

**Colorado Supreme Court**

2 East 14th Avenue  
Denver, CO 80203

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Certiorari to the Court of Appeals,  
Nos. 2023CA191 & 2023CA659  
Denver District Court, No. 2020CV30785

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**Petitioner:**

IVY NGO

v.

**Respondents:**

FRANKLIN D. AZAR & ASSOCIATES P.C., a  
Colorado Corporation, and FRANKLIN D. AZAR.

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*Attorney for Amici Curiae National Disabled Legal  
Professionals Association, Colorado Women's Bar  
Association, Colorado Hispanic Bar Association,  
Sam Cary Bar Association, Colorado LGBTQ+  
Bar Association*

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▲ COURT USE ONLY ▲

Case No.: 2024SC647

**BRIEF OF AMICI CURIAE NATIONAL DISABLED LEGAL  
PROFESSIONALS ASSOCIATION, COLORADO WOMEN'S BAR  
ASSOCIATION, COLORADO HISPANIC BAR ASSOCIATION, SAM  
CARY BAR ASSOCIATION AND COLORADO LGBTQ+ BAR  
ASSOCIATION IN SUPPORT OF PETITIONER**

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with all the applicable requirements of C.A.R. 29, 28, 32, and 53, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

**The brief complies with the applicable word limits set forth in C.A.R. 53(g).**

It contains **3,147** words

**I acknowledge that my brief may be stricken if it fails to comply with any of the applicable requirements.**

s/Blain Myhre  
Blain Myhre

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### **Amici Curiae's Statement of Interest**

Amici Curiae are bar associations supporting Petitioner's petition.

The National Disabled Legal Professionals Association (NDLPA) was founded in 2022 to organize and unify disabled legal professionals into a force for change. NDLPA strives to promote professional growth and opportunity for disabled attorneys and legal professionals, improve access and inclusion in the profession, and ensure access to justice for all. The results of this case will directly affect access to safe, inclusive, and equitable workplaces for disabled legal professionals and the ability to organize with other marginalized legal professionals to create a better future for themselves and our profession.

The Colorado Women's Bar Association (CWBA) is an organization of around 1,400 Colorado attorneys, judges, legal professionals, and law students committed to advancing women as leaders in the legal profession and advocating for the interests of women more broadly. The CWBA has an interest in this case because it is dedicated to supporting its members' professional success and advocating for equitable, inclusive workplaces.

The Colorado Hispanic Bar Association (CHBA), founded in 1977, is a nonprofit organization committed to advancing justice, diversity, and equity within the legal profession and the broader Colorado community. Its mission is to

promote the professional development of Hispanic attorneys, ensure equal access to justice, and advocate for legal policies addressing issues of significance to the Hispanic community and the public. Over its history, the CHBA has been a leader in fostering diversity within the legal field and advocating for fair and equitable legal standards that uphold fundamental rights.

The CHBA has a significant interest in this case because it raises critical questions regarding the impact of attorney noncompete and nonsolicitation agreements. Such issues directly affect the mobility and autonomy of attorneys, particularly those from underrepresented backgrounds, and impact the public's access to competent legal representation. These matters align with CHBA's commitment to promoting fair legal practices and ensuring access to justice.

The CHBA brings a unique perspective to this matter, informed by its extensive experience addressing professional and legal issues affecting attorneys in Colorado. Through advocacy and educational efforts, the CHBA has developed substantial expertise in promoting equity within legal employment practices. The CHBA has been involved in several disputes and pending cases before this Court, offering its insights through amicus briefs and public advocacy. Its engagement in this case seeks to contribute to a balanced and informed resolution that reflects the public interest and maintains the integrity of the legal profession. The CHBA

respectfully urges this Court to grant certiorari to ensure these significant issues are fully addressed.

The Sam Cary Bar Association was founded with the mission of fostering professional growth, advocating for justice and equality, and creating opportunities for mentorship and collaboration within the legal field. The Sam Cary Bar Association serves to promote the administration of justice; to promote the well-being of the Black community; to secure proper legislation; and to promote professionalism, fellowship, and harmony within the Black legal profession in Colorado and beyond. The Court of Appeals' decision upholding the restrictive covenants likely will have a disproportionately negative effect on diverse attorneys, limiting their autonomy, mobility, and ability to serve their clients. Research has shown women and people of color are disproportionately impacted by restrictive covenants, as they are less likely to negotiate these clauses out of their employment contracts compared to their white counterparts.

