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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND SUPREME  
COURT RULE 34(e)

Supreme Court  
No. R-26-0006

**REPLY IN SUPPORT OF  
PETITION TO AMEND RULE  
34(e), RULES OF THE  
SUPREME COURT**

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On January 8, 2026, pursuant to Ariz. S. Ct. R. 28, Jonathan Riches, Timothy Sandefur, and Adam Shelton, individually and on behalf of the Goldwater Institute (“Petitioners”), respectfully petitioned the Arizona Supreme Court to amend Rule 34(e), governing the methods of admission for attorneys who are already licensed in other jurisdictions to be authorized to practice law in Arizona. The Court ordered the Petition open for public comments on January 22, 2026. Petitioners, in support of that Petition, now reply to public comments.

## DISCUSSION

Petitioners propose four amendments to this Court’s rules on Admission on Motion. **First**, Petitioners propose the removal of the requirement that, as a condition of admission by motion, the jurisdiction in which the attorney is licensed must offer reciprocal admission to Arizona attorneys (“reciprocity requirement”). **Second**, Petitioners propose the elimination of the requirement that an attorney must have been engaged in the “active practice of law” for three of the past five years (“active practice requirement”). **Third**, Petitioners propose that the juris doctor requirement be deemed satisfied for certain foreign-educated lawyers. (“foreign education provision.”). **Fourth**, Petitioners propose that attorneys who are in good standing in another jurisdiction have the opportunity to be conditionally licensed to practice law in Arizona while the character and fitness examination is pending on conditions to be determined by the Arizona Committee on Character and Fitness (“conditional practice presumption”).

These proposals are intended to lessen the burdens on attorneys licensed in other jurisdictions, bring the legal profession in line with statutory reforms in Arizona that allow for universal licensing for professionals, and increase access to legal services in Arizona. The proposals ensure fairness for lawyers and their clients, and remove arbitrary, protectionist barriers. They also increase access to legal services in Arizona—an urgent need underscored by the very concerns

opponents of this Petition cite as grounds for denying it. While the recent reforms from this Court were strong steps in the right direction to expand the availability and affordability of legal services in the state, more can be done. Those recent changes are quite limited, however, and insufficient insofar as they apply only to certain communities rather than allowing the market for legal services to naturally grow and develop through the removal of protectionist barriers.

Twenty comments were filed in response to the Petition. The majority opposed the Petition; but most generally adopted the position of Mr. Geoffrey M. Trachtenberg in his comment in opposition.<sup>1</sup>

The State Bar also opposes this petition, but it offered no specific substantive objections to the proposed rule changes themselves. Instead, it largely advocated a wait-and-see approach based on the recent, limited expansions to admission rules for certain rural areas and for certain low-income populations. In other words, the State Bar supports rules changes when it believes they will benefit preferred groups, arbitrarily choosing which communities and which people need more lawyers.

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<sup>1</sup> Even the opposition comment by the Attorney Regulation Advisory Committee adopted “the reasoning expressed in that comment [the Trachtenberg comment] as its own, and incorporates it herein by reference.” See Attorney Regulation Advisory Committee, Comment in Opposition to Petition to Amend Arizona Supreme Court Rule 34 (e), Filed April 27, 2026.

This Petition takes a different approach. Rather than relying on selective exceptions, it would help solve access to justice problems through the natural evolution of the legal market. By reducing unnecessary and protectionist barriers to entry, the Petition would create broader opportunities for attorneys to serve underserved communities without requiring the Court to pick winners and losers.

This also highlights the flaw in the Bar’s primary criticism of the Petition—its assertion that Petitioners have not provided evidence showing that the proposed amendments “would meaningfully improve access to justice, increase the number of competent practitioners in underserved areas, or reduce costs for consumers.” But that misses the point entirely. The proposed amendments are not targeted to specific groups, although they will almost certainly have the effect of increasing the number of practitioners in all communities and all practice areas, including “underserved areas.” Rather, they are intended to make the admissions process more fair, more rational, and more consistent with Arizona’s broader policy framework favoring economic liberty, competition, and the removal of unnecessary regulatory barriers.

