

ORAL ARGUMENT SCHEDULED FOR MAY 14, 2026

No. 26-5009

In the

**United States Court of Appeals
for the District of Columbia Circuit****MARK ZAID, ESQ.,**
Plaintiff-Appellee,

v.

EXECUTIVE OFFICE OF THE PRESIDENT, et al.,
*Defendants-Appellants.**On Appeal from The United States District Court
For the District of Columbia, Case No. 1:25-cv-01365-AHA***BRIEF OF *AMICI CURIAE* FORMER PRESIDENTS OF THE DISTRICT
OF COLUMBIA BAR, OTHER FORMER OFFICIALS OF THE DISTRICT
OF COLUMBIA BAR, PAST AND PRESENT LEADERS OF VOLUNTARY
BAR ASSOCIATIONS, AND VOLUNTARY BAR ASSOCIATIONS IN THE
DISTRICT OF COLUMBIA IN SUPPORT OF APPELLEE AND
AFFIRMANCE OF DISTRICT COURT DECISION**

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**CERTIFICATE AS TO
PARTIES, RULINGS, AND RELATED CASES**

Parties and *Amici*

Except for the *Amici Curiae* in support of Appellee identified in the Appendix attached to this brief, all parties, intervenors, and *amici curiae* appearing before the district court below and this Court are listed in the briefs for the parties.

Rulings under Review and Related Cases

Counsel adopt and incorporate by reference parties' statements with respect to rulings under review and related cases.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rules 26.1-1 and 29(b), each of the following organizations that will be signatories to the *amicus* brief in this case are non-stock, nonprofit corporations with no parent company. No person or entity owns them or any part of them:

Bar Association of the District of Columbia
Hispanic Bar Association of DC
Metropolitan Washington Employment Lawyers Association
National Bar Association
Trial Lawyers Association of Metropolitan Washington, D.C.
Washington Bar Association
Washington Council of Lawyers
Women's Bar Association

Respectfully submitted.

/s/ Andrea C. Ferster

TABLE OF CONTENTS

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES.....-i-

CORPORATE DISCLOSURE STATEMENT.....-ii-

TABLE OF CONTENTS-iii-

TABLE OF AUTHORITIES.....-v-

STATEMENT OF IDENTITY, INDEPENDENCE, AND AUTHORIZATION1

SUMMARY OF ARGUMENT.....2

INTRODUCTORY STATEMENT.....3

FACTUAL CONTEXT: THE PRESIDENT IS RETALIATING AGAINST LAWYERS AND FIRMS BECAUSE OF THE CLIENTS AND CAUSES THEY HAVE LAWFULLY REPRESENTED.....4

ARGUMENT8

I. THE ADVERSARY SYSTEM IS AN ESSENTIAL ELEMENT OF THE RULE OF LAW IN THE AMERICAN CONSTITUTIONAL SYSTEM.....8

II. THE RIGHT TO SELECT ONE’S OWN CHOSEN COUNSEL IS AN ESSENTIAL ELEMENT OF THE RIGHT TO REPRESENTATION, WHICH THE EXECUTIVE BRANCH HAS NO AUTHORITY TO REGULATE.13

III. BLACKBALLING LAWYERS BECAUSE OF VIGOROUS (AND
LAWFUL) REPRESENTATION OF CLIENTS CONFLICTS WITH
THE RULE OF LAW.17

IV. CONTROL OVER SECURITY CLEARANCES MAY NOT
BE USED TO PUNISH LAWYERS BECAUSE OF A
PRESIDENT’S PERSONAL POLITICAL HOSTILITY,
AND THIS ISSUE IS JUSTICIABLE.....20

V. THE PRESIDENT’S ATTEMPT TO BLACKBALL LAWYERS
BECAUSE OF PERSONAL DISAGREEMENTS THREATENS
PROVISION OF LEGAL SERVICES, INCLUDING PRO BONO
SERVICES.....23

CONCLUSION.....30

..

CERTIFICATE OF COMPLIANCE31

CERTIFICATE OF SERVICE32

APPENDIX – LIST OF AMICI.....A-1

TABLE OF AUTHORITIES

Cases

<i>Caperton v. A. T. Massey Coal Co.</i> , 556 U.S. 868 (2009).....	15
<i>Caplin & Drysdale v. United States</i> , 491 U.S. 617 (1989).....	10
<i>Carroll v. Princess Anne</i> , 393 U.S. 175 (1968).....	18
<i>Department of Navy v. Egan</i> , 484 U.S. 518 (1988),.....	20
<i>Eastern R.R. Presidents Conf. v. Noerr Motor Freight</i> , 365 U.S. 127 (1961)	11
<i>Gideon v. Wainwright</i> , 372 U.S. 335 (1963).....	9
<i>Jenner & Block LLP v. U.S. Dep’t of Just.</i> , 784 F. Supp. 3d 76 (D.D.C. 2025)	8, 21-22
<i>Lee v. Garland</i> , 120 F.4th 880 (D.C. Cir. 2024),	20, 22-23
<i>Legal Servs. Corp. v. Velazquez</i> , 531 U.S. 533 (2001).....	12
<i>Marbury v Madison</i> , 5 U.S. (1 Cranch) 137 (1803).....	9,12
<i>Mine Workers v. Illinois State Bar Assn.</i> , 389 U. S. 217 (1967).....	10
<i>Mullane v. Central Hanover Bank & Trust Co</i> , 339 U.S. 306 (1950).....	16
<i>NAACP v. Button</i> , 371 U.S. 415 (1963).....	11
<i>Perkins Coie LLP v. U.S. Dep’t of Just.</i> , 783 F. Supp. 3d 105 (D.D.C. 2025).....	5,6,8,22
<i>Railroad Trainmen v. Virginia ex rel. Virginia State Bar</i> , 377 U. S. 1 (1964).....	16
<i>Susman Godfrey LLP v. Exec. Off. of the President</i> , 789 F. Supp. 3d 15 (D.D.C. 2025).....	7, 13
<i>Trump v. United States</i> , 603 U.S. 593 (2024).....	23

TransUnion v. Ramirez,
594 U.S. 413 (2021).....9

Turner v. Rogers,
564 U.S. 431 (2011).....10

United States v. Brown,
381 U.S. 437 (1965).....15

United States v. Harriss,
347 U.S. 612 (1954).....11

United States v. Lovett,
328 U.S. 303 (1946).....16

Walters v. Radiation Survivors,
473 U.S. 305 (1985).....10

Wilmer Cutler Pickering Hale and Dorr LLP v. Executive Office of the President,
784 F. Supp. 3d 127 (D.D.C. 2025)7, 22

Zaid v. Exec. Off. of President, No. CV 25-01365 (AHA),
2025 WL 3724884 D.D.C. Dec. 23, 202521

Statutes:

