ORAL ARGUMENT SCHEDULED FOR 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* TWENTY-SEVEN BAR ASSOCIATIONS AND LAWYER MEMBERSHIP ASSOCIATIONS IN SUPPORT OF APPELLEES

BENJAMIN L. BERWICK
Protect Democracy Project
15 Main Street, Suite 312
Watertown, MA 02472
(202) 579-4582
ben.berwick@protectdemocracy.org

JEANNIE SUK GERSEN
*Harvard Law School**
1563 Massachusetts Avenue
Cambridge, MA 02138
(617) 496-8834
jeannie.gersen@gersen.com

HAYDEN JOHNSON
Protect Democracy Project
2020 Pennsylvania Ave. NW, Suite 163
Washington, DC 20006
(202) 579-4582
hayden.johnson@protectdemocracy.org

** Institutional affiliation for identification purposes only.*

Counsel for Amici Curiae

CERTIFICATE OF PARTIES AND AMICUS CURIAE

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

A. Parties and Amici. All parties, intervenors, and other amici appearing before the district court and in this Court are listed in the Appendix to this brief, and otherwise in the Brief for Appellees.

B. Ruling Under Review. References to the rulings at issue appear in the Brief for Appellees.

C. Related Cases. This case has not previously been before this Court. Counsel is aware of no other related cases in this or any other Court.

STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

Amici are bar associations and lawyer membership associations. All parties have consented to the filing of this brief. Pursuant to Circuit Rule 29(d), *amici* certify that a separate brief is necessary to represent the interests of a diverse set of bar and membership associations across the country—with expertise in professional norms and obligations, and the role of legal practice in democratic governance—and do not believe it duplicates any other brief that may be submitted.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Circuit Rule 26.1(a) and Federal Rule of Appellate Procedure 29(a)(4)(A), counsel for *amici curiae* certify that *amici* are bar associations and lawyer membership associations. They have no parent corporations, and do not issue stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Executive Orders

Other Authorities

INTRODUCTION

Amici are bar associations and lawyer membership associations across the country who oppose the administration's assault on the independence of the legal profession. An attack on lawyers' independence is an attack on constitutional democracy and the rule of law. By retaliating against law firms for representing disfavored parties and advocating for disfavored positions, the Executive Orders targeting Perkins Coie, Jenner & Block, WilmerHale, and Susman Godfrey undermine the bar's role as an independent safeguard of the legal system.

Coercing lawyers to replace their loyalty to clients with loyalty to the administration would deprive clients of effective and ethical legal representation. Without vigorous advocacy by lawyers independent of the Executive, the Judiciary would be unable to fulfill its constitutional role of checking unlawful action in our system of separated powers. Exacting retribution against targeted firms threatens to erode our adversarial system and diminishes the Judiciary's proper functioning, on which the rule of law depends.

The Orders echo strategies that have weakened the rule of law at critical moments in other countries. Authoritarian governments have converted the legal profession into a political instrument by punishing certain segments of lawyers and demanding party loyalty. By silencing dissent, these regimes dismantled the

adversarial representation system and deprived individuals of protection from government abuse.

Amici urge the Court to affirm the district courts' grants of summary judgment ruling that the retaliatory and coercive Orders are unconstitutional.

INTEREST OF *AMICI CURIAE*[1]

Amici bar associations and lawyer membership associations focus their efforts on protecting the professional role and standards of the legal profession. They encompass large geographic bar associations, including organizations representing New York, Boston, Chicago, Denver, Los Angeles, Philadelphia, San Diego, San Francisco, and Seattle. Their members include attorneys at law firms the Orders targeted and at other firms and legal service programs who are chilled in the exercise of constitutional rights and fulfillment of professional duties by a fear of being similarly targeted next. The full list of *amici curiae* is available at the Appendix.

ARGUMENT

I. The Executive Orders Threaten the Independence of the Bar.

A. The Executive Orders threaten to turn the bar into an instrument of the Executive.

As retribution for providing legal representation to the President's political opponents, the Orders impose steep regulatory, professional, and financial consequences on targeted firms.[2] They impair each firm's ability to represent its

[1] Under C.R. 26.1(a) and FRAP 29(a)(4)(E), counsel for *amici curiae* certify that no counsel for a party authored this brief in whole or in part, and no person other than *amici*, their members, or their counsel made a monetary contribution to the brief's preparation or submission.

[2] Executive Order Nos. 14230, 14246, 14549, 14263 coerce the Law Firms into attempted submission to the Administration. *See* Addressing Risks from Perkins Coie LLP, Exec. Order No. 14230, 90 Fed. Reg. 11781 (Mar. 6, 2025); Addressing

clients, cause hefty monetary losses, and smear their reputations. And they display these punishments as examples for all to see, to discourage other lawyers from daring to provide legal advocacy of which the President disapproves.