The Colorado LGBTQ+ Bar Association (CLBA), founded in 1993, is a non-profit organization whose mission is to provide LGBTQ+ legal professionals living and working in Colorado with LGBTQ+-specific resources, support, and community. As an organization dedicated to advocating for the rights and belonging of LGBTQ+ legal professionals, CLBA recognizes the critical role that

fair and equitable employment practices play in ensuring economic security, social mobility, and freedom from discrimination. Upholding the enforceability of non-compete agreements in the legal industry would severely impede the ability of LGBTQ+ individuals to stand against bias and discrimination in the workplace as employers could use non-compete agreements as a weapon against accountability. The LGBTQ+ community has historically faced barriers to stable employment and equal treatment and opportunity in professional settings. Upholding the validity of non-compete agreements in the profession would further exacerbate these challenges, creating additional obstacles to job mobility and financial stability. For these reasons, and more, CLBA supports the Petitioner's petition.

### **Argument for Granting the Petition**

Non-solicitation and non-compete provisions ("restrictive clauses") will become more common in law firm employment contracts if the ones in this case are upheld. The negative effects of restrictive clauses are particularly pronounced for marginalized groups within the legal profession. Attorneys from underrepresented communities—such as women, attorneys of color, LGBTQ+ attorneys, and disabled attorneys—are disproportionately impacted by these limitations. Restrictive clauses impede their professional development, restrict access to mentorship and career mobility, trap them in hostile and discriminatory

workplaces, and can hinder their ability to provide competent, effective representation to clients. Restrictive clauses threaten not only the professional advancement of these attorneys but also the profession’s broader goals of diversity, inclusion, and public access to justice.

## **I.     Restrictive clauses disproportionately impact marginalized attorneys.**

Restrictive clauses disproportionately impact marginalized attorneys, including disabled attorneys, women, attorneys of color and LGBTQ+ attorneys (“marginalized attorneys”), who are less likely to negotiate their contracts with future employers. *See Doorey, Non-Competition Clauses in Canadian Employment Law and the Doctrine of Inequality of Bargaining Power* (2024) at pdf 3-4 (Canadian Supreme Court more severely restricts noncompetition clauses than the United States based on the doctrine of inequality of bargaining power);<sup>1</sup> *see also* Economic Innovation Group, *The Use, Abuse, and Enforceability of Non-Compete and No-Poach Agreements* (2019) at 7-8 (the signing of a noncompete “is rarely a bargained outcome . . . . One nationally representative study finds that less than 10% of workers negotiate over the terms of the non-compete,” and “two studies find that 30-40% of workers who are asked to sign non-competes are first

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<sup>1</sup>Attached as an exhibit.

asked *after* they have already accepted the job, often on the first day when the worker has already turned down other job offers and may be in a weakened bargaining position”).<sup>2</sup>

Restrictive clauses create barriers that exacerbate existing challenges faced by marginalized attorneys within the legal profession, particularly when the attorneys are subject to implicit bias, discrimination, or lack of support. By preventing attorneys from discussing their intentions to leave or coordinating future transitions with colleagues of their choice, including other colleagues from underrepresented communities, these clauses not only limit their professional mobility but also their ability to seek more supportive, equitable, and inclusive work environments. The consequences are especially damaging for marginalized attorneys, who already face systemic barriers to success and inclusion within law firms.

Non-solicitation clauses limit marginalized attorneys' ability to plan their careers by restricting communication about leaving a firm or transitioning to a new role. Attorneys rely on their client relationships and reputation to build a successful practice, and these restrictions prevent informed career decisions, such as joining a new firm or starting their own practice. This can trap attorneys in

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<sup>2</sup> <https://eig.org/wp-content/uploads/2019/02/Non-Competes-Brief.pdf>

settings that no longer align with their goals, hindering their ability to serve clients effectively or build new practices that could be more responsive to the needs of their clients.

Forcing attorneys to leave a firm without their trusted colleagues can significantly impact their confidence and effectiveness. Without colleague support, attorneys may struggle to meet the demands of their matters. This loss of confidence and strategic support can diminish the quality of representation, erode client trust, and harm attorney-client relationships, especially for marginalized attorneys.

