



# Legal Challenges to Attorney Admission Rules in Federal District Courts Seek to Avoid Multiple State Bar Exams

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In *Bradwell v. Illinois* the Supreme Court “held that the right to practise law in the state courts was not a privilege or immunity of a citizen of the United States.”<sup>1</sup> A concurring opinion emphasized, “The paramount destiny and mission of women are to fulfil the noble and benign offices of wife and mother. This is the law of the Creator.”<sup>2</sup> The Supreme Court in the 1980s held the opposite—that an attorney’s opportunity to practice law is a fundamental right because lawyers have a constitutional duty to vindicate federal rights and to champion locally unpopular claims.<sup>3</sup> The Supreme Court further held that bar admission on motion is constitutionally protected.<sup>4</sup>

The state and federal courts are autonomous and distinct. Disqualification from a state bar does not necessarily lead to disqualification from the federal bar. Bar admission in the U.S. Supreme Court,<sup>5</sup> U.S. Courts of Appeal,<sup>6</sup> and practice before federal administrative agencies is open to all American licensed attorneys regardless of state of admission or office location.<sup>7</sup> These provisions are the result of the adoption of national rules approved by Congress or a statute enacted

by Congress. On the other hand, *general* bar admission privileges in the 94 U.S. district courts are governed by local rules that are highly balkanized without, in my view, any rhyme or reason. Five lawsuits are pending in the U.S. Courts of Appeals challenging district court local rules that deny *general* admission privileges to sister-state attorneys in good standing. This article will examine some of the specific features of the local rules challenged, the hypothesis that passing one bar exam is enough, and briefly analyze the statutory and constitutional arguments presented in these cases seeking to make the constitutional rights to counsel, speech, expressive association, and to petition the government for the redress of grievances a reality in a more perfect union.

## Balkanized District Court Local Rules

Congress adopted the Federal Rules of Civil Procedure (FRCP) for the district courts in 1937, when the United States was in the midst of a depression, and almost two decades before the “separate but equal” doctrine was abrogated. Rule 1, Scope and Purpose, of the rules states: “These [FRCP] rules govern the procedure in the United States District Courts in all suits of a civil nature whether cognizable as cases in law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.”<sup>8</sup> The purpose of these rules was also to make federal law and procedure uniform. The FRCP authorized the district courts to make local rules to carry out their business. The local rules historically have been adopted by a majority vote of the active district judges, but because of recent congressional amendments to the FRCP, new rules now

require public notice and the opportunity to comment before they can be adopted or modified.

A blueprint of the balkanized district court local rules is provided by the United States District Court for the District of Maryland's *Survey of the Admission Rules in the Federal District Court*.<sup>9</sup> The Executive Summary of this 2015 survey states:

The districts divide into two broad categories: district courts where attorneys must be members of either the state bar or highest state court of the state encompassing the district ("no reciprocity jurisdictions"). Currently, 56 districts, or 60 percent, are no reciprocity jurisdictions and 38 districts, or 40 percent, are reciprocity jurisdictions.

This summary, like any snapshot, is misleading because 40 states (with the recent addition of New Jersey) and the District of Columbia provide reciprocal licensing for most sister-state attorneys, thus providing an inferior and expensive back door for district court *general* bar admission. A total of 24 states have adopted the Uniform Bar Exam (UBE), which allows novice attorneys to gain easy access to general admission privileges to the district courts in these UBE states. In some states, there are multiple district courts adjacent to each other that have local rules in both the reciprocity and no reciprocity categories. Similarly, in Montana, a novice lawyer from any of the 24 UBE states is eligible for district court general admission privileges, but experienced lawyers from 49 states and the District of Columbia are ineligible. Many district courts have abrogated *pro hac vice* admission and have opened the door for *general* admission privileges to all attorneys. All told, the vast majority of the 94 district courts have local rules governing general bar admission privileges that are essentially *ipse dixit*.

### Pending Lawsuits

The lawsuits pushing attorney equality follow on the heels of the Supreme Court's providing marriage equality. The federal recognition of lawfully entered marriage licenses across state lines should differ little from recognizing lawyer licenses as the right to counsel was embedded in the Bill of Rights long before interracial or marriage equality.

