

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUSMAN GODFREY LLP,

Plaintiff,

v.

EXECUTIVE OFFICE OF THE PRESIDENT,
et al.,

Defendants.

Civil Action No. 1:25-1107 (LLA)

**AMICUS CURIAE BRIEF OF 366
FORMER JUDGES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

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Amici submit this brief to address the risk that Executive Order 14263 poses to the effective administration of justice and to the rule of law.

Interest of Amici

Amici are the 366 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 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. This 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. To the same end, amici share an interest in preserving the discretion judges need to regulate the conduct of lawyers who appear before them.

Amici believe that Executive Order 14263, captioned “Addressing Risks From Susman Godfrey” (the “Order”), undermines the rule of law by threatening the independence of lawyers

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>.

and litigants to petition courts to redress their grievances. The Order thus undermines the constitutional role of the courts as independent forums for adjudicating disputes. It also threatens 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. *See* D.D.C. Local Civil Rule 7(o)(5) (incorporating Fed. R. App. P. 29(a)(4)).

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 the Order violates these principles. Amici hold this view for four reasons.

A. The Order Imposes 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 the Order and the accompanying presidential statement demonstrate that the Order undermines the constitutional role of courts as a forum for petitioning for redress of grievances. The 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 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*, the Order threatens to chill the filing of cases and zealous advocacy in cases that are filed. It thereby undermines the candor and robust advocacy on which judges must rely in adjudicatory proceedings.

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

² <https://www.federalregister.gov/documents/2025/04/15/2025-06458/addressing-risks-from-susman-godfrey>

³ *Id.*

against the Trump administration may lead to punishment.⁴

B. The Order Undermines the Professional Independence of Counsel.

The 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.⁵ Just adjudication requires that the facts and law relevant to a dispute be presented fully and with vigor to the court. 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.⁶ 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 Order chills the vigorous advocacy on which courts depend. 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 punitive action such as the Order. Firms willing to face such risk embody the highest ideals of the bar, but that is

⁴ Section 5 is qualified by stating that agency heads must provide guidance “to the extent permitted by law,” and it is possible that such guidance may eventually conclude that the First Amendment is a law that contradicts the natural reading of the Order. Should such guidance issue, however, it would only confirm the constitutional infirmity of the Order itself, without dispelling the chilling effect of the Order.

⁵ 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.

⁶ See Amy Howe, *Outside attorneys appointed to argue in two cases*, SCOTUS blog (Jan. 28, 2025), available at: <https://tinyurl.com/f4j5sfdz>; Katherine Shaw, *Friends of the Court: Evaluating the Supreme Court’s Amicus Invitations*, 101 Cornell L. Rev. 1533 (2016), <https://tinyurl.com/22b6yx78>.

not a risk any lawyer should face.

C. The Order Improperly Supplants Judicial Regulation of Litigation Conduct.

In addition, the 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.

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.⁷ This consideration is especially important when a sanction is imposed for past conduct by attorneys no longer with a firm, as certain allegations in the Order 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 Order usurps the judicial function by sanctioning Susman Godfrey for conduct in past cases in which, so far as the Order discloses, 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 Order.⁸

Candor to a tribunal and responsibility to the tribunal go hand in hand. Efforts to use governmental power to bend lawyers to the political interests or views of an administration may

⁷ Order, *In re: Jackson Walker, LLP*, No. 4:24-mc-01523 (S.D. Tex. Sept. 20, 2024), ECF No. 9, <https://www.bloomberglaw.com/document/X4K5J2HAHKV8NKBOFU36E18U9FD>.

⁸ See *Preventing Abuses of the Legal System and the Federal Court*, The White House (Mar. 22, 2025) (<https://tinyurl.com/ykd5ja9h>).

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 Order Promotes 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 Order contributes 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 statement accompanying the Order, the nation 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 Order threatens our system of justice, and the rule of law itself, for each of the reasons outlined above. The Court's ruling enjoining enforcement of the Order was proper and indeed necessary. The Court's ruling should be entered as a final judgment.

RESPECTFULLY SUBMITTED this 25th day of April, 2025.

