UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

JACOBY & MEYERS LAW OFFICES, LLP,	:	No. 3:11CV817(RNC)
Plaintiff,	:	
vs	:	
JUDGES OF THE CONNECTICUT SUPERIOR COURT, ET AL,	:	
Defendants.	:	HARTFORD, CONNECTICUT MARCH 19, 2012

ORAL ARGUMENT

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

APPEARANCES:

FOR THE PLAINTIFF:

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9:00 A.M.

THE COURT: Good morning. Would you please state your appearances.

MR. DENLEA: Yes, Your Honor, for the plaintiff, Jeffrey Carton and James Denlea from Meiselman, Denlea, Packman, Carton & Eberz.

MR. CARTON: Good morning, Your Honor.

THE COURT: Good morning.

MR. DEICHERT: Good morning, Your Honor, for the defendants, Robert Deichert, Assistant Attorney General, and Michael Skold, Assistant Attorney General.

MR. SKOLD: Good morning, Your Honor.

THE COURT: Good morning.

MR. SHEA: Good morning, Your Honor, Kevin Shea for the Connecticut Bar Association.

MR. BAILIN: Good morning, Your Honor, Paul Bailin of Shipman & Goodwin for the CTLA amicus.

THE COURT: Good morning.

Have you talked about how would you like to proceed this morning?

MR. DEICHERT: We have not, Your Honor. If you -- do you have a preference?

THE COURT: No. I would like to give everybody

a chance to address the Court. Since it is a motion to dismiss, I trust that the defense side will go first and if amici want to wait until after the plaintiff has been heard from, I have no particular preference.

MR. DEICHERT: That will be fine, Your Honor.

MR. DENLEA: That sounds right, Your Honor.

THE COURT: Fine.

Mr. Deichert?

MR. DEICHERT: Good morning, Your Honor. I'm Assistant Attorney General Rob Deichert representing the defendants, Judges of the Connecticut Superior Court, on this motion to dismiss.

In this action the plaintiff challenges Rule 5.4 of the Connecticut Rules of Professional Conduct, which is modeled on ABA model rule that has been implemented in virtually every jurisdiction in the United States.

Plaintiff claims that the Connecticut rule, and by extension, the other rules nationwide are unconstitutional. Plaintiff has brought three actions challenging the rule, this action as well as two other actions, one in the Southern District of New York and the other in the District of New Jersey.

Our position on this motion is that this Court's analysis should begin and end with Judge Kaplan's March 8 decision in the Southern District of New York action. In

that decision Judge Kaplan analyzed New York state law and concluded that New York's partnership law prohibits plaintiff from having non-lawyer partners and therefore imposed the independent impediment to plaintiff's standings in this case.

Judge Kaplan's decision is entitled to collateral estoppel effect and bars plaintiff from re-litigating the state law issues in this case.

All four elements for collateral estoppel are met here. The questions of New York law underlying both cases are identical. The parties litigated the issue in New York and Judge Kaplan decided that the Court's resolution of the standing issue was necessary to its judgment. And plaintiff had a full and fair opportunity to litigate the issue in New York.

As this Court may have seen in our notice of supplemental authority, Judge Kaplan held two separate rounds of argument, reviewed two separate rounds of briefing, and ultimately issued an 18-page memorandum of decision concluding that New York state law barred plaintiff's claims.

Because each of the elements of a collateral estoppel appears to be present here, that requires this Court dismiss this action. Of course this Court need not address collateral estoppel if it agrees with Judge

Kaplan's decision and defendants believe Judge Kaplan's decision is correct and that this Court should follow it.

As an initial matter, Judge Kaplan's ruling on issues of New York state law is entitled to deference since he is a New York district judge, possesses familiarity with New York law.

Aside from that deference, Judge Kaplan's decision was right. New York law does not permit any LLP to include limited partners. And each partner of an LLP must be a professional authorized by law to render a professional service in the state.

Because of that independent New York impediment, plaintiff lacks standing in this case because it fails to allege that Rule 5.4 caused its alleged injury or that invalidating the rule would redress such injury.

Even if plaintiffs could overcome the deference to Judge Kaplan's decision and convince this Court that Judge Kaplan was wrong, another provision of New York law bars the investment plaintiffs seek. Specifically section 491 of New York's judiciary law has been held by the New York appellate division to prohibit an agreement between a non-lawyer and attorneys to share in the firm's profits. Under New York law that's classified as a serious crime and that provides another independent bar to this Court's jurisdiction, and that is a bar that Judge Kaplan did not

address because he did not need to because of his ruling under the partnership law.

Ultimately we believe that should really end the analysis in this case. To the extent this Court disagrees, the question -- Judge Kaplan, after analyzing New York laws and concluding it was clear that plaintiff was barred, concluded that if to the extent that it was unclear, he would have abstained under the Pullman abstention doctrine.

And our position is that his rationale with regard to Pullman applies with even greater force in this case given that the plaintiffs had an action in New York in which they challenged the New York law, given that the New York court has greater familiarity with New York law, and given that to the extent the plaintiffs have concerns about Judge Kaplan's ruling they have the ability to appeal to the Second Circuit, which has the ability to certify any questions of New York law to the New York courts and to permit an expeditious ruling, something that neither Judge Kaplan nor Your Honor has.

So ultimately defendants' position is that to the extent the Court believes that there is a possibility of jurisdiction, that abstention would be appropriate.

Aside from Judge Kaplan's ruling, which addressed two of the three prongs of standing, plaintiff's

claim also fails the first prong of standing in that they do not allege an invasion of a legally protected interest that is concrete and particularized and actual or imminent and not conjectural or hypothetical. Plaintiffs bear the burden of showing their claim is not hypothetical and they cannot meet that burden here. They do not allege the defendants have threatened to take any action against the plaintiff and, indeed, plaintiff does not allege an example where the defendants have taken an action to enforce Rule 5.4.

Primary enforcement authority for Rule 5.4 lies with the statewide grievance committees and grievance panels, not the defendants. In any event, even if, it's far from clear that Rule 5.4 would actually apply to plaintiff. Plaintiffs claims are unclear as to what type of investments it seeks thereon and from whom and that could change the analysis.

Moreover, under Connecticut's Rules of Professional Conduct, Rule 8.5 governs choice of law and provides that for conduct that does not -- is not in connection with the matter pending before a tribunal, the Court -- the disciplinary authorities will look to the jurisdiction where the predominant effect of the conduct is felt.

