No. 23-833

In the
Supreme Court of the United States

ZACHARY GREENBERG,
Petitioner,

v.

JERRY LEHOCKY, IN HIS OFFICIAL CAPACITY AS BOARD CHAIR OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF *AMICUS CURIAE* INSTITUTE FOR FAITH AND FAMILY IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

Amicus curiae urges this Court to grant the Petition for Writ of Certiorari and reverse the decision of the Third Circuit.

The Institute for Faith and Family ("IFF") is a North Carolina nonprofit organization that exists to preserve and promote faith, family, and freedom through public policies that protect constitutional liberties, including the right to live and work according to conscience and faith. See https://iffnc.com. Since IFF is an expressive organization engaged in issue advocacy and its Executive Director (Tami Fitzgerald) is a licensed attorney, Rule 8.4(g) could have a devastating impact on the organization's ability to advocate the policies and positions it was established to promote and preserve. The ability to speak freely, often on contentious public matters, is critical to IFF's ongoing existence and advocacy.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

ABA Model Rule 8.4(g) is a constitutional catastrophe. It is a grave danger to the speech, religious, and association rights of licensed attorneys, public policy organizations, and the persons they serve. The Rule was fatally flawed when it was adopted in

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[1] Counsel of record for all parties received notice at least 10 days prior to the due date of *amicus curiae*'s intention to file this brief. *Amicus curiae* certifies that no counsel for a party authored this brief in whole or in part and no person or entity, other than *amicus curiae*, its members, or its counsel, has made a monetary contribution to its preparation or submission.

2016 and its defects have only been magnified by this Court's intervening precedent. Any State Bar that adopts this rule is stepping into a hornet's nest by regulating the content of speech, passing judgment on the popularity of political beliefs, and determining whether unpopular advocacy should be disciplined. *Amicus curiae* writes to emphasize the disastrous impact of the Rule on expressive associations, particularly those that participate in legal advocacy.

It is a sad reality that we live in a world where many people, including lawyers, are willing to suppress and punish the free speech of those with whom they disagree. Rule 8.4(g) can be deployed as a weapon to discipline attorneys for their *speech* on controversial issues—*speech unquestionably protected by the First Amendment*. The Rule jeopardizes fundamental First Amendment rights to Free Speech, Free Exercise, association, issue advocacy, and participation in the political process. It does nothing to further the administration of justice. On the contrary, it denies justice to the very persons entrusted with upholding it.

Attorneys should treat every person with dignity and respect, even where opinions differ on matters of fundamental conviction. But in today's contentious cultural climate, even the gentlest, most respectful expression of a "politically incorrect" opinion on a sensitive matter—marriage, sexual orientation, gender identity, abortion—could be perceived as "discrimination" or "harassment." Rule 8.4(g) unleashes the potential for the "unfettered discretion" and viewpoint discrimination that spelled constitutional doom for the statutes invalidated in *Nat'l Inst. of Fam.*

& Life Advocs. v. Becerra, 138 S. Ct. 2361, 2374 (2018) ("*NIFLA*") and *Matal v. Tam*, 582 U.S. 218 (2017).

Model Rule 8.4(g) attacks the very Constitution attorneys are sworn to uphold. Coercing the speech, attitudes, and even thoughts of licensed attorneys—without any guardrails to confine the regulation to a context where it might arguably be relevant—will have a negative impact on the administration of justice, particularly for those who cannot subscribe to the prevailing cultural orthodoxy. The Third Circuit failed to affirm the District Court, a well-reasoned ruling that would have helped halt the Rule's unnecessary intrusion on liberties of speech, religion, and association. The circuit court skirted the massive constitutional questions, concluding that Greenberg's "planned speech does not arguably violate the Rule, and he faces no credible threat of enforcement." *Greenberg v. Lehockey*, 81 F.4th 376, 384 (3d Cir. 2023). A concurring judge acknowledged that "someday an attorney with standing will challenge Pennsylvania Rule of Professional Responsibility 8.4(g)," suggesting the State Bar "c[ould] amend the Rule preemptively to eliminate many of the constitutional infirmities alleged by Greenberg in this case." *Id.* at 390 (Ambro, J., concurring).