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NOTICE OF COMPLIANCE

Pursuant to LCvR 7(o), I hereby certify that this brief conforms to the requirements of LCvR 5.4, complies with the requirements set forth in Fed. R. App. P. 29(a)(4), and does not exceed 25 pages in length.

DATED this 25th day of April, 2025.

/s/ Donald Falk
Donald Falk

/s/ Sara Kropf
Sara Kropf

/s/ David McGowan
David McGowan

NOTICE OF SERVICE

I hereby certify that on April 25, 2025, I electronically filed the original of this brief with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

/s/ Sara Kropf
Sara Kropf

EXHIBIT A

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California Superior Court, Sacramento County (Ret.)
2. Judge Verna A. Adams,
California Superior Court, Marin County (Ret.)
3. Judge Patricia Aitken,
Washington Superior Court, King County (Ret.)
4. Judge Elsa Alcala,
Texas Court of Criminal Appeals (Ret.)
5. Judge Lesley A. Allan,
Washington Superior Court, Chelan County (Ret.)
6. Chief Justice Jeffrey L. Amestoy,
Vermont Supreme Court (Ret.)
7. Judge Elaine M. Andrews,
Alaska Superior Court, Third District (Ret.)
8. Judge Beth Andrus,
Washington Superior Court, King County (Ret.)
9. Judge Marlin J. Appelwick,
Washington State Court of Appeals, Division I (Ret.)
10. Judge Stephanie A. Arend,
Washington Superior Court, Pierce County (Ret.)
11. Judge Sharon S. Armstrong,
Washington Superior Court, King County (Ret.)
12. Associate Justice Richard M. Aronson,
California Court of Appeal, Fourth District (Ret.)
13. Magistrate Judge Mark E. Aspey,
United States District Court, District of Arizona (Ret.)
14. Judge Steven K. Austin,
California Superior Court, Contra Costa County (Ret.)

15. Judge Monica Bachner,
California Superior Court, County of Los Angeles (Ret.)
16. Chief Justice W. Scott Bales,
Arizona Supreme Court (Ret.)
17. Senior Judge Thomas A. Balmer,
Oregon Supreme Court (Ret.)
18. Judge Barry Baskin,
California Superior Court, Contra Costa County (Ret.)
19. Judge Paul A. Bastine,
Washington Superior Court, Spokane County (Ret.)
20. Chief Judge Mary Kay Becker,
Washington State Court of Appeals, Division One (Ret.)
21. Judge Martha Beckwith,
Alaska State District Court, Third Judicial District (Ret.)
22. Justice William Bedsworth,
California Court of Appeal, Fourth District (Ret.)
23. Justice Carol A. Beier,
Kansas Supreme Court (Ret.)
24. Justice Gina Benavides,
Texas Thirteenth Court of Appeals (Ret.)
25. Chief Justice Michael L. Bender,
Colorado Supreme Court (Ret.)
26. Chief Justice Rebecca White Berch,
Arizona Supreme Court (Ret.)
27. Judge Aviva K. Bobb,
California Superior Court, County of Los Angeles (Ret.)
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Massachusetts Supreme Judicial Court (Ret.)
29. Magistrate Judge E. Thomas Boyle,
United States District Court, Eastern District of New York (Ret.)

30. Justice Richard F. Braun,
New York Supreme Court, New York County (Ret.)
31. Associate Justice Bobbe Bridge,
Washington Supreme Court (Ret.)
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Alaska Superior Court, Third District (Ret.)
33. Magistrate Judge Geraldine Soat Brown,
United States District Court, Northern District of Illinois (Ret.)
34. Associate Justice Brian L. Burgess,
Vermont Supreme Court (Ret.)
35. Judge A. Franklin Burgess, Jr.,
Superior Court, District of Columbia (Ret.)
36. Magistrate Judge Michelle Burns,
United States District Court, District of Arizona (Ret.)
37. Judge Regina S. Cahan,
Washington Superior Court, King County (Ret.)
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California Superior Court, County of San Francisco (Ret.)
39. Judge Gregory P. Canova,
Washington Superior Court, King County (Ret.)
40. Chief Justice Walter L. Carpeneti,
Supreme Court of Alaska (Ret.)
41. Judge Wynne S. Carvill,
California Superior Court, Alameda County (Ret.)
42. Judge Paula Casey,
Washington Superior Court, Thurston County (Ret.)
43. Judge Ronald L. Castleberry,
Washington Superior Court, Snohomish County (Ret.)
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California Superior Court, County of Los Angeles (Ret.)