In fact, Arizona’s experience with broad-based universal licensing reform in other professions strongly suggests that this Petition would increase the number of practitioners, improve access to justice, and reduce costs for consumers. Within just a few years after Arizona enacted universal licensing recognition for Title 32

occupations and professions, more than 9,000 professionals applied for and received Arizona licenses, including approximately 540 physicians and 260 physician assistants.<sup>2</sup> The Common Sense Institute estimated that the economic impact of these reforms would increase Arizona’s GDP by \$1.5 billion over 10 years and bring approximately 16,000 additional workers to the State.<sup>3</sup>

If these reforms produced such immediate and significant results for physicians, engineers, and other licensed professionals, there is little reason to believe the same would not occur for attorneys. Indeed, the impact here is likely to be even more substantial. Unlike many licensed professions that require a physical presence, attorneys can often serve clients remotely from virtually anywhere, allowing legal services to reach all communities, including “underserved communities,” more quickly and efficiently once unnecessary barriers to admission are removed.

The rest of this reply addresses the specific comments directed at the proposed changes offered by Petitioners.

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<sup>2</sup> Heather Curry, *9,000 Arizonans and Counting Free to Work Thanks to Goldwater-led Universal Recognition*, Goldwater Institute (January 23, 2024), available at <https://www.goldwaterinstitute.org/9000-arizonans-and-counting-free-to-work-thanks-to-goldwater-led-universal-recognition/>.

<sup>3</sup> *Id.*

## **I. Reciprocity Requirement**

The Petition proposes to eliminate the reciprocity requirement for admission. This retaliatory barrier does not protect clients, consumers, or the integrity of the legal profession. Its primary function is to shield Arizona attorneys from competition. In practice, the rule simply punishes attorneys for the policy choices of other jurisdictions—decisions over which those attorneys have no control. At the same time, it harms Arizonans by needlessly reducing the availability of legal services in Arizona based on the actions of out-of-state bar associations and licensing authorities. Whatever value retaliatory trade barriers may have in other contexts—it’s not much—this one doesn’t advance the interests of Arizonans who would benefit from greater access to competent legal representation.

The protectionist nature of the reciprocity requirement is proven, in fact, by the comments in opposition. For example, Mr. Trachtenberg contends: “[r]eciprocity ensures Arizona lawyers are not disadvantaged relative to out-of-state lawyers” and that “the Court may reasonably maintain reciprocity as a policy choice balancing mobility and fairness to Arizona admittees.” This is naked economic protectionism, however which prioritizes the “advantages” of “Arizona lawyers” over the needs of the law public. But that rationale has nothing to do with whether an attorney lawyer is competent or qualified to practice law. Courts have repeatedly recognized that this kind of economic protectionism is not a legitimate

government interest. *See Craigmiles v. Giles*, 312 F.3d 220, 229 (6th Cir. 2002); *St. Joseph Abbey v. Castille*, 712 F.3d 215, 222–23 (5th Cir. 2013).

Notably, neither the Bar, the Committee on Character and Fitness, nor the Arizona Prosecuting Attorneys’ Advisory Council took any official position on this specific proposal. The only substantive objection came through the Attorney Regulation Advisory Committee, which merely adopted Trachtenberg’s protectionist arguments as its own.

Given the absence of any genuine consumer-protection justification—and the fact that the opposition rests almost entirely on explicit economic protectionism—the Court should adopt this proposal and eliminate the reciprocity requirement.

## **II. Active Practice Requirement**

The Petition proposes that the Court eliminate the requirement that attorneys seeking Admission on Motion in Arizona show they have been engaged in the active practice of law for three of the past five years. As explained in the Petition, this requirement discourages new attorneys, recent retirees, and those seeking to resume their legal practice after having exited for a time (*e.g.*, for family reasons, such as child-rearing or caring for an elderly family member) from offering legal services to Arizonans. The practical effect of this rule is less opportunities for qualified attorneys who did not actively practice for a time, as well as fewer

attorneys available to serve Arizonans resulting in reduced access to legal services and higher costs for clients and consumers.