The Orders purport to target firms' "egregious" conduct, but are plainly designed to coerce the legal profession into serving the President's agenda. Three of the Orders explicitly identify association with the President's perceived opponents as justifying punishment: Perkins Coie is targeted for representing Hillary Clinton; WilmerHale for employing former Special Counsel Robert Mueller; and Jenner & Block for hiring an attorney who worked with Mueller. The Orders also rebuke each firm's legal advocacy. Susman Godfrey is alleged to have "weaponize[d] the American legal system and degrade[d] the quality of American elections" by representing Dominion Voting Systems in a defamation suit regarding the 2020 election, *Susman Godfrey LLP v. Exec. Off. of the President*, 789 F. Supp. 3d 15, 42 (D.D.C. 2025), while Perkins Coie is accused of supposed "unethical" actions like "fil[ing] lawsuits against the Trump Administration," *Fact Sheet: President Donald J. Trump Addresses Risks from Perkins Coie LLP*, The White House (Mar. 6, 2025),

---

Risks from Jenner & Block, Exec. Order No. 14246, 90 Fed. Reg. 13997 (Mar. 25, 2025); Addressing Risks from WilmerHale, Exec. Order No. 14250, 90 Fed. Reg. 14549 (Mar. 27, 2025); Addressing Risks from Susman Godfrey, Exec. Order No. 14263, 90 Fed. Reg. 15615 (Apr. 9, 2025).

https://perma.cc/ST65-FP4N. The Orders typify the Administration's broader attack on the legal profession and threats of retaliation against firms and attorneys for "litigation against the United States" that the Attorney General deems "frivolous, unreasonable, and vexatious." *Memorandum on Preventing Abuses of the Legal System and the Federal Court*, The White House (Mar. 22, 2025), https://perma.cc/4J64-TSFG.[3]

These measures attempt to co-opt the targeted firms as instruments of the executive branch to work on behalf of the Administration's interests and policies rather than as officers of the courts. That purpose is evident from the rescission of a similar executive order targeting Paul Weiss in exchange for its agreement to provide $40 million in pro bono services "to support the Administration's initiatives." Donald J. Trump (@realDonaldTrump), TruthSocial (Mar. 20, 2025, at 18:10 ET), https://perma.cc/F9MT-6AKE. If the other targeted firms were to similarly "acknowledge[] the wrongdoing" of their attorneys and "agree[] to a number of policy changes," *see* Addressing Remedial Action by Paul Weiss, Exec. Order No.

[3] *See Memorandum on Security Clearances and Suspension of Government Contracts*, The White House (Feb. 25, 2025), https://perma.cc/X5YA-HCDF (Covington & Burling); Addressing Risks from Paul Weiss, Exec. Order No. 14237, 90 Fed. Reg. 13039 (Mar. 14, 2025); *Memorandum on Preventing Abuses of the Legal System and the Federal Court*, The White House (Mar. 22, 2025), https://perma.cc/4J64-TSFG.

14244, 90 Fed. Reg. 13685 (Mar. 21, 2025)—that is, commit to furthering the President's agenda—they, too, may get out from under the Orders targeting them. But that would mean acquiescing to the President's demands at the expense of the firms' constitutional prerogative and professional duty to fiercely advocate for the clients they choose.

The Orders threaten to chill advocacy by all lawyers. As one district court observed, "[t]he legal profession as a whole is watching and wondering if their courtroom activities . . . will cause the government to turn their eyes to them next." J.A. 1878–79. Lawyers are being forced to decline representation of politically disfavored clients for fear of reprisal. *E.g.*, Michael Birnbaum, *Law Firms Refuse to Represent Trump Opponents in the Wake of His Attacks*, Wash. Post (Mar. 25, 2025), https://perma.cc/4U6D-NDY3. Attempting to forestall a targeted executive order, several firms preemptively struck deals involving promises to devote hundreds of millions of dollars combined of pro bono legal services to "causes" that the President seeks to support.[4] The President gloated about firms submitting to him: "They're all

[4] Among others, the President made agreements with Skadden, Willkie Farr, Milbank, Kirkland & Ellis, A&O Shearman, Simpson Thacher, and Latham & Watkins. *See* Donald J. Trump (@realDonaldTrump), TruthSocial (Mar. 28, 2025, 13:57 ET), https://perma.cc/XF7M-CGTL; Donald J. Trump (@realDonaldTrump), TruthSocial (Apr. 1, 2025, 16:47 ET), https://perma.cc/KU2R-6LN4; Donald J. Trump (@realDonaldTrump), TruthSocial (Apr. 2, 2025, 14:06 ET),

bending and saying, 'Sir, thank you very much. . . . Where do I sign? Where do I sign?'" Katelyn Polantz, *Law Firms are Scared to Speak out Amid Trump's Attacks on Their Livelihood*, CNN (Mar. 27, 2025, 05:00 ET), https://perma.cc/3LD9-8M9Y. Firms face strong incentives to enter a preemptive agreement under a perceived need to save their business, pushing them into anticipatory compliance to avoid angering the President.

This pressure is also aimed at dissuading firms from undertaking pro bono representation that the President disfavors.[5] Pro bono representation is a pillar of our legal system.[6] With lawyers cowed into submission and uncooperative firms risking

---

https://perma.cc/5EBU-AHGY; Donald J. Trump (@realDonaldTrump), TruthSocial (Apr. 11, 2025, 12:21 ET), https://perma.cc/6VVD-H2EZ.