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47. Judge Robert James Cindrich,
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Washington Superior Court, King County (Ret.)
51. Judge Isabel R. Cohen,
California Superior Court, County of Los Angeles (Ret.)
52. Judge Bruce W. Cohoe,
Washington Superior Court, Pierce County (Ret.)
53. Acting Justice Ellen M. Coin,
New York Supreme Court, New York County (Ret.)
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Alaska Superior Court, First District (Ret.)
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New Hampshire Supreme Court (Ret.)
57. Judge Karen Conoley,
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58. Chief Justice Dori Contreras,
Texas Thirteenth District Court of Appeals (Ret.)
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United States District Court, Western District of Oklahoma (Ret.)

60. Judge Ronald E. Cox,
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United States District Court, Northern District of Illinois (Ret.)
62. Senior Associate Justice Stephen G. Crane,
New York Supreme Court, Appellate Division, Second Dept. (Ret.)
63. Senior Judge James Crockett,
Nevada District Court, Eighth Judicial District (Ret.)
64. Judge Denise Navarre Cubbon,
Court of Common Pleas, Juvenile Division, Lucas County, Ohio (Ret.)
65. Judge Ron Culpepper,
Washington Superior Court, Pierce County (Ret.)
66. Presiding Justice Brian S. Currey,
California Court of Appeals, Second Appellate District (Ret.)
67. Judge Beverly W. Cutler,
Alaska State Superior Court, Third District (Ret.)
68. Judge Faye D'Opal,
California Superior Court, Marin County (Ret.)
69. Judge David De Alba,
California Superior Court, Sacramento County (Ret.)
70. Justice Brian F. DeJoseph,
New York Supreme Court, Appellate Division (Ret.)
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New York Supreme Court, Kings County (Ret.)
72. Magistrate Judge Morton Denlow,
United States District Court, Northern District of Illinois (Ret.)
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United States District Court, Southern District of New York (Ret.)
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California Court of Appeal, First Appellate District (Ret.)

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Washington Superior Court, Snohomish County (Ret.)
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Arizona Court of Appeals (Ret.)
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Arizona Superior Court, Maricopa County (Ret.)
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Washington Superior Court, King County (Ret.)

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Washington Superior Court, King County (Ret.)
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Washington Court of Appeals, Division Two (Ret.)
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Arizona Superior Court, Maricopa County (Ret.)
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United States District Court, Northern District of California (Ret.)
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Washington Superior Court, King County (Ret.)
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United States District Court, Southern District of New York (Ret.)
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Washington Superior Court, Whitman County (Ret.)
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New York Supreme Court, Appellate Division (Ret.)
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California Superior Court, Alameda County (Ret.)
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California Superior Court, County of Los Angeles (Ret.)
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Washington Superior Court, Whatcom County (Ret.)
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Alaska Superior Court, First District (Ret.)
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Arizona Court of Appeals (Ret.)

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Circuit Court of Oregon, Jackson County (Ret.)
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United States Bankruptcy Court, Northern District of Illinois (Ret.)
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Orleans Parish Juvenile Court (Ret.)
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Massachusetts Appeals Court (Ret.)
131. Judge Paul W. Grimm,
United States District Court, District of Maryland (Ret.)
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United States District Court, Central District of California (Ret.)
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California Superior Court, County of San Francisco (Ret.)
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California Superior Court, San Diego County (Ret.)

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Washington Superior Court, King County (Ret.)
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Superior Court, District of Columbia (Ret.)
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United States Court of Appeals for the Tenth Circuit (Ret.)
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United States District Court, Northern District of Oklahoma (Ret.)
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New York Supreme Court, New York County (Ret.)

