

Nos. 25-5241(L), 25-5265, 25-5277, 25-5310

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

PERKINS COIE LLP,

Plaintiff-Appellee,

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Columbia,

Nos. 25-cv-00716, 25-cv-00916, 25-cv-00917, 25-cv-01107

**AMICUS CURIAE BRIEF OF 239 FORMER JUDGES IN
SUPPORT OF APPELLANT LAW FIRMS**

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Amici submit this brief to address the risk that the four Executive Orders before the Court pose to the effective administration of justice and to the rule of law. All parties have consented to the filing of this brief.

INTERESTS OF AMICI

Amici are the 239 former federal and state court judges whose names are listed in Exhibit A. Amici have dedicated their working lives to the rule of law. They have extensive experience with adjudication as a means of resolving disputes, and they know from experience that litigation conducted by zealous and ethical advocates, and presided over by neutral and independent judges, is an indispensable element of the rule of law. Amici's views on political and social issues vary, but they agree with the words of Chief Justice Roberts: judges "don't work as Democrats or Republicans."¹

Amici further agree with President and Chief Justice William Howard Taft that "our courts, as they are now conducted, and our profession, which is the handmaid of justice, are necessarily so bound together in our judicial system that an attack upon the courts is an attack

¹ Adam Liptak, John Roberts, Leader of Supreme Court's Conservative Majority, Fights Perception That It Is Partisan, *New York Times* (Dec. 23, 2018), <https://tinyurl.com/yc4t4f26>.

upon our profession, and an attack upon our profession is equally an attack upon the courts.” William Howard Taft, *ETHICS IN SERVICE* 1 (1915).

Amici share an interest in ensuring both the substance and the appearance of justice in the adjudication of disputes. Justice requires—always—preserving the freedom of lawyers to advocate for their clients with candor and with zeal, thus providing judges with the complete legal and factual record needed for fair adjudication. Amici share a further interest in preserving the discretion judges need to regulate the conduct of lawyers who appear before them in order to ensure fair adjudication.

The four Orders before the Court undermine the rule of law by threatening the independence of lawyers and litigants to petition courts to redress their grievances. The Orders thus undermine the constitutional role of the courts as independent forums for adjudicating disputes. They also threaten the ability of an independent judiciary to regulate the conduct of lawyers who appear in court.

No party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than the amici curiae or

their counsel—contributed money that was intended to fund preparing or submitting the brief.

ARGUMENT

The fundamental principles of just adjudication are simple and apply equally to allegations made against a lawyer as to allegations in any other case: allegations must be supported by facts, facts must be proved in a fair proceeding, and sanctions cannot precede fair adjudication. Any other sequence is contrary to law and lacks both the substance and the appearance of justice. Amici believe that each Order on appeal violates these principles. Amici hold this view for four reasons.

A. The Orders Impose Improper Political Restrictions on Access to the Courts.

Under the Constitution, courts are indispensable forums for clients to petition for the redress of grievances. As the Supreme Court held in *National Association for Advancement of Colored People v. Button*, 371 U.S. 415, 429-30 (1963): “Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts . . . [U]nder the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.” Courts cannot discharge this function if lawyers

face political restrictions on arguments and theories that the government “finds unacceptable but which by their nature are within the province of the courts to consider.” *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 546 (2001).

This is not a partisan principle. It applies equally to parties who seek adjudication on any side of any issue. For courts and judges to fulfill their constitutional role, lawyers must be free to represent their clients without fear of governmental retribution on political grounds.

The text of each Order and the accompanying presidential statements demonstrate that the Orders undermine the constitutional role of courts as a forum for petitioning for redress of grievances. Executive Order 14263, against the Susman firm, is exemplary; its objectionable features are present in each Order. The Susman Order states that it aims at “law firms and their clients that engage in conduct undermining critical American interests and priorities.”² The Order further states that “Susman spearheads efforts to weaponize the American legal system and degrade the quality of

² <https://www.federalregister.gov/documents/2025/04/15/2025-06458/addressing-risks-fromsusman-Godfrey>

American elections.”³ The Order effectively sanctions the firm for election-related work on behalf of clients. The Order effectively punishes clients as well as the firm.

As with the unconstitutional restrictions on association and funding struck down in *Button* and *Velasquez*, each Order threatens to chill the filing of cases and zealous advocacy in cases that are filed. Each Order thereby undermines the candor and robust advocacy on which judges must rely in adjudicatory proceedings.

The text of each Order could reasonably be read by clients as literally barring federal courthouse doors to lawyers working for the targeted firms and thus to clients represented by those lawyers. Section Five of each Order instructs agency heads to provide guidance restricting access by members of the targeted firms to federal government buildings when such access would “be inconsistent with the interests of the United States.” Section One of each Order effectively states that the work of the targeted firm undermines the interests of the United States. The Orders thus appear designed to warn clients against retaining the targeted firms and to warn both clients and other law firms that bringing suits against

³ *Id.*

the Trump administration may lead to punishment.

B. The Orders Undermine the Professional Independence of Counsel.

Each Order is also inconsistent with the professional independence of counsel that is both required by state professional conduct rules and is one of the principal achievements of the American bar.⁴ Just adjudication requires that the facts and law relevant to a dispute be presented to the court fully and with vigor. The United States Supreme Court's practice of appointing counsel to defend a position relevant to a case when a party declines to do so illustrates the importance of this point. Professional independence preserves the integrity of our adversarial system, which is foundational to just and fair adjudication. It is how courts ascertain the truth.