- *NAAMJP v. Lynch* challenges a Maryland district court local rule disqualification provisions based on "you get reciprocity if we get reciprocity" and a principal office location disqualification (POLD).<sup>10</sup> The state of Maryland does not provide admission on motion to any sister-state attorneys. Every attorney is required to take the Maryland bar exam. However, 15 states are not so grudging and provide admission on motion privileges to Maryland-licensed lawyers. The Maryland District Court Local Rule essentially adopts Maryland law with a few wrinkles. Under this local rule, lawyers from 15 states are eligible for general admission privileges, but lawyers licensed in 34 states that do not provide reciprocal admission to Maryland Court of Appeals lawyers are categorically disqualified. A Maryland licensed lawyer can have his or her office anywhere, but a lawyer admitted in one of the 15 states eligible for federal general admission must have their principal office in the reciprocity state. Under the local rule, if the lawyer is admitted in one of these 15 states, and get subsequently admitted in a state and opens an office in that state that has a district court that does not provide reciprocal admission to

Maryland licensed lawyers, the lawyer forfeits his or her eligibility for Maryland federal *general* admission. The Maryland District Court is the only one in the United States that has a similar rule.

- *NAAMJP v. Roberts* challenges that district court's local rule injunction that denies *general* admission privileges on the basis of a POLD.<sup>11</sup> The District of Columbia District Court, as a result of the NAAMJP complaint, has already vacated its "you get reciprocity if we get reciprocity" provision. The only thing left to decide on appeal is the POLD clause.
- *NAAMJP v. Simandle* challenges the New Jersey district court local rule disqualification that denies *general* admission on motion to sister-state attorneys from 49 states and the District of Columbia.<sup>12</sup> The New Jersey bar exam does not test New Jersey law. An exemption from this draconian punishment is provided for government lawyers, criminal defense lawyers, and patent lawyers who have offices in New Jersey for five years. Additionally, a lawyer admitted *pro hac vice* is required to pay federal application fees and annual dues to the New Jersey Supreme Court Lawyers Client Protection fund every year the federal case is pending. New Jersey's recent adoption of the UBE and admission on motion for experienced lawyers does not become effective until 2017. New Jersey's proposed admission on motion rule will also exclude lawyers licensed in the 10 states that do not have reciprocal licensing.
- *Thaw v. Lynch* raises an attorney equality challenge to that district court's local rules that similarly denies admission on motion to sister-state attorneys from 49 states and the District of Columbia on the basis of forum state law.<sup>13</sup> The Arizona bar exam also does not test its state's laws. The principal facts in this case are somewhat different from the New Jersey case because the Arizona Supreme Court adopts reciprocal licensing for lawyers from 39 states and the District of Columbia.
- *Alfriend v. California Supreme Court* challenges the local rule that denies *general* admission privileges to lawyers from 49 states and the District of Columbia.<sup>14</sup> On March 22, the Ninth Circuit dismissed the appeal for lack of jurisdiction.

### One Bar Exam is Enough

The American Bar Association (ABA) twice extensively studied the issue of whether sister-state attorneys should have to take a second bar exam to gain admission in another state. The 2002 ABA Commission on Multijurisdictional Practice<sup>15</sup> and 2012 ABA Commission on Ethics 20/20<sup>16</sup> studies were undertaken because of continually evolving technology, client demands, and a national (as well as global) legal services marketplace have fueled an increase in cross-border practice as well as a related need for lawyers to relocate to new jurisdictions. These ABA Commissions were composed of highly respected lawyers from all over the United States. They conducted transparent hearings all over the nation where debate was open, uninhibited, and robust. Virtually every arm of the organized bar provided testimony. A massive public record rivaling any conclusions reached by Congress can be found on the ABA's website.<sup>17</sup> These commissions made a number of factual findings, and most recently recommended that all states should consider all attorneys equal and adopt reciprocal admission for all ABA-accredited graduates with three years of experience. The ABA found no reason to believe that lawyers who have been engaged in the active practice of law for

three of the last seven years will be any less able to practice law in a new jurisdiction than a law school graduate who recently passed the bar. It concluded that women as a class were disproportionately injured by the failure to have admission on motion. The ABA has also recently recommended that all states should adopt the UBE.

