Not Everything is Negotiable: Reinforcing Model Rule 5.6(b) to Safeguard the Integrity of the Bar From Government Intrusion

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ABSTRACT

When the government acts to undermine lawyer independence and to restrict the public's access to qualified counsel, how must lawyers ethically respond? Focusing on President Trump's executive orders against major law firms and the resulting settlement agreements—in which firms pledged nearly one billion dollars in free legal services to the White House—this article situates these events within a long history of government intimidation of the bar. Based on new research, we argue that Model Rule of Professional Conduct 5.6(b) was designed to prevent precisely this kind of intrusion, but it has long been misunderstood. Correcting erroneous perceptions of the rule that have gone unchallenged for over forty years, we demonstrate that Rule 5.6(b) was drafted broadly to safeguard professional autonomy and access to counsel, principles its drafters deemed "basic" to "the purpose of our profession." We apply this guidance to the present moment, concluding the agreements reached between the White House and major law firms violate Rule 5.6(b)'s mandate, and we call on the ABA to revise the rule to make explicit lawyers' non-negotiable duty to reject adverse government control over client acceptance and case selection.

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INTRODUCTION

In America's adversarial system of justice, the independence of the bar and the availability of legal counsel are fundamental to the rule of law. Lawyers are gatekeepers to the courts, and the public depends on legal representation to vindicate their rights. Accordingly, when powerful parties seek to act without legal consequence, they threaten the public's access to counsel and hamstring the bar's professional autonomy. Historically, private parties have accomplished these ends through "practice-restrictive" provisions in settlement agreements, which limit an opposing lawyer's right to accept future clients or to litigate on behalf of specific causes. The legal profession responded with an ethical line in the sand, broadly prohibiting settlement agreements that restrict a lawyer's future right to practice. Today, this prohibition is codified in *Model Rules of Professional Conduct* Rule 5.6(b).

Since 1983, Rule 5.6(b)'s ethical guardrail has shut the door on practice-restrictive settlements between private parties. The greater threat to the independence of the bar and the rule of law, however, stems from *government* actions that preclude access to legal representation. Since the Founding, the government has often pressured the bar, through fear and intimidation, not to represent politically disfavored clients as a means of suppressing dissent and limiting judicial review. Government actors first wielded these tactics to suppress the representation of British Loyalists after the Revolutionary War, and they have frequently deployed them since. The most recent example of government pressure on the bar is President Donald Trump's executive orders targeting America's largest and most powerful law firms.

The President's executive orders share a common thread: imposing costly restrictions on law firms that represented clients opposed to the President or his policies. They take several forms but uniformly aim to paralyze the most prominent firms—preventing them from representing clients who would challenge government power—and send a message to other lawyers not to engage in legal process that challenges the White House.

The executive orders have partly succeeded in their goal, as many of the targeted firms, and some not formally targeted, have entered agreements with the administration to advance causes championed by the President and to end efforts he opposes. In exchange, the firms temporarily avoided executive sanctions, including the revocation of security clearances and access to government property, threatened investigations and criminal charges, withholding of federal funds, a prohibition on federal hiring of law firm employees, and more. Effectively, these agreements (which we refer to as the "White House/Law Firm agreements") commandeer the provision of pro bono services to historically underserved clients, as aspired to in Model Rule 6.1, in favor of "safe" causes agreed to by President Trump and benign to the exercise of government authority.

The executive orders and resulting agreements shocked the legal profession. Some law firms have challenged the orders as an unconstitutional, existential threat to the bar. Others frame the agreements as unenforceable. Indeed, it increasingly seems their terms were not put to paper—the President announced the agreements on social media, and his portrayal of their details sometimes differs from the descriptions provided by law firms. Surprisingly, few have openly questioned the ethics of the agreements under Rule 5.6(b), which embodies the importance of an independent bar and explicitly prohibits lawyers from agreeing in settlements to restrict their future right to practice law.

Rule 5.6(b) was designed to prevent the very harm the White House/Law Firm agreements represent as limitations on the bar's independence and the public's access to qualified counsel. But for over forty years and until this article, ABA publications and scholars alike have misunderstood Rule 5.6(b), assuming the rule was first enacted as an "afterthought" and at the suggestion of a single practitioner, with some scholars contending the rule exists to protect the financial interests of certain lawyers rather than the integrity of the legal system. To the contrary, our research demonstrates that the rule is, in fact, derived from the ABA's first model ethical guidance, which was considered "basic" to "the purpose of [the legal] profession" by its drafters, and was intended as a sweeping directive to preserve professional autonomy and access to counsel for the public. And through subsequent guidance opinions interpreting 5.6(b), the profession has determined that the rule applies to both governmental and private efforts to restrict the availability of counsel.