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192. Judge Leslie G. Landau,
California Superior Court, Contra Costa County (Ret.)
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Minnesota Court of Appeals (Ret.)
194. Magistrate Judge Elizabeth D. Laporte,
United States District Court, Northern District of California (Ret.)

195. Magistrate Judge James Larson,
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199. Judge J. Kathleen Learned,
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200. Judge Steve Leben,
Kansas Court of Appeals (Ret.)
201. Chief Judge John P. Leopold,
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203. Judge Anne Levinson,
Seattle Municipal Court (Ret.)
204. Judge Keith B. Levy,
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205. Judge Michael Linfield,
California Superior Court, County of Los Angeles (Ret.)
206. Judge John W. Lohrmann,
Washington Superior Court, Walla Walla County (Ret.)
207. Judge Jose M. Lopez,
Superior Court, District of Columbia (Ret.)
208. Judge Susan Lopez-Giss,
California Superior Court, County of Los Angeles (Ret.)
209. Judge Jackson Lucky,
California Superior Court, Riverside County (Ret.)

210. Judge J. Michael Luttig,
United States Court of Appeals, Fourth Circuit (Ret.)
211. Judge Richard Lyman,
California Superior Court, County of Los Angeles (Ret.)
212. Magistrate Judge Frank Maas,
United States District Court, Southern District of New York (Ret.)
213. Judge Judith Macaluso,
Superior Court, District of Columbia (Ret.)
214. Judge Barbara Mack,
Washington Superior Court, King County (Ret.)
215. Judge Bonnie MacLeod,
Superior Court, Commonwealth of Massachusetts (Ret.)
216. Justice Joan Madden,
New York Supreme Court, New York County (Ret.)
217. Judge Patrick Mahoney,
California Superior Court, County of San Francisco (Ret.)
218. Justice Nora M. Manella,
California Court of Appeal, Second Appellate District (Ret.)
219. Judge M. Kathleen Manley,
Vermont Superior Court (Ret.)
220. Chief Magistrate Judge Roanne L. Mann,
United States District Court, Eastern District of New York (Ret.)
221. Judge Linda S. Marks,
California Superior Court, County of Los Angeles (Ret.)
222. Judge Marc Marmaro,
California Superior Court, County of Los Angeles County (Ret.)
223. Judge Susan Finlay Marrinan,
California Superior Court, San Diego County (Ret.)
224. Judge Elizabeth P. Martin,
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226. Judge A. Howard Matz,
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228. Judge Michael McConnell,
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Arizona Supreme Court (Ret.)
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California Superior Court, Santa Clara County (Ret.)
234. Judge E. Anne McKinsey,
Fourth Judicial District, Minnesota (Ret.)
235. Justice Chuck McRae,
Mississippi Supreme Court (Ret.)
236. Judge Christopher Melly,
Washington Superior Court, Clallam County (Ret.)
237. Judge Louis James Menendez,
Alaska Superior Court, First District (Ret.)
238. Judge John M. Meyer,
Washington Superior Court, Skagit County (Ret.)
239. Judge Bruce E. Meyerson,
Arizona Court of Appeals (Ret.)

240. Judge Paul R. Michel,
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242. Judge Rita Miller,
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243. Judge Stephen Milliken,
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244. Judge Leila Mills,
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245. Judge Walter M. Morris, Jr.,
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246. Justice Fred K. Morrison,
California Court of Appeal, Third Appellate District (Ret.)
247. Justice Karla Moskowitz,
New York Supreme Court, Appellate Division (Ret.)
248. Judge John M. Mott,
Superior Court, District of Columbia (Ret.)
249. Justice Mary Muehlen Maring,
North Dakota Supreme Court (Ret.)
250. Judge Thomas G. Nave,
Alaska District Court, First District (Ret.)
251. Judge Kathryn J. Nelson,
Washington Superior Court, Pierce County (Ret.)
252. Magistrate Judge Kendall Newman,
United States District Court, Eastern District of California (Ret.)
253. Judge Leslie C. Nichols,
California Superior Court, County of Santa Clara (Ret.)
254. Judge William Ward Nooter,
Superior Court, District of Columbia (Ret.)