The syllogism is straightforward. The purpose of a bar exam is to measure entry-level competence to provide public protection.<sup>18</sup> Experienced attorneys have already proven they have entry-level competence and are not a threat to the public. Therefore, because they have already proven they are not a public threat, the ABA concluded that experienced attorneys do not need to take another entry-level bar exam. Another ABA study concluded that nine out of 10 fundamental lawyering skills cannot be tested on a bar exam.<sup>19</sup> It is also well known in testing circles that study after study has shown that it is almost impossible to get judges to agree on scores for essay answers.<sup>20</sup>

The cognitive science of “expertise and expert performance” reinforces the ABA and UBE Commissions’ recommendations for attorney equality and findings of fact that one bar exam is more than enough. The *Cambridge Handbook of Expertise and Expert Performance*<sup>21</sup> is the bible of this emerging field of cognitive science. The premise for a field studying expertise and expert performance is that there are sufficient similarities in the theoretical principles mediating the phenomena, and the methods for studying them in different domains, such that it is possible to propose a general theory of expertise and expert performance. The accumulation of knowledge about the structure and acquisition of expertise in a given domain, as well as knowledge about the instruction and training of future professionals, has occurred until quite recently almost exclusively within each domain and with little cross-fertilization of domains in terms of teaching, learning methods, and skill-training techniques.

Cognitive science has concluded that the highest levels of expertise are characterized by contextually based intuitive actions that are difficult or impossible to report verbally. For example, have you ever realized a solution to a legal question you have been mulling for days while doing something else or after waking up from a good night’s sleep? Systematic differences between experts and less proficient individuals nearly always reflect attributes acquired by experts during their lengthy training and experience. Neurons that fire together wire together. Neuro-dependent learning is the norm. The more you do something the more efficient the brain becomes in performance. The received wisdom that the brain does not grow new neurons has been shown in the last 20 years to be false. Studies of London taxi drivers prove that the size of their hippocampus—the part of the brain that grows new neurons and consolidates memory—is directly correlated with the number of years they have been licensed.

Dr. Gary Klein is world famous for his studies on expertise and decision-making. He echoes these cognitive findings about “experts and expert performance” in his own book *Sources of Power: How People Make Decisions*.<sup>22</sup> Klein explains:

[T]here are many things experts can see that are invisible to everyone else: (i) Patterns that novices do not notice; (ii) Anomalies—events that did not happen and other violations of expectancies; (iii) The big picture (situation awareness); (iv) The way things work; (v) Opportunities and improvisations; (vi) Events that either already happened (the past) or are go-

ing to happen (the future); (vii) Differences that are too small for novices to detect; (viii) Their own limitations.

Each of these is virtually invisible to novices in the field. Klein concludes that experts often do not realize that the rest of us are unable to detect what seems obvious to them. The accumulation of experience does not weigh people down; it lightens them up. In many fields, the time needed to develop expertise is up to 10 years. Thus, we see a relationship between age and expertise. This has become popularly known as the 10,000-hour rule.

In controlled scientific experimental tests, Klein demonstrated that licensing officials are less qualified to judge competence than both novices and experts actually working in the profession. He played six videotapes of people performing CPR on a lifesaving dummy for three audiences: 10 novices who had just finished an eight-hour CPR course; 10 experienced CPR instructors who had never performed CPR on an actual victim; and 10 paramedics who had used CPR many times. Klein asked each participant to imagine it was his or her life on the line. They had to identify the one person in the videotapes who they would want to do CPR on them. Nine out of 10 of the paramedics picked the actual paramedic. When asked why, they could not point to any one thing other than he seemed to know what he was doing. The novices generally chose the paramedic five out of 10 times. Only three of the instructors chose the paramedic to save their lives. According to the instructors, the paramedic was not following the rules carefully and according to their instructions. If licensing officials cannot spot the difference between a novice and an expert on a skill set as basic as CPR, it is absurd to think they can do so when confronted with an already licensed attorney on an entry-level subjective test on a skill set as complicated as practicing law.

United States Judicial Conference studies have concluded that no one has yet devised an examination that will test one’s ability to be a courtroom advocate.<sup>23</sup> Lawyers with previous trial experience are much more likely to turn in very good performances, and it permits the inference that experience improves the quality of trial performance.<sup>24</sup> There is a correlation between the quality of trial performance and the prior experience of the attorneys evaluated.<sup>25</sup> Essentially, requiring experienced attorneys to take another bar exam is built on a false algorithm where licensing officials who have little or no experience are telling lawyers who are experienced that they are a threat to the public and not qualified to practice law. This makes no sense.

Reciprocal licensing has been further urged by the Conference of Chief Justices. The Obama administration has issued a statement recommending interstate streamlining of occupational licensing for military families. African-Americans make up 12.3 percent of the U.S. population but only 4.7 percent of attorneys. According to a Microsoft study,<sup>26</sup> the law is lagging far behind other professions in diversity, in large part, because of licensing barriers.