Ultimately plaintiff is a New York based law

firm with offices throughout the country. Although plaintiff alleges that it has an office in New Haven, it's unclear how much of a presence it has in the state.

Given the nature of Rule 5.4, and that governs issues of firm structure, it's possible a Connecticut Court addressing the issue would never actually apply Connecticut law as opposed to New York law.

For example, the New York State Bar Association concluded that DC's version of Rule 5.4 would apply to permit a lawyer to partner with a non-lawyer even though that lawyer was sharing profits and fees from litigation commenced and prosecuted in New York.

And, Your Honor, if I may approach, I have a copy of the opinion.

THE COURT: Yes, I'd be interested to see that. Thank you.

MR. DEICHERT: Of course the resolution whether to apply its own rule or New York's rule would be highly fact dependent. Also plaintiff has not alleged sufficient facts to move its claim that Connecticut would enforce its Rule 5.4 against plaintiff beyond the realm of the hypothetical and therefore has not met its burden to establish that it has standing.

THE COURT: Mr. Deichert, is there a mechanism in Connecticut akin to the one that apparently exists in

New York that would permit a lawyer to inquire of the disciplinary authority whether a particular investment would be permitted?

MR. DEICHERT: My understanding, Your Honor, is that there is a mechanism whereby the Connecticut Bar Association's Committee on Professional Ethics will provide advisory opinions, but those opinions are not necessarily binding on the state.

So I am not aware of whether the New York decision was binding on the New York authorities, but my understanding is ours -- it would be available and certainly be persuasive but would not necessarily be binding.

In addition to plaintiff's inability to establish standing, the Eleventh Amendment also bars plaintiffs claims. The named defendant in this case is the Judges of the Connecticut Superior Court as a collective body, not any individual. And therefore the Eleventh Amendment bars this action as it's currently pleaded. Defendants did not respond to that argument in their briefing and that alone warrants dismissal.

Presumably defendants will try to amend their complaint to take advantage of Ex parte Young, but in order to take advantage of Ex parte Young you have to allege that there is a clear -- that the defendant has the

authority and is imminently going to exercise it to enforce it. Again, like for all the reasons we discussed with regard to the hypothetical nature of plaintiff's claims, there is no indication or imminent threat that this rule be enforced against the plaintiff.

I'm happy -- I can proceed to the merits, Your Honor. I don't know if you want to hear about jurisdiction.

THE COURT: I think that the policy arguments are very interesting but they're not my first concern this morning.

MR. DEICHERT: Would it make sense for me to allow plaintiffs to respond on the jurisdictional issues?

THE COURT: I think so.

MR. DEICHERT: Thank you, Your Honor.

THE COURT: Thank you.

MR. DENLEA: Good morning, Your Honor.

Your Honor, as an initial matter, counsel for the Attorney General has gone on at some length this morning discussing whether or not it's a hypothetical injury that was sustained by the plaintiff with respect to whether or not there will be an enforcement action.

I don't think that there's an individual in this room who believes that if our client on the way home from court today stopped in Greenwich to obtain private equity

funding that by the time they reached the New York state border that there would be an enforcement action commenced against them by the defendants. So the Rule 5.4 that has been in place in Connecticut for 40 years would definitely be enforced. So to state that's hypothetical or theoretical that a enforcement action will take place is beyond cavil.

Aside from that, that's not the standard, because counsel is ignoring the authority in both Babbitt v. United Farm Workers as well as Steffel v. Thompson, which states that the law does not require a party to, quote, await and undergo a prosecution as a sole means of seeking relief, closed quotes.

So far beyond the notion that this is conjectural or hypothetical, counsel went to great length in their papers to inform the Court that this was a well considered policy decision of 40 years efficacy and that they would in fact seek to enforce Rule 5.4 against our clients.

THE COURT: As a prudential matter, for the Court, you're asking me to preempt the state judiciary on a matter of great significance to the state judiciary without having made any attempt to seek guidance from the state judiciary. In that context, I'm wondering why the ripeness doctrine shouldn't be applied to require your

client to take steps to clarify, A, what it would like to do; and B, whether it would be permitted, particularly because it's not clear to me that your client has an immediate stake in this rule as it exists and is administered in Connecticut.

In that framework, can you please tell me a bit more about your client's activities in Connecticut and what if any impact this rule is actually having on your client in Connecticut?

MR. DENLEA: Yes, Your Honor.

As the Attorney General correctly stated, our client has offices in the state of Connecticut as well as I believe now 31 other states and the impact that this rule has with respect to that law office and that firm is that the -- the harm and the injury is consistent country-wide. That's why we commenced the actions in the three states that we did.

And that harm is that because of the denial of access to capital, that there's an increased cost of capital. And as Judge Easterbrook said in the Alliant case, that that in and of itself is enough to infer standing.

THE COURT: Let me ask you to pause, please.

Where is your client's office in Connecticut?

MR. DENLEA: I believe it's New Haven, Your

Honor.

THE COURT: Is there a person who is actually practicing law in New Haven?

MR. DENLEA: I believe in each of the offices they are staffed and there are individuals practicing law in each of the states.

THE COURT: You can make that representation to me?

MR. DENLEA: Your Honor, that is my understanding and my belief. We will confirm that at the conclusion of the proceedings today. I have absolutely no reason to believe that is not the case.

It is not their business model to have mail drops or absentee offices country-wide.

THE COURT: Was the plaintiff registered to do business in Connecticut at the time the complaint was filed?

MR. DENLEA: Your Honor, we're not 100 percent certain.

THE COURT: And I believe the name of the plaintiff on the caption of the complaint is incorrect, is that right?

MR. CARTON: That was an administrative oversight, Your Honor, and Judge Kaplan brought to our attention that the name of the firm had been Jacoby and

Meyers Law Offices LLP. They had dropped the words "Law" and "Offices."

There was an appropriately filed registration with the New York State Department, the Secretary of State, correcting that. And then subsequently Judge Kaplan amended the caption. We would do similarly here as well, Your Honor.

THE COURT: Okay. Should I treat that as an oral motion to amend the caption?

MR. DENLEA: We would request so, Your Honor. Thank you.

THE COURT: Any objection to that?

MR. DEICHERT: Yes, Your Honor.

Just to clarify a few things, we share Your Honor's concern about the lack of presence in Connecticut and, you know, we're prepared to provide additional information that we've seen that calls in question Jacoby's presence. Specifically, and I don't know how much I should get into it without having presented the evidence. If you prefer, I can wait.

But in preparing for arguments, I saw some things that raised concern.