255. Judge Rita M. Novak,
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256. Chief Justice Lawton R. Nuss,
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257. Judge Kathleen M. O'Connor,
Washington Superior Court, Spokane County (Ret.)
258. Judge Kathleen M. O'Malley,
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259. Justice Michael J. Obus,
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260. Judge Margaret L. Oldendorf,
California Superior Court, County of Los Angeles (Ret.)
261. Judge Rafael Ongkeko,
California Superior Court, County of Los Angeles (Ret.)
262. Magistrate Judge James Orenstein,
United States District Court, Eastern District of New York (Ret.)
263. Judge James Orlando,
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264. Judge Patricia A. Orozco,
Arizona Court of Appeals (Ret.)
265. Magistrate Judge Brian L. Owsley,
United States District Court, Southern District of Texas (Ret.)
266. Judge Gary Oxenhandler,
Missouri Circuit Court (Ret.)
267. Judge Philip Pallenberg,
Alaska Superior Court, First District (Ret.)
268. Judge Cecil Patterson,
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269. Justice John Pelander,
Arizona Supreme Court (Ret.)

270. Justice Dennis Perluss,
California Court of Appeal, Second Appellate District (Ret.)
271. Judge Victor H. Persón
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272. Judge Layn R. Phillips,
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273. Judge Dean B. Pineles,
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274. Judge Burt Pines,
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275. Magistrate Judge Henry Pitman,
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284. Judge Ronald Reinstein,
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289. Justice Nelda Rodriguez,
Thirteenth Court of Appeals in Texas (Ret.)
290. Judge Erik Rohrer,
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291. Judge John Romero,
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293. Judge David A. Rosen,
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298. Judge Shira A. Scheindlin,
United States District Court, Southern District of New York (Ret.)
299. Judge Barry C. Schneider,
Arizona Superior Court, Maricopa County (Ret.)

300. Judge Robert Schnider,
California Superior Court, Los Angeles County (Ret.)
301. Judge Richard L. Seabolt,
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302. Judge Karen G. Seinfeld,
Washington State Court of Appeals, Division Two (Ret.)
303. Judge Susan K. Serko,
Washington Superior Court, Pierce County (Ret.)
304. Judge Hon. Margaret Seymour,
United States District Court, District of South Carolina (Ret.)
305. Judge Catherine Shaffer,
Washington Superior Court, King County (Ret.)
306. Judge Booker T. Shaw,
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307. Judge Nan R. Shuker,
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309. Judge B. Scott Silverman,
California Superior Court, County of Los Angeles (Ret.)
310. Judge T. W. Small,
Washington Superior Court, Chelan County (Ret.)
311. Judge Fern M. Smith,
United States District Court, Northern District of California (Ret.)
312. Judge James Smith,
Arizona Superior Court, Maricopa County (Ret.)
313. Magistrate Judge Stephen Wm. Smith,
United States District Court, Southern District of Texas (Ret.)
314. Judge Winifred Y. Smith,
California Superior Court, Alameda County (Ret.)

315. Judge Charles R. Snyder,
Washington Superior Court, Whatcom County (Ret.)
316. Justice Michael R. Sonberg,
New York Supreme Court, New York County (Ret.)
317. Justice Sheila Prell Sonenshine,
California Court of Appeal, Fourth District (Ret.)
318. Judge Stephanie Sontag,
California Superior Court, San Diego County (Ret.)
319. Judge Michael S. Spearman,
Washington State Court of Appeals (Ret.)
320. Judge Julie Spector,
Washington Superior Court, King County (Ret.)
321. Judge Marjorie Steinberg,
California Superior Court, County of Los Angeles (Ret.)
322. Judge Michael L. Stern,
California Superior Court, County of Los Angeles (Ret.)
323. Judge John K. Stewart,
California Superior Court, County of San Francisco (Ret.)
324. Chief Justice Laura Denvir Stith,
Supreme Court of Missouri (Ret.)
325. Senior Judge Diana Stuart,
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326. Judge James B. Sult,
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327. Judge Paul Suzuki,
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Washington State Court of Appeals, Division Three (Ret.)