5 U.S.C. § 555(b).....11

18 U.S.C. § 872.....29

18 U.S.C. § 1951(b)(2).....29

28 U.S.C. § 43.....9

28 U.S.C. § 132.....9

Rules

DC Bar Rules of Professional Conduct

Rules 1.2, 1.16, 2.1. 3.1.....13,17

Rule 6.1.....23

Federal Rules of Civil Procedure,

Rule 11.....14

Federal Rules of Criminal Procedure

Rule 44.9

Local Rules of the United States District Court for the District of Columbia,

LCrR 57.27(d).....15

ABA Model Rules of Professional Responsibility

Rule 1.2.....	17
---------------	----

Newspaper Articles*New York Times*

Editorial Board, <i>Nine Law Firms Surrendered. Four Law Firms Won</i> , March 3, 2026.....	3,16, 25
Michael Schmidt, <i>Law Firm Bends in Face of Trump Demands</i> , March 20, 2025	25
Troy Cross, <i>Columbia Agrees to Trump’s Demands After Federal Funds Are Stripped</i> , March 21, 2025.....	30
Devlin Barrett, “ <i>With New Decree, Trump Seeks to Cow the Legal Profession</i> ,” March 22, 2025	7
J. Michael Luttig, <i>It’s Trump vs. the Courts, and It Won’t End Well for Trump</i> , March 23, 2025	16
Michael S. Schmitt, etc. “ <i>Skadden, a Top Law Firm, Is in Talks to Avert an Executive Order</i> ,” March 27, 2025.....	8
Matthew Goldstein, <i>Another Big Law Firm Reaches Agreement With Trump</i> , April 2, 2025.....	28
Scott Cummings, <i>There’s a Darker Reason Trump Is Going After Those Law Firms</i> , May 15, 2025	28
Jeffrey Toobin, <i>Trump’s Next Move After the Law Firms Surrender</i> , May 19, 2025	28
Michael S. Schmitt, “ <i>Trump’s Retribution Push Has Expanded Even as It Hits Legal Barriers</i> ,” Nov. 25, 2025	6
Editorial Board, <i>Nine Law Firms Surrendered. Four Law Firms Won</i> , March 3, 2026.	25
Jeffrey Toobin, <i>Trump Is Playing Rope-a-Dope With Elite Law Firms</i> , March 5, 2026.	26

Washington Post

Shayna Jacobs, et al, “*Nation’s biggest law firms back off from challenging Trump policies*,” Oct. 26, 2025.

Mark Berman and Perry Stein, *Justice Dept. abandons defense of orders targeting law firms*, March 2, 202625

Briana Tucker, *Law firm Paul Weiss agrees to deal with Trump, prompting criticism*, , March 24, 2025.....25-26

Politico

Clay Risen, *At a Time When Lawyers Feared Defending Government Enemies, One Law Firm Stood Up*, March 26, 2025.....20

Daniel Barns, *Major law firm strikes preemptive deal with White House*, \March 28, 2025.....27

Bloomberg

David Zimmer, *Big Law’s Silence on Trump Attacking Firms Should Scare Us All*, March 19, 202630

The Guardian

Chris Stein, *How Trump has tried to undermine the powers of Congress: ‘Violation of norms*, Jan. 20, 2026.....30

Axios

<https://www.axios.com/local/washington-dc/2025/04/15/big-law-pro-bono-work-trump-dc-firms-fighting>28

The Hill

<https://thehill.com/homenews/administration/5226557-trump-doug-emhoff-law-firm/>27

Time Magazine

<https://time.com/archive/6811382/books-defender-of-pariahs/>.....18

Reuters

<https://www.reuters.com/legal/trump-signs-executive-order-targeting-susman-godfrey-law-firm-2025-04-09/>.....7

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<https://www.whitehouse.gov/presidential-actions/2025/03/rescinding-security-clearances-and-access-to-classified-information-from-specified-individuals/>.....4

<https://www.justice.gov/archives/jm/civil-resource-manual-35-standing-sue> 9

<https://www.acus.gov/document/statement-16-right-consult-counsel-agency-investigations> 11

<https://www.whitehouse.gov/presidential-actions/2025/03/addressing-risks-from-jenner-block/>25

<https://www.whitehouse.gov/presidential-actions/2025/03/addressing-risks-from-paul-weiss/>25

<https://www.senate.gov/about/powers-procedures/investigations/mccarthy-hearings/have-you-no-sense-of-decency.htm>20

<https://www.state.gov/securityclearances>16

Websites/blogs

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<https://www.justice.gov/archives/sco-mueller>.....7

Dr. Bonham’s Case (1610), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://conservancy.umn.edu/server/api/core/bitstreams/1d644934-3e70-411d-abc1-52b6d1618046/content15

<https://www.history.com/articles/boston-massacre-trial-john-adams-dan-abrams> .17

<https://thefacultylounge.org/2023/01/lawyers-zeal-and-the-unpopular-client-part-i/>
.....18

<https://www.womenshistory.org/education-resources/biographies/eleanor-holmes-norton>18

<https://www.aclu.org/about/aclu-history>18

<https://todayinclh.com/?event=real-freedom-for-the-thought-we-really-hate-eleanor-holmes-norton-defends-free-speech-for-george-wallace>.....18

https://en.wikipedia.org/wiki/Lloyd_K._Garrison20

https://www.democracynow.org/2019/1/28/wheres_my_roy_cohn_film_explores
.....20

<https://davidlat.substack.com/p/brad-karp-firmwide-email-to-paul-weiss-about-the-trump-administration-deal>26

https://viviachen.substack.com/p/big-law-calls-it-pro-bono-gimme-a?utm_source=post-email-title&publication_id=2162313&post_id=161239840&utm_campaign=email-post-title&isFreemail=true&r=1qev8j&triedRedirect=true&utm_medium=email28

<https://www.quora.com/What-is-the-meaning-of-Marlon-Brandos-line-I-ll-make-him-an-offer-he-can-t-refuse-in-the-movie-The-Godfather>3

STATEMENT OF IDENTITY, INDEPENDENCE, AND AUTHORIZATION

Identity. The *amici curiae* and their affiliations appear in the Appendix. *Amici* consist of three categories of leadership of the legal profession in the Nation’s Capital.

The first includes former Presidents of The District of Columbia Bar, the “mandatory” or “unified” bar formed in 1972 as an official arm of the District of Columbia Court of Appeals to license lawyers and regulate the practice of law. It is the second largest unified bar in the United States, with over 120,000 members. Its members practice in all 50 states and more than 80 countries. These *amici* were elected over the past fifty years by the thousands of lawyers, wherever located.

Other *amici* served as Officers, Governors, or senior executives of the DC Bar.

The District is also the venue for private “voluntary bar associations,” which focus on specialized professional development. The second category of *amici* are former presidents of these associations.

Third are various voluntary bar associations themselves.

Independence. No counsel for a party has drafted this brief in whole or in part. No party or other entity has made any financial contribution toward the preparation and submission of this brief.

Authorization. Counsel for all parties consented to the filing of this brief.

All *amici* have authorized participation.

SUMMARY OF ARGUMENT

The President's action enjoined by the district court was not merely an attack on a single lawyer (or a handful of lawyers) but an assault on the underpinnings of the American legal system. Bar leaders elsewhere, such as the American Bar Association and dozens of state and local bar associations, condemned these attacks on the Rule of Law.

This assault is of special concern, though, to protecting the Rule of Law in the seat of government.

The Rule of Law prohibits a President from blackballing a lawyer by summarily denying the clearance necessary to represent clients before government agencies, when this action reflects personal pique and hostility to the causes and clients that the lawyer represents.

First, the adversary system is an essential element of constitutional order, and the system depends on the effective functioning of an independent bar.

Second, the right to select counsel of one's own choice is an indispensable corollary of this constitutional order.

Third, no government official may punish a lawyer (or firm) simply for vigorously representing a client or cause that the official dislikes.