This case raises questions that are crucial to preserving basic American freedoms. This Court should affirm Petitioner Greenberg's standing, paving the way to a timely resolution of the urgent underlying constitutional questions.

ARGUMENT

I. RULE 8.4(g) INFRINGES A PUBLIC POLICY ORGANIZATION'S RIGHT TO ENGAGE IN ISSUE ADVOCACY.

The breathtaking scope of Model Rule 8.4(g), even as recently amended, would have a punitive and chilling impact on the issue advocacy of *expressive organizations*, particularly public policy organizations whose centerpiece is advocacy. Issue advocacy requires the skills of licensed attorneys to navigate the judicial process. Entire organizations exist for purposes of advocacy, and they represent a variety of competing viewpoints. Rule 8.4(g) would squelch the speech of some organizations while amplifying the voices of others, even when there is a feeble attempt to exclude advocacy from the clutches of the Rule.

There are a multitude of potential problems impacting public policy organizations, including:

- Advocacy would potentially be limited to whatever issues or policy positions are "politically correct" and acceptable to State Bar officials;
- The organization's employment policies might be restricted, including the ability to hire and retain those who are committed to the organization's mission;
- Lobbying might be considered "sexual orientation discrimination" if an organization holds a traditional view of marriage (one man, one woman) and lobbies for conscience

protections of those who hold that viewpoint, or lobbies against a proposed state law or local ordinance that would add new protected classes (e.g., sexual orientation and gender identity) to existing anti-discrimination laws.

- Lobbying for pro-life laws (limiting abortion or protecting the health and safety of pregnant women) might be considered "discrimination" against women.

- Amicus briefs presenting a "politically incorrect" position concerning marriage or the right to life of an unborn child in the womb might be deemed "discrimination," e.g. (1) an amicus brief in *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020) arguing that the funeral home owner had the right to fire an employee who was hired as a man but later desired to represent himself to grieving clients as a woman; (2) a brief in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020) arguing that a group of nuns has the right to fight a government mandate that they pay for abortifacients and contraceptives in their health plan. Would these amicus briefs be considered "discrimination" within the meaning of the Rule?

- There are a myriad of other scenarios where an offended member of the audience might potentially file a complaint: Panel discussions, presentations (citizens, churches, schools, other audiences), op-eds, media interviews, social media posts, white papers, law review articles, candidate endorsements.

These concerns are not speculative but represent real threats to the common activities of public policy organizations. Rule 8.4(g) regulates *speech* far beyond the normal scope of professional rules. "Pennsylvania's Rule 8.4(g) expands far beyond regulation of speech within a judicial proceeding or representing a client." *Greenberg v. Goodrich*, 593 F.Supp. 3d 174, 208 (E.D. Pa. 2022), citing *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1071-72 (1991). The Rule's poorly defined language sweeps much too broadly, encroaching on organizational advocacy as well as the lives of individual attorneys. Constitutional flaws include the unfettered discretion granted to officials to determine whether a violation has occurred, content and viewpoint discrimination, vagueness, overbroad applications, speech control bordering on thought control, and the possibility that, even if the Rule's application were limited to *unlawful* discrimination (as defined by state law), the underlying anti-discrimination law itself may be unconstitutional.

The District Court discussed Comment Three to Rule 8.4(g), which states that "the practice of law does not include speeches, communications, debates, presentations, or publications given or published outside the contexts described" in an earlier portion of the Comment. *Greenberg*, 593 F.Supp. 3d at 208. This convoluted statement does not salvage the constitutionality of the Rule. As the District Court correctly concluded, these activities "*are included* within the scope of Rule 8.4(g) if they occur within the listed contexts," such as legal proceedings, client representation, operating a law practice, or conferences offering CLE credits. *Greenberg*, 593 F.Supp. 3d at 208

(emphasis in original). Petitioner Greenberg "regularly gives continuing legal education presentations about First Amendment protections for offensive speech," an activity virtually certain to fall within the scope of the Rule. *Greenberg v. Lehockey*, 81 F.4th at 379. A nonprofit public interest law firm, or a conservative association of lawyers holding a similar conference, would fall within the broad sweep of the Rule.