THE COURT: I don't think it would be inappropriate for you to tell me what you've learned. This file is replete with hearsay.

MR. DEICHERT: Well, Your Honor, in the course of preparing for argument, I looked up Jacoby and Meyers jurist number in the Connecticut judicial website. There were two jurist numbers listed for the firm. I've searched under both. One returned no cases at all. The other returned two cases, the most recent of which was dismissed in 2008.

I also looked at Jacoby's website for the New Haven office which they allege in the complaint. The New Haven office is the only office, among the offices that I saw on their website, that does not use their main JM attorney number, so it appears to be separate. I called the number listed and the voicemail I received said the Law Offices of -- I unfortunately don't -- the Law Offices of Kenneth Bartlett, not Jacoby and Meyers.

Attorney Bartlett is their registered agent of service in the state. But it's not clear, at least from the voice message, whether he has any affiliation with the firm aside from that.

Also Your Honor had asked about whether they were registered at the time the suit was filed. The answer is no. They were not registered with the Connecticut Secretary of State's office. We raised that issue in our motion to dismiss. They then paid a fine to the Connecticut Secretary of State's office and have since

registered a few months after the complaint was filed.

Under Connecticut law, there's a door closing statute that raises questions as to whether the post amendment would have been sufficient, but it gets fairly complicated as to whether it applies to federal claims in addition to state law claims.

And as far as amending the complaint to correct the caption, Your Honor, we know that leave is generally freely granted, but as plaintiff acknowledged, Judge Kaplan raised that issue in the November 2011 argument. Plaintiffs made no efforts and have may no effort to this point to amend the complaint, to correct the caption, nor have they made any effort to amend their complaint to correct numerous jurisdictional problems that they attempted unsuccessfully to correct in Judge Kaplan's case.

So as a result, you know, we've been preparing for argument on a complaint that has not been amended. Your Honor's heard argument today on a complaint that has not been amended, even though they knew of the need to amend several months ago.

And so we would respectfully object.

We also believe that it's -- in addition to being untimely, we believe it's futile for the reasons set forth in Judge Kaplan's decision.

THE COURT: You refer just now to jurisdictional difficulties that have not been addressed.

MR. DEICHERT: Yes, Your Honor. Because we were discussing the issue of -- ultimately the Connecticut law, if you don't register with the Connecticut Secretary of State's Office, you are precluded under Connecticut law from bringing suits in courts of this state.

There is kind of a split in authority -- Connecticut hasn't addressed the issue -- other jurisdictions, there's a split in authority as to whether that would apply to federal courts as well as state courts within the state.

And also the question if, assuming for the sake of argument that it applied in federal courts, the question would then become whether plaintiff's post hoc change or correction of the defects would kind of relate back to the initial standing in court.

So it's a fairly complicated issue and so we didn't -- ultimately we weren't sure if the fact that they had fixed the defect would alter the analysis.

THE COURT: I see.

MR. DEICHERT: But that's our response on the motion to amend, Your Honor.

THE COURT: Thank you.

MR. DENLEA: Your Honor, in view of the fact

that the motion to amend the caption is freely granted, as counsel concedes, and the fact that the procedural irregularity by his concession has been corrected, we would ask the Court to regard it as a correction nunc pro tunc and we would be prepared to proceed with the balance of the analysis as regards to the standing and ripeness issues.

THE COURT: Do you think these facts should be weighed by the Court in considering the equities of the case? You do seek equitable relief, this is in the nature of an action for an injunction, and I wonder if these facts need to be addressed in considering the equities of the case.

A firm that may have no presence in Connecticut, that brought suit when it wasn't registered to do business in Connecticut, never having sought guidance from the state judiciary, a body to whom I owe appropriate respect and deference.

MR. DENLEA: Your Honor, it's interesting that the Court brings this up, because one thing that's distinct in this action as contrasted to New York and New Jersey is that in terms of the deference that the Court may wish to extend to the state judiciary and in terms of how that issue bears on the Court's consideration as regards abstention, distinction between the litigation

here as contrasted with New York and New Jersey is that, as the Court's well aware, the abstention doctrine in deference to New York state or, I'm sorry, New York state, New Jersey or Connecticut judiciary, would involve areas where there was an unsettled question of state law.

Here in the Attorney General's papers, quoting at page 2, they state in the first full paragraph, "Rule 5.4 reflects a policy choice that the Connecticut judiciary, exercising its inherent authority to regulate the legal profession, has embraced for almost 40 years. Although Rule 5.4 has been periodically updated, defendants have not seen fit to meaningful alter its substantive requirements during that time."

So this is the Attorney General's expository with respect to their client's perspective on Rule 5.4.

Technically could the Court send us to that body to further adjudicate this matter? The Court can procedurally sidestep the issues here and do just that as was done in New Jersey. However, in view of the fact that the whole notion of stare decisis as regards to how the Connecticut judicial reviews this and the fact that it's not just been on the books but that it has been embraced for 40 years and that, as the Attorney General states, it's not as if consideration has not been given to changing the rule, but that the defendants have not seen

fit to meaningful alter its substantive requirements, I think speaks volumes with respect to how any further proceeding or inquiry as regards that body or another administrative agency that may be affiliated with it, may be an exercise in futility and a waste of not only the parties' resources but just against the concept of judicial economy.

THE COURT: That's consistent with your argument that is made in your papers, and you suggest that it would not be appropriate for me to abstain because we must presume that the state judiciary would be biased. Do you think that that's something that I'm in a position to actually say?

MR. DENLEA: Your Honor, I think that in this setting that what this Court is in a position to say is that there are fundamental constitutional issues that are uniquely within the purview of Your Honor's mandate to decide these matters and that the state judiciary, in view of the fact that they had the opportunity to sua sponte review this Rule 5.4 over the last 40 years, and as counsel eloquently stated, chose -- saw fit not to meaningfully alter its dictates and have embraced that notion, I think that that gives the Court the foundation to say that I have a clear understanding of how the state feels about this action and if there are constitutional

issues involved as regards freedom of speech, due process, equal protection, that it is incumbent on this Court to conduct that analysis.

THE COURT: I can't claim to have a clear understanding of how the state judiciary views this particular controversy. I don't know.

MR. DENLEA: Well the Attorney General has informed all of us, Your Honor, that they have absolutely no intention of abrogating Rule 5.4.

THE COURT: I think that's an over reading of the Attorney General's position.

But dealing with this topic, what do you say to the argument that under the Eleventh Amendment you haven't sued the right defendant, that you would need to amend your complaint in that regard also? Would you please respond to that?