Fourth, the President may not withhold security clearances to punish lawyers he considers his political enemies, and the federal courts have authority to decide whether power over security clearances is being used in violation of the Constitution.

Fifth, the President's retaliation against lawyers distorts the system of pro bono representation vital to the functioning of the system of justice administered by Article III courts.

INTRODUCTORY STATEMENT

This brief provides full context for the President's action in this case, showing why the issues extend beyond the specific presidential order successfully challenged below.

Amici do not wish to burden the Court by tendering a separate but substantially similar brief, but these considerations apply equally to the Government's four consolidated appeals involving four law firms that successfully challenged the President's similar orders and are to be heard by the same Panel on the same day (Nos. 25-5241, 25-5265, 25-5277, and 25-5310).

As a recent New York Times editorial emphasized¹:

“The larger goal of the executive orders was chilling. The president attacked a bedrock principle of the law, which is that everybody deserves legal representation. He sought to frighten lawyers away from representing people

¹ For the convenience of the Court, this brief provides hyperlinks to the websites and news articles cited herein. Full citations are provided in the table of authorities.

who had the temerity to criticize him. By extension, he sought to frighten any Americans who might criticize him.”

FACTUAL CONTEXT:

THE PRESIDENT IS RETALIATING AGAINST LAWYERS AND FIRMS BECAUSE OF THE CLIENTS AND CAUSES THEY HAVE LAWFULLY REPRESENTED.

The President has used “Executive Orders” or “Presidential Memoranda” to weaponize the government to retaliate against perceived enemies and political opponents. This inference is evident from the targets of presidential wrath included in the Presidential Memorandum banning appellee Mark Zaid and others from continuing to hold security clearances as necessary for representing clients dealing with the government on national security matters.

Without any individualized explanation, the President’s fiat stripping and banning such clearances simply declares:

“Having determined that it is no longer in the national interest for the following individuals to access classified information: Antony Blinken, Jacob Sullivan, Lisa Monaco, **Mark Zaid**, Norman Eisen, Letitia James, Alvin Bragg, Andrew Weissmann, Hillary Clinton, Elizabeth Cheney, Kamala Harris, Adam Kinzinger, Fiona Hill, Alexander Vindman, Joseph R. Biden Jr., and any other member of Joseph R. Biden Jr.’s family. Therefore, I hereby direct every executive department and agency head to take all additional action as necessary and consistent with existing law to revoke any active security clearances held by the aforementioned individuals and to immediately rescind their access to classified information. I also direct all executive department and agency heads to revoke unescorted access to secure United States Government facilities from these individuals.”

Each of the persons listed, including Zaid, either served as counsel in litigation or criminal investigations adverse to Donald Trump, often in his personal capacity, or was affiliated with his personal political adversaries.

Judge Ali's opinion granting the preliminary injunction noted that Zaid's practice "included advising whistleblowers making complaints against the government and forming a nonprofit that facilitates pro bono representation for whistleblowers." *Zaid v. Exec. Off. of President*, No. CV 25-01365 (AHA), 2025 WL 3724884, at *2 (D.D.C. Dec. 23, 2025) Judge Ali found that the President's motive for punishing Zaid was retaliation for Zaid's lawfully serving as a lawyer in matters adverse to the President's personal interests, including representing "multiple government whistleblowers in settings disfavored by the present administration." *Id.* As Judge Ali also found, "no government agency conducted an assessment of Zaid's eligibility for clearance, and the [President's] memorandum itself does not purport to make any national security assessment—in fact, it does not mention national security at all." *Id.* at * 5.

Here, as well as in similar instances targeting Covington & Burling, Perkins Coie, Paul Weiss Rifkind Wharton & Garrison, Jenner & Block, WilmerHale, and Susman Godfrey, the President retaliated against lawyers and law firms that – as he unilaterally declared – engaged in representing clients or causes with which he disagrees, especially cases in which he had a personal interest. In the limited recitals

of pretexts for the President's grievances, the firms or individual partners represented clients running for office against Mr. Trump in his personal capacity or were involved in official investigations into his own possibly criminal conduct.

This use of presidential power to punish lawyers is part of a broader pattern of using presidential assertions and Justice Department investigations to settle personal scores, "using a whole-of-government approach to imposing some kind of penalty on his foes." This pattern emerges clearly when this case is viewed in the context of the Government's consolidated appeals from injunctive relief granted by four other district judges to four law firms that the President also made the targets of his pique. *See* cases consolidated under D.C. Cir. No. 25-5241.

Before Zaid sought relief, four previously targeted law firms had challenged the President's attempts to attain them. First was Perkins Coie, which obtained injunctive relief from Judge Howell. *Perkins Coie LLP v. U.S. Dep't of Just.*, 783 F. Supp. 3d 105 (D.D.C. 2025). After Perkins Coie filed the first legal challenge, the President upped the stakes, promulgating still another decree seeking "to cow the legal profession" by making unsupported and inflammatory accusations about "immigration lawyers and Big Law pro bono practices." That Memorandum directed the Departments of Justice and of Homeland Security to seek out and punish firms that had brought suits against the government over the past eight years or do so in the future, if Trump Administration officials consider those suits "vexatious."

The campaign continued. The President targeted the Susman Godfrey firm, because (among the President's other personal grievances), the firm represented clients who successfully sued the President's favored network, FOX, and one of his campaign advisors, Rudy Giuliani, for falsely claiming that the clients had helped "steal" the 2020 presidential election from candidate Trump. *Susman Godfrey LLP v. Exec. Off. of the President*, 789 F. Supp. 3d 15 (D.D.C. 2025), Government's appeal pending, D.C. Cir. No. 25-5310.

In sanctioning WilmerHale, the President acted because the firm had hired former FBI Director Robert Mueller, whom a former Attorney General had appointed as Independent Counsel to investigate Russian influence in connection with Mr. Trump's 2016 presidential campaign. See *Wilmer Cutler Pickering Hale and Dorr LLP v. Executive Office of the President*, 784 F. Supp. 3d 127 (D.D.C. 2025 (permanent injunction granted), Government's appeal pending, D.C. Cir. No. 25-5277.

As Judge Bates found in the *Jenner & Block* case, the President "picked Jenner because of the causes Jenner champions, the clients Jenner represents, and a lawyer [Andrew Weissmann] Jenner once employed." *Jenner & Block LLP v. U.S. Dep't of Just.*, 784 F. Supp. 3d 76 (D.D.C. 2025) (injunction granted), Government's appeal pending, D.C. Cir. No. 25-5265. Weissman had earned a place as a *bete noir* on the President's long list of perceived personal enemies.

As discussed in Point V below, other firms that the President dislikes were forced to negotiate for “protection” from his threatened retaliation. All these presidential actions represent an attempt to prevent lawyers from performing their essential role in our adversary system as vigorous, independent advocates. The campaign has been working, dramatically reducing the willingness of major firms to undertake challenges to President Trump’s legally dubious policies, forcing clients, including public interest organizations, to seek smaller firms or individual lawyers, with fewer resources, to try to step into the breach.

ARGUMENT

I. THE ADVERSARY SYSTEM IS AN ESSENTIAL ELEMENT OF THE RULE OF LAW IN THE AMERICAN CONSTITUTIONAL SYSTEM.

The adversary system is a basic element of the Rule of Law on which our constitutional structure rests. Any constraints on that system, therefore, could only be justified by the clearest constitutional authorization and only in the most extreme factual context. Neither requirement is satisfied in the current setting.

