

ORAL ARGUMENT SCHEDULED ON MAY 14, 2026
Nos. 25-5241, 25-5265, 25-5277, 25-5310

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PERKINS COIE LLP,
Plaintiff-Appellee,

v.

U.S. DEPARTMENT OF JUSTICE, *et al.*,
Defendants-Appellants,

On appeal from the United States District Court
for the District of Columbia

BRIEF OF *AMICI CURIAE* 595 LAW PROFESSORS
IN SUPPORT OF APPELLEES AND AFFIRMANCE

BRIANNE HOLLAND-STERGAR
Holland-Stergar LLLP
526 E. Front Street
Missoula, MT 59802
(406) 243-2751
hollandstergarlllp@gmail.com

PHILLIP R. MALONE
MARK A. LEMLEY
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
(650) 725-6369
pmalone@law.stanford.edu

Counsel for Amici Curiae

CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), *amici curiae* certify as follows.

A. Parties and *Amici*

Except for the following, all parties, intervenors, and *amici* appearing before the district court and in this Court are listed in the Defendant-Appellant's brief filed March 6, 2026, at i-ii.

Amici curiae law professors listed in Appendix A to this brief.

Amici curiae America's Future, Gun Owners of America, Inc., Gun Owners Foundation, Judicial Action Group, and Conservative Legal Defense and Education Fund, who submitted an amicus brief on March 13, 2026.

B. Rulings Under Review

References to the rulings at issue appear in the Defendants-Appellant's brief filed March 6, 2026, at ii.

C. Related Cases

As far as counsel is aware, other than the case listed in the Defendant-Appellant's brief filed March 6, 2026, the cases on review were not previously before this Court or any other court, and there are no other related cases currently pending in this Court or in any other court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1(a), *amici* represent, through their undersigned counsel, that they are individual law professors and not a corporation, association, joint venture, partnership, syndicate, or other similar entity and thus have no parent corporations, and no publicly held company has a 10% or greater ownership interest in them.

/s/ Phillip R. Malone

Phillip R. Malone

**CERTIFICATE OF COUNSEL REGARDING
NECESSITY OF SEPARATE AMICUS BRIEF**

Pursuant to Circuit Rule 29(d), counsel states that a separate brief on behalf of law professors is necessary because this brief presents a different perspective than other briefs. *Amici* do not represent clients or political positions in this matter. Instead, this brief presents the perspectives that *Amici* Law professors bring as disinterested scholars of the Constitution, legal ethics, the history of the legal profession, and the rule of law. It also contributes their unique perspectives as legal educators who are responsible for training the next generation of attorneys and preparing them to zealously represent clients and causes without fear of reprisal and with respect for the rule of law. *Amici* expect that these perspectives will not be presented by other briefs.

Dated: April 2, 2026

Respectfully submitted,

/s/ Phillip R. Malone
Phillip R. Malone

Counsel for Amici Curiae

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IDENTITY AND INTEREST OF *AMICI*

Amici 595 law professors submit this brief in support of Appellees to emphasize the threat that the President’s four Executive Orders (the “Orders”) reviewed by the district courts in this case present to the independence and integrity of the legal profession, the rights of clients to seek redress in the courts, and, by extension, the rule of law.¹ As scholars and experts in constitutional law, legal ethics, and the history of the legal profession, among other fields, we have a significant interest in ensuring that the principles of free speech, freedom of association, the right to petition the government, and the right to counsel are upheld. As educators, we have an interest in fostering the next generation of attorneys and in preparing them to zealously represent clients and causes without fear of reprisal. A full list of *amici* is provided in the Appendix.

SUMMARY OF ARGUMENT

The President’s Orders are self-declared acts of retribution that targeted law firms for representing clients and causes the President disfavors.² In inflicting this

¹ *Amici* law professors state that no counsel for a party has authored this brief in whole or in part and that no person or entity, other than *amici* law professors or their counsel, has made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this brief.

² While the district courts enjoined the operation of the Orders in full, JA1623–24; JA2207; JA2886–87; JA3535–36, this brief focuses on Sections 1, 3, and 5 of the Orders.

retribution, the Orders contradict centuries of precedent safeguarding free speech, the right of association, and the right to petition. These precedents establish that the First Amendment “prohibits government officials from ‘relying on the threat of invoking legal sanctions and other means of coercion . . . to achieve the suppression’ of disfavored speech.” *Nat’l Rifle Ass’n v. Vullo*, 602 U.S. 175, 176 (2024) (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963)). Targeting law firms for representing clients and espousing views the President dislikes is viewpoint discrimination, plain and simple.

Nor should this Court credit the government’s remarkable new argument on appeal that the injunctions against Section 1 of the Orders violate President Trump’s First Amendment right to say whatever he wants. Nothing in the injunctions prevents the President from speaking. Rather, they properly enjoin the government from *punishing* the firms, depriving them of rights on the basis of the President’s disagreement with their clients and their views.

The district courts correctly found that the Orders violate the Fifth and Sixth Amendments as well.³ The Fifth and Sixth Amendments were designed to check

³ The district courts deciding the challenges brought by Perkins Coie and WilmerHale found that those orders violated the Fifth and Sixth Amendments. JA1623–24; JA2877–78. The court overseeing Jenner & Block’s challenge found that the order targeting that firm violated the First Amendment and declined to

executive power and to ensure a meaningful way to assert rights before a judicial authority. *Powell v. Alabama*, 287 U.S. 45, 61, 64–65 (1932). Forcing lawyers to bend to the preferences of federal officials robs clients of their right to counsel and introduces the very type of government interference in the administration of justice the Founders acted to prevent.⁴

Finally, the Orders threaten the rule of law. If the Orders are reinstated, it will be open season on lawyers who have dared to take on clients or causes the President or other officials don't like. This is no hypothetical threat. In the run-up to the election, the President posted on Truth Social that “WHEN I WIN, those people that CHEATED will be prosecuted to the fullest extent of the Law Please beware that this legal exposure extends to Lawyers” JA2461. Later, the President pledged before issuing the Order targeting Appellee Perkins Coie that it was merely among the first of “a lot of law firms that we’re going to be going after.” JA1988.

Indeed, in addition to the four Orders on appeal here, the President issued an

analyze its constitutionality under the Fifth and Sixth Amendments. JA2197–99; JA2207. Susman Godfrey did not challenge its order on Sixth Amendment grounds. JA3460–3479.

⁴ The Orders violate the Constitution in multiple ways and pose a grave threat to the American justice system. This brief focuses on several of those violations—their violations of the First Amendment, the Fifth Amendment, the Sixth Amendment, and the threat they pose to the rule of law. Amici do not focus on the other grounds on which the district courts granted summary judgment, but that should not be taken as disagreement with those grounds.

additional executive order targeting another leading law firm, Paul, Weiss, Rifkind, Wharton & Garrison.⁵ JA1978–81. But rather than challenge the order directed against it, Paul Weiss caved to the President’s pressure, donating what the President described as “\$40 million in pro bono legal services over the course of President Trump’s term to support the Administration’s initiatives” in exchange for the order’s revocation. JA1993–94 (President Trump’s Truth Social post); *see also* JA1996–97 (revoking original Executive Order targeting Paul Weiss). Eight other law firms similarly capitulated, promising to donate nearly \$1 billion in uncompensated legal services to causes the President supports in order to stave off executive orders. Matthew Goldstein, *Five More Big Law Firms Reach Deals with Trump*, N.Y. TIMES (Apr. 11, 2025); Sam Baker, *Law Firms Pledge Almost \$1 Billion in Free Work to Trump*, AXIOS (Apr. 12, 2025).

Faced with unanimous—and resounding—district court decisions blocking

⁵ In addition, the President issued a March 22, 2025 memorandum, titled “Preventing Abuses of the Legal System and the Federal Court,” which directs the Attorney General to, among other things, “seek sanctions against attorneys and law firms who engage in frivolous, unreasonable, and vexatious litigation against the United States” and “review conduct by attorneys or their law firms in litigation against the federal government” in order to identify any misconduct that might warrant further disciplinary action. JA1990–2000. In different circumstances, a directive to identify and address ethical misconduct among attorneys might be a reasonable exercise of Presidential authority. But, considered alongside his Executive Orders targeting the previously mentioned firms, the decision to deploy governmental resources toward heightened scrutiny of lawyers who challenge his administration warrants concern.

his unlawful orders, the President appeared to have temporarily paused his vendetta. But the administration's recent about-face in withdrawing this appeal and then immediately reinstating it suggests that President Trump may be intent on resuming his retributive campaign.⁶

The impact of the President's Orders reverberates far beyond the particular firms that were targeted. Going forward, a lawyer or law firm that is asked to represent a client on a matter that is likely to trigger the President's ire will have to weigh whether they are willing to be placed on the President's target list—and lose the business such a placement entails. They must also ask whether taking on a client of this sort, and whether zealously advocating on that client's behalf, will hurt other existing clients to whom ethical duties are owed. The Executive branch has no constitutional authority to use executive orders as a cudgel to beat the American legal system into submission.

Beyond the impact on clients and lawyers, orders of this type threaten the integrity of the judicial process, including the core role of judicial review. That anchor of our constitutional system cannot function when one person—regardless of

⁶ The administration filed a motion to voluntarily dismiss this appeal on March 3, 2026. *See* Order, *Perkins Coie LLP v U.S. Dep't of Just., et al.*, No. 25-5241 (D.C. Cir. Mar. 16, 2026) (granting the government's motion to withdraw its request to voluntarily dismiss these appeals); *see also* Carrie Johnson, *Trump Administration Reverses Course on Law Firms, Vowing to Appeal*, NPR (Mar. 3, 2026). Less than twenty-four hours later, it reversed course without explanation. *See* Johnson, *supra*.

his position—is empowered to threaten and punish lawyers for zealously representing their clients in court. “The Government of the United States has been emphatically termed a government of laws, and not of men.” *Marbury v. Madison*, 5 U.S. 137, 163 (1803). Let it not “cease to deserve this high appellation.” *Id.*

Amici urge the Court to affirm the district courts’ grants of summary judgment for Appellees.

ARGUMENT

I. The Orders Violate the First Amendment.

The Orders violate the First Amendment in at least four ways. First, the Orders single out a speaker and discriminate against it because of its views. Second, the Orders unconstitutionally control the speech and associational freedoms of lawyers engaged in legal work against the government. Third, the Orders impose unconstitutional conditions on a firm’s access to government funding and property. Fourth, the Orders violate the Petition Clause.

A. The Orders Constitute Unlawful Viewpoint Discrimination.

“At the heart of the First Amendment’s Free Speech Clause is the recognition that viewpoint discrimination is uniquely harmful to a free and democratic society.” *Vullo*, 602 U.S. at 187. Indeed, while the Supreme Court has long expressed deep skepticism toward all content-based speech restrictions, it has reserved its highest opprobrium for those based on viewpoint. As the Court has explained: “It is

axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.” *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995). When the government rests its regulation on “particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.” *Id.* at 829.