II. RULE 8.4(g) VIOLATES CORE FIRST AMENDMENT RIGHTS TO SPEECH, RELIGION, AND ASSOCIATION.

Attorneys speak on behalf of their clients as well as themselves as individuals. To censor attorney speech is to broadly censor the speech of all Americans. Attorneys are sworn to uphold the Constitution in their practice of law. Government speech suppression obstructs this duty.

The practice of law is a profession subject to reasonable regulation, but it is not exempt from the First Amendment. As this Court warned, regulating the content of professional speech "pose[s] the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to *suppress unpopular ideas* or information." *NIFLA*, 138 S. Ct. at 2374, quoting *Turner Broadcasting Systems, Inc. v. FCC*, 512 U.S. 622, 641 (1994) (emphasis added). Speech regulation threatens to destroy the "uninhibited marketplace of ideas in which truth will ultimately prevail." *NIFLA*, 138 S. Ct. at 2374, quoting *McCullen v. Coakley*, 573 U.S. 464, 476 (2014) (quoting *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 377 (1984) (internal quotation marks omitted)). Rule 8.4(g),

like the law implicated in *NIFLA*, is unconstitutional because it suppresses unpopular ideas and restricts the "marketplace of ideas" central to free speech, religion, and association.

A. Rule 8.4(g) violates the Free Speech Clause.

The District Court correctly recognized and explained that the Rule chills speech that is "at best, tangentially related to the administration of justice and, at worst, completely irrelevant to it." *Greenberg,* 593 F.Supp. 3d at 219. The "investigatory process itself" could have "a chilling effect," causing attorneys "to self-censor" even if officials promise not to enforce the Rule "in the way its plain language suggests." *Id.* at 199. Investigation of an attorney's alleged "discrimination" could easily cause "reputational damage," "inhibit[ing] [the attorney's] ability to obtain clients, retain employment, be admitted in other jurisdictions," and other adverse results. *Id.* at 224.

The Rule's burden on speech is beyond "incidental." Because Rule 8.4(g) "regulate[s] speech, not merely conduct," its burden on free expression is not incidental to its enforcement. *Greenberg*, 593 F.Supp. 3d at 206. "The government cannot regulate speech by relabeling it as conduct." *Otto v. City of Boca Raton*, 981 F.3d 854, 865 (11th Cir. 2020). Nor may the government, "under the guise of prohibiting professional misconduct, ignore constitutional rights." *NAACP v. Button*, 371 U.S. 415, 439 (1963). Some professional rules incidentally involve speech but do not target any specific viewpoint—client confidentiality, candor, truthfulness, and conflict of interest disclosures. Rule 8.4(g) sweeps more broadly,

intruding on the personal and even *religious* life of the lawyer. "Sexual orientation" and "gender identity," protected categories under the Rule, are contentious issues that implicate deeply personal beliefs about morality and religion. The government has no business stepping into this legal quicksand by attempting to regulate attitudes or thoughts about such matters.

The Rule is broad, imprecise, and vague. Rule 8.4(g) stretches far beyond reasonable licensing requirements and encroaches on attorneys' personal lives and beliefs. "Professional speech" has never been defined with precision. *NIFLA*, 138 S. Ct. at 2375, citing *Brown v. Entm't Merchs. Ass'n.*, 564 U.S. 786, 791 (2011). That ambiguity creates a grave danger that states could achieve "unfettered power to reduce a group's First Amendment rights by simply imposing a licensing requirement." *NIFLA*, 138 S. Ct. at 2375, quoting *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 423-424 n. 19 (1993). The state could thereby brandish "a powerful tool to impose invidious discrimination of disfavored subjects." *Id.*

The District Court acknowledged "the danger of censorship through selective enforcement of broad prohibitions" and the need to regulate with "narrow specificity" to preserve the "breathing space" required for First Amendment liberties. *Greenberg*, 593 F.Supp. 3d at 209, citing *In re Primus*, 436 U.S. 412, 432-433 (1978). Even the ABA has admitted the "important constitutional principle" that "an ethical duty that can result in discipline *must be sufficiently clear* to give notice of the conduct that is required or forbidden." *Greenberg*, 593 F.Supp. 3d at 222 (emphasis added),

quoting ABA Comm. on Ethics & Pro. Resp., Formal Op. 493 (2020) (emphasis added). Even after the recent Amendments, the Pennsylvania Rule fails to "provide fair notice" and "invite[s] imprecise enforcement" through its inclusion of "made-up definitions that do not comport with the definitions of similar terms [e.g., harassment] in similar contexts." *Greenberg*, 593 F.Supp. 3d at 222-22.