[5] *See* Addressing Risks from Susman Godfrey, Exec. Order No. 14263, 90 Fed. Reg. 15615 (targeting Susman Godfrey based on its election-related cases); Addressing Risks from Perkins Coie LLP, 90 Fed. Reg. at 11781 (targeting Perkins Coie based on advocacy against certain election laws); Addressing Risks from Jenner & Block, 90 Fed. Reg. at 13997 (targeting Jenner & Block based on advocacy for immigrants and transgender individuals); Addressing Risks from WilmerHale, 90 Fed. Reg. at 14549 (targeting WilmerHale based on advocacy for immigrants); Addressing Risks from Paul Weiss, 90 Fed. Reg. at 13039 (targeting Paul Weiss based on representation of the District Columbia in a civil suit against groups involved in the events of January 6, 2021); *Memorandum on Security Clearances and Suspension of Government Contracts*, *supra* note 3 (targeting Covington & Burling for representing Jack Smith during his time as Special Counsel).

[6] Model Rule of Professional Conduct 6.1 states that "[e]very lawyer has a professional responsibility to provide legal services to those unable to pay" and encourages lawyers to provide at least 50 hours of pro bono legal services annually. Model Rules of Pro. Conduct r. 6.1 (A.B.A. 1983).

their client business, many pro bono clients will not have effective legal representation.[7] The March 22 memorandum, in particular, exacerbates immigrants' struggles to secure adequate legal representation.[8] The retaliation and coercion campaign weakens legal advocacy for clients the President opposes, and instead co-opts lawyers to further the Executive's policy preferences.

B. The Executive Orders encumber lawyers from performing their ethical duties.

The Orders impair lawyers' ability to adhere to ethical rules that govern the practice of law. They constitute broadscale executive interference with individual attorney-client relationships, placing lawyers in the position of choosing between maintaining the duty of loyalty to the client and avoiding costly presidential reprisals. This duty of loyalty to the client is enshrined throughout the Model Rules

---

[7] *See* Amanda O'Brien & Patrick Smith, *Paul Weiss—and Big Law—Face "An Existential Threat" Amid Intensifying Trump Administration Pressure*, Am. Law. (Mar. 18, 2025, 04:00 ET), https://perma.cc/94UT-Y27M (quoting Steve Bannon stating, "[W]e are trying to . . . put [major law firms] out of business and bankrupt [them]").

[8] As noted above, the March 22 memorandum directs the Attorney General and the Secretary of Homeland Security to take disciplinary and punitive action against attorneys their agencies oppose in judicial proceedings, with a particular focus on immigration lawyers and organizations that challenge federal immigration policies. It accuses immigration attorneys and pro bono lawyers representing asylum seekers of engaging in what the Administration deems "unscrupulous behavior," threatening to chill their representation. *Memorandum on Preventing Abuses of the Legal System and the Federal Court*, The White House (Mar. 22, 2025), https://perma.cc/4J64-TSFG.

of Professional Conduct: a lawyer may not undertake representation where there is a concurrent conflict of interest,[9] may not enter into transactions or acquire pecuniary interests adverse to a client,[10] may not use information relating to the representation to the client's disadvantage absent informed consent,[11] and remains bound by certain duties of loyalty even to former clients.[12] Rather than focusing on these loyalty obligations to certain clients, the Orders compel lawyers to consider loyalty to the Administration.

The Orders also threaten the independent professional judgment that lawyers are expected to offer their clients.[13] Fear of retaliation muzzles a lawyer's vigorous legal advocacy, particularly if the client's interest challenges the government's position.[14] Moreover, the Orders require firms to assess whether their work for a

---

[9] Model Rules of Pro. Conduct r. 1.7(a) (A.B.A. 1983) ("[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest.").

[10] *Id.* r. 1.8(a) (Subject to limited exceptions, "[a] lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client.").

[11] *Id.* r. 1.8(b) ("A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent.").

[12] *Id.* r. 1.9 (enshrining lawyers' duties even to their former clients).

[13] *See id*. r. 2.1 ("In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.").

[14] This also counteracts the principle established in Model Rule 1.3 by limiting the extent to which lawyers can act with commitment and dedication to their client's

client conflicts with an undefined set of national "interests," pressuring lawyers to downplay clients' strategic objectives where they conflict with those of the executive branch.[15] Lawyers and clients in some circumstances would then be limited in carrying out the full scope and aims of the representation, placing attorneys in a position where their professional obligations could conflict with efforts to avoid Executive retaliation. The Orders effectively pressure these targeted lawyers to subordinate their ethical mandates.

The danger is concrete and immediate; the targeted firms are presently representing clients in matters that conceivably clash with the Administration's agenda.[16] A bar that is dependent on the President will need to choose between advancing clients' interests and serving the President's conception of the "national

---

interests. *See id*. r. 1.3 ("A lawyer shall act with reasonable diligence and promptness in representing a client.").

[15] *See, e.g.*, Addressing Risks from Susman Godfrey, 90 Fed. Reg. at 15615 (criticizing Susman Godfrey for "engag[ing] in . . . activities" that, in the President's view, are "inconsistent with the *interests of the United States*" (emphasis added)).