The Orders’ viewpoint discrimination is clear on their face. The Susman Godfrey order, for example, rebukes the firm for what the Order calls “weaponiz[ing] the American legal system,” JA3145–48 (“Susman Order”) § 1, and for representing causes the administration dislikes, including, in the Order’s words, funding groups that “inject” into the military “political and racial ideology.” *Id.* It also castigates Susman Godfrey for advancing specific views through its litigation. *Id.* (criticizing Susman Godfrey for litigating cases involving election laws). The Perkins Coie order criticizes the firm for representing candidates and private citizens whom the administration dislikes, including, in the Order’s words, “failed Presidential candidate Hillary Clinton” and “activist donors including George Soros.” JA487–89 (“Perkins Order”) § 1. The Orders also castigate the firms for advancing specific views through its constitutional litigation. *See, e.g., id.* (criticizing Perkins Coie for litigating cases involving voter identification laws); Susman Order § 1 (same); JA2332–35 (“WilmerHale Order”) § 1 (same); JA2011–14 (“Jenner Order”) § 1 (criticizing Jenner’s work in support of transgender

individuals). In doing so, the Orders punish the firms for advancing the viewpoints of their clients, despite the well-established premise that an attorney’s decision to represent a client “does not constitute an endorsement of the client’s political, economic, social or moral views or activities.” MODEL RULES OF PROF’L CONDUCT r. 1.2(b) (A.B.A. 2025).⁷

When a governmental action burdens speech because of its content, the action is reviewed pursuant to strict scrutiny, “which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” *Arizona Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011) (quoting *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 340 (2010)).

The President’s Orders targeting his political opponents cannot survive strict scrutiny. To begin, discriminating against one’s political enemies is not a permissible purpose. “Government officials cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors.” *National Rifle Ass’n v. Vullo*, 602 U.S. 175, 180 (2024). Indeed, an act that “seem[s] ‘inexplicable

⁷ See also Eugene Scalia, *John Adams, Legal Representation, and the “Cancel Culture,”* 44 HARV. J.L. & PUB. POL’Y 333, 337 (2021) (“[I]ndependence of the lawyer from his client is integral to the freedom and autonomy that are among the privileges of private practice, and it is essential to lawyers’ effective performance of their role in our system of justice.”).

by anything but animus” cannot survive even rationality review. *Trump v. Hawaii*, 585 U.S. 667, 706 (2018) (quoting *Romer v. Evans*, 517 U.S. 620, 632 (1996)). Nor can the Orders be justified by the President’s invocation of “the authority vested in me as President by the Constitution and the laws of the United States of America.” *E.g.*, Perkins Order, pmbl. The President is, by his oath of office (and by the Constitution), bound by the dictates of the Bill of Rights, and has no unilateral power to single out and punish speakers based on nebulous criteria of his own making.⁸

Today, Appellees have fallen into the President’s disfavor. Tomorrow, it could be any one of us whose speech the President unilaterally deems antithetical to “the interests of the United States” because that person or organization has chosen to litigate against him. *E.g.* Susman Order § 1; Perkins Coie Order § 5; Jenner Order § 1; Wilmer Order § 1. And the threat is far from hypothetical. As noted at the outset, the President has vowed to “go[] after . . . a lot of law firms.” JA1988. Indeed, the President already targeted other law firms through separate executive actions, including Paul Weiss, JA1978–81, and Covington & Burling LLP, JA1950–51.

To the extent the President expected that these orders would cause the firms in question to bend to his will, he has been proven correct: Paul Weiss, fearing it

⁸ In *New York Times v. United States*, Justice Black observed that the government’s power in this area is particularly weak when “[t]he Government does not even attempt to rely on any act of Congress.” 403 U.S. 713, 718 (1971) (Black, J., concurring).

would be unable to “survive a protracted dispute with the administration,” agreed to donate the equivalent of \$40 million in uncompensated legal services toward causes consistent with the President’s agenda. *See* Michael S. Schmidt & Matthew Goldstein, *Head of Paul, Weiss Says Firm Would Not Have Survived Without Deal with Trump*, N.Y. TIMES (Mar. 23, 2025) (quoting Paul Weiss Chairman Brad Karp). In exchange, the President revoked the relevant Executive Order. *Id.*; *see also* JA1996–97 (revoking Executive Order targeting Paul Weiss, citing the firm’s decision to donate its legal services).

To stave off similar orders, other major firms have preemptively capitulated to the President. Eight other firms, including three that were then-ranked in the top ten firms nationwide in terms of gross revenues and industry prestige,⁹ donated an additional \$900 million in legal services toward the President’s favored causes to avoid being subjected to analogous executive action.¹⁰ *See* Baker, *supra*. As the President himself has said, “They’re all bending and saying, ‘Sir, thank you very

⁹ *See* 2025 Am Law 100, THE AMERICAN LAWYER (Apr. 15, 2025) (ranking firms by gross revenues, among other metrics); 2025 Vault Law 100, VAULT (last visited Apr. 18, 2025) (ranking the most prestigious law firms based on the assessments of lawyers at peer firms).

¹⁰ Those firms are Skadden, Arps, Meagher & Flom (\$100 million); Willkie Farr & Gallagher (\$100 million); Milbank (\$100 million); Latham & Watkins (\$125 million); Simpson Thacher & Bartlett (\$125 million); Kirkland & Ellis (\$125 million); A&O Shearman (\$125 million); and Cadwalader, Wickersham & Taft (\$100 million). *See* Baker, *supra*.

much.” JA2704.

The chilling impact of the President’s actions is not limited to the firms the President has targeted; it has cast a shadow over the legal profession at large. In the wake of the Orders, firms across the country have declined to represent clients and causes the President disfavors. *See* JA2698–2701 (reporting that potential clients seeking representation in actions adverse to the President have had difficulty finding representation); Katelyn Polantz, *The Chilling Effect of Trump’s War Against the Legal Establishment*, CNN (Mar. 11, 2025) (reporting on the “chilling” effect of the President’s executive actions toward law firms). Lawyers have been cowed into submission, incentivized to stay quiet, toe the line, and cave to the President’s demands—lest they and their clients be punished. That is not surprising. As the Supreme Court recognized in *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963), which held illegal a government list of “objectionable” books even though the commission that issued the list had no direct enforcement power, “[p]eople do not lightly disregard public officers’ thinly veiled threats” of legal action. *Id.* at 68. And if that is true of a state advisory commission, it is surely more true of the President of the United States.

B. The Orders Are Especially Dangerous Insofar as They Seek to Insulate Government Actors from Legal Challenge.

Although viewpoint discrimination is hardly ever tolerated, it is especially dangerous when government officials wield it to insulate themselves from legal

scrutiny. The Supreme Court expressed just this concern in *Legal Services Corp. v. Velazquez*, 531 U.S. 533 (2001). In *Velazquez*, the Court invalidated a federal statute that prohibited Legal Services Corporation (LSC)-funded attorneys from challenging federal or state welfare laws. *Id.* at 537–49. The restriction, said the Court, impermissibly “distort[ed] the legal system by altering the traditional role of attorneys” as zealous advocates for their clients. *Id.* at 544. And, to make matters worse, it “insulate[d] the Government’s interpretation of the Constitution from judicial challenge,” *id.* at 548, thus implicating “central First Amendment concerns,” *id.* at 547.

The Orders in this case are considerably more troubling than the statute invalidated in *Velazquez*. Through these Orders, the President sought to arrogate to himself the power to single out lawyers and law firms who cross him, simply by declaring their legal work, past or present, contrary to the national interest. *See* Orders § 5. If the Orders are reinstated, the zealous advocacy that is the hallmark of a functioning court system will be chilled in dramatic ways, as lawyers tiptoe fearfully away from disfavored views and clients.

C. The Orders Place Unconstitutional Conditions on a Speaker’s Access to Government Funds and Property.

The Orders seek to punish Appellees in numerous ways, including terminating their government contracts, *e.g.*, Orders § 3(b); threatening the contracts of those who do business with them, *id.* §§ 3(a), 3(b); precluding every single firm employee

from working for a federal agency in the future (absent a waiver), *id.* § 5(b); and limiting firm lawyers’ access to federal government buildings (potentially including courthouses), *id.* § 5(a). These provisions run afoul of well-established limitations on the government’s power to condition benefits on the viewpoint of a recipient.

Indeed, *Velazquez* itself involved a condition on government funding of lawyers’ work. The statutory prohibition on LSC-funded lawyers’ constitutional arguments applied only to certain congressionally funded legal services (namely, constitutional challenges to welfare laws). *Velazquez*, 531 U.S. at 537–39. The Court concluded, nonetheless, that Congress could not condition funding on viewpoint-based restrictions that distorted the very “medium of expression”—litigation and representation of clients—through which the funded expression took place. *Id.* at 543.

Velazquez fits within a broader framework that the Court has created for evaluating speech-based conditions on accessing public property, programs, or funds. This framework establishes that the government may not dictate private speakers’ viewpoints as a condition of allowing them to access such resources. *See Agency for Int’l Dev. v. Alliance for Open Society Inst.*, 570 U.S. 205, 214 (2013) (“[T]he Government may not deny a benefit to a person on a basis that infringes his constitutionally protected freedom of speech even if he has no entitlement to that benefit.”) (cleaned up). The government “offends the First Amendment when it

imposes financial burdens on certain speakers based on the content of their expression.” *Rosenberger*, 515 U.S. at 828. The Orders run well afoul of this essential bar on viewpoint-based conditions.

D. The Orders Violate the First Amendment’s Petition Clause.

The Orders also violate the Petition Clause. The First Amendment forbids “abridging” the “right of the people” to “petition the Government for a redress of grievances.” The Supreme Court has “recognized this right to petition as one of the most precious of the liberties safeguarded by the Bill of Rights” and has “explained that the right is implied by the very idea of a government, republican in form.” *BE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 524–25 (2002) (cleaned up). The Court has repeatedly held that the right of access to courts can implicate “the protections of the Petition Clause.” *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011); *NAACP v. Button*, 371 U.S. 415, 429–30 (1963) (“[L]itigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.”).

The Orders directly interfere with access to the courts. They direct federal officials to “limit[] official access from Federal Government buildings to employees” of Appellee firms to the extent permitted by law, whenever such access would “be inconsistent with the interests of the United States.” Orders § 5(a). The Supreme Court has treated physical access to courthouses as an aspect of “the fundamental right of access to the courts.” *Tennessee v. Lane*, 541 U.S. 509, 533–34

(2004). The gauzy “interests of the United States” are insufficient to threaten Appellees’ access to federal courthouses and administrative agencies, or to other government buildings where they seek to meet to further their clients’ interests.

Further, the Orders retaliate against Appellees for positions they have taken in litigation against government actors—most notably in representing individuals in election law cases (termed “degrad[ing] American elections”), *see, e.g.*, Susman Order § 1, or representing President Trump’s political opponents, Perkins Order § 1. This Court should not permit the President to punish firms for their past actions in petitioning the government for redress of its clients’ interests. Such retaliation against lawful petitioning itself runs afoul of the Petition Clause. *See Borough of Duryea*, 564 U.S. at 387 (holding that retaliation by government employees can violate the Petition clause); *see also Nader v. Democratic Nat’l Comm.*, 567 F.3d 692, 696 (D.C. Cir. 2009) (“[W]hen a person petitions the government for redress, the First Amendment prohibits any sanction on that action . . . so long as the petition was in good faith.”).