But Rule 5.6(b)'s application to instances of government pressure on the bar is not explicit, and the rule must go further to counter this recurring threat. The White House/Law Firm agreements bear this out. Between the vague terms of the agreements and the modern wording of 5.6(b), the rule's text—alone—appears to cast only a shadow of impropriety over the agreements. And yet, as our research demonstrates, the agreements unambiguously run afoul of the rule's broad, historical functions: preserving the availability of qualified counsel and the independence of the bar.

Without a clear and unwaivable ethical mandate to guide the profession in responding to government intrusion, law firms and lawyers are caught in an impasse. Do they reject government pressure, risking an unfavorable court order that upholds the government's action and imperils their practice? Or do they submit, entering agreements they deem their only realistic choice to protect their clients and business interests? Firm leaders acting in good faith but under threat may reach different conclusions. But Rule 5.6(b), properly understood and with the benefit of clarifying amendments, should provide explicit instruction affirming a non-negotiable duty to protect the availability of counsel and the independence of the bar.

This article examines Model Rule 5.6(b)'s historical mandate to safeguard against third-party interference in the bar's independence through settlement agreements. We conclude the White House/Law Firm agreements appear to violate that mandate, notwithstanding their vague terms and the textual application of 5.6(b) to settlements of "client controvers[ies]." We also call upon the ABA to promulgate amendments to Rule 5.6(b) to more clearly address a clear and recurring danger—that of government efforts to hamstring the independence and availability of lawyers as a means of evading legal scrutiny. While critical, it is not enough to ask whether government pressure on the bar is constitutional. Rather, faced with this pressure, the bar must ask—as guardians of an independent judiciary and guarantors of democracy—how must lawyers ethically respond?

Section I summarizes the import of the availability of counsel and the independence of the bar to the rule of law and outlines a pattern of government efforts to diminish these safeguards from Founding to present. Section II details the President's executive orders and the resulting White House/Law Firm agreements as the most recent instance of this pattern, compiling what is known about their terms, their emerging impact, and the profession's response. Section III then applies Rule 5.6(b) to the agreements, identifying and correcting modern (mis)understandings of the rule and concluding that the agreements run counter to its core functions. Based upon a corrected legislative history, we contend the current text of Rule 5.6(b) does not fully capture the rule's functions and, as a result, provides insufficient guidance to lawyers facing government intrusion. Accordingly, we call upon the profession to amend the Rule and its Comments to offer a more transparent ethical guardrail, one which aims to make plain what is clear from the rule's history: that (1) 5.6(b) applies to agreements reached with the government as well as between private parties, (2) it prohibits settlement agreements with terms that "materially limit" a lawyer's future representations—safeguarding the availability of qualified counsel to the public, and (3) it applies to agreements of any kind with adverse parties or entities, whether or not the agreement involves the resolution of a client controversy.

I. LAWYERS AND THE RULE OF LAW

A. LAWYER INDEPENDENCE AND ACCESS TO COUNSEL

The public's access to counsel and the ability of lawyers to exercise independent judgment are fundamental to the rule of law. "Our society has entrusted lawyers with something of a monopoly on the exercise of [a] foundational right:" to sue and defend in court, "translating real-world harm into courtroom argument."[1] That monopoly has consequences for litigants, who are "less likely to prevail in court and . . . more likely to believe that they were not treated fairly" without the assistance of counsel.[2] It has consequences for judges, who depend on lawyers to "screen[] legitimate legal claims" as "crucial gatekeepers."[3] And it has consequences for the entire judiciary, which cannot operate effectively as an independent check on its co-equal branches of government without a bar ready and willing to represent clients who challenge exercises of government power.[4]

American lawyers have long served as gatekeepers of justice and guarantors of democracy. The colonies broke from the Crown, in part, because English courts "sometimes ma[d]e 'short shrift' of lawyers whose greatest crime was to dare to defend unpopular causes."[5] Prosecutors were as much agents of the king as judicial officers, and "defense counsel was not only unnecessary, but positively harmful."[6] The Founding Fathers wanted more for the bar.[7] After the Boston Massacre, for example, John Adams stepped forward to defend eight British soldiers charged with

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1. Jenner & Block LLP v. U.S. Dep't of Just., 784 F. Supp. 3d 76, 98 (D.D.C. 2025).

2. David W. Lannetti & Jennifer L. Eaton, *Sparking a Movement: A Coordinated, Bottom-up Approach to Increase Voluntary Pro Bono Service and Mend the Justice Gap*, 25 RICH. PUB. INT. L. REV. 1, 12–16 (2022).

3. Scott Cummings, *When Lawyers Attack the Rule of Law*, LPE PROJECT (June 20, 2024), https://lpeproject.org/blog/when-lawyers-attack-the-rule-of-law/ [https://perma.cc/M6EK-SE8Z].