Disabled people are severely underrepresented in the legal profession. Despite making up more than 28 percent of the population, *see* Centers for Disease Control, *Disability Impacts All of Us*,<sup>3</sup> disabled lawyers represent only about 1.41 percent of partners and 1.99 percent of all lawyers at firms. National Association for Law Placement, *Report on Diversity in US Law Firms* (2023) (“NALP 2023 Report”) at 11.<sup>4</sup> The inaccessible and exclusionary culture of the legal profession and law school contributes to these disparities, with the “culture of constant

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<sup>3</sup> <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>

<sup>4</sup> <https://www.nalp.org/uploads/Research/2023NALPReportonDiversityFinal.pdf>

availability” being particularly pronounced in law firm environments. *See Sheikh, Lawyers with Disabilities are Seeking Equity, Not Pity* (2024).<sup>5</sup>

Disabled attorneys face higher rates of discrimination than nondisabled attorneys. Blanck, et al., *Diversity and Inclusion in the American Legal Profession: Discrimination and Bias Reported by Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+* (2021) at 10.<sup>6</sup> Disabled attorneys may rely on accommodations—e.g., physical access, mental health support, remote work arrangements, or with firms in particular, flexibility in billable hours or utilization rate policies—that are crucial to their success. But disabled attorneys may struggle to obtain these accommodations, which in and of itself is a form of discrimination. *See id.* at 16-18. Restrictive clauses that prevent these attorneys from leaving their firm with trusted colleagues—including other disabled or marginalized colleagues—or discussing their departure options diminish accountability and trap disabled attorneys in toxic and discriminatory workplaces. Without the ability to transition to a supportive environment, they risk isolation, lack of necessary accommodations, and diminished professional growth. This can

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<sup>5</sup> <https://www.mlaglobal.com/en/insights/articles/lawyers-with-disabilities-are-seeking-equity-not-pity>.

<sup>6</sup>Attached as an exhibit.

affect their ability to practice effectively and may contribute to burnout or deteriorating mental or physical health, hindering their long-term success.

Women in the legal profession face gender-based biases and discrimination that can hinder their career advancement. *Blanck, supra*, at 10, 15, 47-48. In many firms, women receive unequal pay, fewer leadership opportunities, and lack of recognition for their contributions. For example, women comprised only 23.7 percent of equity partners in 2023, while men comprised 76.3 percent. NALP 2023 Report at 24. Restrictive clauses compound these challenges, trapping them in unsupportive or discriminatory environments without room for professional growth. These barriers discourage women from seeking new opportunities or escaping toxic work environments, thereby limiting their professional growth and career progression. See Marx, *Employee Non-compete Agreements, Gender, and Entrepreneurship* (2021) at 1756, 1763 (“women subject to tighter non-compete policies were less likely to leave their employers and start rival businesses,” and “the impact of non-competes on would-be founders who are female is about 15% stronger”);<sup>7</sup> Johnson, et al., *The Labor Market Effects of Legal Restrictions on Worker Mobility* (2021) at 38 (essentially banning non-competes would close the

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<sup>7</sup> <https://pubsonline.informs.org/doi/epdf/10.1287/orsc.2021.1506>

earnings gap between white men and Black women by 4.6 percent; 5.6 percent for white women; 8.7 percent for Black men; and 9.1 percent for non-Black, non-white women).<sup>8</sup> Additionally, these clauses contribute to the continuation of gender inequities within the profession.

Similarly, attorneys of color encounter implicit bias, microaggressions, discrimination, and retaliation within law firms. *See Lawyering in Color: The Ethics of Diversity and Inclusion* (2020) (implicit bias, microaggressions, and discrimination disrupt the careers of attorneys of color, creating a hostile work environment);<sup>9</sup> Payne-Pikus, et al., *Experiencing Discrimination: Race and Retention in America's Largest Law Firms* (2010) (attorneys of color face higher rates of discrimination, which negatively impacts retention and career progression).<sup>10</sup> These challenges hinder professional development, limit opportunities for advancement, make career transitions difficult, and create hostile

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<sup>8</sup> Attached as an exhibit.