Under the test announced by the Supreme Court in *Mount Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977), the Appellee law firms are entitled to relief on their First Amendment claims if they “show that [their] conduct was constitutionally protected, and that this conduct was a ‘substantial factor’ or to put it in other words, that it was a ‘motivating factor’” in the challenged

decisions, unless the Government can show “by a preponderance of the evidence that it would have reached the same decision . . . even in the absence of the protected conduct.” *Id.* at 287. Here, Appellees’ representation of clients and causes the President dislikes is plainly a motivating factor for the actions in the Orders.

E. The Orders Are Not Merely Protected Speech by President Trump.

The government attempts to justify Section 1 of the Orders on the grounds that they are merely “precatory” and reflect Donald Trump’s protected free speech. Not so. Donald Trump the private citizen and political candidate, and even President Trump the government official, is free to criticize whomever he wants. He is not, however, free to deprive Appellees and others of their legal rights because he doesn’t like them. “A government official can share her views freely and criticize particular beliefs, and she can do so forcefully in the hopes of persuading others,” relying on “the merits and force of her ideas, the strength of her convictions, and her ability to inspire others.” *Vullo*, 602 U.S. at 188. “What she cannot do, however, is use the power of the State to punish or suppress disfavored expression.” *Id.* Here, as in *Vullo*, the government official’s statements were not simply “permissible government speech.” *Id.* at 195.

The Executive Orders bear their animus on their face, and that animus is explicitly the thing that motivated the government to punish the law firms. A right of the government to speak does not somehow convey governmental power to

violate the law by targeting political opponents. As this Court, sitting en banc, said in rejecting an analogous argument as “border[ing] upon the frivolous”:

The company claims an absolute and unfettered right to use its intellectual property as it wishes: “[I]f intellectual property rights have been lawfully acquired,” it says, then “their subsequent exercise cannot give rise to antitrust liability.” [citation omitted]. That is no more correct than the proposition that use of one’s personal property, such as a baseball bat, cannot give rise to tort liability. As the Federal Circuit succinctly stated: “Intellectual property rights do not confer a privilege to violate the antitrust laws.”

United States v. Microsoft Corp., 253 F.3d 34, 63 (D.C. Cir. 2001) (en banc). Nor does President Trump’s freedom to speak confer on the government a privilege to violate the First Amendment. Inscribing Donald Trump’s views on a baseball bat would not immunize its use as a cudgel.

II. The Orders Violate the Fifth and Sixth Amendments.

The Orders also violate the Fifth and Sixth Amendments because they trample on clients’ right to select a lawyer free of government intervention. The right to counsel of choice is a bedrock principle of our constitutional order. That right would be meaningless if the Executive branch of the federal government could decide who represents—and who doesn’t represent—its adversaries in court.

The “notion of compulsory counsel,” *i.e.*, forcing a party to accept a particular lawyer, “was utterly foreign” to the Founders. *Faretta v. California*, 422 U.S. 806, 833 (1975). “[W]hatever else may be said of those who wrote the Bill of Rights, surely there can be no doubt that they understood the inestimable worth of free

choice.” *Id.* at 833–34.

The Founders were well aware that executive control of access to counsel could distort the administration of justice. The English system against which the Sixth Amendment right to counsel was established featured “[a]n inherent imbalance in favor of the prosecution” to protect the Crown’s interest in ensuring conviction of accused felons. J.M. Beattie, *Scales of Justice: Defense Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries*, 9 L. & HIST. REV. 221, 222 (1991). “The justices of the peace were to deal with felony accusations as agents of the king, not as judicial officers . . . [and] the accused had few rights.” *Id.* at 222–23. In the eyes of the Crown, “defense counsel was not only unnecessary, but positively harmful.” *Id.* at 223.

Gradually, a right to counsel in felony cases emerged in England. It found its roots in the Treason Act of 1696, which required the presence of defense counsel in response to the obvious “unfairness of a procedure under which the case for the Crown was presented by lawyers, often by the attorney general, while defendants were on their own.” *Id.* at 224. Providing counsel in treason cases was a critical first step toward ensuring that the Crown’s politically motivated invocations of safety and security to justify criminal prosecution would be tested by a zealous advocate for the accused.

Experience with the inequities of the English system prompted Americans to

enshrine the right to counsel in fundamental law. “As early as 1758,” Blackstone had “denounced” the prohibition of counsel in felony cases, and in America, “at least twelve of the thirteen colonies” had “definitely rejected” the English prohibition. *Powell v. Alabama*, 287 U.S. 45, 60–61, 64–65 (1932). The “oppressive” English rule, the Supreme Court has emphasized, “never obtained a foothold” here. *Id.* at 65 (quoting *Holden v. Hardy*, 169 U.S. 366, 386 (1898)).

The Founders emphatically rejected the English Rule in the Constitution. The Sixth Amendment secures the accused’s right “to be defended by the counsel he believes to be the best.” *United States v. Gonzalez-Lopez*, 548 U.S. 140, 146 (2006); *see also Luis v. United States*, 578 U.S. 5, 11 (2016) (“[T]he Sixth Amendment grants a defendant ‘a fair opportunity to secure counsel of his own choice.’”) (quoting *Powell*, 287 U.S. at 53); *Kaley v. United States*, 571 U.S. 320, 336 (2014) (remarking that defendants “have a vital interest” in “the constitutional right to retain counsel of their own choosing”). “The right to select counsel of one’s choice . . . has been regarded as the root meaning of the constitutional guarantee.” *Gonzalez-Lopez*, 548 U.S. at 147–48.

Critically, the Constitution secures that right *precisely* to prevent the government from controlling the loyalty, quality, and vigor of the defense. *See Strickland v. Washington*, 466 U.S. 668, 686 (1984) (“Government violates the right to effective assistance when it interferes in certain ways with the ability of counsel

to make independent decisions about how to conduct the defense.”). Indeed, in criminal cases, the Supreme Court has recognized that “[w]here a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of interest.” *Wood v. Georgia*, 450 U.S. 261, 271 (1981); *see also McCord v. Bailey*, 636 F.2d 606, 618 n.2 (D.C. Cir. 1980) (Wald, J., concurring in part and dissenting in part) (“The right to the undivided loyalty of one’s attorney is ‘absolute’ in the sense that it does not depend on one’s guilt or innocence. That duty of loyalty is a crucial factor in the success of our adversary system of justice.”).

In civil matters, the Due Process Clause of the Fifth Amendment protects litigants’ access to counsel.¹¹ “[T]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.” *Goldberg v. Kelly*, 397 U.S. 254, 270 (1970) (quoting *Powell*, 287 U.S. at 68–69) (holding that the party opposing the government in an administrative proceeding generally “must

¹¹ Actions that abridge an individual’s or entity’s selection of counsel also violate the First Amendment. *See United Mine Workers v. Ill. State Bar Ass’n*, 389 U.S. 217, 223–25 (1967) (holding that prohibitions on a union’s ability to hire attorneys on a salaried basis violated the First Amendment); *Railroad Trainmen v. Va. ex rel. Va. State Bar*, 377 U.S. 1, 5–7 (1964) (holding that the First Amendment protected a union’s ability to recommend attorneys to its members); *NAACP v. Button*, 371 U.S. 415, 438–445 (1963) (invalidating, on First Amendment grounds, a law prohibiting civil rights groups from engaging in public interest litigation).

be allowed to retain an attorney if he so desires”).¹² Interference with the free choice of counsel and disruption of existing attorney-client relationships in civil cases carries similar costs to the impartial, fair, and accurate administration of justice as it does in criminal cases. Legal ethics rules fortify this constitutional requirement by restricting a lawyer’s ability to represent clients when their loyalties are divided. The American Bar Association’s Model Rules provide that, with certain exceptions, “a lawyer shall not represent a client if . . . there is a significant risk that the representation . . . will be materially limited by the lawyer’s responsibilities to . . . a third person or by the personal interest of the lawyer.” MODEL RULES OF PROFESSIONAL CONDUCT r. 1.7(a) (A.B.A. 2025).¹³

By making loyalty to the whims of federal officeholders a practical condition of counsels’ availability to serve a client, the Orders violate the Fifth Amendment. The risks to a law firm subject to these Orders are significant: loss of, among other things, access to any “[g]overnment goods, property, material, and services,”

¹² Just as the freedom to choose counsel is protected by the Fifth Amendment, so too does the Fifth Amendment prohibit the Government from unlawfully infringing upon a lawyer’s right to practice their chosen profession. *See Bd. of Regents v. Roth*, 408 U.S. 564, 576 n.15 (1972) (discussing *Goldsmith v. Bd. of Tax Appeals*, 270 U.S. 117 (1926)).

¹³ A lawyer’s representation of a client can certainly be “materially limited . . . by the personal interests of the lawyer” when the lawyer operates in a climate of fear of Presidential retribution if a particular argument is met with disfavor. *Id.*

government contracts, access to government buildings (presumptively including courts) unless specifically authorized, and the firm's clients' loss of *their* government contracts. Orders §§ 2, 3, 5. That is not to mention the risk that employees of such a firm cannot be hired by any government agency absent a waiver from the head of the agency, made in consultation with the Director of the Office of Personnel Management. Orders § 5(b). Many lawyers will find these risks to themselves and their clients to be unacceptably high. They will instead avoid cases and clients that touch on issues that might anger the President—or (perhaps worse) avoid raising arguments that may incur the President's wrath.

The Orders eviscerate the client's right to a lawyer whose fidelity is undivided, run roughshod over the Fifth and Sixth Amendments, and revive precisely the system of abuse of centralized power which the Founders rejected. By threatening attorneys' livelihood for their having spoken out against the preferred policy positions of a sitting President, the Orders are intended to—and will—cow attorneys into silence, depriving clients of rights secured by the Fifth and Sixth Amendments. An attorney whose “lips” are “sealed . . . on crucial matters” for fear that she will provoke the ire of the Executive, is no attorney at all. *See Holloway v. Arkansas*, 435 U.S. 475, 490 (1978) (commenting, in a case where a single attorney represented multiple defendants with conflicting interests, “[t]he mere physical presence of an attorney does not fulfill the Sixth Amendment guarantee when the

advocate's conflicting obligations have effectively sealed his lips on crucial matters.”).

III. The Orders Threaten the Rule of Law.

That the Orders violate core First, Fifth, and Sixth Amendment rights by restricting the ability of Appellees and their clients to participate in the legal system is cause enough for the Court to affirm the decisions below. But the Orders also pose a broader threat to the rule of law.

Lawyers play an essential role in upholding America's democratic institutions. As Alexis de Tocqueville observed in the early days of the Republic, lawyers' ability to vindicate the rights of their clients and their attachment to the Constitution and laws serves as “the most powerful existing security against the excesses of democracy.” ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 301 (Henry Reeve trans., 2002) (1835). The role of lawyers in fighting governmental abuses is no less essential to the rule of law and an independent judiciary today than it was then. *See Velazquez*, 531 U.S. at 545 (“An informed, independent judiciary presumes an informed, independent bar.”). “Intolerance and pressure to suppress ideas that may be unwelcome to some poses a special threat to the legal profession.” Scalia, *supra* at 334. “One of the great traditions of the profession is respect for the right to representation of those with whom we disagree, and even to undertake that representation ourselves.” *Id.*; *see also* Hon. J. Michael Luttig, Address to the Am.