The Orders chill the vigorous advocacy on which courts depend. Lawyers work in a representative capacity. They present claims and arguments on behalf of clients; their representation "does not constitute an endorsement of the client's political, economic, social or moral views

⁴ *See, e.g.*, Cal. R. Pro. Conduct 2.1 ("In representing a client, a lawyer shall exercise independent professional judgment and render candid advice."). The American Bar Association's Model Rule of Professional Conduct 2.1 states the same rule.

or activities.”⁵ The Orders violate this principle and thus threaten the integrity of adjudication as a means of resolving disputes. The judiciary needs and depends on lawyers and firms willing to represent clients whose cases may be unpopular with an administration or the public. Our adversarial system cannot work otherwise. Clients, courts, and the rule of law itself need firms willing to exercise professional independence.

A court cannot be confident that the facts and law relevant to a matter have been fully presented if a firm must look over its shoulder in fear of becoming the target of adverse actions such as those embodied in the Orders. Firms willing to face such risk embody the highest ideals of the bar, but that is not a risk any lawyer should face.

C. The Orders Improperly Supplant Judicial Regulation of Litigation Conduct.

In addition, each Order is inconsistent with judicial regulation of conduct before tribunals. When the relevant conduct does not occur in open court before a judge, sanctions follow the basic principles of adjudication: allegations must be based on facts, facts must be proved in a fair proceeding, and sanctions cannot precede such adjudication.

⁵ Am. Bar Ass’n Model R. Prof’l Conduct 1.2(b).

Sanctions for misconduct before a tribunal are almost invariably directed to responsible lawyers, not entire firms. The rules of professional conduct are written to apply to lawyers rather than firms. This consideration is especially important when a sanction is imposed for past conduct by attorneys no longer with a firm, as certain allegations in some of the Orders appear to do.

More generally, it is for courts, not parties or another branch of government, to assess the merits of claims and the conduct of lawyers before a tribunal. The Orders usurp the judicial function by sanctioning firms for conduct in past cases in which, so far as the Orders disclose, sanctions were not sought or imposed. A Presidential memorandum that instructs the Attorney General to review cases filed against the federal government in the past eight years and recommend adverse action against lawyers or firms whose conduct the Attorney General finds wanting, without regard to whether such concerns were presented to the relevant tribunal, confirms this understanding of the Orders.⁶

Candor to a tribunal and responsibility to the tribunal go hand in

⁶ See *Preventing Abuses of the Legal System and the Federal Court*, The White House (Mar. 22, 2025) (<https://tinyurl.com/ykd5ja9h>).

hand. Efforts to use governmental power to bend lawyers to the political interests or views of an administration may impair the candor on which judges rely and usurp judges' role in regulating the conduct of lawyers who appear before them. The adversarial system cannot function properly with such an incursion into the judicial role.

D. The Orders Promote Hostility Towards Adjudication and Judicial Officers.

Finally, amici are concerned that by undermining the credibility of adjudication as a lawful means of resolving disputes the Orders contribute to a general climate of hostility toward adjudication and toward judicial officers, who are constitutionally bound to apply the law. Contrary to the implication of the presidential statements accompanying each Order, the nation is not harmed, and the rule of law is not undermined, when claims are adjudicated in its courts. Parties dissatisfied with a ruling may appeal and seek to show by law and logic why they should prevail. If a party is right, no extrajudicial sanction on lawyers or judges is needed. If the party is not right, such sanctions are unjust and invite lawlessness.

CONCLUSION

Amici swore to uphold our system of justice. The Orders threaten our system of justice, and the rule of law itself, for each of the reasons outlined above. The Courts' rulings enjoining enforcement of the Orders were proper and indeed necessary. Those rulings should be affirmed.

Respectfully submitted

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of D.C. Circuit Rule 27 because it contains 1,789 words. This motion also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)–(6) because it was prepared using Word for Microsoft 365 in Century Schoolbook 14-point font, a proportionally spaced typeface.

/s/Donald Falk _____

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Washington Superior Court, King County (Ret.)
227. Judge Eugene R. Wedoff,
United States Bankruptcy Court, Northern District of Illinois (Ret.)
228. Judge Elizabeth Allen White,
California Superior Court, County of Los Angeles (Ret.)
229. Judge Jay V. White,
Washington Superior Court, King County (Ret.)
230. Judge H. Christopher Wickham,
Washington Superior Court, Thurston County (Ret.)
231. Justice Thomas L. Willhite, Jr.,
California Court of Appeal, Second Appellate District (Ret.)
232. Judge Ken Williams,
Washington Superior Court, Clallam County (Ret.)
233. Judge Jeffrey Winikow,
California Superior Court, County of Los Angeles (Ret.)
234. Judge Lawrence F. Winthrop,
Arizona Court of Appeals, Division One (Ret.)
235. Chief Justice Michael A. Wolff,
Missouri Supreme Court (Ret.)
236. Senior Judge Merri Souther Wyatt,
Oregon Circuit Court, Multnomah County (Ret.)
237. Senior Justice Linda Reyna Yanez,
Texas Thirteenth District Court of Appeals (Ret.)
238. Justice Mary Yu,
Washington Superior Court, King County (Ret.)
239. Justice Laurie Zelon,
California Court of Appeal, Second Appellate District (Ret.)

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2026, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system.

/s/Donald Falk

Donald Falk