As Judge Howell observed in granting a permanent injunction against a similar Executive Order in *Perkins Coie*:

“The importance of independent lawyers to ensuring the American judicial system’s fair and impartial administration of justice has been recognized in this country since its founding era.” 783 F. Supp. 3d at 105.

The President is flouting a crucial part of the constitutional structure, the Separation of Powers.

Article III of the Constitution creates a Supreme Court and authorizes Congress to establish lower federal courts, which it has done since the earliest days. *See* 28 U.S.C. §§ 43 and 132. Under Article III, the federal courts have jurisdiction to adjudicate “cases or controversies.” The essence of a “case or controversy” is the presence of adverse parties genuinely contesting issues of law and fact. *See, e.g., TransUnion v. Ramirez*, 594 U.S. 413 (2021).

In *Marbury v Madison*, 5 U.S. (1 Cranch) 137 (1803), the Court declared: “It is emphatically the duty of the Judicial Department to say what the law is.” Under the “case or controversy” principle, the federal courts can perform this constitutional function only when adverse parties appear before them in a genuine dispute.

An essential corollary of the adversary system is the right of parties to be represented by counsel in those cases. In criminal cases, the Sixth Amendment makes this right explicit. The Supreme Court has stressed the vital importance of legal representation to enable the justice system to function fairly and reliably. This principle even requires the government to pay for counsel to represent defendants whom the government is prosecuting. *See, e.g., Gideon v. Wainwright*, 372 U.S. 335 (1963). *See also* Rule 44, Federal Rules of Criminal Procedure.

Defendants who are financially able to hire counsel of their choice are at least equally entitled to be represented throughout the proceedings by their chosen counsel.

Although the Constitution does not expressly guarantee a similar right to have counsel appointed to provide free representation in civil proceedings, see, *e.g.*, Turner v. Rogers, 564 U.S. 431 (2011), the Article III adversary system presupposes a civil litigant’s right to retain counsel, including representation that a lawyer is willing to provide on a pro bono basis.

For example, cases such as Mine Workers v. Illinois State Bar Assn., 389 U.S. 217 (1967), and Railroad Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1 (1964), established a right to ensure “meaningful access to courts” by retaining or recommending counsel:

“Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries”

This right is especially important in adversary proceedings in court. Compare Walters v. Radiation Survivors, 473 U.S. 305, 333-334 (1985); Caplin & Drysdale v. United States, 491 U.S. 617, 626 (1989) (referring to “the individual’s right to spend his own money to obtain the advice and assistance of . . . counsel”).

Not surprisingly, the Federal Rules of Civil Procedure assume that a party has a right to be represented in civil litigation, if the party so chooses and is able to hire counsel of the party’s choosing. Rule 11 recognizes the central role of counsel in the proper functioning of federal courts:

“Every pleading, written motion, and other paper *must be signed by at least one attorney of record* in the attorney’s name—or by a party personally *if the party is unrepresented.*” [Emphasis added].

The Constitution also presupposes a similar right to representation in other forums, especially where the government is involved. Thus, the First Amendment enshrines the right of every person in the United States to “petition for redress of grievances,” a right that extends to lobbying Congress or appearing before government agencies. *Eastern R.R. Presidents Conf. v. Noerr Motor Freight*, 365 U.S. 127, 137 (1961); *United States v. Harriss*, 347 U.S. 612, 617 (1954); *NAACP v. Button*, 371 U.S. 415, 429 (1963).

Congress recognized this real-world imperative. The Administrative Procedure Act recognizes that anyone required to appear before a federal agency “is entitled to be accompanied, represented, and advised by counsel.” 5 U.S.C. § 555(b).

The role of an independent bar free from government hamstringing – or retaliation – is a constitutional imperative. The Supreme Court has been clear that the government may not put its official thumb on the scales of justice by placing political restrictions on advancing arguments and causes 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).

In *Velazquez*, the Court voided statutory restrictions on the kinds of programs that federally funded lawyers could attack or the arguments they could make. Any government restriction on “advising their clients and in presenting arguments and analyses to the courts distorts the legal system by altering the traditional role of the

attorneys.” 531 U.S. at 544-545. Such government constraints conflict with *Marbury’s* principle that it is the province of the courts to say what the law is:

“An informed, independent judiciary presumes an informed, *independent* bar.” 531 U.S. at 545 (emphasis added).

Accordingly, any action by the head of the Executive Branch that undermines the proper functioning of the adversary system is fundamentally anti-constitutional.

Yet, among the blunderbuss penalties summarily imposed on Zaid without any evidentiary support, much less even the pretense of a hearing, the Presidential Memorandum requires federal agencies to exclude Zaid from any representation that requires a security clearance, because it is supposedly not in “the national interest” for Zaid (and numerous others) to be eligible to act in that capacity.

This *diktat* is particularly ironic. One of the President’s core constitutional obligations is, under Article II, Section 3, to “take Care that the Laws be faithfully executed.” Any intervention by a President that demonstrably obstructs the functioning of the legal process betrays this solemn constitutional duty.

II. THE RIGHT TO SELECT ONE’S OWN CHOSEN COUNSEL IS AN ESSENTIAL ELEMENT OF THE RIGHT TO REPRESENTATION, WHICH THE EXECUTIVE BRANCH HAS NO AUTHORITY TO REGULATE.

The right to representation would be hollow indeed if someone else, such as the opposing party, including the Government, could prevent a party from selecting counsel in whom the client has confidence.

The DC Bar Rules of Professional Conduct make clear that the selection of counsel is the Client’s prerogative, and the client decides when to hire counsel and what objectives to assign the lawyer to pursue. See, *e.g.*, Rules 1.2, 1.16, 2.1, 3.1. Thus, Rule 1.2(a) states that the lawyer “shall abide by a client’s decisions concerning the objectives of representation”

The presidential directives in this case and the others have nothing to do with the power of the *courts* to supervise the conduct of lawyers appearing before them or with the authority of bar authorities to assure professional competence and integrity. Here, as in most States, the professional conduct of lawyers comes within the ambit of the judiciary and the state bars, not the Executive, especially a self-interested Chief Executive.

Federal courts have ample authority under Fed. R. Civ. P. Rule 11 to deal with “vexatious” lawsuits. In addition, the District of Columbia Court of Appeals oversees the adjudication process following the filing of a disciplinary complaint.

This Court will search in vain for any legitimate basis for sustaining *presidential* intervention in these affairs. Rather, in this case and the others, the President has manifested personal pique because of the clients whom Zaid or the firms represented or the causes that they chose to pursue on behalf of their clients or their own professional autonomy.

Although the various orders invoke generic powers “as President of the United States” and unspecified “laws of the United States,” they do not articulate any specific Article II power or federal statute that supposedly confers on the President any authority to superintend the choice of counsel by otherwise competent clients.

The President’s stated grounds for issuing these decrees appear to reflect his hostility toward lawyers who undertook to represent his political opponents and an equally impermissible objective to deter future legal advocacy on matters contrary to his policy objectives. For more than 400 years, however, it has been a bedrock principle of the Anglo-American legal system that, as Chief Justice Sir Edward Coke put it in 1610 (*Dr. Bonham’s Case*), “no man should be judge in his own cause.” See, e.g., *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868 (2009). That principle

bars the exercise of what otherwise might be some implicit presidential power in order to settle personal grudges with opposing counsel.