Bar Ass'n Annual Meeting of the Nat'l Conf. of State Bar Leaders (Aug. 4, 2023) (recognizing that lawyers are “uniquely qualified and obligated to defend our Constitution, [r]ule of [l]aw, and [d]emocracy”).

Courts must maintain unwavering “vigilance” when the government “imposes rules and conditions” on attorneys that restrict their ability to effectively represent their clients, particularly when such restrictions “in effect insulate its own laws from legitimate judicial challenge.” *Velazquez*, 531 U.S. at 544. Restricting attorneys “in advising their clients and in presenting arguments and analyses to the courts distorts the legal system by altering the traditional role of the attorneys.” *Id.* And, chilling attorneys alters the basic role of the courts in a government that relies on judicial review to protect constitutional rights. In an adversarial system, courts consider issues only when lawyers have presented them. Limits on lawyers readily become limits on courts.

The Orders are a blatant attempt to hamstring attorneys’ ability to zealously represent clients—and, particularly, clients who seek to challenge the Executive’s authority. At the most basic level, the President seeks to interfere not only with prospective federal contractors’ counsel of choice, but with the rights of Appellees’ existing clients involved in civil and criminal matters with the government, and with the firms’ constitutional and ethical obligations to clients in such cases.

But the threat from the Orders goes far beyond Appellees and their clients.

Under the specter of the Orders, any firm that has, or hopes to retain, clients who contract with the federal government will have to shape its practice to meet the whims of the President. By the same token, clients who want to stay in the President's good graces will either drop a firm or demand that the firm drop other clients perceived to be enemies of the President.

That is not just a threat to lawyers and their clients; it is a threat to the judicial system and the rule of law as a whole. "Historically, threats to lawyers have been an integral part of constricting judicial power." David McGowan, *Fealty Oaths*, at 49, <https://laweconcenter.org/resources/fealty-oaths/>. As Justice Taft, who served both as President and Chief Justice, put it, "an attack upon the courts is an attack upon our profession, and an attack upon our profession is equally an attack upon the courts." WILLIAM HOWARD TAFT, *ETHICS IN SERVICE* 1 (1915).

The challenged Orders name only a few law firms, but in so doing, they dangle a Sword of Damocles over all those who refuse to place loyalty to the President above the interests of their clients and the law. They seek to destroy a functional bar that ensures the government follows the law, substituting instead a bar that is, at best, reluctant to challenge the government, and, at worst, one that is a plaything of the party in power. That sword has already fallen on a dozen other firms, *see supra* pages 9–11. This Court should affirm the rulings of the district courts and stop this abuse of executive power before it goes any further.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court affirm the district courts' grants of summary judgment.

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Respectfully submitted,

/s/ Phillip R. Malone

Phillip R. Malone
559 Nathan Abbott Way
Stanford, CA 94305
Telephone: (650) 725-6369
Fax: (650)-723-4426
pmalone@law.stanford.edu

Counsel for Amici Curiae

APPENDIX A

LIST OF *AMICI CURIAE* LAW PROFESSORS

Institutional affiliations are provided for purposes of identification only and do not reflect the views of the listed institutions.

Mark N. Aaronson

Professor of Law Emeritus
UC College of the Law, San Francisco

Richard L. Abel

Connell Distinguished Professor of Law
Emeritus & Distinguished Research
Professor
UCLA School of Law

David Abraham

Professor Emeritus of Law
University of Miami School of Law

Jamie R. Abrams

Professor of Law
American University Washington College of
Law

Kathryn R. Abrams

Herma Hill Kay Distinguished Professor
Law
University of California, Berkeley Law
School

Deborah Ahrens

Professor of Law
Seattle University School of Law

Janet C. Alexander

Frederick I. Richman Professor of Law
Emerita
Stanford Law School

Anthony V. Alfieri

Michael R. Klein Distinguished Scholar
Chair & Professor of Law
University of Miami School of Law

Hilary J. Allen

Professor of Law
American University Washington College of
Law

Jessie Allen

Professor of Law
University of Pittsburgh School of Law

Rebecca Allensworth

Professor of Law
Vanderbilt Law School

Sean M. Anderson

Teaching Professor
University of Illinois College of Law

Rachel J. Anderson

Professor of Law
UNLV William S. Boyd School of Law

Claudia Angelos

Professor of Law
New York University School of Law

John S. Applegate

James Louis Calamaras Professor of Law
Indiana University Maurer School of Law

Jonathan Askin

Professor of Clinical Law
Brooklyn Law School

Emad H. Atiq

Professor of Law & Philosophy
Cornell Law School

Kif Augustine-Adams

Professor
BYU J. Reuben Clark Law School

Rebecca J. Aviel

Professor
University of Denver Sturm College of Law

Gilat J. Bachar

Professor
Temple University Beasley School of Law

Carlos A. Ball
Distinguished Professor of Law
Rutgers Law School

W. David Ball
Professor
Santa Clara University School of Law

Beverly Balos
Clinical Professor of Law Emerita
University of Minnesota Law School

Derek E. Bambauer
Irving Cypen Professor of Law
University of Florida Levin College of Law

Brad M. Baranowski
Visiting Assistant Professor
Boston University School of Law

Christine P. Bartholomew
Professor of Law
University at Buffalo School of Law

Mark Bartholomew
Professor of Law
University at Buffalo School of Law

Benjamin H. Barton
Professor
The University of Tennessee Winston
College of Law

Jon Bauer
Clinical Professor of Law & Richard D.
Tulisano '69 Scholar in Human Rights
University of Connecticut School of Law

Jeremy P. E. Bearer-Friend
Associate Professor of Law
The George Washington University Law
School

Edith Beerdsen
Associate Professor of Law
Temple University, Beasley School of Law

Steven W. Bender
Professor of Law
Seattle University School of Law

Lenni B. Benson
Distinguished Chaired Professor
Immigration and Human Rights Law
New York Law School

Anna L. Benvenue
Associate Clinical Professor of Law
Santa Clara University School of Law

Jessica J. Berch
Teaching Professor
Sandra Day O'Connor College of Law,
Arizona State University

Eric Berger
Earl Dunlap Distinguished Professor of Law
University of Nebraska College of Law

Linda L. Berger
Professor of Law Emerita
UNLV Boyd School of Law

Vivian Berger
Nash Professor of Law Emerita
Columbia Law School

Paul Schiff Berman
Walter S. Cox Professor of Law
The George Washington University Law
School

Francesca E. Bignami
Leroy Sorenson Merrifield Research
Professor of Law
The George Washington University Law
School

Laura M. Bingham
Professor of Practice
Temple University Beasley School of Law

Brian H. Bix
Frederick W. Thomas Professor of Law and
Philosophy
University of Minnesota

Natalia V. Blinkova
Associate Professor, Fundamentals of
Lawyering
The George Washington University Law
School

Carl T. Bogus
Professor of Law Emeritus
Roger Williams University School of Law

Kathryn N. Boling
Assistant Professor of Law
Seattle University School of Law

Alexander A. Boni-Saenz
Professor of Law
University of Minnesota Law School

Vincent Martin Bonventre
Justice Robert Jackson Distinguished
Professor
Albany Law School

Richard A. Boswell
Professor of Law
UC College of the Law, San Francisco

Deborah Brake
Professor of Law
University of Pittsburgh School of Law

Ben Bratman
Professor of Legal Writing
University of Pittsburgh School of Law

Cheryl S. Bratt
Associate Professor of the Practice
Boston College Law School

Robert F. Brauneis
Professor of Law
The George Washington University Law
School

Michael B. Bressman
Professor in the Practice of Law
Vanderbilt University Law School

Paul Brest
Professor Emeritus
Stanford Law School

Juliet M. Brodie
Professor of Law
Stanford Law School

Mark S. Brodin
Professor
Boston College Law School

Chaz D. Brooks
Assistant Professor of Law
American University Washington College of
Law

Eleanor M. Brown
Professor
Fordham University School of Law

Fred B. Brown
Professor of Law and Director of the
Graduate Tax Program
University of Baltimore School of Law

Karen B. Brown
Professor of Business Law
George Washington University Law School

Mark R. Brown
Newton D. Baker/Baker & Hostetler Chair
Capital University Law School

Alan E. Brownstein
Professor of Law Emeritus
University of California Davis School of
Law

James J. Brudney
Professor of Law
Fordham University School of Law

Scott Burris
Professor and Director, Center for Public
Health Law Research
Temple University Beasley School of Law

J. Anna Cabot
Assistant Dean of Clinical Programs
University of Houston Law Center

Daniel J. Canon
Director of Externships
University of Louisville, Louis D. Brandeis
School of Law

June R. Carbone
Robina Chair in Law, Science and
Technology
University of Minnesota

W. Jonathan Cardi
Judge Donald L. Smith Professor of Law
Wake Forest University School of Law

Susan D. Carle
Distinguished Professor of Law
American University Washington College of
Law

Ann E. Carlson
Shapiro Professor of Environmental Law
UCLA School of Law

Angela C. Carmella
Professor of Law
Seton Hall University School of Law

David J. Carney
Professor
Case Western Reserve University School of
Law

Leonore F. Carpenter
Associate Professor of Law
Rutgers Law School, Camden

Erin M. Carr
Assistant Professor of Law
Seattle University School of Law

Gilbert P. Carrasco
Professor of Law Emeritus
Willamette University School of Law

Michael W. Carroll
Professor of Law
American University Washington College of
Law

William M. Carter, Jr.
Professor of Law
University of Pittsburgh School of Law

Tara L. Casey
Professor
University of Richmond School of Law

Zachary Catanzaro
Assistant Professor of Law
Widener University Delaware Law School

Christine Cerniglia
Professor
Stetson College of Law

Martha Chamallas
Distinguished University Professor
Ohio State University, Moritz College of
Law

Elizabeth Chambliss
Henry Harman Edens Professor of Law &
Director, NMRS Center on Professionalism
University of South Carolina Rice School of
Law

Anupam Chander
Professor of Law
Georgetown University

Bernard Chao
Professor
University of Denver Sturm College of Law

Matthew H. Charity
Professor of Law
City University of New York School of Law

Copeland Charlton

Professor of Law
University of Miami Law School

Mary M. Cheh

Elyce Zenoff Research Professor of Law
George Washington University Law School

Erwin Chemerinsky

Dean & Jesse H. Choper Distinguished
Professor of Law
University of California, Berkeley School of
Law

Alan K. Chen

Thompson G. Marsh Law Alumni Professor
University of Denver Sturm College of Law

Ronald K. Chen

University Professor and Distinguished
Professor of Law
Rutgers Law School

Carol L. Chomsky

Professor Emerita
University of Minnesota Law School

Margaret Chon

Donald & Lynda Horowitz Professor for the
Pursuit of Justice
Seattle University School of Law

Ralph D. Clifford

Professor Emeritus of Law
Univ. of Massachusetts School of Law

Morgan Cloud

Charles Howard Candler Professor of Law
Emeritus
Emory University

Wilfred U. Codrington III

Walter Floersheimer Professor of
Constitutional Law
Benjamin N. Cardozo School of Law