[16] *See, e.g.*, *A.B.A. v. Exec. Off. of the President*, No. 25-cv-01888 (D.D.C. argued Mar. 4, 2026) (Susman Godfrey representing the American Bar Association suing to enjoin the government from enforcing provisions like those in the Orders); *PFLAG, Inc. v. Trump*, 769 F. Supp. 3d 405 (D. Md. 2025) (Jenner & Block representing plaintiffs challenging Orders restricting access to gender-affirming medical care for transgender youth), *appeal docketed*, No. 25-1279 (4th Cir. Mar. 24, 2025); *Pacito v. Trump*, No. 25-1313, 2026 WL 620449 (9th Cir. Mar. 5, 2026) (Perkins Coie representing plaintiffs challenging changes to refugee resettlement policy); *Storch v. Hegseth*, 804 F. Supp. 3d 216 (D.D.C. 2025) (WilmerHale representing inspectors general fired by the administration).

interest," in some cases even undermining the right to counsel. *Cf. Strickland v. Washington*, 466 U.S. 668, 692 (1984) (an active conflict of interest that adversely affects a lawyer's representation is presumed prejudicial).

Additionally, the Orders intrude upon attorney-client confidentiality.[17] Many clients do not publicly disclose their relationship with a firm when dealing with the federal government. *See* J.A. 285, 1925–26, 2369, 3101. But the Orders compel clients to disclose this confidential information to the federal government, risking termination of their government contracts. *E.g.*, Addressing Risks from Susman Godfrey, 90 Fed. Reg. at 15615.

Finally, the Orders subvert lawyers' duty of candor to the tribunal.[18] The Judiciary relies on lawyers to bring cases, present pertinent facts, and make legal arguments based on those facts. Attorneys must speak truthfully to courts and not withhold material facts or controlling law.[19] But when the executive branch penalizes law firms for representing particular clients or causes, it pressures lawyers

---

[17] *See* Model Rules of Pro. Conduct r. 1.6(a) (A.B.A. 1983) ("A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).").

[18] Model Rules of Pro. Conduct r. 3.3(a)(2) (A.B.A. 1983) ("A lawyer shall not knowingly . . . fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.").

[19] *Id*. r. 3.3(a)(1), (2).

to mute facts, soft-pedal arguments, and engage in self-censorship to shield themselves and their clients from subsequent harm.

II. An Independent Bar is Essential to the Rule of Law.

A. An independent bar enables the proper functioning of our judicial system.

Executive actions that punish lawyers for representing disfavored clients undermine the integrity of the judicial process. In our adversarial system, uncovering the truth requires close scrutiny of the facts and robust cross-examination. The court then reaches legal conclusions by neutrally and impartially evaluating arguments lawyers make in zealously representing their clients.

The judicial role is premised on this adversarial system of testing factual and legal arguments. As the Supreme Court has repeatedly reinforced, "[a]n informed, independent judiciary presumes an informed, independent bar." *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 545 (2001). It is "[t]he very premise of our adversary system . . . that partisan advocacy on both sides of a case will best promote the ultimate objective" of reaching the right and just result. *United States v. Cronic*, 466 U.S. 648, 655 (1984). Attacks on the "vigorous representation" of an independent bar undermines the "nature of our adversarial system of justice." *See Penson v. Ohio*, 488 U.S. 75, 84 (1988). The Orders, by chilling legal representation that the

President disfavors, improperly shape the arguments lawyers present to courts, hindering the Judiciary's ability to fulfill its role.

As a concrete example, courts in our system follow a principle of party presentation to "rely on the parties to frame the issues for decision." *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020) (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)). Courts cannot "advance[] the facts and argument[s] entitling [a litigant] to relief"; they are limited to the parties' presentations, which depend on counsel to advance full, accurate, and vigorous arguments on parties' behalf. *See id.* (citation omitted). If Executive pressure deters lawyers from representing certain parties or making certain arguments in court, courts may receive systematically incomplete or skewed presentations, warping the judicial process.

Distorting the adversarial system carries high stakes: it threatens to impede the vindication of rights and liberties, which are meaningfully protected only through effective legal advocacy of those rights. *See* Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 Law & Soc'y Rev. 419, 428 tbl. 4 (2001) (finding that representation more than doubles a tenant's likelihood of legal success); Robert A. Katzmann, *Bench, Bar, and Immigrant Representation: Meeting an Urgent Need*, 15 N.Y.U. J. Legis. & Pub. Pol'y 585, 593–94 (2012) (finding represented

immigrants to be more than five times more likely to prevail). This risk is acute given the current scale of unmet legal needs: a recent report finds that low-income Americans receive inadequate or no legal help for ninety-two percent of their civil legal problems. Legal Servs. Corp., *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans* 7 (2022), https://perma.cc/T53D-8R7A. Such a deprivation of effective legal representation can be equivalent to a deprivation of substantive rights. *Cf. Strickland*, 466 U.S. at 692 (denial of counsel in criminal prosecution "is legally presumed to result in prejudice").

Historically, nonprofit legal organizations have led the representation of unpopular clients. Insulated by design from the same financial pressures of law-firm businesses, legal nonprofits are positioned to represent disfavored interests and parties. For example, in direct response to the "Palmer raids" under the Espionage Act of 1917 and the Sedition Act of 1918, the National Civil Liberties Bureau and American Civil Liberties Union defended parties whom other lawyers would not. *See ACLU History: Defending Liberty in Times of National Crisis*, ACLU (Sep. 1, 2010), https://perma.cc/4ZAD-SVBZ; Samuel Walker, *The Founding of the American Civil Liberties Union, 1920*, Princeton Univ. Archives (Aug. 1, 2012), https://perma.cc/9YVL-52KM.