Imprecision is especially troublesome with respect to "discrimination" and "harassment." These poorly defined terms easily invade the First Amendment. Their definitions "begin with the speaker's intentions" and consequently, "regulation extends to simple offensive acts" beyond the requirements for federal anti-harassment liability. *Greenberg*, 593 F.Supp. 3d at 211. Attorneys do not cease to be citizens but retain the same First Amendment rights as all others. As the Third Circuit explained in an earlier case, "we cannot turn a blind eye to the First Amendment implications" when laws against "harassment" regulate expression, no matter how "detestable the views expressed may be." *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 206 (3d Cir. 2001) (Alito, J.). The government's allegedly "compelling" interest in eliminating "discrimination" relies on "amorphous justifications untethered to attorneys or Pennsylvania or any of the contexts listed in the Amendments." *Greenberg*, 593 F.Supp. 3d at 214. These "broad strokes" have a "corrosive effect" on the Constitution's ability to protect individual rights and to restrain "popular movements that seek to limit those rights." *Id.* at 214.

Instead of precision, Rule 8.4(g) follows the culture's coercive redefinition of reality that erodes core rights to expression. Words like *marriage* and *sex* are increasingly redefined in a way that jeopardizes free speech and religious liberty. Sexuality is central to the religious and moral convictions of many—including attorneys. "Sex," an objective term that describes the biological reality of male or female, has been expanded to encompass "sexual orientation" and "gender identity," two highly subjective concepts that depend on an individual's shifting perceptions and desires.

The Rule is so broad that its very existence chills expression. The District Court correctly noted that the "very existence" of this broadly formulated Rule "will inhibit free expression to a substantial extent." *Greenberg*, 593 F.Supp. 3d at 218, quoting *McCauley v. Univ. of the Virgin Islands*, 618 F.3d 232, 241 (3d Cir. 2010) (quoting *Sypniewski v. Warren Hills Reg'l Bd. of Educ.*, 307 F.3d 243, 258 (3d Cir. 2002) (internal quotation marks omitted). Here, the "very existence" of Rule 8.4(g) "will inhibit . . . the speech of third parties who are not before the Court" (*Saxe*, 240 F.3d at 214)—specifically, every attorney governed by the Rule. The Rule "permits the government to restrict speech outside of the courtroom," "the context of a pending case," or "the administration of justice." *Greenberg*, 593 F.Supp. 3d at 216. Even as amended, the Rule "extend[s] far beyond situations that would necessarily affect the administration of justice." *Id.* at 218. "Precision . . . must be the touchstone" when it comes to regulations of speech, which "so closely touch[es] our most precious freedoms." *NIFLA*, 138 S. Ct. at 2376, quoting *Button*, 371 U.S. at 438. Neither

Rule 8.4(g) nor the regulations it spawns can satisfy the demands of the First Amendment.

The Rule reeks of both content and viewpoint discrimination. In *NIFLA*, Justice Kennedy wrote separately "to underscore . . . the apparent viewpoint discrimination . . . inherent in the design and structure of th[e] Act" which he considered to be a matter of "serious constitutional concern." *NIFLA*, 138 S. Ct. at 2378-79 (Kennedy, J., concurring). Similarly, the viewpoint discrimination "inherent in the design" of Rule 8.4(g) is a "serious constitutional concern." It creates a "substantial risk of excising certain ideas or viewpoints from the public dialogue." *Turner Broadcasting*, 512 U.S. at 642. This is "poison to a free society." *Iancu v. Brunetti*, 139 S. Ct. 2294, 2302 (2019) (Alito, J., concurring) (striking down a provision forbidding "immoral or scandalous" trademarks because the ban "disfavors certain ideas").