The Government misses the point in emphasizing that the right to counsel of one's choice does not prevent *courts* from determining whether particular lawyers are professionally qualified, nor does it ensure that chosen counsel will have a necessary security clearance, *if* there are legitimate grounds for denying such a clearance. (Appellants' Br. at 43-46). The issue here is whether the President may deny a security clearance to punish a lawyer for representing otherwise legitimate clients or causes with which the President disagrees.

The Constitution bars "bills of attainder," which are *non-judicial* declarations directly imposing "pains and penalties," including deprivations of rights, that "named the parties to whom they were to apply" or "simply described them." *United States v. Brown*, 381 U.S. 437 (1965). The prohibition of bills of attainder is "an implementation of the separation of powers," since it confines each branch within its authorized functions, and was "looked to as a bulwark against tyranny." *Id.* at 442-444.

If any of the targets of the President's summary banishment were guilty of any misconduct and were properly subject to some sanctions, the constitutional Separation of Powers would entrust such a determination to the *judiciary* under Article III (see, *e.g.*, D.D.C. Local Rules LCrR 57.27(d)), not to some undiscovered,

inherent power of a President under Article II simply to decree guilt. *See also United States v. Lovett*, 328 U.S. 303 (1946). As a distinguished former judge, J. Michael Luttig, aptly opined, the President's course of action in these cases demonstrates that "the president wants to assume the role of judge."

Finally, the Due Process Clause prevents any government official from depriving any person of liberty or property without due process. *See, e.g., Mullane v. Central Hanover Bank & Trust Co*, 339 U.S. 306 (1950). The federal government has an elaborate process for determining, after due notice and an opportunity to be heard, whether a person should be cleared for access to classified information. But nothing in any of President Trump's spate of Executive Orders, including Zaid's, afforded *any* process at all.

A late-night *ukase* signed by a presidential Sharpie without notice or an opportunity to be heard cannot be treated as a valid exercise of whatever powers the President *may* have had. The Orders also reveal that the President has hardly been acting as an "impartial tribunal."

III. BLACKBALLING LAWYERS BECAUSE OF VIGOROUS (AND LAWFUL) REPRESENTATION OF CLIENTS CONFLICTS WITH THE RULE OF LAW.

For the legal system to function, lawyers must be able to represent clients who may be unpopular or even reviled in the eyes of others. That is, indeed, one of the profession's most honorable characteristics.

The prevailing American tradition carefully distinguishes the client's identity and interests from the lawyer's own personal views. The DC Rules of Professional Conduct declare:

“(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.” Rule 1.2.

Rule 1.2 of the ABA Model Rules of Professional Conduct codifies this same principle.

This vital feature of the legal profession has played a long, courageous part in American history. For example, lawyer James Hamilton risked retaliatory disbarment for daring to represent publisher John Peter Zenger in his 1735 criminal trial for seditious libel; Zenger had published articles criticizing the colonial governor of New York for sacking the colony's chief justice. Similarly heroic and professional was the willingness of colonial patriot (and later President) John Adams to represent the British soldiers (“Redcoats”) charged with murder of American protestors in the infamous 1770 “Boston Massacre.”

And so on down through our subsequent constitutional history.

Too often, someone or some group is demonized by someone else or some other group –

- Catholics, Jews, evangelical Protestants, Muslims, Hare Krishna, or Scientologists, etc.
- Fundamentalists or atheists
- Alleged rapists, murderers, pederasts, or white-collar fraudsters
- Black Panthers or KKK
- Pacificists and draft resisters or alleged terrorist detainees
- Undocumented migrants

But *each* has the right to effective and diligent representation, regardless of any hostility to the particular client or the client's conduct or affiliation. As renowned Washington lawyer Edward Bennett Williams noted, major civil liberties cases that reached the Supreme Court featured defendants “accused of murder, rape, arson, narcotics offenses, bootlegging and membership in the Communist Party.”

Various law firms and organizations take professional pride in having represented the constitutional rights of such unpopular groups as antisemite marchers and White Supremacist organizers, despite the contrary personal beliefs of the lawyers undertaking the representation.

For example, in 1968, a Black civil rights lawyer, Eleanor Holmes Norton, appeared before the Supreme Court to argue on behalf of a white supremacist group that had been barred from holding a rally in Maryland. *Carroll v. Princess Anne*, 393 U.S. 175 (1968). In another case she went into a New York City court to defend the

right of segregationist Alabama governor George Wallace to hold a rally after city authorities had barred this controversial figure from appearing in a city stadium.

During the height of the Red Scare, a fledgling law firm, Arnold Fortas & Porter, was –

“well known around the capital for representing federal employees accused of disloyalty by the Truman administration — as many as 200 a year, almost all pro bono.”

A partner took it as a badge of honor when a friend sneered, “I understand your firm is engaged in defending communists and homosexuals.”

Another defender of unpopular civil-liberties causes, Lloyd K. Garrison, joined bar leader John W. Davis to represent Dr. J. Robert Oppenheimer before the Atomic Energy Commission, when Oppenheimer was falsely accused of aiding the Soviet Union. Then, along with another stalwart of the Washington bar, Joseph L. Rauh, Jr., Garrison represented playwright Arthur Miller before the House Un-American Activities Committee and in Miller's fight against his contempt-of-Congress conviction.

Imagine where our country would be today, if lawyers who undertook to represent unpopular clients had been browbeaten or threatened into withdrawing from the cases – or had been too fearful of recrimination and retaliation even to have undertaken the cases.

One more example should suffice. During the 1950s, at the height of anti-communist fervor, even within the legal profession, it was courageous for a lawyer to represent an alleged communist. In pursuing his “anti-communist” campaign, Senator Joseph McCarthy was aided by “no holds barred” lawyer Roy Cohn. During Senate hearings, Cohn and McCarthy were hounding defense lawyer Joseph Welch, asserting that a young lawyer in Welch’s firm was a communist himself. As a Senate report later summarized:

“Welch responded with the immortal lines that ultimately ended McCarthy's career: ‘Until this moment, Senator, I think I never really gauged your cruelty or your recklessness.’ When McCarthy tried to continue his attack, Welch angrily interrupted, ‘Let us not assassinate this lad further, senator. You have done enough. *Have you no sense of decency?*’” [Emphasis added].

Welch’s words summarize what these cases are all about. It is reckless and indecent to use the aegis of the Oval Office to smear the reputation of respected lawyers and law firms simply to punish them for having had the temerity to represent clients who promote policies or causes that the President personally dislikes.

IV. CONTROL OVER SECURITY CLEARANCES MAY NOT BE USED TO PUNISH LAWYERS BECAUSE OF A PRESIDENT’S PERSONAL POLITICAL HOSTILITY, AND THIS ISSUE IS JUSTICIABLE.

The Government contends that the wielding of the classification power is non-justiciable (Appellants’ Br. at 13 *et seq.*), relying on *Department of Navy v. Egan*, 484 U.S. 518 (1988), as interpreted in *Lee v. Garland*, 120 F.4th 880 (D.C. Cir. 2024). But all five district judges in these related cases have held correctly that

courts may prevent the President from using authority over access to national defense information to accomplish an otherwise unconstitutional objective or in an otherwise unconstitutional process.