But advocacy to protect Americans' rights and liberties cannot rest solely on nonprofits because the need is simply too great. Pro bono partnerships are a key capacity multiplier for nonprofit organizations. In 2024, large law firms provided nearly five million hours (equivalent to roughly $5 billion) of pro bono legal services.[20] The work of modern legal nonprofits often involves massive pro bono contributions from for-profit law firms.[21] The Lawyers' Committee for Civil Rights Under Law states that its work "would be severely limited" without law firms' pro bono attorneys, estimating that its active case docket would shrink from about eighty matters down to twenty at any given time. *Pro Bono*, Laws.' Comm. for C.R. Under L., https://perma.cc/HM49-W3DD (last visited Mar. 20, 2026).[22] The legal director

---

[20] *See* Pro Bono Inst., *2025 Report on the Law Firm Pro Bono Challenge Initiative* 2 (2025), https://perma.cc/G5UB-8KSF; Lyle Moran, *Largest Law Firms Charge Nearly $1,000 an Hour, Report Finds*, Legal Dive (Dec. 11, 2023), https://perma.cc/ZJ5L-XB8R.

[21] *See* Atinuke O. Adediran, *The Relational Costs of Free Legal Services*, 55 Harv. C.R-C.L. L. Rev. 357, 359 (2020) (noting that in some years, the estimated value of pro bono work by private firms roughly doubled congressional funding for civil legal services); Raymond H. Brescia, Bahareh Ansari, and Hannah Hage, *The Legal Needs of Nonprofits: An Empirical Study of Tax-Exempt Organizations and Their Access to Legal Services*, 17 Hastings Race & Poverty L.J. 451, 473 tbl. 5 (2020) (2020 survey of tax-exempt organizations reports nearly fifty percent of respondents rely entirely on free legal services).

[22] An earlier version of this webpage prominently identified the law firm partners supporting the organization's pro bono work, *see Pro Bono*, Laws.' Comm. for C.R. Under L., https://perma.cc/7QC7-2EXQ (last visited Mar. 31, 2025), but the current version omits this—potentially reflecting the growing reluctance of law firms to be publicly associated with the pro bono efforts nonprofits depend upon.

of the Center for Constitutional Rights, which mobilized private law firms including those subject to the Orders to represent detainees at Guantanamo Bay, has also implored that "civil society organizations . . . are tired, overworked, and underpaid," and that "[c]ivil society needs Big Law more than ever." Baher Azmy, *Lawyers Face an Existential Choice*, Bos. Rev. (Apr. 1, 2025), https://perma.cc/GQ86-LEA8. Law firms thus play a crucial role in preserving adversarial justice by litigating to assert legal rights and prevent abuses of government power.

Notably, the President took action against *the top three* big law firm providers of pro bono services. *See The 2024 Pro Bono Scorecard: National Report*, Am. Law. (July 9, 2024), https://perma.cc/R2LJ-B6TS (Jenner & Block, Covington & Burling, and WilmerHale). Whereas the nation's largest firms were often involved in challenging the government's directives during President Trump's first term, their participation has sharply declined in his second. Mike Spector et al., *How Trump's Crackdown on Law Firms is Undermining Legal Defenses for the Vulnerable*, Reuters (Aug. 3, 2025), https://perma.cc/5JG6-EM2G. This retreat has strained nonprofit groups challenging the President's expansive claims of executive power, heavily reducing the pro bono support they depend on. By coercing law firms, the President curtails even legal nonprofits' ability to represent interests he disfavors.

B. An independent judiciary is necessary for our constitutional system of checks and balances.

The Constitution provides for an independent judiciary to check the unlawful action of the political branches. The distribution of power among the branches "is designed to preserve the liberty of all the people." *Collins v. Yellen*, 141 S. Ct. 1761, 1780 (2021). That separation is maintained when "each department [has] a will of its own." *The Federalist No. 51*, at 348 (James Madison) (Cooke ed., 1961). For that reason, the Constitution entrusts each branch with the means "to resist encroachments of the others." *Id.* at 349. The Judiciary's "complete independence" is "peculiarly essential" to this scheme of limited governmental power. *The Federalist No. 78*, *supra*, at 524 (Alexander Hamilton). Without an independent authority to judge the constitutionality of their acts, the political branches could trample constitutional limits on government. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 178 (1803).

An independent bar protects litigants' ability to bring cases, which enables the Judiciary to resist encroachments by Congress or the President. Consider, for instance, law firms' representation of clients in essential cases in which the Judiciary has enforced separation of powers and federalism limits to

- Prevent the President from seizing part of the legislative power, thus protecting private entities' liberty against executive seizure, *see Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 588–89 (1952) (steel producers represented by, inter

alia, Covington & Burling, *see Youngstown Sheet & Tube Co. v. Sawyer*, 103 F. Supp. 569, 571 (D.D.C. 1952));

- Prevent Congress from stripping the Judiciary's power to hear, and petitioners' right to assert, certain habeas petitions, *see Boumediene v. Bush*, 128 S. Ct. 2229, 2244–47 (2008) (habeas petitioners represented by, inter alia, WilmerHale and Covington & Burling, *id.* at 2239);
- Protect state courts' power to subject state legislatures' laws governing federal elections to judicial review, and thus protecting voters' interest in challenging alleged partisan gerrymanders, *see Moore v. Harper*, 143 S. Ct. 2065, 2079–81 (2023) (voter plaintiffs represented by, inter alia, Jenner & Block and Elias Law Group, *id.* at 2073).