The Rule contains content-based discrimination because it impacts "the perception of lawyers by the public." *Greenberg*, 593 F.Supp. 3d at 213, citing *United States v. Playboy Ent. Grp.*, 529 U.S. 803, 811 (2000) ("concern for the effect of the subject matter on [listeners] . . . is the essence of content-based regulation"). Even if the motivation for the Rule were innocent or even admirable, there is a residual danger of censorship because "future government officials may one day wield [the Rule] to suppress disfavored speech." *Reed v. Town of Gilbert*, 576 U.S. 155, 167 (2015).

The District Court also found viewpoint discrimination, "an egregious form of content discrimination." *Ne. Pennsylvania Freethought Soc'y v. Lackawanna Transit Sys.*, 938 F.3d 424, 432 (3d Cir. 2019), quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Viewpoint discrimination is present in laws that favor (or disfavor) speech based on "the ideas or views expressed." *Greenberg*, 593 F.Supp. 3d at 210, quoting *Startzell v. City of Phila.*, 533 F.3d 183, 193 (3d Cir. 2008) (quoting *Turner Broadcasting*, 512 U.S. at 643). Rule 8.4(g) prohibits discrimination based on "gender identity or expression, religion, . . . sexual orientation," comparable to the provision in *Matal* that "prohibited trademarks that disparage, or show contempt or disrepute towards a person." *Greenberg*, 593 F.Supp. 3d at 211. The Rule represents "the essence of viewpoint discrimination" because it "reflects the [g]overnment's disapproval of a subset of messages it finds offensive." *Id.* at 210, quoting *Matal*, 582 U.S. at 249. Viewpoint discrimination is only appropriate where "the government *itself* is speaking or recruiting others to communicate a message on its behalf." *Id.* at 253 (Kennedy, J., concurring) (emphasis added).

The Rule attempts to regulate speech that is "offensive" or "politically incorrect," and improperly relies on audience response. As this Circuit recognizes, "there is . . . no question that the free speech clause protects a wide variety of speech that listeners may consider deeply offensive," even "statements that impugn another's race or national origin or that denigrate religious beliefs." *Saxe*, 240 F.3d at 206. In *Matal*, this Court struck down the

"disparagement clause" of the Lanham Act because it transgressed the "bedrock First Amendment principle" that "the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." 582 U.S. at 244, quoting *Texas v. Johnson*, 491 U.S. 397, 414 (1989). The provision at issue in *Matal* prohibited registration of a trademark "which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute." *Matal*, 582 U.S. at 227. A prima facie case for disparagement could be made where an examiner found a proposed mark to be "disparaging in the context of contemporary attitudes." *Id.* at 228. *This language is eerily similar to the "prima facie" case that might be made for attorney discipline in any state where Rule 8.4(g) is adopted.* "Contemporary attitudes" and "politically correct" attitudes are virtually identical. Based on "the plain language of the regulation and its administrative process," enforcement of the Rule inevitably "relies on complaints filed by the public and whether an individual perceives another's expression to be welcome or unwelcome." *Greenberg*, 593 F.Supp. 3d at 211. If enforcement were tethered to "judicial proceedings or the representation of a client," there might be a more objective evaluation as to whether the attorney's conduct has "prevented equal access or the fair administration of justice." *Id.* at 212. Instead, "the Rule floats in the sea of whatever the majority finds offensive at the time." *Ibid.*

The Rule's viewpoint discrimination threatens to impose thought control. Freedom of thought is the "indispensable condition" of "nearly every other form of freedom." *Palko v. Connecticut*, 302 U.S. 319,

326-27 (1937)), *overruled on other grounds by Benton v. Maryland*, 395 U.S. 784 (1969). The freedom of thought that undergirds the First Amendment merits "unqualified attachment." *Schneiderman v. United States*, 320 U.S. 118, 144 (1943). The victory for freedom of thought recorded in the Bill of Rights recognizes that in the domain of conscience there is a moral power higher than the State. *Girouard v. United States,* 328 U.S. 61, 68 (1946). Courts have an affirmative "duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people." *Lee v. Weisman*, 505 U.S. 577, 592 (1992).