The recommendations for streamlining reciprocal licensing make perfect sense because if laymen are qualified to represent and speak for themselves as long as they are not mentally ill, it follows that they are qualified to select their own counsel. It is implausible to presume laymen are qualified to represent and speak for themselves, but experienced attorneys are not qualified to represent and speak for laymen. It is equally implausible and irrational to conclude that a novice lawyer can be trusted to fulfill his or her professional responsibilities, but experienced lawyers cannot be trusted. If it is self-evi-



dent that all American citizens are created equal, then it follows that all American lawyers are created equal.

### The Statutory Basis for Challenging the Local Rules

Federal judges are not legislators free to enact any law they vote for or choose. Congress re-wrote the Rules Enabling Act as a consequence of widespread discontent with the proliferation of federal court local rules in 1988.<sup>27</sup> Congress concluded that many of these conflict with the national rules of general applicability and Acts of Congress. It concluded that the rulemaking procedures lacked sufficient openness, there was no meaningful opportunity for judicial review because the judges who make the rules decide whether they are valid, “and of course the barrier to interlocutory appeal built into federal rule practice . . . made effective appellate review of such a rule impossible sometimes, impractical most times, and impolitic always.”<sup>28</sup>

Congress added 28 U.S.C. § 332(d)(4) and it amended § 2071 “thus placing on each judicial council a mandatory continuing duty to periodically review the federal district court local rules promulgated on the authority of § 2071 to conform to the requirements of § 2072 instead of merely to rules promulgated by the Supreme Court.”<sup>29</sup> There is no such thing as a federal district court local rule becoming sacrosanct merely for passing initial Judicial Council review the first time. FRCP 83 was subsequently amended, stating that local rules must conform to the requirements of § 2072.

The revised statutes are as follows:

- 28 U.S.C. § 2071. *Rulemaking power*, 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 § 2072 of this title.* (emphasis added)
- 28 U.S.C. § 2072. *Rules of procedure and evidence; power to prescribe*, provides, *Such rules shall not abridge, enlarge, or modify any substantive right.* (emphasis added)

Appellants argue the challenged local rules are an abuse of rulemaking discretion that contradict numerous Acts of Congress and that they on their face and as applied abridge, enlarge, and modify a flood of substantive rights of lawyers, American citizens, and corporations. These substantive rights include: the First Amendment freedom of speech, right of expressive association, and ability to petition for the redress of grievances; and the fundamental right to counsel. Every lawyer gets admitted by an order of the state's highest court.<sup>30</sup> Appellants argue the local rules abridge, enlarge, and modify the full faith and credit stature<sup>31</sup> by providing full faith and credit to the licensing records of forum state supreme courts and no faith and credit to the licensing records of on-forum state supreme courts. Appellants make the same argument with reference to the statutory right to counsel.<sup>32</sup> Appellants argue the local rules contradict the national rules for bar admission, which are approved by Congress and provide full faith and credit bar admission to all licensed attorneys.<sup>33</sup>

Appellants further argue the claim that the local rules are not subject to the provisions of 28 U.S.C. §§ 2071-72 and on its face violates these Acts of Congress. Appellants further argue the local rules' delegation of federal jurisdiction to state actors without any intelligible standards or active supervision abridges, enlarges, and

modifies the substantive rights of patent holders and patent lawyers and Article III courts' exclusive jurisdiction over the enumerated powers of Congress.

In each of the pending appeals, the district judge specially assigned was a former chief judge of another district court that has similar protectionist local rules. Not surprisingly, the decisions reached are, like the local rules themselves, all over the place. Some hold the local rules are exempt from scrutiny under §§ 2071-72, some hold the statutes are applicable but pass the statutory test, and the California court dismissed the case under immunity grounds. The common thread upholding the challenged local rules is they are *rational*.

### The Constitutional Basis for Challenging the Local Rules

The right to petition the government for a redress of grievances is “one of the most precious of the liberties safeguarded by the Bill of Rights.”<sup>34</sup> In *Bill Johnson's Restaurants Inc. v. NLRB*,<sup>35</sup> the Court held “[r]etaliatory motive and lack of reasonable basis are both essential prerequisites to the issuance of a cease-and-desist order against a state suit.”<sup>36</sup> The local rules enjoin the filing of lawsuits by non-forum state attorneys. They plainly implicate the right to petition by providing forum state lawyers with a monopoly on the exercise this constitutional and substantive right in the district courts.