These are just a few examples of cases brought with the assistance of law firms. Had the fear of retribution from the Executive deterred these lawyers from pursuing these and other lawsuits of significant constitutional importance, the Judiciary would have been unable to enforce the constitutional bounds at issue.

In designing constitutional checks and balances, the Framers recognized the importance of an independent bar in enabling the Judiciary to repel encroachments on liberty. The colonial legal system was dependent on the King's will. The Declaration of Independence para. 11 (U.S. 1776). "Particularly fresh in [the

Framers'] minds" was the case of two lawyers summarily disbarred by the royal court in apparent retaliation for representing a newspaper publisher who had printed insults to "'the dignity of his majesty's government.'" *Cohen v. Hurley*, 366 U.S. 117, 140 & n.18 (1961) (Black, J., dissenting) (quoting Trial of John Peter Zenger, 17 Howell's State Trials 675). The King's will flowed through the King's courts to the bar, punishing lawyers who resisted that will.

The Framers were "singularly unimpressed" by that model and created the Constitution that protected the Judiciary from Executive control and provided procedural rights to prevent abuses like those inflicted on lawyers who represented interests the Executive disfavored. *See id.* at 141. John Adams, reflecting on the inability of the British soldiers accused of perpetrating the Boston Massacre to secure representation until he agreed to serve as counsel, also understood his representation to demonstrate the importance of an independent bar to the preservation of liberty. *See* 3 Diary and Autobiography of John Adams 293 (L.H. Butterfield et al. eds., 1961). Lawyer-Framers like Adams were keenly aware that in declaring independence, they were rejecting a system of courts and lawyers dominated by the Executive. Instead, in a free country, "the Bar ought . . . to be independent and impartial at all Times And in every Circumstance." *Id.*

The American judiciary has long recognized that an independent bar is necessary to its own ability to check the other branches and protect liberty. Declaring unconstitutional Congress's attempt to legislate the qualifications of lawyers, the Supreme Court reasoned that the admission of an attorney to the bar "is the exercise of judicial power." *Ex parte Garland*, 71 U.S. 333, 378–79 (1866). "Attorneys and counsellors are not officers of the United States; . . . [t]hey are officers of the court." *Id.* at 378. The Court again protected an independent bar in considering whether Congress could prevent lawyers who received federal funds for indigent legal aid from challenging welfare statutes as unconstitutional. *Velazquez*, 531 U.S. at 536–37. Congress sought to "prohibit[] speech and expression upon which courts must depend for the proper exercise of the judicial power." *Id.* at 545. The Court concluded that it was unconstitutional "to exclude from litigation those arguments and theories Congress finds unacceptable but which by their nature are within the province of the courts to consider." *Id.* at 546. By protecting lawyers' freedom to bring constitutional claims, the Court protected the Judiciary's ability to fulfill its own constitutional role and the rights of clients to assert those claims.

Just as the independent judiciary has defended the independent bar, so too has the bar defended the independent judiciary. In the face of recent calls for impeachment of, and even physical threats to, judges for ruling against the executive

branch, the New York City Bar Association declared its support for the Judiciary, noting that the current attacks on judges and threats to impeach them "ignore . . . history and the settled interpretation of Congress's impeachment power, and instead threaten judges with impeachment merely for ruling adversely to the positions taken by the current Administration." *Statement Condemning Threats to Impeach Federal Judges Based on Disagreement with Rulings*, N.Y. City Bar (Mar. 31, 2025), https://perma.cc/4JPN-AKJR. And the president of the American Bar Association declared that it would "defend our courts" and called on "every lawyer to do the same." William R. Bay, *The ABA Rejects Efforts to Undermine the Courts and the Legal Profession*, A.B.A. (Mar. 3, 2025), https://perma.cc/5DRU-N227.[23] That mutual support between the courts and the bar, each for the other's independence, is not for the sake of independence as an end in itself; it is necessary for the system of checks and balances that preserves liberty.

C. History demonstrates the necessity of an independent legal profession.

Other countries' experiences confirm the American founders' conviction that an independent bar preserves liberty and reinforces constitutional democracy. In countries with eroded democratic governance, leaders seeking to consolidate power

[23] Dozens of bar organizations around the country have issued similar statements defending the rule of law. *See Bar Organizations Support the Rule of Law*, A.B.A., https://perma.cc/9ZVW-3WHX (last visited Mar. 18, 2026).

often pursued the professional exile of perceived uncooperative lawyers. *See* Scott Cummings, *Lawyers in Backsliding Democracy*, 112 Cal. L. Rev. 513, 527, 534 (2024) (explaining that "professional erosion," wherein "critical democratic functions performed by lawyers weaken over time," is both a "product and producer of [democratic] backsliding"). Threatening lawyers' professional independence has suppressed opposition and co-opted lawyers into legitimating government actions in increasingly authoritarian countries. The Orders here employ a similar strategy.[24]

To vindicate legal rights, lawyers must be able to exercise independent judgment in asserting clients' interests. Such a legal system stands in contrast to a regime that coerces lawyers to act on behalf of the state's political interests. *See* Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. Rev. 1, 11 (1988). One salient example is Germany, where the Third Reich stripped the legal profession of its independence. By 1933, the government had adopted policies to purge from the profession attorneys deemed politically unreliable. Cynthia L. Fountaine, *Complicity in the Perversion of Justice: The Role of Lawyers in Eroding the Rule of Law in the Third Reich*, 10 St. Mary's J. on Legal Malpractice & Ethics 198, 220–24 (2020). In

[24] As a result of the Orders, the United States was chosen as a focus country for the European Criminal Bar Association's International Day of the Endangered Lawyer. *United States Chosen as Focus Country for 2026 International Day of the Endangered Lawyer: Alarming Wave of Attacks on the Legal Profession Sparks Global Concern*, Eur. Crim. Bar Ass'n (June 2025), https://perma.cc/2QS2-ADGV.