330. Judge S. Brooke Taylor,
Washington Superior Court, Clallam County (Ret.)
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Court of Common Pleas, 1st Judicial District of Pennsylvania (Ret.)
332. Chief Judge Philip E. Toci,
Arizona Court of Appeals, Division One (Ret.)
333. Judge Helen M. Toor,
Vermont Superior Court (Ret.)
334. Judge Fred Torrisi,
Alaska Superior Court, First District (Ret.)
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Washington Superior Court and Court of Appeals, Div. I (Ret.)
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Eastern District of the Missouri Court of Appeals (Ret.)
337. Judge Thomas I. Vanaskie,
United State Court of Appeals, Third Circuit (Ret.)
338. Judge Jack Vandenorh,
Second Judicial District of Minnesota (Ret.)
339. Judge Emily E. Vasquez,
California Superior Court, Sacramento County (Ret.)
340. Judge Arthur W. Verharen,
Washington Superior Court, Pierce County (Ret.)
341. Justice Miriam A. Vogel,
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342. Judge Vaughn R. Walker,
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343. Judge Art Wang,
Washington State Court of Appeals (Ret.)
344. Judge Steve M. Warning,
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345. Judge Anthony P. Wartnik,
Washington Superior Court, King County (Ret.)
346. Judge Eugene R. Wedoff,
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347. Judge Kerry Wells,
California Superior Court, San Diego County (Ret.)
348. Judge John P. Wesley,
Vermont Superior Court (Ret.)
349. Judge Elizabeth Allen White,
California Superior Court, County of Los Angeles (Ret.)
350. Judge Vanessa H. White,
Alaska Superior Court, Third District (Ret.)
351. Judge Jay V. White,
Washington Superior Court, King County (Ret.)
352. Judge H. Christopher Wickham,
Washington Superior Court, Thurston County (Ret.)
353. Justice Thomas L. Willhite, Jr.,
California Court of Appeal, Second Appellate District (Ret.)
354. Judge Ken Williams,
Washington Superior Court, Clallam County (Ret.)
355. Senior Judge Janice R. Wilson,
Oregon Circuit Court, Multnomah County (Ret.)
356. Judge Jeffrey Winikow,
California Superior Court, County of Los Angeles (Ret.)
357. Judge Lawrence F. Winthrop,
Arizona Court of Appeals, Division One (Ret.)
358. Chief Justice Michael A. Wolff,
Missouri Supreme Court (Ret.)
359. Judge Beverly K. Wood,
California Superior Court, Marin County (Ret.)

360. Judge Margie G. Woods,
California Superior Court, San Diego County (Ret.)
361. Senior Judge Merri Souther Wyatt,
Oregon Circuit Court, Multnomah County (Ret.)
362. Judge Thomas J. Wynne,
Washington Superior Court, Snohomish County (Ret.)
363. Justice James A. Yates,
New York State Supreme Court (Ret.)
364. Justice Laurie Zelon,
California Court of Appeal, Second Appellate District (Ret.)
365. Judge Larry Zervos,
Alaska Superior Court, Fourth District (Ret.)
366. Chief Justice Thomas A. Zlaket,
Arizona Supreme Court (Ret.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUSMAN GODFREY LLP,

Plaintiff,

v.

EXECUTIVE OFFICE OF THE PRESIDENT,
et al.,

Defendants.

Civil Action No. 1:25-1107 (LLA)

**AMICUS CURIAE BRIEF OF 366
FORMER JUDGES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

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Amici submit this brief to address the risk that Executive Order 14263 poses to the effective administration of justice and to the rule of law.

Interest of Amici

Amici are the 366 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 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. This 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. To the same end, amici share an interest in preserving the discretion judges need to regulate the conduct of lawyers who appear before them.