Julie E. Cohen

Mark Cluster Mamolen Professor of Law &
Technology
Georgetown University Law Center

David S. Cohen

Professor of Law
Drexel Kline School of Law

Laura Cohen

Professor of Law & Justice Virginia Long
Scholar
Rutgers Law School

Carl H. Coleman

Professor of Law
Seton Hall Law School

Matthew A. Coles

Professor of Practice
UC College of the Law, San Francisco

Dree Collopy

Practitioner in Residence
American University Washington College of
Law

Anna G. Cominsky

Professor of Law
New York Law School

Daniel O. Conkle

Professor of Law Emeritus
Indiana University Maurer School of Law

Jorge L. Contreras

Distinguished University Professor
University of Utah S.J. Quinney College of
Law

Elizabeth Cooper

Professor
Fordham University School of Law

Caroline Mala Corbin

Professor of Law
University of Miami School of Law

Roberto L. Corrada
Professor of Law
University of Denver Sturm College of Law

Christopher A. Cotropia
David Weaver Research Professor of Law
The George Washington University Law
School

Thomas F. Cotter
Professor of Law
University of Minnesota Law School

Avidan Y. Cover
Professor
Case Western Reserve University School of
Law

Courtney M. Cox
Associate Professor of Law
Fordham University School of Law

Janice L. Craft
Professor of Law, Legal Practice
University of Richmond School of Law

Karen H. Cross
Professor Emerita
University of Illinois Chicago School of
Law

Leigha C. Crout
Assistant Professor of Law
DePaul University College of Law

Catherine N. Crump
Clinical Professor of Law
University of California, Berkeley School of
Law

Scott L. Cummings
Robert Henigson Professor of Legal Ethics
UCLA School of Law

Stephanie Dangel
Professor of Practice
University of Pittsburgh School of Law

Angela J. Davis
Distinguished Professor of Law Emerita
American University Washington College of
Law

Martha F. Davis
University Distinguished Professor
Northeastern University School of Law

Peggy C. Davis
Shad Professor of Law Emeritus
New York University School of Law

John C. Dehn
Associate Professor of Law
Loyola University Chicago School of Law

Laura A. Dickinson
Lyle T. Alverson Professor of Law
The George Washington University Law
School

Jennifer T. Dierks
Clinical Professor of Law
University of Missouri-Kansas City School
of Law

J. Amy Dillard
Associate Professor of Law
University of Baltimore School of Law

Robert D. Dinerstein
Professor of Law Emeritus
American University Washington College of
Law

Graeme B. Dinwoodie
University Distinguished Professor of Law
Chicago-Kent College of Law

William S. Dodge
Lobingier Professor of Comparative Law &
Jurisprudence
The George Washington University Law
School

Stacey Dogan

Professor
Boston University School of Law

John J. Donohue

C. Wendell and Edith M. Carlsmith
Professor
Stanford Law School

Michael C. Dorf

Robert S. Stevens Professor of Law
Cornell Law School

Alyssa Dragnich

Clinical Professor of Law
Arizona State University Sandra Day
O'Connor College of Law

Rochelle C. Dreyfuss

Pauline Professor of Law Emerita
New York University School of Law

Meredith J. Duncan

Alumnae College Professor of Law
University of Houston Law Center

Jeffrey L. Dunoff

Laura H. Carnell Professor of Law
Temple University Beasley School of Law

Eric B. Easton

Professor of Law Emeritus
University of Baltimore School of Law

Robin J. Effron

Professor of Law
Fordham University School of Law

Nate Ela

Assistant Professor of Law
Temple University Beasley School of Law

Anne S. Emanuel

Professor Emerita
Georgia State University College of Law

David Freeman Engstrom

LSVF Professor of Law
Stanford Law School

Nora Freeman Engstrom

Ernest W. McFarland Professor of Law
Stanford Law School

Garrett Epps

Professor of Law Emeritus
University of Baltimore School of Law

Jules Epstein

Professor of Law and Director of Advocacy
Programs
Temple University Beasley School of Law

Danieli G. Evans

Assistant Professor of Law
University of Washington School of Law

Sarah L. Fackrell

Professor of Law
Chicago-Kent College of Law

Jeffrey A. Fagan

Professor of Law
Columbia Law School, Columbia University

Dave Fagundes

Professor of Law
Emory University School of Law

Bridget Fahey

Professor of Law
University of Chicago Law School

Jonathan Feingold

Professor of Law
Boston University School of Law

Aaron X. Fellmeth

Dennis S. Karjala Professor of Law
Arizona State University College of Law

Mailyn Fidler

Professor
University of New Hampshire Franklin
Pierce School of Law

Ronald H. Filler

Professor Emeritus
New York Law School

Sharon Finegan

Professor of Law
South Texas College of Law Houston

Martha Albertson Fineman

Robert W. Woodruff Professor of Law
Emory University Law School

Omeed Firouzi

Practice Professor of Law
Temple University Beasley School of Law

Harry First

Charles L. Denison Professor of Law
Emeritus
New York University School of Law

Timothy S. Fisher

Dean and Professor of Law Emeritus
University of Connecticut School of Law

Joseph R. Fishkin

Professor
UCLA School of Law

Martin Flaherty

Charles and Marie Robertson Visiting
Professor
School of Public and International Affairs,
Princeton University

J. Clifton Fleming, Jr.

Ernest L. Wilkinson Chair, Guy Anderson
Chair & Professor of Law
J. Reuben Clark Law School, Brigham
Young University

Amy Flynn

Associate Dean for Academic Affairs
University of San Francisco

Elizabeth Ford

Assistant Professor
Seattle University School of Law

Richard T. Ford

George E. Osborne Professor of Law
Stanford Law School

Andrew H. Foster

Clinical Professor of Law
Duke University School of Law

Eleanor M. Fox

Professor Emerita
New York University School of Law

Eric M. Freedman

Siggi B. Wilzig Distinguished Professor of
Constitutional Rights Emeritus
Maurice A. Deane School of Law, Hofstra
University

Alexi Freeman

Associate Dean & Professor of the Practice
University of Denver Sturm College of Law

Susan A. Freiwald

Professor of Law
University of San Francisco School of Law

Barry Friedman

Jacob D. Fuchsberg Professor of Law
New York University School of Law

A. Michael Fromkin

Laurie Silvers & Mitchell Rubenstein
Distinguished Professor of Law
University of Miami School of Law

Shannon Fyfe

Assistant Professor
Washington & Lee University School of
Law

Theresa A. Gabaldon
Lyle T. Alverson Professor of Law
The George Washington University Law
School

Iselin M. Gambert
Professor, Fundamentals of Lawyering
The George Washington University Law
School

Frank J. Garcia
Professor and Dean's Distinguished Scholar
Boston College Law School

Marie-Amélie P. George
Professor
Wake Forest University School of Law

Erika Renee George
Professor of Law & Associate Dean for
Equity, Justice, & Engagement
Boston University School of Law

Bennett L. Gershman
Distinguished Professor of Law
Pace University School of Law

Shubha Ghosh
Crandall Melvin Professor of Law
Syracuse University College of Law

James Gibson
Sesquicentennial Professor of law
University of Richmond School of Law

Jonathan D. Gingerich
Associate Professor of Law
Rutgers Law School

Jonathan D. Glater
Professor of Law
University of California, Berkeley School of
Law

Nicole B. Godfrey
Assistant Professor of Law
University of Denver Sturm College of Law

Cynthia Godsoe
Professor of Law & Dean's Research
Scholar
Brooklyn Law School

Steve C. Gold
Professor of Law & Judge Raymond J.
Dearie Scholar
Rutgers Law School

Suzanne B. Goldberg
Herbert and Doris Wechsler Clinical
Professor of Law
Columbia Law School

Eric Goldman
Professor & Associate Dean for Research
Santa Clara University School of Law

Robert K. Goldman
Professor of Law & Louis C. James Scholar
American University Washington College of
Law

Julie Goldscheid
Professor Emerita
CUNY School of Law

Paul Goldstein
Professor of Law Emeritus
Stanford Law School

Thalia González
Professor of Law & James Edgar Hervey
'50 Chair of Litigation
UC College of the Law, San Francisco

Marc-Tizoc González
Professor of Law
University of New Mexico School of Law

Leigh S. Goodmark
Marjorie Cook Professor of Law
University of Maryland Francis King Carey
School of Law

Jennifer L. Gordon

John D. Feerick Chair and Professor of Law
Fordham University School of Law

Robert W. Gordon

Professor of Law Emeritus
Stanford Law School

Sarah Gottlieb

Assistant Clinical Professor of Law
Washington & Lee University School of
Law

William B. Gould IV

Charles A Beardsley Professor of Law
Emeritus
Stanford Law School

Paul Gowder

Frederic P. Bose Professor of Law
Northwestern University Pritzker School of
Law

Mark A. Graber

Regents Professor
University of Maryland Carey School of
Law

Henry T. Greely

Deane F. & Kate Edelman Johnson
Professor of Law
Stanford Law School

Michael Green

Emeritus Professor
Wake Forest University School of Law

Abner S. Greene

Leonard F. Manning Professor
Fordham Law School

Kent Greenfield

Professor of Law & Dr. Thomas F. Carney
Distinguished Scholar
Boston College Law School

Daniel Greenwood

Professor of Law
Maurice A. Deane School of Law, Hofstra
University

Leslie C. Griffin

Professor
UNLV Boyd School of Law

Ariela J. Gross

Distinguished Professor of Law and History
UCLA School of Law

Karen Gross

Professor of Law (ret.)
New York Law School

Joanna L. Grossman

Ellen K. Solender Endowed Chair in
Women and Law & Professor of Law
SMU Dedman School of Law

Catherine M. Grosso

Professor of Law
Michigan State University College of Law

Lisa F. Grumet

Professor of Law
New York Law School

Michael Grynberg

Professor of Law
DePaul University College of Law

Jennifer A. Gundlach

Emily & Stephen Mendel Distinguished
Professor of Law
Maurice A. Deane School of Law, Hofstra
University

Jeffrey S. Gutman

Professor Emeritus of Clinical Law
The George Washington University Law
School

Lucas Guttentag

Professor of the Practice of Law
Stanford Law School
Martin R. R Flug Lecturer & Senior
Researcher Scholar
Yale Law School

Lula A. Hagos

Associate Professor of Law
The George Washington University Law
School

Thomas D. Haley

Assistant Professor
University of Florida Levin College of Law

Rebecca J. Hamilton

Professor of Law
American University Washington College of
Law

Rachel L. Hampton

Professor of Legal Writing
Capital University Law School

G.S. Hans

Clinical Professor of Law
Cornell Law School

Hugh Hansen

Professor of Law Emeritus
Fordham University School of Law

Angela P. Harris

Distinguished Professor
Seattle University School of Law

Lindsay M. Harris

Professor of Law
University of San Francisco School of Law

Jeffrey L. Harrison

Huber Hurst Eminent Scholar (ret.)
University of Florida College of Law

Daniel L. Hatcher

Professor of Law
University of Baltimore School of Law

Paul J. Heald

Albert J. Harno & Edward W. Cleary Chair
in Law Emeritus
University of Illinois College of Law