1936, the government replaced a statute establishing an independent bar with a code obligating lawyers to adhere to party doctrine. Kenneth C. H. Willig, *The Bar in the Third Reich*, 20 Am. J. Legal Hist. 1, 2, 6 (1976). The state aimed to channel lawyers away from a search for the truth and toward a joint effort to implement the interests of the state. Ingo Müller, *Hitler's Justice: The Courts of the Third Reich* 64 (Deborah Lucas Schneider trans., Harv. Univ. Press 1991) (1987). Courts at that time regularly cast defense counsel's procedural objections as mere interference, and the regime coerced attorneys to pressure their clients for confessions. Gordon, *supra*, at 11. By conscripting the formerly independent bar to instead be under party control, the German government undermined adversarial representation and suppressed dissent as a tool to consolidate power.

Both Soviet and post-Soviet Russia also undermined lawyers' independence to advance authoritarian goals. The Bolshevik government replaced a relatively autonomous bar with state-supervised classes of lawyers that the Communist Party closely surveilled. *See* Kathryn Hendley, *Do Lawyers Matter in Russia?*, 2021 Wis. L. Rev. 301, 305; Eugene Huskey, *Between Citizen and State: The Soviet Bar (Advokatura) Under Gorbachev*, 28 Colum. J. Transnat'l L. 95, 104–06 (1990). The regime tasked lawyers with advancing the government's political goals rather than advocating for their clients' rights. *See* Andreas Bilinsky, *The Lawyer and Soviet*

Society, Probs. of Communism, March–April 1965, at 62, 67 (explaining that lawyers in court "were expected to give evidence of their loyalty to the Bolshevik regime, often with the result that, instead of defending the accused, they joined the prosecution in heaping accusations on him"). Dissenting lawyers suffered social and legal sanctions, including disbarment. *See* Louise I. Shelley, *Soviet Defense Counsel: Past as Prologue*, 1987 Am. Bar Found. Rsch. J. 835, 837–38.

The lack of an independent legal profession hindered due process reforms introduced after the Soviet Union's collapse. In the early 2000s, President Putin's government again brought the legal profession to heel.[25] In the 2000s and 2010s, bar leadership became fully aligned with the Kremlin, and lawyers who represented political opposition figures or exposed official wrongdoing faced disciplinary proceedings. *See, e.g.*, Peter Finn, *Russia's Champion of Hopeless Cases Is Targeted for Disbarment*, Wash. Post (June 2, 2007), https://perma.cc/83A2-L3BN. The crackdown on independent lawyers intensified in the 2020s, with political

[25] For instance, the Russian government passed a 2002 law purporting to reorganize the fragmented bar but that, in practice, intensified the bar's dependence on the state. *See generally* Pamela A. Jordan, *Restructuring the Advokatura from Above, 2002-3*, in *Defending Rights in Russia: Lawyers, the State, and Legal Reform in the Post-Soviet Era* (2005) (citing Ob Advokatskoi Deyatelnosti i Advokature v Rossi'skoi Federatsii [On Work as an Attorney and the Legal Profession in the Russian Federation], Sobranie Zakonodatel'stva Rossiikoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2002, No. 63).

prosecutions and jailings of attorneys who advocated too strongly for Kremlin opponents. *See, e.g.*, Matthew Luxmoore, *Navalny Lawyers Sentenced to Years in Prison*, Wall St. J. (Jan. 17, 2025, 09:27 ET), https://perma.cc/3WEH-KW8N. Today, the lack of an independent bar prevents Russian citizens' ability to seek meaningful legal recourse against the government.

These examples cannot be dismissed as distant foreign cautionary tales. The American independent bar has been threatened during past episodes of political fear. In the late 1940s and 1950s, the McCarthy era created a culture of suspicion wherein representing clients perceived as subversive or "un-American" entailed significant professional risk. For example, then-Attorney General J. Tom Clark publicly stated that "politically wayward lawyers should be punished." James E. Moliterno, *Politically Motivated Bar Discipline*, 83 Wash. U. L.Q. 725, 737, 742 (2005).[26] When the Supreme Court subjected lawyers to jail terms and disbarment for their "contemptuous act[s]," *Sacher v. United States*, 343 U.S. 1, 3, 10–11 (1952), Justice Hugo Black dissented and decried the "summary blasting of legal careers," warning

[26] Evoking this history, the recent Orders targeting firms reflect aversion to causes that the President deems contrary to "American interests." *See* Addressing Risks from Paul Weiss, 90 Fed. Reg. at 13040; Addressing Risks from Jenner & Block, 90 Fed. Reg. at 13997; Addressing Risks from WilmerHale, 90 Fed. Reg. at 14549; Addressing Risks from Susman Godfrey, 90 Fed. Reg. at 15615.

of a threat that was "ominous for lawyers who are obscure, unpopular or defenders of unpopular persons or unorthodox causes." *Id*. at 18 (Black, J., dissenting).