MR. DENLEA: Your Honor, with respect to the Eleventh Amendment, I believe that in view of the fact that it is the state judiciary through its agents and assigns that is responsible for the enforcement of this action that we do in fact have the right party and that the Eleventh Amendment as regards this Court's ability to determine matters of state law is really an inapposite analysis because, Your Honor, this Court, again, coming back to the constitutional issues --

THE COURT: No, no, please, sir, I need to ask you to focus on the Eleventh Amendment.

MR. DENLEA: They're intertwined, Your Honor.

THE COURT: The argument, as I understand it, is that under Section 1983 you may be permitted to amend to name an individual or perhaps more than one individual with enforcement authority and in that way overcome the Eleventh Amendment immunity of the state.

Focusing specifically on that argument, what would be your response, please?

MR. DENLEA: Well, Your Honor, if that's the Court's wishes, we would have absolutely no problem again requesting the Court for permission to amend the caption in that regard to reflect the names of the individual enforcement agencies involved.

THE COURT: Do you think that's what the law requires?

MR. DENLEA: I'm not convinced that's what the law requires, but my feelings in this regard are obviously sublimated to Your Honor's feeling, and if that ministerial change is something that the Court would require, we'd have absolutely no problem complying.

THE COURT: Well, the further argument is that under Ex parte Young, if the complaint were permitted to be amended to address this jurisdictional problem, you

would need to allege an imminent threat of enforcement by that individual defendant.

What do you say to that, sir?

MR. DENLEA: Well, Your Honor, this is a unique situation because when we talk about an imminent threat, what does imminent threat mean in this setting?

What an imminent threat means is that the plaintiffs in this action would effectively, according to the Attorney General's analysis, be put on the horns of a dilemma, basically risking their law license to go forward with the type of private investment that's contemplated in the complaint.

And as we began our analysis, both in Babbitt v. United Farm Workers and Steffel v. Thompson, those both stand for the proposition that a party's not required to await and undergo a prosecution as the sole means of seeking relief.

So obviously, Your Honor, in a case such as this when the law licenses of the individuals are potentially the stakes of attempting to press their legal rights and their legal claims, both the Babbitt case and the Steffel case stand for the proposition that one need not go to that extent nor put those assets at risk before coming to court and seeking the relief that we seek.

THE COURT: All right. I understand that, I

think, but let's break that down.

Who's law license are we talking about?

MR. DENLEA: Your Honor, it would be presumptively the individuals who are the principals of Jacoby and Meyers, as well as the individual practitioners in the state of Connecticut.

THE COURT: We don't know that there are any individual practitioners in Connecticut.

Are the principals licensed in Connecticut?

MR. CARTON: Can I supplement the record in one respect, Your Honor?

THE COURT: Yes.

MR. CARTON: Because as meaningful and interesting the colloquy is, I would suggest it's actually in some respects on the wrong path.

THE COURT: Okay.

MR. CARTON: Jacoby and Meyers' standing in this case was never predicated upon the threatened enforcement action that would be brought against it in the event it were to consummate. Yes, that would be a collateral or incidental harm that it would suffer if an enforcement action were brought against it, but its standing was primarily predicated upon the injury that exists today, the injury that existed yesterday, the injury that will exist tomorrow in terms of the increased cost of capital

that it is experiencing as a result of its inability to access capital markets in the manner in which any other business can.

At the present time, Rule 5.4 prohibits a non-lawyer, obviously, from owning an interest.

THE COURT: I understand, but this is an action in which the plaintiff, Jacoby and Meyers Law Offices LLP, comes here seeking extraordinary relief involving the equitable power of the Court. Consistent with fundamental precepts of equity, I need to first ask: Who is this plaintiff? What is the nature of their situation? Why is it that extraordinary relief is being sought? And I need to consider the equities of the plaintiff's position.

When I do that, I learn that the plaintiff comes here using the wrong name, without being licensed to do business in Connecticut and perhaps having no actual presence in Connecticut, and with no claim to having inquired of the state judiciary about this problem.

I don't think you need to be a stick in the mud to pause at that point and ask: Is this an appropriate thing to be doing?

A traditionalist I'm sure would suggest it's not, that a member of the Connecticut Bar owes the state judiciary respect and deference too, and a simple inquiry might be made in advance of bringing an action in federal

court in which you assert that they're biased. That's also part of the total picture.

So I don't think it's on the wrong path. I think it's the starting point.

MR. CARTON: And I appreciate, Your Honor, the equity consideration that the Court is exploring this morning. I would respond simply and respectfully by saying that the considerations would be no different than if it were a solo practitioner having graduated from law school yesterday than it would be if Shipman & Goodwin were bringing this application as a several hundred person law firm.

THE COURT: But they're not.

MR. CARTON: Right. But that's the point, Your Honor.

Jacoby and Meyers has lawyers licensed to practice, maintains a presence in the state of Connecticut, whether that presence is as robust as a firm ten times its size or more significant than the recent law school graduate, the issue is the same.

THE COURT: Right.

MR. CARTON: The issue is each of those attorneys licensed to practice in the state of Connecticut is currently restricted from pursuing capital in the manner in which Jacoby and Meyers wishes to proceed in

terms of its expansion.

So it's not so much a question of the equities being different or different deference being given to the size or scope or magnitude of the particular plaintiff who could come before Your Honor, the challenge is one predicated upon the federal constitution.

It would be no different, and we've referred to this in different jurisdictions and I bring it to Your Honor's attention here as well, there are parallels to be drawn with respect to the desegregation efforts that took place in the 1960's, when the Supreme Court concluded that separate but equal was unconstitutional and various state and municipal legislatures and county ordinances tried to pass laws, and ultimately in Cooper v. Aaron they said you couldn't do that, you could not subrogate a Supreme Court decision to the wishes of local governments.

THE COURT: That's a remarkable analogy, counsel.

MR. CARTON: It is. I think there are a number of analogies to --

THE COURT: What do you say to the Ex parte Young problem?

MR. CARTON: I say it's form over substance. In terms of the Ex parte Young, to me it would be a ministerial and relatively easy fix if we were to conclude

that we needed to name the individual enforcement officers, which again would elevate form over substance. It wouldn't get to the heart of the issue.

THE COURT: What about the requirement that you show an imminent threat?

MR. CARTON: My response would be that not only is there an imminent threat, there's an actual threat. There's an injury that Jacoby and Meyers sustained at the very start of the business day today, which is the same injury they sustained last Friday during working hours. They do not have the ability to access the capital in the way they wish.

