring into contempt or disrepute" living or dead persons. Allowing government officials to determine what words do and do not "disparage" a person "offends a bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend." *Id.* at 1751. Justice Alito, writing for a plurality of the Court, noted that "[s]peech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express 'the thought that we

hate.'" *Id.* at 1764 (quoting *United States v. Schwimmer*, 279 U.S. 644, 655 (1929) (Holmes, J., dissenting) (plurality op.)). Thus, a unanimous Court held the federal statute facially unconstitutional because it allowed government officials to penalize "disparaging" speech. The Court made clear that a government prohibition on disparaging, derogatory, demeaning, or offensive speech is blatant viewpoint discrimination and, therefore, unconstitutional. *Id.* at 1744, 1753-1754, 1765.

In his concurrence, Justice Kennedy, joined by Justices Ginsburg, Sotomayor, and Kagan, observed that it is unconstitutional to suppress speech that "demeans or offends." *Id.* at 1766 (Kennedy, J., concurring). Justice Kennedy stressed that "[t]he danger of viewpoint discrimination is that the government will remove certain ideas or perspectives from a broader debate," particularly "if the ideas or perspectives are ones a particular audience might think offensive." *Id.* at 1767 (Kennedy, J., concurring). Justice Kennedy closed with a sober warning:

> A law that can be directed against speech found offensive to some portion of the public can be turned against minority and dissenting views to the detriment of all. The First Amendment does not entrust that power to the government's benevolence. Instead, our reliance must be on the substantial safeguards of free and open discussion in a democratic society.

Id. at 1769 (Kennedy, J., concurring).

In 2019, the Supreme Court reaffirmed its rejection of viewpoint discrimination. The challenged terms in *Iancu* were "immoral" and "slanderous" and, once again, the Court found the terms were viewpoint discriminatory because

they allowed government officials to pick and choose which speech to allow. In her opinion for the Court, Justice Kagan explained that the terms "immoral" and "scandalous" insert a "facial viewpoint bias in the law [that] results in viewpoint-discriminatory application." *Iancu,* 139 S. Ct. At 2300. The Lanham Act's prohibition on "immoral[] or scandalous" trademarks was unconstitutional because:

> [I]t allows registration of marks when their messages accord with, but not when their messages defy, society's sense of decency or propriety. Put the pair of overlapping terms together and the statute, on its face, distinguishes between two opposed sets of ideas: those aligned with conventional moral standards and those hostile to them; those inducing societal nods of approval and those provoking offense and condemnation. The statute favors the former, and disfavors the latter.

Id.

In this newest version of Rule 8.4(g), Pennsylvania tried a sleight of hand maneuver in an attempt to remove the rule from the purview of Supreme Court precedent, by redefining "harassment" and "discrimination" without using terms like "disparaging" or "demeaning" or "derogatory" or "offensive" as it had in its prior iteration. Instead, the new rule defines "harassment" and "discrimination" with terms like "denigrate" and "intimidate" and "show hostility or aversion toward" and "treat as inferior." Changing the words used to define "harassment" and "discrimination" fails to remedy the Rule's constitutionality. For example, the word "disparage" is, in fact, a synonym for the word "denigrate." *See*

https://www.thesaurus.com/browse/denigrate. As properly determined by the district court, under the *Matal* and *Iancu* analyses, Pennsylvania's Rule 8.4(g) remains unconstitutional.

A rule that permits government officials to punish lawyers for speech that the government determines to be "harmful" or "derogatory or demeaning" – or that "is intended to intimidate, denigrate or show hostility or aversion toward" – is the epitome of an unconstitutional rule. Because Pennsylvania's Rule 8.4(g) will punish attorneys' speech based on their viewpoint, the district court appropriately found the rule unconstitutional under the analyses in both *Matal* and *Iancu*.

CONCLUSION

Pennsylvania's Rule 8.4(g) violates the First Amendment because it imposes sanctions based not only on the content but also the viewpoint of the speech. *NIFLA* clarifies that the First Amendment protects "professional speech" just as fully as other speech; there is no free speech carve-out that countenances content-based restrictions on professional speech. *Matal* and *Iancu* affirm that the terms used in Pennsylvania's Rule 8.4(g) create unconstitutional viewpoint discrimination. Clearly, Pennsylvania's Rule 8.4(g) unconstitutionally targets speech protected by the First Amendment and United States Supreme Court precedent.

Because the district court appropriately found that Pennsylvania's Rule 8.4(g) is both content-based discrimination and viewpoint discrimination in violation of the First Amendment, this Court should affirm the district court's decision.

Respectfully submitted,

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CERTIFICATE OF COMPLAINCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STLE REQUIREMENTS

1) This brief complies with the type-volume limitation of Fed. R. App. P.29(b)(4) because this brief contains 3835 words, excluding the parts of the brief exempted by Fed. R. App. P.32(f).

2) This brief complies with the typeface requirements of Fed. R. App. P.32(a)(5) and the type style requirements of Fed. R. App. P.32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 in 14-point Times New Roman font.

CERTIFICATE OF SERVICE

The undersigned hereby certified that on October 27, 2022, the foregoing was filed electronically and served on the other parties via the court's ECF system.

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