The operations of the courts and the judicial conduct of judges are matters of utmost public concern.<sup>37</sup> “There are circumstances in which . . . speech by attorneys on public issues and matters of legal representation [are accorded] the strongest protection our Constitution has to offer.”<sup>38</sup> The right to counsel is also a fundamental right. In addition, the right to expressive association is protected. Government actions that may unconstitutionally infringe upon this freedom can take a number of forms. Among other things, government may seek to impose penalties or withhold benefits from individuals because of their membership in a disfavored group. The local rules impose penalties on non-forum state attorneys and penalties on American citizens if they want counsel of choice from outside the forum state. Appellants argue the government has no authority to license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules.<sup>39</sup>

Appellants further rest upon *Citizens United v. Federal Election Commission*,<sup>40</sup> where the Court stated:

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.<sup>41</sup>

...

[A]ny 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.<sup>42</sup>

Appellants argue that the local rules constitute structural error by preferring certain lawyers over others. They further rely upon *Holder v. Humanitarian Law Project*.<sup>43</sup> There, in a challenge to a federal statute making it a crime to aid foreign terrorist organizations, including advice on the law by lawyers, the government claimed the only thing at issue was *conduct* and not *speech*. The Supreme Court rejected this argument applying a strict scrutiny standard of review. *Humanitarian Law* makes clear that *verbal or written communications, even those that function as vehicles for delivering professional legal services*, to aid foreign terrorist organizations are “content-based speech” for purposes of the First Amendment that require strict scrutiny review.

The Supreme Court has held that the federal courts do not have freewheeling authority to declare new categories of speech outside the scope of the First Amendment.<sup>44</sup> The district court decisions on appeal share a common theme. They create categories of speech outside First Amendment protection. They do not discuss or address any of the First Amendment decisions. They hold that the First Amendment is not applicable and the challenged local rules are rational. This is why these cases are on appeal. The issues raised by these appeals are likely headed to the Supreme Court. Stay tuned: Your constitutional rights, as well as those of your clients, are at stake. ☉



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## Endnotes

<sup>1</sup>83 U.S. (16 Wall.) 130, (1872).

<sup>2</sup>*Id.* at 141.

<sup>3</sup>*Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985).

<sup>4</sup>*Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988).

<sup>5</sup>S. Ct. R. 5 (requiring three years of experience for general admission).

<sup>6</sup>Fed. R. App. P. 46.

<sup>7</sup>5 U.S.C. § 500(b).

<sup>8</sup>Fed. R. Civ. P. 1.

<sup>9</sup>United States District Court for the District of Maryland, Survey of the Admission Rules in the Federal District Court (Jan. 2015), available at [www.msba.org/uploadedFiles/MSBA/Member\\_Groups/Sections/Litigation/USDCTMDSurvey0115.pdf](http://www.msba.org/uploadedFiles/MSBA/Member_Groups/Sections/Litigation/USDCTMDSurvey0115.pdf).

<sup>10</sup>*NAAMJP v. Lynch*, No. 15-1982 (4th Cir.).

<sup>11</sup>*NAAMJP v. Roberts*, No. 16-5020 (D.C. Cir.).

<sup>12</sup>*NAAMJP v. Simandle*, No. 15-3356 (3d Cir.).

<sup>13</sup>*Thaw v. Lynch*, No. 15-cv-1703-PHX-JWS (D. Ariz.).

<sup>14</sup>*Alfriend v. California Supreme Court*, No. 14-15347 (9th Cir.).

<sup>15</sup>American Bar Association, Commission on Multijurisdictional Practice (Aug. 12, 2002), available at [www.americanbar.org/groups/professional\\_responsibility/committees\\_commissions/commission\\_on\\_multijurisdictional\\_practice.html](http://www.americanbar.org/groups/professional_responsibility/committees_commissions/commission_on_multijurisdictional_practice.html).

<sup>16</sup>American Bar Association, Commission on Ethics 20-20 (Aug. 6, 2012), available at [www.americanbar.org/groups/professional\\_responsibility/aba\\_commission\\_on\\_ethics\\_20\\_20.html](http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20.html).

<sup>17</sup>*Center for Professional Responsibility*, A.B.A., [www.americanbar.org](http://www.americanbar.org).