THE COURT: Does Jacoby and Meyers have an arrangement with someone in which they wish to invest?

MR. CARTON: The extent to which I am at liberty to share with the Court, I can share with the Court what we shared with Judge Kaplan in New York.

We have specifically identified the names of three high net worth individuals, each of whom are prepared to consummate an investment in Jacoby and Meyers in exchange for an ownership interest.

There are also corporate entities that obviously business confidences dictate that I not divulge at this time.

But in response to Judge Kaplan's questions

regarding the nature of the transaction that Jacoby and Meyers wishes to consummate, one of the facts that we amended our pleading in New York to allege was the specific identity of those individuals. And in fact, I believe as recently as last week, Bloomberg News actually reported on who those individuals are and the fact that they were prepared to consummate a investment in Jacoby and Meyers.

THE COURT: Are you able to reveal how the investment would work?

MR. CARTON: Not beyond satisfying the language of the statute, which is that those individual investors would own an interest which is currently the proscription that Rule 5.4 prevents.

THE COURT: Thank you.

MR. CARTON: Effectively it would be a capital infusion into Jacoby and Meyers, they would then own an interest in the overall profitability of the firm not unlike any other limited partner or member of an LLC.

THE COURT: Thank you.

MR. CARTON: Thank you. And thank you, I recognize the unorthodox approach, but given that we're obviously trying to bring all these issues to the forefront, I appreciate the opportunity. Thank you.

THE COURT: Not at all.

Yes, sir?

MR. DENLEA: Yes, Your Honor, just in echoing what my partner and the Court had been discussing, when Your Honor said that it's a remarkable analogy to certain cases involved in the civil rights struggle.

It's really an apt analogy because what had happened in that setting in Aaron v. Cooper was that in 1957, Thurgood Marshall, a U.S. attorney, found himself in -- the district court in Arkansas found himself facing a situation where he was told very much what we've been told, that why should we even bother reaching the questions of the constitutional issues involved in this matter, because even if we get past the hurdle of this matter immediately before us, there are ten more separate but equal statutes right behind that would take their place and prevent the same relief that you seek.

And the Supreme Court of the United States in 1958 in that setting said that that is not to be permitted, that basically, my words not theirs, that one cannot use unconstitutional statutes and regulations as scaffolding to buttress each other such that they can overcome the constitutional claims in replacement for this court.

So accordingly, Your Honor, with respect to -- and unfortunately Judge Kaplan an in New York completely

ignored that part of the authority and that Supreme Court decision with respect to his analysis, and that's why we think that it's particularly appropriate that this Court as a court of coordinate jurisdiction, examine anew the entire issue because the merits of this case have not been reached yet and the procedural hurtles that have been placed in our path to this point should not, under the authority cited, particularly in Aaron v. Cooper, should not preclude that analysis.

THE COURT: Do you think that there is any merit to the proposition that an individual judge should not preempt the rule-making process that is followed with regard to the rules of professional conduct whereby everybody has a chance to be heard and matters are deliberated over at some length and public comment is then solicited again and you go through a rather painstaking process that ensures everybody has a chance to be heard?

MR. DENLEA: Well, Your Honor, that presupposes a legitimate state interest and a policy that has not been as entrenched by four decades of embracement, to use the Attorney General's word.

So as far as that goes, Your Honor, it's our opinion that it is particularly and uniquely this Court's province to look past what the state courts have done in this regard.

THE COURT: I think your conception of the role of the district judge in the context of racial segregation makes sense certainly, that's our history. But I wonder if that conception does obtain in the very different scenario before the Court today. You're talking about the regulation of the legal profession, which is a matter entrusted to the state judiciary, having to do with the economic concern of your client engaged in the practice of law in Connecticut perhaps under the authority of the licensing body, the state judiciary.

Aren't those two very different?

MR. DENLEA: No, Your Honor.

THE COURT: Doesn't the role of the individual district judge in the latter scenario appear very different to you?

MR. DENLEA: Your Honor, as a matter of fact --

THE COURT: If it doesn't, I'm quite surprised, counsel.

MR. DENLEA: Well, it doesn't, and if the Court will permit, I'll explain why.

THE COURT: Please.

MR. DENLEA: This precise path has been tried by your predecessors in the Bates action as regards attorney advertising. Each and every one of the states had a proscription against attorney advertising. And ironically

it was our client who was pressing that case in that forum as well. It was only in that setting with district court judges and ultimately right on up the appellate line that the current law as regards attorney advertising came into being. Because district courts stepped in, the appellate, the circuit courts stepped in and aggregated the individual state proscriptions.

And I think that what's interesting for the Court's analysis is that the fulcrum in that discussion was the notion that it was the blanket prohibition, the complete banning of attorney advertising that was the offensive part of the statute.

And similarly here, Your Honor, it's the blanket proscription of access to private equity capital that is what's offensive to the Constitution.

And, Your Honor, furthermore, in terms of whether it's -- there's a propriety in terms of Your Honor intervening and becoming involved in what you may momentarily perceive as being a matter for the state judiciary, it's interesting to note that one of the first analyses, and this is something that is the -- often the part that the Attorney General would leave off the analysis involving the case of Pike v. Bruce Church is that the Court must do an analysis as to whether or not there is a less intrusive or less invasive way of going

about the stated objective, in this case the regulation of attorney conduct.

And pointedly, while with respect to the laws of the State of Connecticut and the regulations of the State of Connecticut, Rule 5.4 is actually unnecessary and superfluous because there are other rules. Specifically: Rule 2.1, in terms of the representation of the client, the lawyers will exercise independent professional judgment and render candid advice. Rule 7.4 and 7.3 with respect to both advertising and personal contact with the perspective clients, and Rule 1.6 with respect to that a lawyer shall not reveal information related to the representation of a client unless the client gives him consent.

So with respect to the Court's concern as to whether or not the conduct of the attorneys could continue to be regulated by the courts, all of those regulations and others more than cover that area.

So the analysis is at this point the Rule 5.4 as it seeks to cloak itself in regulating attorney conduct really does nothing of the kind. What it does is it regulates the commerce of law, not the conduct of the law, and that it has been inappropriately linked to these other regulations in an attempt to give it the cloak of legitimacy with respect to regulating attorney conduct.

In point of fact, when one does an analysis as to the origins of this regulation, one finds that it really stems from a 1909 criminal statute in the state of New York that was really a means of economic protectionism where local practitioners in New York were attempting to prevent corporations from setting up prepaid legal services. So they enacted a criminal statute stating that private corporations could not invest in law firms.