A President may withhold security clearances from persons found to pose a national-security risk, because they may mishandle classified information. But a President's personal pique with lawyers or political opponents is not itself a legitimate basis for denying or revoking such access. Unlike a royal prerogative such as conferring a knighthood, which the British King may grant or withhold solely as a matter of the Crown's grace, the American Chief Executive must rest security-clearance determinations on a *bona fide* determination whether a particular person poses a genuine risk of mishandling restricted information to the detriment of the *Nation's* security. Such determinations are not a legitimate part of a President's arsenal for retaliating against lawyers whom he views as his own personal political adversaries.

Judge Ali explained why this Court's precedents interpreting *Egan* allow judicial review of the process followed in denying or revoking a clearance. *Zaid*, 2025 WL 3724884 at **3-6. This conclusion echoed (*id.* at **17-18) what four other judges agreed in the related cases against law firms – the mere declaration that it is not in the “national interest” to maintain security clearances, “without individualized explanation, consideration, or opportunity to be heard,” is not sufficient. See *Jenner*,

784 F. Supp. 3d at 88; *Perkins Coie*, 783 F. Supp. 3d at 128; *WilmerHale*, 784 F. Supp. 3d at 138; *Susman*, 789 F. Supp. 3d at 30.

As Judge Howell recognized in *Perkins Coie*:

“Finding any such government actions judicially unreviewable simply because the Executive branch invoked ‘the national interest’ would represent a breathtaking expansion of executive power at the expense of the constitutionally mandated role of the judicial branch and the concomitant safeguards for the individual rights of Americans.” [Op. at 41]

Here, Judge Ali explained why *Lee* leaves ample room for judicial review in cases like this one.

First, unlike *Lee*, the President claimed no “substantive basis” for revoking Zaid’s clearance. *Lee v. Garland*, 120 F.4th at 886.

The revocation was announced by *ipse dixit*, not derived from any alleged violation of published standards for maintaining a security clearance.

Second, unlike *Lee*, Zaid received no hearing or other elements of due process before his clearance was revoked.

Third, unlike the circumstances surrounding the underlying determination challenged in *Lee*, here there are “judicially manageable standards for resolving” Zaid’s claim. *Id.* at 889. Courts are well equipped to determine what process is due and whether unconstitutional motives were operative.

Fourth, as *Lee* recognized, “the Supreme Court [has] stressed that it would present a ‘serious constitutional question’ to deny a plaintiff any judicial forum in which to raise colorable constitutional challenges to agency action.” *Id.* at 454.

The President’s decision to blackball Zaid (like the other lawyers and firms) was found to rest on unconstitutional grounds. Judicial review is available to examine summary revocation of a security clearance arising solely from personal, vindictive whim, or caprice. *See Lee*, 120 F.4th at 887-88. The President is no more entitled under the Constitution to unreviewable use of his general authority over security clearances, when he petulantly decides to attain disfavored lawyers, than he is to unreviewable use of any other official power for similarly impermissible reasons:

“If the President claims authority to act but in fact exercises mere ‘individual will’ and ‘authority without law,’ the courts may say so.”

Trump v. United States, 603 U.S. 593, 608 (2024).

V. THE PRESIDENT’S ATTEMPT TO BLACKBALL LAWYERS BECAUSE OF PERSONAL DISAGREEMENTS THREATENS PROVISION OF LEGAL SERVICES, INCLUDING PRO BONO SERVICES.

In reviewing the “public interest” issues involved in Judge Ali’s injunctive relief, this Court should evaluate the deleterious effect that the President’s campaign against disfavored lawyers has on the provision of pro bono legal services, a special concern of these *amici*.

Lawyers have an ethical obligation to undertake or support pro bono representation of persons and organizations who cannot afford such representation:

“A lawyer should participate in serving those persons, or groups of persons, who are unable to pay all or a portion of reasonable attorney’s fees or who are otherwise unable to obtain counsel.” DC Bar Rules of Professional Conduct Rule 6.1.

As explained in the Comment:

“The rule incorporates the legal profession’s historical commitment to the principle that all persons in our society should be able to obtain necessary legal services. The rule also recognizes that . . . legal assistance in coping with the web of statutes, rules, and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.”

In the District, as throughout the rest of the country, pro bono legal services have been essential to the effective participation of many non-profit organizations in the advocacy process, including before Article III courts and Congress. These pro bono services extend to persons and organizations pursuing objectives that may be at odds with the preferences of a particular national Administration.

According to the latest data from the Pro Bono Institute, law firms with at least fifty lawyers throughout the country devoted almost 5,000,000 hours of professional time to pro bono work in 2024. One of the major categories of such professional commitment includes pro bono services that the current Administration has explicitly criticized targeted firms for providing – “addressing racial justice” in the following areas:

- Economic Empowerment

- Housing
- Education
- Criminal Justice Reform
- Voting Rights
- Police Reform
- Healthcare
- Environmental Justice

Similarly, in the District of Columbia alone, 47 reporting firms alone devoted more than 700,000 hours to pro bono services.

In his various Executive Orders punishing law firms, the President has been startlingly candid that he is holding against them what he regards as their “harmful activity through their powerful pro bono practices, earmarking hundreds of millions of their clients’ dollars for destructive causes.”

The President is seeking to discourage this pro bono work both by directly imposing sanctions on lawyers and firms and by limiting their ability to be retained by paying clients. Some *amici* have observed that, as a result of the President’s campaign of threats and sanctions, many firms have become reluctant to undertake pro bono matters that might get them cross-wise with the President.

In this connection, we note the “capitulation” by a series of law firms that the President targeted for “retribution.” First was the Paul Weiss firm, which the President had punished for hiring his political enemies and, expressly, for engaging in the kinds of pro bono representations that he derided. To escape from the President’s Executive Order, the firm was pressured into accepting a “deal” to

allocate “\$40 million in pro bono legal services *to support Trump’s agenda.*” (Emphasis added).

The firm also was forced to revamp its historic commitment to minority recruitment, because of the President’s personal opposition to “DEI” programs.

In an explanatory memorandum to his colleagues, Paul Weiss’s chairman explained that the President’s decree had presented the firm with an “existential crisis,” because the President’s “executive order could easily have destroyed our firm.” Accordingly, he explained, “in the face of an unprecedented threat,” the firm “settled” with the Administration and “agreed to commit substantial pro bono resources” to what were euphemistically described as “areas of shared interest.”

The “deal” that Paul Weiss accepted, with a loaded gun to its head, would financially force Paul Weiss to redirect huge amounts of attorneys’ pro bono time away from clients and organizations that the firm otherwise would be assisting and instead to work for clients and causes that are compatible with the President’s personal “agenda.”

That was just the beginning of the President’s disruption of the independent American legal system. One legal analyst aptly noted:

“Eight other major firms raised white flags to the White House without even being attacked. In quick succession, Kirkland & Ellis; Latham & Watkins; Skadden Arps; Milbank; Willkie Farr & Gallagher; Simpson Thacher & Bartlett; A&O Shearman and Cadwalader, Wickersham & Taft made similar capitulations, and they promised the president a total of nearly \$1 billion in legal services.”

Skadden agreed to commit to the President's favored causes an even greater volume of purported pro bono work in the face of the mere *threat* of being added to his law-firm hit list. The firm decided "to provide the equivalent of \$100 million in free legal work to causes supported by the administration."