Rule 8.4(g) darkens the "fixed star in our constitutional constellation" that forbids any government official, "high or petty," from prescribing "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." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Regardless of how acceptable transgender ideology is in the current culture, the State Bar's interest in disseminating that ideology "cannot outweigh [an attorney's] First Amendment right to avoid becoming the courier for such message." *Wooley v. Maynard*, 430 U.S. 705, 717 (1977). "Struggles to coerce uniformity" of thought are ultimately futile, "achiev[ing] only the unanimity of the graveyard." *Barnette*, 319 U.S. at 640, 641. The government itself may adopt a viewpoint but may never "interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." *Hurley v. Irish-American Gay, Lesbian & Bisexual Group*, 515 U.S. 557, 579

(1995). Gender identity may be "embraced and advocated by increasing numbers of people," but that is "all the more reason to protect the First Amendment rights of those who wish to voice a different view." *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 660 (2000).

The District Court understood the threat, finding that the call to discipline attorneys "where listeners are offended . . . appears to be a thinly veiled effort to police attorneys for having *undesirable views* and *bad thoughts*." *Greenberg*, 593 F.Supp. 3d at 212 (emphasis added). Like the constitutionally defective statute in *NIFLA*, Rule 8.4(g) is a "paradigmatic example of the serious threat presented" when the government "seeks to impose its own message in the place of individual speech, thought, and expression," coercing individuals—here, attorneys at law—to become "an instrument for fostering public adherence" to an ideology they find unacceptable. *NIFLA*, 138 S. Ct. at 2378-79 (Kennedy, J., concurring).

Commercial Speech. Even if the Rule were limited to the commercial context rather than extending to an attorney's personal life—and the line is blurred—restrictions of commercial speech must be "narrowly drawn" to serve a "substantial interest." *Matal*, 582 U.S. at 245, citing *Cent. Hudson Gas & Elect. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 565 (1980). Moreover, "discrimination based on viewpoint, including a regulation that targets speech for its offensiveness," is prohibited in the commercial sphere, just as it is anywhere else. *Matal*, 582 U.S. at 251 (Kennedy, J., concurring, citing *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 65, 71-72 (1983)). In

Matal, the government proclaimed an interest in protecting "underrepresented groups" from "demeaning messages in commercial advertising." *Id.* at 245. But "that idea strikes at the heart of the First Amendment" and cannot withstand constitutional scrutiny: "Speech 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." *Matal*, 582 U.S. at 246, quoting *United States v. Schwimmer*, 279 U.S. 644, 655 (1929) (Holmes, J., dissenting) (internal quotations omitted) (emphasis added).

B. Rule 8.4(g) violates the Free Exercise Clause.

The imprecise terms "harassment" and "discrimination" open the door for state officials to discipline an attorney for expression of his or her religious or moral viewpoint on sensitive, controversial contemporary topics. To put it bluntly, "[t]o permit viewpoint discrimination in this context . . . is to permit Government censorship." *Matal*, 582 U.S. at 252 (Kennedy, J., concurring). The Rule contains no guardrails or limiting principles to prevent that result. This clashes with the Free Exercise Clause, which "protects not only the right to harbor religious beliefs inwardly and secretly," but even more importantly, "the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421

(2022) (international citations and quotation marks omitted).

The Rule's content discrimination threatens religious liberty. Its restrictions apply to "*any* attorney at *any* event even tangentially related to the practice of law" and consequently "depend[s] entirely on the communicative *content* of the attorney's speech." *Greenberg*, 593 F.Supp. 3d at 213 (emphasis added). An official who opposes religious teachings against abortion could "investigate a CLE presenter advocating for restrictive abortion laws," reasoning "such teachings intend to treat women as inferior based on their sex." *Ibid*.

C. Rule 8.4(g) violates the First Amendment right to association.

Rule 8.4(g) potentially infringes the First Amendment rights of attorneys to engage in expressive association, including the "right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Dale*, 530 U.S. at 647. Association is crucial to "preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas." *Id*. at 647-48. The Rule is worded so broadly that even membership in an organization that espouses views that some consider "harmful" or "derogatory" might be deemed "discriminatory" or "harassing." There are no limiting principles that would explicitly protect the right to belong to a church or other religious or expressive organization. This omission is as alarming as it is unconstitutional.

CONCLUSION

This Court should grant Certiorari and affirm Petitioner's standing to challenge Pennsylvania's version of Model Rule 8.4(g).

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