<sup>9</sup> <https://www.thompsoncoburn.com/insights/publications/item/2020-08-14/lawyering-in-color-the-ethics-of-diversity-and-inclusion>

<sup>10</sup> <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/559317FD6FF2ABDC8792C7C1E3736374/S0023921600009403a.pdf/experiencing-discrimination-race-and-retention-in-americas-largest-law-firms.pdf>

work environments that affect both the attorneys' well-being and their ability to provide effective representation. For example, in 2023, only 9.6 percent of equity partners and only 14 percent of non-equity partners were people of color. NALP 2023 Report at 24.

Restrictive clauses that prevent attorneys of color from leaving with trusted colleagues or seeking out more supportive and inclusive work environments exacerbate these issues. *See* Johnson (2021), *supra*, at 1, 38 (higher noncompete agreement “enforceability exacerbates gender and racial wage gaps,” with a statistically significant negative impact on nonwhite women, Black men, and, to a lesser extent, white women); Johnson, et al., *The Labor Market Effects of Legal Restrictions on Worker Mobility* (Working Paper No. 31929) (2023) at 41 (pdf 43) (earnings effect of legal restrictions on worker mobility for Black men and other female minority workers are 94% and 145% larger than on White men);<sup>11</sup> Dias, *Black Lawyers Matter: Enduring Racism in American Law Firms* (2021) (Black attorneys face systemic racism, especially in retention, promotion, and advancement);<sup>12</sup> Wilkins, et al., *Why Are There So Few Black Lawyers in Corporate Law Firms: An Institutional Analysis* (1996) (systemic discrimination

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<sup>11</sup> [https://www.nber.org/system/files/working\\_papers/w31929/w31929.pdf](https://www.nber.org/system/files/working_papers/w31929/w31929.pdf)

<sup>12</sup><https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2542&context=mjlr>

and structural barriers in corporate law firms hinder the advancement of Black attorneys).<sup>13</sup>

Without the ability to transition with a trusted team, attorneys of color may face isolation, lack of support, and increased risks of retaliation or career instability. Attorneys of color often face exclusion from networks of influence, and the ability to leave a firm with a trusted team can provide crucial solidarity. At the same time, clients of color may also lose culturally effective legal representation, disrupting continuity and quality of representation. This impact is worsened when the legal team familiar with the client's cultural and legal needs is prevented from continuing representation due to systemic barriers in the profession.

LGBTQ+ attorneys also experience discrimination, lack of inclusivity, and even hostility within law firms that fail to create supportive and welcoming environments. *Blanck, supra*. For example, in 2023, only 2.57 percent of partners and only 4.57 percent of all lawyers at law firms were a part of the LGBTQ+ community. NALP 2023 Report at 39, 11. Restrictive clauses can leave them isolated and marginalized. The inability to discuss departure plans or transition

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<sup>13</sup>[https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2077&context=faculty\\_scholarship](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2077&context=faculty_scholarship)

with a trusted team hinders their ability to find affirming environments where they can thrive. This in turn impacts their well-being and undermines their ability to provide sensitive, high-quality representation to clients with similar experiences, resulting in a less inclusive profession that struggles to meet the needs of a diverse client base.

Marginalized attorneys bring critical perspectives and skills, including, but not limited to, creative problem-solving skills and a deeper understanding of clients with similar lived experience. Public policies must support marginalized attorneys and reflect a commitment to inclusion. Permitting restrictive clauses only serves to discourage talented and dedicated marginalized attorneys from continuing to practice. To promote a more equitable, inclusive, and competent legal profession, it is essential to consider the harm enforcing restrictive clauses causes to marginalized attorneys and their clients.

## **II. Restrictive clauses negatively impact clients from marginalized communities.**

Restrictive clauses have significant, detrimental consequences for clients, particularly those from marginalized communities. Non-solicitation clauses directly interfere with attorney-client communication and disrupt the continuity of legal representation—two essential components of the attorney-client relationship. For clients, the abrupt loss of a legal team that understands their specific needs and

whom they trust can be particularly harmful. Attorneys often build strong relationships with clients, especially in sensitive personal matters like discrimination or family law. When restrictive clauses force attorneys to leave without proper planning, it can lead to abrupt transitions that undermine trust and rapport, leaving clients feeling abandoned. For marginalized clients, who may require additional time and effort to place their trust in an attorney in the first instance, such disruptions can worsen feelings of alienation, erode confidence in the legal system, and negatively impact their legal matters.