Next to succumb was Willkie Farr. The President announced that the firm not only was abandoning its DEI policies but also "will provide the equivalent of \$100 million in pro bono legal services for causes the administration supports." Willkie's crimes? It is the firm (i) where the husband (Douglas Emhoff) of the President's 2024 electoral opponent, Vice President Kamala Harris, practiced law, (ii) where an investigator who worked for a House of Representatives committee probing the pro-Trump January 6 attack on the Capitol was employed, and (iii) which represented two Georgia election workers who successfully sued presidential friend Rudy Giuliani for defamation when he falsely accused them of helping to "steal" the 2020 election from Mr. Trump.

Milbank was next to pay for protection. It came within the President's cross-hairs because it chose to hire former Obama Administration Acting Solicitor General Neal Katyal, who had criticized Mr. Trump's conduct in and out of office. Milbank agreed to pay the new going rate for protection from the President's wrath, \$100 million in supposed pro bono services directed to the President's preferred causes.

Other firms that subsequently made deals for as much as \$125 million in “pro bono” services for the President’s pet causes include Latham & Watkins; Cadwalader, Wickersham & Taft; A & O Shearman; Kirkland & Ellis; and Simpson Thacher & Bartlett.

Perversely, the President has coerced once-proud law firms to agree to divert almost a billion dollars in free legal services away from representing the poor and oppressed to such things as implementing his tariff programs and broadening coal mining; some White House officials “believe that some of the pro bono legal work could even be used toward representing Mr. Trump or his allies if they became ensnared in investigations.” Thus, a legal commentator noted, the president reminded the firms “that their escape from sanctions came with a price: They work for him now.”

Respect for the Rule of Law, however, must mean that lawyers should be free to exercise their own personal and professional judgment in determining which pro bono clients to represent and which causes to pursue. No government official, especially a President, may legitimately commandeer those professional services and impress lawyers into the service of his own personal “agenda.” See, *e.g.*, 18 U.S.C. §§ 872, 1951(b)(2).

As one professor of legal ethics explained, the firms the President targeted had regularly topped the lists of major providers of pro bono:

“These orders use the pretense of punishing Mr. Trump’s perceived enemies to pursue the far more comprehensive goal of controlling pro bono work, the lifeblood of legal aid and public-interest law organizations, which depend on pro bono support to promote access to justice and defend the values of liberal democracy.”

By banning Zaid and disfavored firms from representing even paying clients in dealing with the federal government, the President’s Executive Orders erode the availability of pro bono services. Lawyers depend on the revenue from paying clients to enable them to represent pro bono clients and to contribute to supporting a broad range of human rights organizations. Thus, restrictions on representing paying clients not only punish lawyers for pro bono work the President finds objectionable, but also degrade their financial capacity to take on the routine pro bono work of representing indigent clients or supporting public interest organizations, a service on which our courts depend for the administration of justice.

In defending the President’s threats and punitive orders, the Government begins its brief in the consolidated law-firm cases, warning: “Courts cannot tell the President what to say.” D.C. Cir. Case No. 25-5241 *et al.*, Document 2162591.

We may watch passively when a powerful man in a fictional book and film confronts a citizen and “makes him an offer that he can’t refuse.” But when the integrity of the American legal system is at stake, any such man, even the President, must be told that he has gone too far.

Who will deliver this message, when even major law firms are cowed, corporate clients are silenced, universities are threatened, and Congress remains complicit? The clear answer: Only an Article III court responsible for saying “what the law is.”

CONCLUSION

The Order granting the Preliminary Injunction should be *affirmed*.

Dated: March 27, 2026

Respectfully submitted.



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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 28.1(e)(2)(C) or 32(a)(7)(B) because:

this brief contains 6488 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), *and*

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Dated: March 26, 2026

/s/ Andrea Ferster
Counsel for Appellants

CERTIFICATE OF SERVICE

I, Andrea C. Ferster, hereby certify that on March 26, 2026, I electronically filed the above document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all registered participants as identified in the CM/ECF electronic filing system for this matter.

/s/ Andrea C. Ferster

Andrea C. Ferster

APPENDIX - LIST OF AMICI CURIAE

Past Presidents of The District of Columbia Bar

(appearing in their individual capacities)

Charles R. Work (1976-1977)

Marna Tucker (1984-1985)

Philip Allen Lacovara (1988-1989)

Robert N. Weiner (1995-1996)

Myles V. Lynk (1996-1997)

Andrew H. Marks (1998-1999)

Joan H. Strand (1999-2000)

John C. Keeney Jr. (2004-2005)

John C. Cruden (2005-2006)

James J. Sandman (2006-2007)

Melvin White (2007-2008)

Kim M. Keenan (2009-2010)

Andrea C. Ferster (2013-2014)

Annamaria Steward (2016-2017)

Patrick McGlone (2017-2018)

Geoffrey M. Klineberg (2020-2021)

Charles R. Lowery, Jr. (2023-24)

Former Officers and Governors of The District of Columbia Bar

(appearing in their individual capacities and listed alphabetically)

Francis D. Carter, Board of Governors, 2002-2005

William F. Causey, Board of Governors, 1996-1999

H. Guy Collier, Board of Governors, 2010-2013

Robert D. Dinerstein, Board of Governors, 2002-2005

Ann K. Ford, Board of Governors, 2015-2018
Elizabeth Sarah Gere, Board of Governors, 2018-2024
Nathalie F.P. Gilfoyle, Board of Governors, 2004-2007
Jeffrey S. Gutman, Treasurer, 2011-2012, Board of Governors, 2012-2015
Su Sie Ju, Board of Governors, 2019-2022
Sara Kropf, Secretary, 2013-2014
Annette K. Kwok, Board of Governors, 2016-2019
Mira Nan Marshall, Secretary, 2003-2004
Amy E. Nelson, Treasurer, 2018-2019, Board of Governors, 2019-2022
Don Resnikoff, Treasurer, 2007-2008
Martha Purcell Rogers, Board of Governors, 2002-2005
Paul M. Smith, Board of Governors 2002-2005
Leslie T. Thornton, Board of Governors, 2018-2021
Benjamin F. Wilson, Board of Governors, 2008-2011 and 2014-2018

Former Senior Executive Staff of The District of Columbia Bar

Katherine A. Mazzaferri
(Executive Director, 1982-2010, Chief Executive Officer, 2010-2017)

Cynthia D. Hill
(Assistant Executive Director for Programs, 1990-2010,
Chief Programs Officer, 2010- 2017)

Maureen Thornton Syracuse
(D.C. Bar Pro Bono Center, Director/Executive Director, 1992-2011)

Past Presidents of Voluntary Bars

(appearing in their individual capacities and listed alphabetically)

Jessica E. Adler, President, Women's Bar Association of the District of Columbia (2013-2014)

Ralph P. Albrecht, President, Bar Association of the District of Columbia (2008-2009)

Mark W. Atwood, President, DC Chapter, InterAmerican Bar Association (2025-2026)

Alfred F. Belcuore, National President, Federal Bar Association (1991-1992); DC Chapter President, American Board of Trial Advocates (2018-2024); President, The Counsellors, District of Columbia (2024-2025)

Constance L. Belfiore, President, Bar Association of the District of Columbia (1997-1998)

Robert L. Bell, President, Washington Bar Association (2007-2008)