Beyond formal discipline, blacklisting permeated the legal community during the Red Scare. Moliterno, *supra*, at 737–38. Attorneys representing Communists or other unpopular clients risked professional harm. *See* Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* 246–58 (1976). Under pressure from the executive and legislative branches, much of the legal profession—including bar associations—complied with the government's agenda. In Justice Douglas's words, a "black silence of fear" descended on the bar. William O. Douglas, *The Black Silence of Fear*, N.Y. Times Mag., Jan. 13, 1952, at 7, 37–38, https://perma.cc/829P-8E4C. The cumulative impact of these pressures, punishments, and purges chilled legal advocacy for disfavored interests.

Suppression of legal advocacy during the Civil Rights Era likewise serves as a reminder of the importance of an independent bar. Civil rights plaintiffs in the South confronted "an apparent dearth of lawyers . . . willing to undertake such litigation" viewed as "neither very profitable nor very popular," a scarcity that emerged because of government pressure designed to deter such representation. *See NAACP v. Button,* 371 U.S. 415, 443 (1963). Such pressure included ethics charges, disbarment proceedings, and government suits against civil rights attorneys, often

on pretextual grounds. *See* Moliterno, *supra*, at 739–44; Sherrilyn Ifill, *Trump's Attack on Lawyers and Law Firms Takes a Page Out of the Southern 1950s Playbook* (Mar. 24, 2025), https://perma.cc/5CGB-4U7G. Leading judges and bar leaders encouraged the use of "rigorous powers of discipline" against attorneys in the Civil Rights movement. *See* Special Comm. on Courtroom Disorder, Ass'n of the Bar of the City of N.Y., *Disorder in the Court* xiii–xiv (1973); Special Comm. on Evaluation of Disciplinary Enf't, A.B.A., *Problems and Recommendations in Disciplinary Enforcement* xvii (1970). The Executive also surveilled certain activists and their legal counsel, invading attorney-client confidentiality and engendering an atmosphere of distrust among those seeking legal help. *See generally* Traci Yoder, Nat'l Laws.' Guild, *Breach of Privilege: Spying on Lawyers in the United States* (2014).

These tactics chilled legal representation at times when it was important to the rule of law. And these periods illustrate a critical point: the legal profession need not be wholly disabled for liberties to suffer. A bar that is intimidated and coerced into giving up its independence to choose which clients and causes to advocate is a bar that risks no longer serving a key role in the effective checks on power and protection of liberty.

CONCLUSION

The Executive Orders are clear attempts to instill fear in the legal profession and intimidate lawyers into submission, thereby co-opting the bar to be subservient to the executive branch. They chill lawyers' exercise of constitutional rights and fulfillment of professional duties, and consequently undermine the Judiciary's ability to check executive power, eroding the rule of law. The Court should affirm the decisions to enjoin these Executive Orders.

Respectfully submitted,

/s/ Hayden Johnson
HAYDEN JOHNSON (Bar #63802)
Protect Democracy Project
2020 Pennsylvania Ave. NW, Suite 163
Washington, DC 20006
(202) 579-4582
hayden.johnson@protectdemocracy.org

/s/ Jeannie Suk Gersen
JEANNIE SUK GERSEN
*Harvard Law School**
1563 Massachusetts Avenue
Cambridge, MA 02138
(617) 496-8834
jeannie.gersen@gersen.com

BENJAMIN L. BERWICK
Protect Democracy Project
15 Main Street, Suite 312
Watertown, MA 02472
(202) 579-4582
ben.berwick@protectdemocracy.org

* *Institutional affiliation for identification purposes only.*

Counsel for Amici Curiae

APPENDIX

List of *Amici*

Metropolitan Bar Associations

New York City Bar Association

Bar Association of San Francisco

Beverly Hills Bar Association

Boston Bar Association

Chicago Bar Association

Colorado Bar Association

Denver Bar Association

King County Bar Association

Los Angeles County Bar Association

New York County Lawyers Association

Philadelphia Bar Association

San Diego County Bar Association

Affinity, Specialty, Regional & Local Bar Associations, and Lawyer Membership Associations

Asian American Bar Association of New York

Asian American Bar Association of the Greater Bay Area

Asian Pacific American Bar Association of Silicon Valley

Association of Professional Responsibility Lawyers

Brehon Law Society of New York City and Nassau County

Lawyers Club of San Diego

Metropolitan Black Bar Association

Monroe County Bar Association

Mother Attorney Mentoring Association of Seattle

Muslim Bar Association of New York

National Association of Women Lawyers

National LGBTQ+ Bar Association

Queen's Bench Bar Association

Women Lawyers on Guard Action Network, Inc.

Women's Bar Association of the State of New York

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), it contains 6493 words.

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman font.

Executed this 3rd day of April, 2026.

/s/ Hayden Johnson
Hayden Johnson

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April, 2026, I electronically filed the foregoing document using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

/s/ Hayden Johnson
Hayden Johnson