Continuity of representation is crucial for clients. A consistent legal team ensures attorneys can build on prior work, maintain momentum, and make informed decisions. But restrictive clauses can prevent attorneys from leaving together, causing fragmented representation. This disruption leads to gaps in communication, inconsistent strategies, and reduced service quality.

Restrictive clauses also limit clients' ability to choose their legal representation. They prevent continuity by blocking attorneys from taking clients with them if they leave the firm, thereby undermining client autonomy, especially for clients from marginalized communities—who already face difficulties in finding culturally competent and empathetic representation. Restrictive clauses hinder clients' right to retain their chosen attorneys who best meet their needs and

provide effective, compassionate representation. This is particularly true when marginalized attorneys leave a firm setting due to disagreement with a supervisor over how to provide competent legal representation to a client with similar lived experiences.

Restrictive clauses interfere with attorneys' ethical duties to provide competent representation by disrupting institutional knowledge, established working relationships, and essential collaboration. Without team support, attorneys may struggle to maintain effective representation, especially in complex matters. This is particularly detrimental to clients from marginalized communities, who are already underserved by the legal system.

Restrictive clauses exacerbate existing inequities and undermine client trust in the legal system. Enforcement of such clauses therefore prioritizes firm business interests over clients' interests, autonomy, and access to competent legal representation.

### **III. Legal and financial penalties have a chilling effect and exacerbate the inequities marginalized attorneys face.**

Restrictive clauses, particularly non-solicitation provisions, create a chilling effect that disproportionately harms marginalized attorneys. *See Marx, Employee Non-compete Agreement, supra* at 1770 (“even the possibility of a lawsuit may have a chilling effect on worker behavior”); Marx, *The Firm Strikes Back: Non-*

*Compete Agreements and the Mobility of Technical Professionals* (2011) at 695 (pdf 1) (“ex-employees subject to non-competes are more likely to take *career detours*—that is, they involuntarily leave their technical field to avoid a potential lawsuit.”);<sup>14</sup> Starr, et al., *The Behavioral Effects of (Unenforceable) Contracts*, (2020) at 1 (“employees’ beliefs about the likelihood of a lawsuit or legal enforcement are important predictors of their citing a noncompete as a factor in their decision to decline competitor offers”);<sup>15</sup> Fear of financial penalties or termination for discussing departure plans discourages attorneys from advocating for themselves and seeking better work environments. The threat of substantial attorney’s fees—such as an award of over \$1 million in attorney’s fees for a \$4,000 jury verdict—or other financial consequences often forces marginalized attorneys, who are already more likely to be paid less than their colleagues, to remain in discriminatory or hostile workplaces where they may be unable to challenge unethical practices or leave toxic conditions. See Major, Lindsey & Africa LLC, *2020 Partner Compensation Survey*, at 22 (average total compensation for non-

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<sup>14</sup> Attached as an exhibit.

<sup>15</sup> Attached as an exhibit.

White partners is 20% lower than White partners, average male partner's compensation is 44% more than female partner's).<sup>16</sup>

This fear of retaliation silences attorneys, trapping them in environments that hinder their personal and professional growth. It also harms clients, particularly those from marginalized communities, by depriving them of competent, trusted representation when their attorneys are unable to seek better opportunities. The financial risks exacerbate inequalities, as marginalized attorneys are less likely to have the resources to challenge restrictive clauses, thereby perpetuating systemic barriers to their success. Rejecting enforcement of these clauses is essential to empower attorneys, particularly those from marginalized communities, to pursue supportive work environments that better serve both their clients and their legal careers. For these reasons, this Court should grant the petition.

### **Conclusion**

The Court should grant review to address the harmful impact of restrictive clauses on attorneys and clients, particularly those from marginalized communities, and provide guidance so attorneys can uphold their ethical obligations and clients

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<sup>16</sup> <https://www.acc.com/sites/default/files/2021-02/MLA%202020%20Partner%20CompensationSurvey.pdf>

can receive competent, continuous representation. This is essential to foster a more equitable, effective, and inclusive legal profession.

Respectfully submitted this 24<sup>th</sup> day of November 2024.

/s/ Blain Myhre  
Blain Myhre  
*Counsel for Amici Curiae*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 24<sup>th</sup> day of November, 2024, a true and correct copy of the above and foregoing was served upon the following through the Colorado Courts E-Filing service:

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/s/ Blain Myhre