Joel P. Bennett, President, Bar Association of the District of Columbia (1992-1993)

Mary L. Blatch, President, Women's Bar Association of the District of Columbia (2024-2025)

Traci Buschner, President, Trial Lawyers Association of Metropolitan Washington, DC (2024-2025)

Paulette E. Chapman, President, Women's Bar Association of the District of Columbia (2003-2004); President, Bar Association of the District of Columbia (2007-2008)

William E. Davis, President, Bar Association of the District of Columbia (2004-2005)

Karen E. Evans, President, Washington Bar Association (2014-2016); President, Trial Lawyers Association of Metropolitan Washington, DC (2012)

L. Palmer Foret, President, Trial Lawyers Association of Metropolitan Washington, DC (2003-2004); D.C. Chapter President, American Board of Trial Advocates (2011-2013)

Kathleen Gunning, President, Women's Bar Association of the District of Columbia (1991-1992)

David E. Hawkins, President, Bar Association of the District of Columbia (2013-2014)

David E. Haynes, President, Trial Lawyers Association of Metropolitan Washington, DC (2016-2017)

Christopher G. Hoge, President, Bar Association of the District of Columbia (1998-1999)

Matthew G. Kaiser, President, Bar Association of the District of Columbia (2017-2018)

Avi Kumin, President, Metropolitan Washington Employment Lawyers Association (2025-2027)

Nancy Aliquo Long, President, Women's Bar Association of the District of Columbia (1996-1997); Women's Bar Association Foundation (2014-2016)

Victor E. Long, President, Trial Lawyers Association of Metropolitan Washington, DC (2013-2014)

Patrick Malone, President, Trial Lawyers Association of Metropolitan Washington, DC (2004-2005)

W. Charles Meltmar, President, Trial Lawyers Association of Metropolitan Washington, DC (2021-2022)

Sonia Murphy, President, Women's Bar Association of the District of Columbia (2016-2017)

Dwight D. Murray, President, Bar Association of the District of Columbia (1996-1997)

Christopher T. Nace, President, Trial Lawyers Association of Metropolitan Washington, DC (2017-2018)

Patrick M. Regan, President, Trial Lawyers Association of Metropolitan Washington, DC (1991-1992)

Melissa Rhea, President, Trial Lawyers Association of Metropolitan Washington, DC (2006-2007)

Sandra H. Robinson, President, Trial Lawyers Association of Metropolitan Washington, DC (1997-1998)

Gregory S. Smith, President, Bar Association of the District of Columbia (2011-2012); President, Atlanta Bar Association (1998-1999)

Suzanne M. Snedegar, President, Women's Bar Association of the District of Columbia (1979-1980)

Lucy L. Thomson, President, Women's Bar Association of the District of Columbia (1988-1989); Women's Bar Association of the District of Columbia Foundation (1989-1991)

Kenneth M. Trombly, President, Trial Lawyers Association of Metropolitan Washington, DC (1994-1995); D.C. Chapter, American Board of Trial Advocates (2006-2010); The Counsellors (2022-2023)

Keith W. Watters, President, Bar Association of the District of Columbia (2006-2007); Washington Bar Association (1988-1990), National Bar Association (1995-1996)

Salvatore J. Zambri, Past-President, Trial Lawyers Association of Metropolitan Washington, DC (2007-2008)

Voluntary Bar Associations

Bar Association of the District of Columbia (BADC)

BADC is a non-profit voluntary bar association that seeks to promote civility, justice, and collegiality among members of the legal profession as well as access to legal services for all residents of the nation's capital. The BADC is the first bar association founded in the District of Columbia in 1871, the same year that the U.S. Department of Justice was established. It is a zealous proponent of the Rule of Law, and the independence of the judiciary, law firms and lawyers.

Hispanic Bar Association of the District of Columbia (HBA-DC)

HBA-DC is a non-profit established in 1977 serving lawyers and law students in the D.C. region. Committed to fostering professional growth, the HBA-DC runs multifaceted initiatives through scholarships, advocacy, pro bono activities, and community outreach. The HBA-DC's interest in this litigation stems from its dedication to the principles of promoting equal justice and opportunity; educating the community about relevant legal issues; and promoting the professional development of lawyers and law students, including those of Hispanic heritage.

Metropolitan Washington Employment Lawyers Association (MWELA)

MWELA is a non-profit organization comprised of over 350 lawyers who regularly advise and represent employees in employment and civil rights disputes. MWELA is the local chapter of the National Employment Lawyers Association, a national organization of more than 3,000 lawyers dedicated to the advancement of employee rights. MWELA shares the amicus brief's concerns about the targeting of law firms for their client representations and their implementation of employee DEI programs, and the chilling effect on the legal profession were the Executive Orders allowed to stand.

National Bar Association (NBA)

The National Bar Association (NBA), founded in 1925, is a non-profit voluntary bar association representing the interests of more than 65,000 African American lawyers, judges, law professors, and law students worldwide. The NBA is dedicated to advancing the administration of justice, protecting civil and political rights, and ensuring equal justice under law. The NBA's interest in this brief reflects its long-standing commitment to defending access to justice, safeguarding the independence of the legal profession, and protecting marginalized communities from discrimination.

Trial Lawyers Association of Metropolitan Washington, D.C. (TLA-DC)

The Trial Lawyers Association of Metropolitan Washington, D.C. (TLA-DC) is a nonprofit voluntary bar association dedicated to preserving the civil justice system and promoting the rule of law. TLA-DC champions the constitutional right to trial by jury, supports access to justice for all, and works to protect public safety through legal accountability. The organization is a strong advocate for ethical advocacy, the independence of the legal profession, and the integrity of the courts.

Washington Bar Association, Inc. (WBA)

The Washington Bar Association, Inc. (WBA) is the oldest and largest predominantly Black bar association in the metropolitan Washington D.C. area, and one of the oldest and largest in the country. Having been founded by legal legend Charles Hamilton Houston and others in 1925, the organization is dedicated to the principle of "Equal Justice Under Law." For over 100 years, WBA's members have contributed significantly to the diversification of local and federal benches, as well as to the legal fiber and fabric of the Washington D.C. community. This brief aligns with WBA's objectives and purpose to protect the well-being of the legal profession, to advance

the administration of justice, and to encourage excellence consistent with the philosophy of Houstonian Jurisprudence.

Washington Council of Lawyers

Washington Council of Lawyers (WCL) is a voluntary bar association committed to ensuring that our legal system treats everyone fairly, regardless of money, position, or power. Our members represent the legal community's diversity: They come from law firms, law schools, private and nonprofit organizations, and the government.

WCL promotes pro bono and public-interest law by building partnerships between the public, private, and nonprofit sectors; volunteering to provide legal services to those who need them; training and mentoring the next generation of public-interest advocates; and supporting policies that expand access to justice.

Women's Bar Association of the District of Columbia

The mission of the Women's Bar Association of the District of Columbia (WBADC) is to maintain the honor and integrity of the profession, promote the administration of justice, and advance and protect the interest of women lawyers. The WBADC envisions a world in which all women lawyers are empowered to achieve personal and professional success and satisfaction, where all members are meaningfully connected, engaged, and mentored, and where diversity, equity, and inclusion are hallmarks of our programming and leadership. WBADC works through its advocacy voice and community service to improve the legal profession and society as a whole and promote the rule of law.