And the problem with that analysis -- and that was unabashedly held open as being the reason for the predecessor of Rule 5.4 -- but in 1978 that analysis ran into difficulty in the case of the City of Philadelphia v. New Jersey, because the Court stated it is inappropriate for a state to enact legislation that would inure to the economic advantage of a particular group. So this economic protectionism was unmasked for what it really was, and then all of a sudden the legal fiction of all of the collateral salutary effects that were claimed with respect to regulating attorney conduct came into being.

What we know from the analysis that I just gave the Court is that those rules and their predecessors were already in place, so this was effectively a grafting of Rule 5.4 and its predecessor onto these other regulations in the hopes and attempts to try to cloak it with an era of legitimacy which it otherwise doesn't deserve.

THE COURT: Coming back to the Bates precedent, have you looked to see whether district judges abstained pending developments on the state side or simply leapt into the breach and ruled?

MR. DENLEA: I believe that they ruled directly, Your Honor. That had not been a matter of our inquiry prior to this. If further analysis finds that to be incorrect, we would request permission to communicate that to the Court.

THE COURT: To be clear, you haven't done the research but --

MR. DENLEA: No, it's not that, Your Honor, it's that Your Honor's specific inquiry with respect to whether or not there was a requirement of doing collateral administrative remedies prior to the district court ruling, that had not been germane to any of the matters before the court and was not researched.

THE COURT: So you don't know.

MR. DENLEA: As I stand here, I do not, sir.

THE COURT: Okay, thank you.

MR. DENLEA: Anything further, Your Honor?

THE COURT: No, thank you.

MR. DENLEA: Okay, thank you, Your Honor.

THE COURT: Mr. Deichert, would you like to respond?

MR. DEICHERT: Briefly, if I may, Your Honor? I just want to clarify a few things.

The idea that the Connecticut judicial branch believes that Rule 5.4 serves an important policy does not mean that it would necessarily apply in the situation, in every situation, or regardless of the facts of the case. I mean, ultimately, you know -- and the idea that plaintiffs are -- plaintiff is saying that the state judiciary is inherently biased and unable to adjudicate these claims is, quite frankly, insulting. I mean, ultimately there's no evidence to indicate that.

As Your Honor pointed out, they've made no effort to get any kind of ruling from any state body. And the Judges of the Superior Court, who are the defendants in this case, ultimately would not be the final deciding body for the determination of whether Rule 5.4 is valid. If were an enforced through the grievance process, it would go through the Superior Court and ultimately be subject to review by the Connecticut Supreme Court and the United States Supreme Court on certiorari.

So ultimately the idea that the state judiciary is inherently biased should be a non-starter in our opinion, Your Honor.

They raise the specter of them losing their law licenses. That kind of gets us back into the choice of

law questions we were discussing.

Under Connecticut's Rule 8.5 -- 8.5(b)(2) specifically says that a lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant of the effect of the lawyer's conduct will occur.

So, as we were saying, Your Honor, given the lack of presence of Jacoby and Meyers in this case, and given the nature of the rule at issue which governs internal firm conduct, it's not -- certainly not clear that anyone would be losing a law license based on any potential enforcement. And in fact Attorney Carton apparently concedes there is no imminent enforcement.

And as Your Honor was trying to get an answer on the Ex parte Young issue, we believe that is the answer. There is no imminent risk of enforcement here. And the fact that plaintiffs failed to properly plead an Ex parte Young claim shows kind of the -- why the hypothetical nature of their claim is a problem. There is no one they can name. No one has enforced it, no one has threatened to force it.

And ultimately the judges of the Superior Court are responsible for the creation of the rule. They do have some enforcement authority. But ultimately the

primary enforcement authority resides elsewhere. So it highlights the hypothetical nature of their claims and the reasons why they lack standing in this case.

THE COURT: What is a lawyer acting in good faith supposed to do?

MR. DEICHERT: Your Honor, one option would be to seek a, like, a decision from the Connecticut Bar Association to determine whether the rule applies in the specific factual context.

Another potential option which plaintiffs -- I don't know if plaintiffs have explored -- they may be able to bring a declaratory judgment action in state court seeking, you know, a ruling. That's something that, you know, we would have to decide depending on the situation what our response to that would be. But plaintiffs certainly haven't stated that that's not available.

THE COURT: In the New Jersey case, the Court remitted the matter to a state authority?

MR. DEICHERT: It did, Your Honor.

THE COURT: Does that have any parallel here?

MR. DEICHERT: It could.

Essentially -- but the New Jersey setup is different from the Connecticut setup. My understanding from the New Jersey action is that there was an actual process through the New Jersey court system whereby you

could obtain a binding decision on kind of a given advisory opinion.

Connecticut's setup is different. It would be up to Your Honor whether that would be something that would be appropriate under the circumstances.

But I wanted to highlight that there is that distinction, which may counsel potentially against following the New Jersey approach here.

But also Judge Sheridan in New Jersey had not had the benefit of Judge Kaplan's decision in New York. His decision was issued prior. We submit that Judge Kaplan's decision really analyzes the issues carefully and establishes the plaintiffs lack standing. And to the extent that plaintiffs are complaining of an impediment of their ability to raise capital, that impediment exists regardless of Rule 5.4. An impediment existed under New York law, and it's going to exist regardless of what happens here, particularly given that this court, defendants in this case, have no role in enforcing New York law at all. At least in the southern district, the defendants there were involved in the New York judicial system.

So Your Honor's concerns about interfering with Connecticut's judicial system are, we believe, completely appropriate and we think even more so trying to extend

that to interfere with New York's judicial system in a situation where the New York Attorney General has already represented the New York defendants in that case and a New York district judge has addressed it and the plaintiffs have the ability to seek an appeal, which they haven't done yet, and I'm not sure they plan to.

THE COURT: Counsel?

MR. DENLEA: Your Honor, if I may?

Initially with respect to counsel's comments, I was present in the room with Judge Sheridan, and point of fact he was made aware of the New York proceedings. It was actually an Attorney General from the State of New York who was present and gave the -- his own chapter and verse of what had gone on.

But I think that perhaps we can pull away the veil with respect to some of this back and forth that's gone on here. Present in court with us today are two members from the Connecticut State Attorney General, an attorney representing the CBA, an attorney representing the CTLA. My partner and I would be willing to go into an attorney room with these individuals and just ask them point blank, under what circumstances would your organizations and your enforcement agencies be willing to permit private investment in a law firm? And then perhaps we can build from the ground up so that we don't have to

waste everyone's time and resources going through administrative agencies and saying, well, what you're proposing isn't acceptable, and do that three or four or five times.