Notably, no other pathway for admission in Arizona imposes a comparable time-based active practice requirement. Under Rule 34(g), for example, an applicant may be admitted by transferring a qualifying bar examination score from another jurisdiction achieved within the last five years without demonstrating any prior practice at all. Thus an individual who passed the bar four and a half years ago and never practiced law a single day would qualify for admission through score transfer, but an attorney with a decade of experience who temporarily stepped away during part of the last five years would be categorically barred from admission on motion. That inconsistency is difficult to justify.

The Committee on Character and Fitness voted to support this rule in part. The Committee supports eliminating the requirement that active practice occurs in the last five years, but nevertheless believes showing three years of practice should still be a requirement as it helps to demonstrate the fitness to practice law in Arizona. The Committee's position implicitly recognizes that the current rule is overly rigid and in need of modernization. And the inconsistency with the transferred score pathway still remains. Neither the State Bar nor the Arizona Prosecuting Attorneys' Advisory Council offered any specific opposition to this proposal.

Mr. Trachtenberg's comment, later adopted by the Attorney Regulation Advisory Council, contends that the active practice requirement is necessary because laws, procedures, technology and evidence rules change over time, making recent practice "a proxy for baseline competence and professional judgment." While those concerns are understandable, they ultimately demonstrate how underinclusive the current rule is if maintaining current competency is truly the objective. For example, nothing in the rules specifically limits the ability of an attorney to practice law in Arizona if the attorney has not engaged in the active practice of law for over a decade but maintained an active Arizona license over that time. An attorney admitted in Arizona in 1995 who has not actively practiced since 2010 remains fully authorized to practice today without additional scrutiny, while an experienced out-of-state attorney seeking admission on motion faces heightened barriers.

Indeed, Mr. Trachtenberg's own proposed alternatives implicitly recognize the need to modernize the current framework. He recommends modernizing the definition, adjusting the "look back" window, and creating a "return-to-practice track" for those who have been out of practice for over five years. But if maintaining current competency is genuinely important, those reforms cannot logically apply only to attorneys seeking Admission on Motion while exempting currently licensed Arizona attorneys from similar standards.

The same inconsistency is reflected in the comment of Alexander R. Hartman, who provides the example of an attorney who practiced from 1995 to 2010, could still market “fifteen years of experience” despite having been out of practice for fifteen years, while a recently admitted attorney would have only a few years of experience but more current legal knowledge. Mr. Hartman argues that laymen “cannot readily distinguish between substantial but stale credentials and recent, current practice” and that “[t]his information asymmetry leads clients to select attorneys whose knowledge may be fifteen years out of date over attorneys with current competency, resulting in potentially outdated advice, and increased malpractice risk.” But that concern exists regardless of whether the attorney was originally admitted in Arizona or is seeking Admission on Motion. Yet only the latter is subject to the rule. Treating the two situations differently is irrational from the vantage point of consumer protection—although, again, it serves as an effective barrier to entry that protects the financial interests of Arizona attorneys.

At minimum, the Court should substantially amend the active-practice requirement for Admission on Motion. The better course, however, would be to eliminate it altogether.

### **III. Foreign Educated Lawyer Provision**

The Petition proposes amending the rules for admission on motion to allow for the admission of foreign-educated lawyers who are already licensed to practice

law in the United States. Under the current rule, an applicant must “hold a juris doctor degree from a law school approved by the Council of the Section of Legal Education and Admission to the Bar of American Bar Association at the time of graduation.” The proposed change preserves that requirement but adds a narrow alternative for those with a foreign legal education that has been deemed substantially equivalent to a juris doctor degree by the state or states in which the applicant is already authorized to practice law.

This change ensures that foreign-educated attorneys are eligible for licensure if they are already engaged in the practice of law and their education has already been vetted and deemed substantially equivalent by another U.S. jurisdiction. The amendment would apply only where the licensing state employs a rigorous equivalency analysis.