J. Benton Heath

Associate Professor
Temple University School of Law

William D. Henderson

Professor & Stephen F. Burns Chair on the
Legal Profession
Indiana University Maurer School of Law

William D. Henslee

Professor of Law
FAMU College of Law

Helen Hershkoff

Herbert & Svetlana Wachtell Professor of
Constitutional Law & Civil Liberties
New York University School of Law

Katherine M. Hessler

Assistant Dean, Animal Law
The George Washington University Law
School

Robert Heverly

Associate Professor of Law
Albany Law School

Laura A. Heymann

James G. Cutler Professor of Law
William & Mary Law School

Claire A. Hill

Professor
University of Minnesota Law School

B. Jessie Hill

Judge Ben C. Green Professor of Law
Case Western Reserve University School of
Law

Robert Hillman

Edwin H. Woodruff Professor of Law
Emeritus
Cornell Law School

Bill O. Hing

Professor of Law
University of San Francisco School of Law

Alexis J. Hoag-Fordjour

David Dinkins Professor
Brooklyn Law School

Diane E. Hoffmann

Jacob A. France Professor of Health Law
University of Maryland Francis King Carey
School of Law

Lonny Hoffman

Law Foundation Professor of Law
University of Houston Law Center

Timothy R. Holbrook

Robert B. Yegge Endowed Distinguished
Professor in Law
University of Denver Sturm College of Law

Brooks Holland

Professor of Law
Gonzaga University School of Law

Paul Holland

Associate Dean and Associate Professor
Seattle University School of Law

Duncan B. Hollis

Laura H. Carnell Professor of Law
Temple University Beasley School of Law

Nicholas H. Horan

Associate Teaching Professor & Assistant
Dean for Academic Success
Northeastern University School of Law

Nicholas C. Howson

Pao Li Tsiang Chair Professor of Law
University of Michigan School of Law

Marina C. Hsieh

Senior Fellow, Emerita
Santa Clara University School of Law

William Hubbard

Professor
University of Baltimore School of Law

Katherine C. Hughes

Clinical Associate Professor of Law
Fordham Law School

Aziz Z. Huq

Professor of Law
University of Chicago Law School

Kip M. Hustace

Assistant Professor of Law
Seattle University School of Law

Megan R. Hutchinson

Professor and Co-director of Legal Writing
University of San Francisco School of Law

Lisa C. Ikemoto

Professor
University of California, Davis School of
Law

Anthony C. Infanti

Christopher C. Walthour, Sr. Professor of
Law
University of Pittsburgh School of Law

Loren Jacobson

Associate Professor of Law
UNT Dallas College of Law

David Jaros

Professor
University of Baltimore School of Law

Danielle C. Jefferis

Associate Professor of Law
University of Nebraska College of Law

Dalié Jiménez
Professor of Law
University of California, Irvine School of Law

Dawn Johnsen
Walter W. Foskett Professor of Law
Indiana University Maurer School of Law

Sheri Kynn Johnson
Professor
Cornell Law School

Abigail L. Jones
Assistant Teaching Professor
Arizona State University Sandra Day
O'Connor College of Law

Bradley W. Joondeph
Jerry Kasner Professor
Santa Clara University School of Law

Johanna Kalb
Dean and Professor of Law
University of San Francisco School of Law

Sam Kamin
Chauncey G. Wilson Memorial Research
Chair
University of Denver, Sturm College of Law

Jon E. Kappes
Teaching Professor of Law
Arizona State University Sandra Day
O'Connor College of Law

Pamela S. Karlan
Kenneth & Harle Montgomery Professor of
Public Interest Law
Stanford Law School

Alexis Karteron
Professor of Law
NYU School of Law

Tal Kastner
Associate Professor of Law
Rutgers Law School

Alice Kaswan
Professor of Law
University of San Francisco School of Law

Ken Katkin
Professor of Law
Chase College of Law, Northern Kentucky
University

Richard B. Katskee
Assistant Clinical Professor of Law &
Director of the Appellate Litigation Clinic
Duke University School of Law

Adam M. Katz
Assistant Professor of Law
Seton Hall University School of Law

Michael Kaufman
Dean and Professor of Law
Santa Clara University School of Law

Gregory C. Keating
William T. Dalessi Professor of Law &
Philosophy
USC Gould School of Law

Riley T. Keenan
Associate Professor of Law
University of Richmond School of Law

Mark G. Kelman
James C. Gaither Professor of Law & Vice
Dean
Stanford Law School

Amalia D. Kessler
Lewis Talbot & Nadine Hearn Shelton
Professor of International Legal Studies
Stanford Law School

Jay B. Kesten
Associate Professor
Florida State College of Law

Elizabeth A. Keyes
Professor of Law
University of Baltimore School of Law

Eugene Kim
Professor of Legal Writing
University of San Francisco School of Law

Laird C. Kirkpatrick
Louis Harkey Research Professor of Law
Emeritus
The George Washington University Law
School

John B. Kirkwood
William C. Oltman Professor of Teaching
Excellence
Seattle University School of Law

Heidi Kitrosser
William W. Gurley Professor of Law
Northwestern University Pritzker School of
Law

Karl Klare
George J. & Kathleen Waters Matthews
Distinguished University Professor
Northeastern University School of Law

Michael Klausner
Professor
Stanford Law School

Alexandra L. Klein
Associate Professor of Law
Washington & Lee University School of
Law

Daniel T. Kobil
Professor of Law
Capital University Law School

Gerald Korngold
Trustee Professor of Law
New York Law School

William S. Koski
Eric & Nancy Wright Professor of Clinical
Education and Professor of Law
Stanford Law School

Ellen Kreitzberg
Professor of Law Emerita
Santa Clara University School of Law

Harold J. Krent
Professor
Chicago-Kent College of Law

Vivek Krishnamurthy
Associate Professor
University of Colorado Law School

Raymond S.R. Ku
John Homer Kapp Professor of Law
Case Western Reserve University School of
Law

Sapna Kumar
Henry J. Fletcher Professor of Law
University of Minnesota Law School

Andrew Lah
Visiting Professor
University of San Francisco School of Law

Corinna Lain
George E. Allen Chair in Law
University of Richmond School of Law

Amy Landers
Associate Dean of Faculty Research
Drexel University Thomas R. Kline School
of Law

Rachel Landy
Assistant Professor of Law
Cardozo Law School

Andrew J. Lanham
Assistant Professor of Law
University of Houston Law Center

Lisa J. Laplante
Professor of Law
New England Law, Boston

Peter E. Larsen

Assistant Professor of Law
Mitchell Hamline School of Law

Tamara Rice Lave

Professor of Law
University of Miami School of Law

Thomas S. Leatherbury

Clinical Professor of Law & Director, First
SMU Dedman School of Law

Cynthia Lee

Professor of Law
The George Washington University Law
School

Edward Lee

Professor of Law
Santa Clara University School of Law

Mark A. Lemley

William H. Neukom Professor
Stanford Law School

Arthur S. Leonard

Professor Emeritus
New York Law School

Lisa G. Lerman

Professor of Law Emerita
The Catholic University of America

Jack I. Lerner

Clinical Professor of Law
University of California, Irvine School of
Law

Gregg P. Leslie

Professor of Practice and Director, First
Amendment Clinic
Arizona State University Sandra Day
O'Connor College of Law

Christopher R. Leslie

Chancellor's Professor
University of California, Irvine School of
Law

John Leubsdorf

Professor of Law Emeritus
Rutgers Law School

Leslie C. Levin

Hugh Macgill Professor of Law Emerita
University of Connecticut School of Law

David S. Levine

Professor
Elon University School of Law

Ariana R. Levinson

Professor of Law
University of Louisville Brandeis School of
Law

Nancy E. Levit

Professor of Law
University of Missouri-Kansas City School
of Law

Justin M. Levitt

Professor of Law
LMU Loyola Law School

Marin K. Levy

Professor
Duke University School of Law

Yvette J. Liebesman

Professor of Law
Saint Louis University School of Law

James S. Liebman

James L. Dohr Professor of Law
Columbia Law School

Matthew G. Liebman

Professor & Chair of the Justice for Animals
Program
University of San Francisco School of Law

Theodor S. Liebmann

Clinical Professor of Law
Maurice A. Deane School of Law, Hofstra
University

Shirley Lin

Associate Professor of Law
Brooklyn Law School

Francine J. Lipman

William S. Boyd Professor of Law
UNLV William S. Boyd School of Law

Leah M. Litman

Professor of Law
University of Michigan Law School

Stephen Loffredo

Professor of Law Emeritus
CUNY School of Law

David A. Logan

Dean and Professor of Law Emeritus
Roger Williams University School of Law

Kyle D. Logue

Professor of Law
University of Michigan Law School

John C. Lore III

Distinguished Clinical Professor of Law
Rutgers Law School

Sarah H. Lorr

Associate Professor of Law
University of Maryland Francis King Carey
School of Law

David Luban

Distinguished University Professor
Georgetown University Law Center

Stephen J. Lubben

Harvey Washington Wiley Chair in
Corporate Governance & Business Ethics
Seton Hall University School of Law

Steven Lubet

Williams Memorial Professor Emeritus
Northwestern University Pritzker School of
Law

Grande Lum

Senior Lecturer
Stanford Law School

Ira C. Lupu

F. Elwood and Eleanor Davis Professor of
Law Emeritus
The George Washington University Law
School

Jody L. Madeira

Richard S. Melvin Professor of Law
Maurer School of Law, Indiana University-
Bloomington

Gregory P. Magarian

Thomas and Karole Green Professor of Law
Washington University School of Law

Luke T. Maher

Assistant Professor of Law
Seattle University School of Law

Jessica A. Mahon Scoles

Professor of Law
Western New England University Law
School

Maya Manian

Professor of Law
American University Washington College of
Law

Irina D. Manta

Professor of Law
Maurice A. Deane School of Law, Hofstra
University

Ellie Margolis

Jack E. Feinberg Professor in Litigation
Temple University Beasley School of Law

Milan Markovic

Professor
Texas A&M University School of Law

Terry A. Maroney
Robert S. & Theresa L. Reder Professor of
Law
Vanderbilt Law School

William Marshall
Kenan Professor of Law
University of North Carolina School of Law

Toni M. Massaro
Regents Professor of Law Emerita
University of Arizona College of Law

Suzanne K. Mawhinney
Director, Zief Law Library, and Assistant
Professor
University of San Francisco School of Law

Serena Mayeri
Arlin M. Adams Professor of Constitutional
Law
University of Pennsylvania Carey Law
School

Sara Mayeux
Mildred Prescott Miller Chair in Law
Vanderbilt Law School

Thomas W. Mayo
Professor of Law & University
Distinguished Teaching Professor
SMU Dedman School of Law

L. Thorne McCarty
Professor of Law & Computer Science,
Emeritus
Rutgers Law School

Marcia L. McCormick
Professor of Law
Saint Louis University School of Law

Brett H. McDonnell
Dorsey & Whitney Chair and Professor of
Law
University of Minnesota Law School

Timothy J. McFarlin
Professor
Samford University Cumberland School of
Law

William McGeeveran
Dean and William S. Pattee Professor of
Law
University of Minnesota Law School