Why don't we just stop the charade and say, there is going to be an enforcement action if our clients seek private equity funding, and let's get to the bottom of what these gentlemen would permit.

THE COURT: For a minute there I thought you were agreeing that I should abstain?

MR. DENLEA: No, sir, not at all. If anything, it's hyperbole. It's exaggeration to prove a point.

Everyone in this room knows there would be an enforcement action. It's beyond cavil to suggest something to the contrary.

MR. DEICHERT: Your Honor, again, whether there be an enforcement action would depend on the facts of the case. And ultimately as we've -- we believe we've made clear, there is no basis to conclude whether there would be one. And if so, whether that would apply Connecticut law or whether it would apply New York law. Given the lack of presence here, you know, there's really it's significantly likely that Connecticut would choose to apply New York law.

I mean, these are -- and the idea that they're

saying let's stop this charade before we waste anybody else's time, Your Honor, we didn't bring this action. If they had -- they could have sought -- made efforts to try to get some kind of declaratory ruling or some kind of clarity.

Had they done so, certainly their case would be stronger, but they haven't.

MR. DENLEA: If I might, Your Honor, one need go no further than counsel's papers in saying that the defendants have not seen fit in 40 years to meaningful alter the substantive requirements of Rule 5.4. Can we not take that at its word for what the plain language means?

THE COURT: Okay. At some point I need to adhere to basic procedure, although I do enjoy the back and forth.

Is there anything that you wanted to add, Mr. Deichert before we hear from the counsel for the amici?

MR. DEICHERT: No. I believe we've addressed the issues clearly, Your Honor. Is there anything else that you'd like to hear from us?

THE COURT: Not at this time, thank you.

MR. DEICHERT: Thank you.

THE COURT: Yes, sir?

MR. SHEA: Good morning, Your Honor, Kevin Shea Clendenen & Shea on behalf of the Connecticut Bar Association amicus.

Your Honor, first obviously we rise in support of the motion to dismiss. We join with the Attorney General. I just want to highlight a few of the issues that we've briefed for the Court, that all the parties have extensively briefed the issues, but since there's been some discussion first about the CBA's role in the rule-making process, that is of the greatest concern to us. Our brief actually spent the most time discussing this rule-making process, and we think it's an important one.

We don't think this is just a charade. The importance to realize here, this is an all or nothing game here from Jacoby and Meyers. They're not seeking an amendment to Rule 5.4 to allow this consistent with all the other forces that prevail upon the practice and the things that would uphold this passive investment they're talking about. We don't know what this looks like. We have no idea what this proposal is because they have not submitted to the rule-making bodies any proposal for consideration. That's a real primary problem with this whole cause of action.

This is an all or nothing game. They are asking

the Court to get rid of 5.4 in its entirety. They're not asking you to red pencil it, to write in reasonable restrictions to ensure that all the other things that we're concerned about won't happen here. They're asking for it to be thrown away and we think that that is very telling of their motives here. Because as Your Honor has correctly pointed out time and again, there is a process, the Connecticut Bar Association is part of that process. It has two committees that bear directly on these issues: The Committee on Professional Ethics and the Committee on the Unauthorized Practice of Law. Those committees publish formal opinions -- the Connecticut Bar Association publishes formal opinions by each of those committees on specific inquiries about specific situations just like this. Application of the rules of professional conduct to specific situations.

There has been no inquiry by Jacoby and Meyers to the Connecticut Bar Association about what it believes would be offensive to the professional ethics involved in lawyering.

Your Honor, as we and the Attorney General has briefed extensively, Rule 5.4 is the product of lengthy and deliberate process involving the ABA, premised on model rules, the Connecticut Bar Association and the Connecticut Judicial branch.

The American Bar Association has a 20/20 commission looking into precisely this issue right now. We're not aware that Jacoby and Meyers has participated in that process to give its views on a reasonable amendment that might meet everyone's needs to ensure the provision of legal services to low and moderate income people which they profess to be their goal.

We've addressed elsewhere in the brief, and I'll let the Connecticut Trial Lawyers Association speak to the legitimacy of that representation with this plaintiff, but if you take them at their word that that's what they're concerned about, first of all, it doesn't apply to contingent fee cases because that's the same fee everywhere, it's a contingent fee. We believe that to be primary, if not entirely, the interest of the plaintiffs here, which moots their entire premise for their lawsuit.

THE COURT: I'm sorry, I didn't follow you there.

MR. SHEA: Meaning that Jacoby and Meyers is interested in plaintiff's personal injury cases and there is no concern, none whatsoever, about being able to provide those for low or moderate income people. The fee structure on those contingent fee cases is just that, it's a contingent fee. There's not a problem for access. Quite the contrary. Everybody decries there's too many

personal injury lawsuits.

We believe that the materials we've submitted, as well as those submitted by the Connecticut Trial Lawyers Association show the true motives of Jacoby and Meyers rather to penetrate more markets to increase their share of the contingent fee plaintiff's work, and that's not a purpose here.

THE COURT: So you envision this plaintiff undertaking to acquire personal injury law firms like the Australian firm?

MR. SHEA: Correct. That's exactly what we think is happening here, a national personal injury firm that increases its penetration by an infusion of capital that allows it to open up offices, satellite offices all throughout the country, and just take a greater share of a market that's already being well served and, to some people's opinions, too well served.

Your Honor, the Judges of the Connecticut Superior Court have their own rule-making committee. They seek input from the public. They seek input from the bar association. We're not aware that the plaintiffs have sought input into that process at all.

Again, they could propose a revision of the rule that meets perhaps, you know, with some restrictions, like the Washington D.C. rule that has been allowed, with some

restrictions. They have not proposed that rule. They want it thrown away.

We agree with the Court, this is not the way to do it. Or we agree with the concern of the Court that this is not the proper way to do it. I should correct that.

Briefly, Your Honor, on the standing issue that was recently decided by the Southern District of New York, we join in that argument as well and only seek to point out in addition to the New York state laws that are also additional hurtles that the plaintiff can't overcome if 5.4 is thrown out, there are Connecticut criminal statutes. We've cited four of them that prohibit non-lawyers from sharing in fees, from referring clients, from being involved in legal work: 51-86, 51-87, 51-88 and 53-340a. Those are all additional hurtles that further reinforce the plaintiff's lack of standing because they haven't challenged all of those things, they haven't come up with a plan for how they're going to get around those other additional prohibitions which makes any ruling by this Court merely advisory.