[org/groups/professional\\_responsibility.html](http://org/groups/professional_responsibility.html) (last visited Jun. 15, 2016).

<sup>18</sup>Rebecca White Berch, *The Case for the Uniform Bar Exam*, 78 BAR EXAM'R 12 (Feb. 2009) (“A bar exam is a test of minimum competence to practice law.”).

<sup>19</sup>Bedford T. Bentley Jr., *Rethinking the Purpose of the Bar Examination*, 78 BAR EXAM'R 17 (Feb. 2009).

<sup>20</sup>See Geoff Norman, *So What Does Guessing the Right Answer Out of Four Have to Do With Competence Anyway?* 77 BAR EXAM'R 18 (Nov. 2008).

<sup>21</sup>CAMBRIDGE HANDBOOK OF EXPERTISE & EXPERT PERFORMANCE (K. Anders Ericsson et al. eds., 2006).

<sup>22</sup>GARY KLEIN, SOURCES OF POWER: HOW PEOPLE MAKE DECISIONS (1999).

<sup>23</sup>*Report and Tentative Recommendations of the Committee to Consider Standards for Admission to Practice in the Federal Courts to the Judicial Conference of the United States*, 79 F.R.D. 187, 196 (1978).

<sup>24</sup>*Id.*

<sup>25</sup>*Final Report of the Committee to Consider Standards for Admission to Practice in the Federal Courts to the Judicial Conference of the United States*, 83 F.R.D. 215, 222 (1979).

<sup>26</sup>Jeffrey Meisner, *Raising the Bar: Exploring the Diversity Gap Within the Legal Profession*, MICROSOFT ON THE ISSUES (Dec. 10, 2013), available at [blogs.technet.microsoft.com/microsoft\\_on\\_the\\_issues/2013/12/10/raising-the-bar-exploring-the-diversity-gap-within-the-legal-profession](http://blogs.technet.microsoft.com/microsoft_on_the_issues/2013/12/10/raising-the-bar-exploring-the-diversity-gap-within-the-legal-profession); see also *Raising the Bar: An Analysis of African-American and Hispanic/Latino Diversity in the Legal Profession*, Microsoft (2013), available at [https://msdnshared.blob.core.windows.net/media/TNBlogFS/prod.evlo.blogs.technet.com/CommunityServer.Blogs.Components.WeblogFiles/00/00/00/82/95/5460.Raising%20the%20Bar\\_FINAL.pptx](https://msdnshared.blob.core.windows.net/media/TNBlogFS/prod.evlo.blogs.technet.com/CommunityServer.Blogs.Components.WeblogFiles/00/00/00/82/95/5460.Raising%20the%20Bar_FINAL.pptx).

<sup>27</sup>*Title IV of the Judicial Improvements and Access to Justice Act of 1988*, Pub. L. No. 100-702, 102 Stat. 4642 (Nov. 19, 1988).

<sup>28</sup>See David D. Siegel, Commentary, 28 U.S.C. §§ 332, 2071 (1988). Siegel was the reporter for Congress.

<sup>29</sup>*Id.*

<sup>30</sup>“Regarding judgments, ... the full faith and credit obligation is exacting.” *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 233 (1998). A state is constitutionally required to honor a sister state’s judgment even if it disagrees with that judgment: there is “no roving ‘public policy exception’ to the full faith and credit due judgments.” *Id.* (citation omitted).

<sup>31</sup>28 U.S.C. § 1738.

<sup>32</sup>28 U.S.C. § 1654.

<sup>33</sup>S. Ct. R. 5; Fed. R. App. P. 46; 5 U.S.C. § 500 (b).

<sup>34</sup>*BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 524 (2002) (citation and internal quotation marks omitted).

<sup>35</sup>461 U.S. 731 (1983).

<sup>36</sup>*Id.* at 748-49.

<sup>37</sup>*Landmark Commc’ns Inc. v. Virginia*, 435 U.S. 829, 839 (1978).

<sup>38</sup>*Fla. Bar v. Went For It Inc.*, 515 U.S. 618, 634 (1995) (citations omitted).

<sup>39</sup>See *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 392 (1992).

<sup>40</sup>558 U.S. 310 (2010).

<sup>41</sup>*Id.* at 340-41.

<sup>42</sup>*Id.* at 326 (emphasis added).

<sup>43</sup>561 U.S. 1 (2010).

<sup>44</sup>*United States v. Stevens*, 559 U.S. 460, 470 (2010).