Ben A. McJunkin
Associate Professor of Law
Arizona State University Sandra Day
O'Connor College of Law

Mark P. McKenna
Professor of Law
UCLA School of Law

Nicholas M. McLean
Assistant Professor of Law
William S. Richardson School of Law,
University of Hawai'i at Mānoa

Willajeanne F. McLean
Distinguished Professor of Law
University of Connecticut School of Law

Catlin Meade
Associate Professor, Fundamentals of
Lawyering
The George Washington University Law
School

M. Isabel Medina
Victor H. Schiro Distinguished Professor of
Law
Loyola University New Orleans College of
Law

Joan S. Meier
NFVLC Professor of Clinical Law
The George Washington University Law
School

Gabriel S. Mendlow
Professor of Law
University of Michigan Law School

Nazune M. Menka

Assistant Professor of Law
Seattle University School of Law

Nicholas Mercurio

Professor in Residence
Michigan State University College of Law

Deborah Jones Merritt

Distinguished University Professor Emerita
The Ohio State University Moritz College of Law

Bernadette A. Meyler

Carl & Sheila Spaeth Professor of Law
Stanford Law School

Naomi J. Mezey

Agnes Williams Sesquicentennial Professor
of Law & Culture
Georgetown University Law Center

Chi A. Mgbako

Clinical Professor of Law
Fordham Law School

Frank Michelman

Robert Walmsley University Professor and
Professor of Law Emeritus
Harvard Law School

Curtis J. Milhaupt

William F. Baxter-Visa International
Professor of Law
Stanford Law School

Binny Miller

Professor of Law & Associate Dean for
Experiential Education
American University Washington College of Law

Frances H. Miller

Professor Emerita
Boston University School of Law

Monte Mills

Charles I. Stone Professor & Director,
Native American Law Center
University of Washington School of Law

Jane E. Mitchell

Associate Professor
J. Reuben Clark Law School at Brigham
Young University

Viva R. Moffat

Professor of Law
University of Denver College of Law

Saira Mohamed

Agnes Roddy Robb Professor of Law
University of California, Berkeley School of Law

Margaret E. Montoya

Professor Emerita of Law
University of New Mexico School of Law

Daniel I. Morales

Associate Professor of Law, Dwight Olds
Chair in Law
University of Houston Law Center

Alison D. Morantz

James & Nancy Kelso Professor of Law
Stanford Law School

Emily Michiko Morris

David L. Brennan Professor of Law
University of Akron School of Law

Nicole Morris

Professor of Practice
Emory University School of Law

Stefano G. Moscato

Professor of Practice
UC College of the Law, San Francisco

Jon A. Mueller

Visiting Associate Professor of Law
University of Maryland Carey School of Law

Deirdre K. Mulligan
Professor & Director of the Berkeley Center
for Law & Technology
University of California, Berkeley School of
Information

Loren E. Mulraine
Professor of Law, Director of Music and
Entertainment Law Studies
Belmont University College of Law

Korin A. Munsterman
Professor of Practice
UNT Dallas College of Law

Kari E. Murphy
Professor of Legal Writing
Capital University Law School

Heather E. Murray
Associate Director, First Amendment Clinic
Cornell Law School

Justin S. Murray
Professor of Law
New York Law School

Karen B. Musalo
Professor
UC College of the Law, San Francisco

Athena D. Mutua
Professor of Law and Floyd H. & Hilda L.
Hurst Faculty Scholar
University at Buffalo School of Law
(SUNY)

Michele Neitz
Visiting Professor
University of San Francisco School of Law

Ryan H. Nelson
Associate Professor of Law
South Texas College of Law Houston

Burt Neuborne
Professor of Law Emeritus
New York University Law School

Christopher M. Newman
Associate Professor of Law
Antonin Scalia School of Law

Julie A. Nice
Herbst Foundation Professor of Law
University of San Francisco School of Law

Lisa H. Nicholson
Professor of Law & William Marshall
Bullitt Chair in Business Law
University of Louisville Louis D. Brandeis
School of Law

Len Niehoff
Professor from Practice
University of Michigan Law School

John T. Nockleby
Professor of Law & Susan Gurley Daniels
Chair in Civil Advocacy
LMU Loyola Law School

Clare R. Norins
Clinical Associate Professor
University of Georgia School of Law

Luke P. Norris
Tyler Haynes Professor of Law & Associate
Dean of Faculty Development
University of Richmond School of Law

Helen Norton
University Distinguished Professor and
Rothgerber Chair in Constitutional Law
University of Colorado School of Law

Jacob Noti-Victor
Professor of Law
Cardozo Law School

D. Carolina Núñez
Charles E. Jones Professor of Law
BYU J. Reuben Clark Law School

Sean D. O'Brien

Curators' Distinguished Teaching Professor
University of Missouri-Kansas City School
of Law

Seán M. O'Connor

Allen Grubman Chair in Media &
Entertainment Law
Brooklyn Law School

Margaret E. O'Grady

Assistant Professor of Law
University of New Hampshire School of
Law

Michelle Oberman

Katharine & George Alexander Professor of
Law
Santa Clara University School of Law

Tyler T. Ochoa

Professor
Santa Clara University School of Law

Jeffrey Omari

Associate Professor
Seattle University School of Law

David W. Opderbeck

Professor of Law and Director, Program on
Faith, Values, and the Rule of Law
Seton Hall University School of Law

Henry M. Ordower

Professor of Law
Saint Louis University School of Law

David Orentlicher

Judge Jack & Lulu Lehman Professor
UNLV William S. Boyd School of Law

Diane F. Orentlicher

Professor Emerita
American University Washington College of
Law

Adam D. Orford

Associate Professor of Law
Fordham University School of Law

Brian Owsley

Associate Professor of Law
UNT Dallas College of Law

Sean A. Pager

Professor of Law
Michigan State University

Suzianne D. Painter-Thorne

Professor of Law
Mercer University School of Law

Samir D. Parikh

Professor of Law
Wake Forest University School of Law

Wendy M. Parker

Research Professor of Law
Wake Forest University School of Law

Wendy E. Parmet

Matthews University Distinguished
Professor of Law
Northeastern University School of Law

Seema N. Patel

Associate Professor of Law
UC College of the Law, San Francisco

Jeremy R. Paul

Professor of Law
Northeastern University School of Law

Michael Stokes Paulsen

Professor
University of St. Thomas School of Law

Deborah Pearlstein

Director, Princeton Program in Law &
Public Policy, Charles and Marie Robertson
Visiting Professor of Law & Public Affairs
Princeton University

Richard J. Peltz-Steele
Chancellor Professor
University of Massachusetts Law School

Dylan Penningroth
Professor of Law and History
University of California, Berkeley School of
Law

Harvey S. Perlman
Professor of Law
University of Nebraska College of Law

Michael J. Perry
Robert W. Woodruff Professor of Law
Emeritus
Emory University School of Law

Aaron Perzanowski
Thomas W. Lacchia Professor of Law
University of Michigan Law School

Philip G. Peters
Ruth L Hulston Professor Emeritus of Law
University of Missouri School of Law

Nicole L. Phillips
Associate Professor of Legal Writing
University of San Francisco School of Law

Richard J. Pierce
Lyle T. Alverson Professor of Law
The George Washington University Law
School

Stephanie Plamondon
Bruce C. Hafen Professor of Law
BYU J. Reuben Clark Law School

Ellen S. Podgor
Professor of Law
Stetson University College of Law

Sarah Polcz
Acting Professor of Law
University of California, Davis School of
Law

Lucas A. Powe, Jr.
Anne Green Regents Chair
University of Texas School of Law

Russell A. Powell
Professor of Law
Seattle University School of Law

Jeanne Frazier Price
Professor of Law Emerita
UNLV William S. Boyd School of Law

Richard A. Primus
Theodore J. St. Antoine Collegiate Professor
University of Michigan Law School

Francesca L. Procaccini
Associate Professor of Law
Vanderbilt University Law School

Edward A. Purcell, Jr.
Joseph Solomon Distinguished Professor
Emeritus
New York Law School

Dara E. Purvis
James E. Beasley Professor of Law
Temple Beasley School of Law

Tara A. Ragone
Assistant Professor
Seton Hall University School of Law

Sarah Rajec
Professor
William & Mary Law School

Lisa P. Ramsey
Professor of Law
University of San Diego School of Law

Aziz Rana
J. Donald Monan, S.J., University Professor
of Law and Government
Boston College School of Law

Nancy B. Rapoport
UNLV Distinguished Professor & German
Turner Gordon Professor of Law
UNLV William S. Boyd School of Law

Frank S. Ravitch
Professor of Law and Walter H. Stowers
Chair
Michigan State University College of Law

Larry E. Ray
Professor
The George Washington University Law
School

Margaret Raymond
Warren P. Knowles Chair in Law
University of Wisconsin Law School

James D. Redwood
Professor of Law
Albany Law School

R. Anthony Reese
Chancellor's Professor of Law
University of California, Irvine School of
Law

Mitt Regan
McDevitt Professor of Jurisprudence
Georgetown Law Center

Jarrod F. Reich
Senior Lecturer
Boston University School of Law

Amanda Reid
Associate Professor
The University of North Carolina at Chapel
Hill

Alexander A. Reinert
Max Freund Professor of Litigation and
Advocacy
Benjamin N. Cardozo School of Law

Leah S. Richardson
Chancellor's Professor of Law
University of California, Irvine School of
Law

Sarah E. Ricks
Distinguished Clinical Professor
Rutgers Law School

Sandra L. Rierson
Professor
Western State College of Law

Paul T. Rink
Associate Professor of Law
Seton Hall University School of Law

Thomas Riordan
Visiting Associate Clinical Professor
LMU Loyola Law School of Los Angeles

Michael V. Risch
Professor of Law
Villanova University School of Law

David T. Ritchie
Professor of Law & Philosophy
Mercer University School of Law

Ira P. Robbins
Distinguished Professor of Law
American University Washington College of
Law

Lauren K. Robel
Val Nolan Professor of Law
Indiana University Maurer School of Law

Cassandra Burke Robertson
Professor of Law
Case Western Reserve University School of
Law

Lauren M. Rogal
Clinical Professor of Law
Vanderbilt Law School

Sarah F. Rogerson

Distinguished Professor of Law
Albany Law School

Daria Roithmayr

Provost Professor of Law
University of Colorado Law School

Sonia E. Rolland

Professor of Law & Business
Northeastern University School of Law

Addie C. Rolnick

Yuhaaviatam of San Manuel Nation
Professor of Law
UNLV William S. Boyd School of Law

Jon Romberg

Assoc Professor
Seton Hall University School of Law

Carrie L. Rosenbaum

Associate Professor of Legal Writing
University of San Francisco School of Law

Jonathan Rosenbloom

Distinguished Professor of Law
Albany Law School

Catherine J. Ross

Lyle T. Alverson Professor of Law Emerita
The George Washington University Law
School

Ezra Rosser

Professor of Law
American University Washington College of
Law

Laura L. Rovner

Professor of Law & Director, Civil Rights
Clinic
University of Denver Sturm College of Law