If they want an advisory ruling on this, they can get one from the Connecticut Bar Association. They can submit an inquiry and get an advisory opinion about this.

Additionally, Your Honor, the Securities and Exchange Commission, the disclosures required by the Securities and Exchange Commission are by their very nature in direct conflict with the attorney/client privilege. They are a publicly traded entity. They are required to disclose the nature of their contracts on which their business relies, the nature of the clients on which their business relies, identifying specifically the contracts, specifically the clients. That's what public filing entails. That's in direct conflict to the attorney/client confidence required by the practice of law.

And finally, Your Honor, just one of the constitutional issues touched upon, and we just think it's important if the Court reaches any of these issues, on the First Amendment issue, the plaintiff fails to deal entirely with the fact that the association it is seeking is a purely commercial association and nothing has changed.

The United States Supreme Court's decisions from Lawline on through, they say that that's entitled to the most minimal level of protection.

The Citizens United did not change that. They overlook entirely the fact that Citizens United involved political speech, which is entirely different than a

commercial relationship.

Barring any questions from Your Honor, thank you.

THE COURT: Thank you.

MR. BAILIN: Good morning, Your Honor, Paul Bailin, Shipman & Goodwin with the Connecticut Trial Lawyers Association. Thank you very much for the opportunity to speak this morning.

As in our brief, Your Honor, our concern is primarily with the background policy questions. I know Your Honor has expressed that those are not your top concerns, so I'll try to keep my remarks very brief this morning.

Your Honor, Judge Kaplan dismissed the sister suit in New York in part because other laws preclude relief that the plaintiff is seeking. What we're arguing here is really the flip side of that coin, that each legal system is a complex structure and you can't just pull one piece of the structure out and leave the rest intact. The plaintiff ignores over a century of practice in Connecticut and instead focuses on what's happening in England and in Australia.

In this case, to find Rule 5.4 unconstitutional, and in its entirety, would really not only eliminate that rule, but would bring the entire rule system into

question, and so I think that would be quite extreme.

The plaintiff offers two possible benefits of eliminating Rule 5.4: One that it will help the poor, one that it will help Connecticut lawyers. As far as I can tell, those two claims are unrelated. In other words, the purported benefit for the Connecticut lawyers is not that we would be better able to serve the poor, but we will be better able to serve the rich and compete with others in that regard.

As to the poor, Your Honor, there's simply no information that the minor drop in the prices of services that they might be able to achieve by lower cost equity financing or by keeping the economy to scale would somehow solve this problem.

We've just gone through a four or five year period in our economy where we've had a glut of new law graduates, many of them who anecdotally have been forced to work for minimum wage jobs. At the same time we've had a drop in real estate prices. So to the extent that cost is really the issue, a company like Jacoby could have taken this opportunity to hire new law graduates, buy up the cheap real state and offer these services to poor that they claim to want to help. The fact that that didn't happen seems to me very unlikely that having four percent interest on their capital rather than five or six percent,

seems unlikely it's going to change the situation here.

And the other side of the claim seems to be we're not competing with Australia and United Kingdom. As I indicated in our brief, there's no indication those firms are trying to compete in the Connecticut market. There's some indication they feel like they can't precisely because of Rules like 5.4. So perhaps there's some worry about competing in the global economy, but there's no sense that legitimate ethical Connecticut firms are unable now to earn a living in the state of Connecticut.

On the flip side, what we suggested is that getting rid of Rule 5.4 would not only abrogate that rule but would bring the entire rule's regime into question, perhaps cause serious ethical problems or concerns for our clients. They really havn't given any good service to any possible solution to this problem or given any sense why the possible harm to the interests of our clients would be justified based on any sort of benefits, and so we simply don't see any possible basis for making this choice.

Ultimately it is a political question. The changes that would be involved are so interrelated and complicated that they're ones best left to the people of Connecticut.

So thank you, Your Honor.

THE COURT: Thank you.

MR. CARTON: Your Honor, may I just briefly respond to each of the amici as they each made a similar point that I'd like to address in one regard.

Each amici suggests that in seeking the abolition of Rule 5.4 nothing will fill its void. And in that respect, I think that misconstrues the nature of the challenge and I don't think that the two are necessarily mutually exclusive, that there wouldn't be some type of administrative or quasi judicial structure that wouldn't be imposed in the absence of Rule 5.4.

It's not Jacoby and Meyers' burden to come forth and present this Court or any other Court with an alternative construct that might ameliorate the other ethical concerns on which they say Rule 5.4 was built. Jacoby and Meyers' challenge, quite simply, is directed at the blanket suppression that Rule 5.4 currently prohibits, and my colleague referred to that.

But in that regard, if I could just redirect the Court's attention, there is significant Supreme Court guidance in this regard. You can look both to the Bates decision in which the Court held, in holding that advertising by attorneys may not be subjected to blanket suppression, we of course do not hold that advertising by attorneys may not be regulated in any way.

Jacoby and Meyers has said as much in its opposition papers. It's the blanket suppression of outside capital that it believes is unconstitutional. That's not to suggest that if an alternative structure were implemented, such as that in the District of Columbia or such as that in Australia or the United Kingdom -- whether it be limitations on the percentage of outside equity, whether that be the fitness to own requirements, whether that be management committees, whether that be requiring non-lawyers to agree to abide by ethical codes of conduct that lawyers are otherwise required to abide by as a matter of licensure -- that those things couldn't be entertained, and might ultimately be necessary to the extent that the field would continue to be regulated.

But it's the blanket suppression, and that blanket suppression that the Court talked about, being constitutionally infirm in Bates, continued up through its most recent pronouncement in Bates, because in Bates they said a similar thing when they remarked that the government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether. That is what this lawsuit is all about, the blanket suppression that Rule 5.4 currently commands.

THE COURT: All right.

Mr. Deichert, I'll give you the last work as the movant.

MR. DEICHERT: Your Honor, I'll be brief.

I think we've responded well to their issues in our papers, so I don't think we'll repeat our arguments, and I believe Your Honor understands our jurisdictional arguments and so I'll just thank the Court for its time.

THE COURT: All right, thank you all. I appreciate your coming here today.

(Proceedings adjourned at 11:16 a.m.)

C E R T I F I C A T E

In Re: GALE vs. CHICAGO TITLE

I, Darlene A. Warner, RDR-CRR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/s/_____

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