Neither the Arizona State Bar, the Arizona Committee on Character and Fitness, nor the Arizona Prosecuting Attorneys’ Advisory Council made any specific comments related to this proposal.

Mr. Trachtenberg expresses concern that the proposal will lead to an outsourcing of this Court’s power to other jurisdictions. But that is not the case. The proposal simply adds a pathway for those who do not “hold a juris doctor degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time

of graduation.” Currently, an individual who graduated from a foreign law school is not eligible for the admission on motion process. This proposal seeks to remedy that problem without placing unnecessary burdens on this Court to determine the appropriateness of the legal education if such a determination has already been made by another jurisdiction.

That approach is particularly reasonable at a time when the American Bar Association’s long-standing dominance over law-school accreditation is itself beginning to erode. *See* Samadhi Jones, *Court Opens Door to New Law School Accreditors for Bar Admission*, Florida Bar News (Jan. 16, 2026)<sup>4</sup>; Karen Sloan, *Tennessee Joins States Eying End to ABA’s Role in Law School Accreditation*, Reuters (Sept. 17, 2025).<sup>5</sup> As more jurisdictions reconsider rigid reliance on ABA accreditation alone, Arizona should not maintain an unnecessarily exclusionary rule that forecloses otherwise qualified attorneys from practicing law in the State.

Indeed, Petitioners would support a proposal that would make another jurisdiction’s determination that a foreign educated lawyer’s education was substantially equivalent to a juris doctor degree a mere rebuttable presumption of the sufficiency of the legal education rather than being automatically dispositive.

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<sup>4</sup> <https://www.floridabar.org/the-florida-bar-news/court-opens-door-to-new-law-school-accreditors-for-bar-admission/>.

<sup>5</sup> <https://www.reuters.com/legal/litigation/tennessee-joins-states-eying-end-abas-role-law-school-accreditation-2025-09-17/>.

Such a framework would fully preserve this Court's ultimate authority while still eliminating the current categorical exclusion.

Because foreign-educated attorneys are presently and unreasonably barred altogether from seeking Admission on Motion, the Court should adopt the proposed amendment.

#### **IV. Character and Fitness Presumption**

The Petition proposes that an attorney in good standing in another jurisdiction be permitted to conditionally practice law in Arizona while the attorney's character and fitness review is pending. The proposed amendment also permits the Committee on Character and Fitness to establish presumptive standards for fitness. This proposal preserves the Committee's authority to conduct a full character and fitness review while allowing attorneys who have already passed such reviews elsewhere—and who present no red flags—to begin serving Arizona clients without unnecessary delay. That balances public protection with the need to expand access to legal services.

This proposal is aimed at easing the burdens on licensed attorneys becoming authorized to practice law in Arizona and serving the legal needs of Arizonans. The character and fitness examination takes a minimum of four months to be

completed.<sup>6</sup> During that period, otherwise qualified attorneys are prohibited from serving Arizona clients despite already being licensed and in good standing elsewhere.

This proposal generated the most opposition among Petitioners' proposed reforms. The Arizona Prosecuting Attorneys' Advisory Council, the Committee on Character and Fitness, and Mr. Trachtenberg all oppose this change, although Mr. Trachtenberg's comment acknowledges that some reform in this area is warranted.

The Committee on Character and Fitness's primary argument is that admission in another jurisdiction is not sufficient to establish, by clear and convincing evidence, that the applicant has "good moral character" and the relevant traits and characteristics required under Rule 36(b). To support that position, the Committee identified ten instances over the past nine years of individuals who were in "good standing" in their original jurisdictions, but Arizona's review process later raised character concerns. But that argument overstates the problem and understates the safeguards built into the Petition's proposal.