Keith A. Rowley

William S. Boyd Professor of Law
UNLV William S. Boyd School of Law

Guy A. Rub

Vincent J. Marella Professor of Law
Temple University Beasley School of Law

Eric M. Ruben

Associate Professor of Law
SMU Dedman School of Law

John E. Rumel

Professor of Law
University of Idaho College of Law

Michael J. Russo

Teaching Professor
Seattle University School of Law

Jennifer Safstrom

Associate Clinical Professor of Law, Clay
Travis Director of the Stanton Foundation
First Amendment Clinic
Vanderbilt Law School

Zahr K. Said

Professor of Law
Santa Clara University School of Law

Rosemary C. Salomone

Kenneth Wang Professor of Law
St. John's University School of Law

Stephen A. Saltzburg

Wallace & Beverley Woodbury University
Professor
The George Washington University Law
School

Matthew J. Sanders

Assistant Professor of Law
Stanford Law School

Timothy R. Sanzi

Assistant Professor
University of San Francisco School of Law

Joshua D. Sarnoff

Raymond P. Niro Professor of Intellectual
Property Law
DePaul University College of Law

Andres Sawicki
Professor of Law
University of Miami School of Law

Jane Schacter
Professor of Law
Stanford Law School

Scott E. Schang
Professor of Practice
Wake Forest University School of Law

Erin A. Scharff
Willard H. Pedrick Distinguished Research
Scholar & Professor of Law
Arizona State University Sandra Day
O'Connor College of Law

Roger Schechter
William Thomas Fryer Research Professor
Emeritus
The George Washington University Law
School

Andrew A. Scherer
Professor of Law
New York Law School

Philip G. Schrag
Delaney Family Professor of Public Interest
Law
Georgetown University Law Center

Jacob M. Schriener-Briggs
Visiting Assistant Professor
Chicago-Kent College of Law, Illinois
Institute of Technology

Joshua I. Schwartz
EK Gubin Professor of Law Emeritus
The George Washington University Law
School

Anthony Sebok
Joseph and Sadie Danciger Chair in Law
Benjamin N. Cardozo School of Law

Alex Y. Seita
Professor of Law
Albany Law School

Jeffrey Selbin
Chancellor's Clinical Professor of Law
University of California, Berkeley School of
Law

Elisabeth A. Semel
Chancellor's Clinical Professor of Law
University of California, Berkeley School of
Law

Peter M. Shane
Professor and Jacob E. Davis and Jacob E.
Davis II Chair in Law Emeritus
The Ohio State University Moritz College of
Law

Amanda Shanor
Associate Professor & Wolpow Family
Faculty Scholar
The Wharton School of the University of
Pennsylvania

Daniel J. Sharfstein
Dick and Martha Lansden Chair in Law and
Professor of History
Vanderbilt University Law School

Kate Shaw
Professor of Law
University of Pennsylvania Carey Law
School

Jonathan Sheffield
Clinical Assistant Professor
Loyola University Chicago School of Law

Seana V. Shiffrin
Professor
UCLA School of Law

Jodi L. Short
Mary Kay Kane Distinguished Professor of
Law
UC College of the Law, San Francisco

Andrew M. Siegel

Professor of Law
Seattle University School of Law

Jessica M. Silbey

Professor of Law
Boston University School of Law

Gail E. Silverstein

Clinical Professor of Law
UC College of the Law, San Francisco

Gary J. Simson

Macon Chair in Law and Former Dean
Mercer University School of Law

Jana B. Singer

Professor of Law Emeritus
University of Maryland Cary School of Law

Michael S. Sinha

Assistant Professor
Saint Louis University School of Law

Shirin A. Sinnar

Professor of Law
Stanford Law School

Rima Sirota

Professor of Law, Legal Practice
Georgetown University Law Center

Gregory C. Sisk

Laghi Distinguished Chair in Law
University of St. Thomas School of Law

Deborah A. Sivas

Luke W. Cole Professor of Environmental
Law
Stanford Law School

David L. Sloss

John A. & Elizabeth H. Sutro Professor of
Law
Santa Clara University School of Law

Abbe L. Smith

Scott K. Ginsburg Professor of Law
Georgetown University Law Center

Bryant Walker Smith

Associate Professor of Law
University of South Carolina School of Law

William J. Snape

Professor
American University, Washington College
of Law

Stacey L. Sobel

Professor of Law
Western State College of Law at Westcliff
University

Aviam Soifer

Emeritus Professor
University of Hawai'i, William S.
Richardson School of Law

Daniel J. Solove

Bernard Professor of Intellectual Property &
Technology Law
The George Washington University Law
School

Alicia G. Solow-Niederman

Associate Professor of Law
The George Washington University Law
School

Ann Southworth

Professor of Law and Raymond Pryke Chair
University of California, Irvine School of
Law

Norman Spaulding

Sweitzer Professor of Law
Stanford Law School

Mai Linh Spencer

Clinical Professor
UC College of the Law, San Francisco

Douglas M. Spencer

Ira C. Rothgerber Chair in Constitutional Law
University of Colorado School of Law

Jane Spinak

Edward Ross Aranow Clinical Professor of Law Emerita
Columbia Law School

Carla Spivack

Distinguished Professor of Law
Albany Law School

Christopher J. Sprigman

Murray & Kathleen Bring Professor of Law
New York University School of Law

Jayashri Srikantiah

Professor of Law & Director, Immigrants' Rights Clinic
Stanford Law School

Erik Stallman

Clinical Professor of Law
University of California, Berkeley School of Law

Kathryn M. Stanchi

Professor of Law
UNLV William S. Boyd School of Law

Robert R. Statchen

Clinical Professor of Law, Assoc. Dean of Experiential Learning
Western New England University School of Law

Sarah Steadman

Professor of Law
University of New Mexico School of Law

Michalyn Steele

Professor
BYU J. Reuben Clark Law School

Ralph G. Steinhardt

Lobingier Professor of Comparative Law & Jurisprudence Emeritus
The George Washington University Law School

Jeffrey W. Stempel

Doris S. & Theodore B. Lee Professor of Law
UNLV William S. Boyd School of Law

Nomi M. Stolzenberg

Professor of Law
University of Southern California Gould Law School

Geoffrey R. Stone

Edward H. Levi Distinguished Professor of Law
The University of Chicago

Irwin P. Stotzky

Professor of Law
University of Miami School of Law

Seth W. Stoughton

Professor
University of South Carolina Joseph F. Rice School of Law

Katherine J. Strandburg

Pauline Newman Professor of Law
New York University School of Law

Marcy Strauss

Professor of Law
Loyola Law School

Jennifer E. Sturiale

Associate Professor of Law
Delaware Law School

Susan Sturm

George M. Jaffin Professor of Law and Social Responsibility
Columbia Law School

Lauren D. Sudeall
David Daniels Allen Distinguished Chair of
Law
Vanderbilt Law School

Lisa Grow Sun
Professor of Law
BYU J. Reuben Clark Law School

Cara Suvall
Clinical Professor of Law
Vanderbilt Law School

Maureen A. Sweeney
Law School Professor
University of Maryland Carey School of
Law

Xiyin Tang
Professor of Law
UCLA School of Law

Kim Taylor-Thompson
Professor of Law Emerita
New York University School of Law

Barton H. Thompson
Robert E. Paradise Professor of Law
Stanford Law School

Gerald Torres
Dolores Huerta and Wilma Mankiller
Professor
Yale Law School & Yale School of the
Environment

Paul R. Tremblay
Clinical Professor Emeritus
Boston College Law School

George Triantis
Richard E. Lang Professor of Law
Stanford Law School

Craig Trocino
Associate Professor of Clinical Education
University of Miami School of Law

Rebecca Tushnet
Frank Stanton Professor of the First
Amendment
Harvard Law School

Robert W. Tuttle
Berz Research Professor of Law & Religion
The George Washington University Law
School

Ron Tyler
Professor
Stanford Law School

Jennifer M. Urban
Clinical Professor of Law
University of California, Berkeley School of
Law

Michael P. Van Alstine
Francis King Carey Professor in Business
Law
University of Maryland Carey School of
Law

Allison K. Van Stean
Professor of Practice
UNT Dallas College of Law

Jonathan D. Varat
Professor of Law Emeritus
UCLA School of Law

Liza S. Vertinsky
Professor of Law
University of Maryland Francis King Carey
School of Law

Alexander Volokh
Professor
Emory Law School

Eugene Volokh
Senior Fellow
Hoover Institution, Stanford University
Distinguished Professor of Law Emeritus,
UCLA School of Law

Michael S. Wald

Professor of Law Emeritus
Stanford Law School

Daniel Warshawsky

Professor of Law
New York Law School

Cheryl B. Wattle

Professor
UNT Dallas College of Law

Jonathan Weinberg

Distinguished Professor
Wayne State University Law School

Allen Weiner

Senior Lecturer in Law
Stanford Law School

Laura M. Weinrib

Fred N. Fishman Professor of Constitutional
Law
Harvard Law School

Ian Weinstein

Professor of Law
Fordham University School of Law

Brandon Weiss

Professor of Law
American University Washington College of
Law

Charles D. Weisselberg

Yosef Osheawich Professor of Law
University of California, Berkeley School of
Law

Meijken Westenskow

Senior Professor of Practice
UNT Dallas College of Law

Patricia D. White

Professor of Law
University of Miami School of Law

Deborah A. Widiss

John F. Kimberling Professor of Law
Indiana University Maurer School of Law

Steven L. Willborn

Spencer Professor of Law
University of Nebraska College of Law

Beth Williams

Senior Lecturer in Law
Stanford Law School

Lucy Williams

Associate Professor
BYU J. Reuben Clark Law School

Sally H. Wise

Professor of Law Emerita
University of Miami School of Law

Tobias B. Wolff

Jefferson Barnes Fordham Professor of Law
University of Pennsylvania Law School

Eric W. Wright

Professor of Law
Santa Clara University School of Law

Ellen Yaroshefsky

Distinguished Professor of Legal Ethics
Emerita
Maurice A. Deane School of Law, Hofstra
University

Ruqaiijah A. Yearby

Judge Clifford Scott Green Chair in Law
Temple University Beasley School of Law

Alfred C. Yen

Professor of Law and Dean's Distinguished
Scholar
Boston College Law School

Kathryne M. Young

Professor of Law
The George Washington University Law
School

Patricia J. Zettler

John W. Bricker Professor of Law
The Ohio State University Moritz College of
Law

Emily R. Zhang

Assistant Professor
University of California, Berkeley School of
Law

Benjamin C. Zipursky

Professor of Law & James H. Quinn '49
Chair
Fordham Law School

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(a)(5) and 32(a)(7)(B)(i) and Circuit Rule 32(e)(3), I certify that this brief complies with the applicable type-volume limitations. This brief was prepared using a proportionally spaced typeface using Microsoft Word for Mac version 16.107.1 in 14-point Times New Roman. Exclusive of the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and Circuit Rule 32(e)(1), this brief contains 6,381 words as reported by the Microsoft Word for Mac version 16.107.1 word count feature.

DATED this 2nd day of April 2026.

/s/ Phillip R. Malone

Phillip R. Malone

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2026, I electronically filed the original of this brief with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

DATED this 2nd day of April 2026.

/s/ Phillip R. Malone _____

Phillip R. Malone