Amici believe that Executive Order 14263, captioned “Addressing Risks From Susman Godfrey” (the “Order”), undermines the rule of law by threatening the independence of lawyers

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>.

and litigants to petition courts to redress their grievances. The Order thus undermines the constitutional role of the courts as independent forums for adjudicating disputes. It also threatens 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. *See* D.D.C. Local Civil Rule 7(o)(5) (incorporating Fed. R. App. P. 29(a)(4)).

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 the Order violates these principles. Amici hold this view for four reasons.

A. The Order Imposes 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 the Order and the accompanying presidential statement demonstrate that the Order undermines the constitutional role of courts as a forum for petitioning for redress of grievances. The 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 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*, the Order threatens to chill the filing of cases and zealous advocacy in cases that are filed. It thereby undermines the candor and robust advocacy on which judges must rely in adjudicatory proceedings.

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

² <https://www.federalregister.gov/documents/2025/04/15/2025-06458/addressing-risks-from-susman-godfrey>

³ *Id.*

against the Trump administration may lead to punishment.⁴

B. The Order Undermines the Professional Independence of Counsel.

The 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.⁵ Just adjudication requires that the facts and law relevant to a dispute be presented fully and with vigor to the court. 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.⁶ 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 Order chills the vigorous advocacy on which courts depend. 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 punitive action such as the Order. Firms willing to face such risk embody the highest ideals of the bar, but that is

⁴ Section 5 is qualified by stating that agency heads must provide guidance "to the extent permitted by law," and it is possible that such guidance may eventually conclude that the First Amendment is a law that contradicts the natural reading of the Order. Should such guidance issue, however, it would only confirm the constitutional infirmity of the Order itself, without dispelling the chilling effect of the Order.

⁵ 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.

⁶ See Amy Howe, *Outside attorneys appointed to argue in two cases*, SCOTUS blog (Jan. 28, 2025), available at: <https://tinyurl.com/f4j5sfdz>; Katherine Shaw, *Friends of the Court: Evaluating the Supreme Court's Amicus Invitations*, 101 Cornell L. Rev. 1533 (2016), <https://tinyurl.com/22b6yx78>.

not a risk any lawyer should face.

C. The Order Improperly Supplants Judicial Regulation of Litigation Conduct.

In addition, the 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.

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.⁷ This consideration is especially important when a sanction is imposed for past conduct by attorneys no longer with a firm, as certain allegations in the Order 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 Order usurps the judicial function by sanctioning Susman Godfrey for conduct in past cases in which, so far as the Order discloses, 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 Order.⁸

Candor to a tribunal and responsibility to the tribunal go hand in hand. Efforts to use governmental power to bend lawyers to the political interests or views of an administration may

⁷ Order, *In re: Jackson Walker, LLP*, No. 4:24-mc-01523 (S.D. Tex. Sept. 20, 2024), ECF No. 9, <https://www.bloomberglaw.com/document/X4K5J2HAHKV8NKBOFU36E18U9FD>.

⁸ See *Preventing Abuses of the Legal System and the Federal Court*, The White House (Mar. 22, 2025) (<https://tinyurl.com/ykd5ja9h>).

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 Order Promotes 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 Order contributes 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 statement accompanying the Order, the nation 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 Order threatens our system of justice, and the rule of law itself, for each of the reasons outlined above. The Court's ruling enjoining enforcement of the Order was proper and indeed necessary. The Court's ruling should be entered as a final judgment.

RESPECTFULLY SUBMITTED this 25th day of April, 2025.

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NOTICE OF COMPLIANCE

Pursuant to LCvR 7(o), I hereby certify that this brief conforms to the requirements of LCvR 5.4, complies with the requirements set forth in Fed. R. App. P. 29(a)(4), and does not exceed 25 pages in length.

DATED this 25th day of April, 2025.

/s/ Donald Falk
Donald Falk

/s/ Sara Kropf
Sara Kropf

/s/ David McGowan
David McGowan

NOTICE OF SERVICE

I hereby certify that on April 25, 2025, I electronically filed the original of this brief with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

/s/ Sara Kropf
Sara Kropf