Most importantly, the Committee does not contend that these applicants would have passed presumptive standards for fitness adopted by the Committee in

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<sup>6</sup> *Character and Fitness General Information*, Arizona Supreme Court Attorney Admissions, <https://www.azbaradmissions.org/appinfo.action?id=241>.

accordance with this proposal. Nor does the Committee explain why those isolated examples justify imposing lengthy delays and substantial burdens on every other applicant. Between 2017 and 2022, 1,115<sup>7</sup> attorneys were admitted under the Admission on Motion rule.<sup>8</sup>

Even accepting the Committee’s numbers at face value, the problematic applications identified represent only a tiny fraction of one percent of applicants over nearly a decade. In effect, the Committee’s position is that more than 99% of applicants seeking Admission on Motion should be required to undergo the burdensome, time consuming, and costly character and fitness process to stop the fraction of a percent of applicants that the Committee identified over a nine-year period. That approach imposes substantial costs on the overwhelming majority of

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2017	158	ARC Annual Report (04/26/18), <a href="https://tinyurl.com/535ufsvf">https://tinyurl.com/535ufsvf</a>
2018	185	ARC Annual Report (04/30/19), <a href="https://tinyurl.com/bddy4pcu">https://tinyurl.com/bddy4pcu</a>
019	197	ARC Annual Report (04/30/20), <a href="https://tinyurl.com/yhfath4a">https://tinyurl.com/yhfath4a</a>
2020	170	ARC Annual Report (04/14/21), <a href="https://tinyurl.com/ynjwstfx">https://tinyurl.com/ynjwstfx</a>
2021	249	ARC Annual Report (04/30/22), <a href="https://tinyurl.com/h7dtyaah">https://tinyurl.com/h7dtyaah</a>
2022	156	ARC Annual Report (04/2023), <a href="https://tinyurl.com/4vs7k6x2">https://tinyurl.com/4vs7k6x2</a>
Total Between 2017-2022	1,115	

<sup>8</sup> These numbers are the best available as there is no report of the number of individuals who applied under the admission on motion process and were denied admission.

qualified attorneys and unnecessarily delays the availability of legal services for Arizonans who need them.

To be clear, the Petition does not suggest lowering Arizona's character and fitness standards. It merely proposes that attorneys already licensed and in good standing in another jurisdiction be permitted to conditionally practice while Arizona's review proceeds. Such an inquiry could be made by asking simple questions, that a "yes" answer to would make the application ineligible for conditional practice. Examples include:

- Have you been convicted of, or pled guilty, to a felony?
- Have you been found by a court to have engaged in fraud?
- Have you been disciplined by an educational institution which you attended?
- Have you been disciplined by the lawyer regulation body of any jurisdiction?
- Have you filed for bankruptcy?
- Have you failed a previous character and fitness evaluation?
- Are there any pending complaints against you made to any jurisdiction in which you are authorized to practice law?

Questions of this nature would allow the Committee to quickly identify applicants who may warrant heightened scrutiny while permitting attorneys with clean disciplinary and professional histories to begin practicing without waiting a minimum of four months for the full review process to conclude.

**V. Arizona’s admission on motion standard is in need of modernization, as even those opposing the Petition tacitly concede, and as other state high courts and the ABA appear to recognize.**

Finally, it is important to recognize that many commenters—and developments in other jurisdictions—implicitly acknowledge that Arizona’s Admission on Motion framework requires modernization. Mr. Trachtenberg’s comment, adopted by the Attorney Regulation Advisory Committee, concedes that reforms to the current framework should be considered. The Committee on Character and Fitness likewise supports changes to the active practice requirement.

Beyond Arizona, the Tennessee Supreme Court recently solicited comments in response to a number of questions about the future of the legal profession including “whether the Court should consider modifying requirements for admission to the Tennessee Bar for those licensed in other States to promote interstate practice and mobility.”<sup>9</sup> And the American Bar Association is also considering changes to Rule 5.5, that would permit the cross jurisdictional practice of law in certain situations, like the Petition does here. Arizona should lead, and not follow, these reforms.

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<sup>9</sup> In Re: Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation, Docket No. **ADM2025-01403** (Tenn. Sup. Ct. Sept. 16, 2025).

## CONCLUSION

The Petition should be granted.

**Respectfully submitted May 26, 2026 by:**

*/s/ Adam Shelton* \_\_\_\_\_

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