4. *See* Legal Servs. Corp. v. Velazquez, 531 U.S. 533, 545 (2001) ("An informed, independent judiciary presumes an informed, independent bar."); Brief for 346 Former Judges as Amici Curiae Supporting Plaintiff's Motion for Summary Judgment at 8, Perkins Coie LLP v. U.S. Dep't of Just., No. 25-716, 2025 WL 1276857 (D.D.C. May 2, 2025) ("Efforts to use governmental power to bend lawyers to the political interests or views of an administration may impair the candor on which judges rely and usurp judges' role in regulating the conduct of lawyers who appear before them. The adversarial system cannot function properly with such an incursion into the judicial role.").

5. Cohen v. Hurley, 366 U.S. 117, 139–40 (1961) (Black, J., dissenting).

6. Brief for 363 Law Professors as Amici Curiae Supporting Plaintiff's Motion for Summary Judgment & for Declaratory & Permanent Injunctive Relief at 12, Perkins Coie LLP v. U.S. Dep't of Just., No. 25-716, 2025 WL 1276857 (D.D.C. May 2, 2025) [hereinafter 363 Law Professors].

7. *See* Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of President, 784 F. Supp. 3d 127, 135 (D.D.C. 2025) ("The cornerstone of the American system of justice is an independent judiciary and an independent bar willing to tackle unpopular cases, however daunting. The Founding Fathers knew this!").

murder, with little expectation of compensation.[8] He later wrote of his decision that "Council [sic] ought to be the very last thing that an accused Person should want in a free Country," and "[t]hat the Bar ought . . . to be independent and impartial at all Times [a]nd in every Circumstance."[9] The Founders codified these values in their new Constitution, ratifying "at least four . . . amendments afford[ing] counsel-specific protection"[10]—the First,[11] Fifth,[12] Sixth,[13] and Fourteenth Amendments.[14] These amendments protect litigants' right to petition the government without fear of retaliation, to hire counsel of their choosing in criminal and civil matters, and to the loyalty of their attorney, however unpopular their case, as "[a]n attorney whose lips are sealed on crucial matters . . . is no attorney at all."[15]

The counsel-specific protections enshrined in the Bill of Rights vest lawyers with "an essential role in upholding America's democratic institutions."[16] But, to fill that role, the bar must remain independent.[17] As the Supreme Court recognized in *Legal Services Corp. v. Velazquez*, government restrictions on attorneys' independence "in advising their clients and in presenting arguments and analyses to the courts distort[] the legal system, . . . prohibit[ing] speech and expression upon which courts must depend for the proper exercise of the judicial power."[18] When lawyers are not free to select their own clients, causes, and arguments, "they are likely to become nothing more than parrots of the views of whatever group wields governmental power at the moment."[19] And, because courts consider only those issues actually presented to them, "[l]imits on lawyers readily become limits on courts"[20] and "threaten[] severe impairment of the judicial

8. 3 DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS 293 (L.H. Butterfield et al. eds.,1961).

9. *Id.*

10. Jenner & Block LLP v. U.S. Dep't of Just., 784 F. Supp. 3d 76, 97 (D.D.C. 2025).

11. U.S. CONST. amend. I; *see* United Mine Workers v. Ill. State Bar Ass'n, 389 U.S. 217, 221–25 (1967) (finding government actions limiting individual choice of counsel implicate "the freedom of speech, assembly, and petition guaranteed by the First" Amendment).

12. U.S. CONST. amend. V; *see* Miranda v. Arizona, 384 U.S. 436, 470 (1966) (holding the Fifth Amendment "comprehends not merely a right to consult with counsel prior to [police] questioning, but also to have counsel present during any questioning if the defendant so desires").

13. U.S. CONST. amend. VI; *see* United States v. Gonzalez-Lopez, 548 U.S. 140, 146 (2006) ("[The Sixth Amendment] commands, not that a trial be fair, but that a particular guarantee of fairness be provided—to wit, that the accused be defended by the counsel he believes to be best.").

14. U.S. CONST. amend. XIV; *see* Powell v. Alabama, 287 U.S. 45, 68–69 (1932) ("The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.").

15. 363 Law Professors, *supra* note 6, at 12–15 (citation modified) (quoting Holloway v. Arkansas, 435 U.S. 475, 490 (1978)).

16. *Id.* at 15.

17. *See id.* at 11 ("The Founders were well aware that executive control of access to counsel could distort the administration of justice."); Susman Godfrey LLP v. Exec. Off. of President, 789 F. Supp. 3d 15, 57 (D.D.C. 2025) ("[T]he independence of the bar [is] a necessity for the rule of law.").

18. Legal Servs. Corp. v. Velazquez, 531 U.S. 533, 544–45 (2001).

19. Cohen v. Hurley, 366 U.S. 117, 138 (1961) (Black, J., dissenting).

20. 363 Law Professors, *supra* note 6, at 16.

function."[21] That is why, when leaders hope to exercise power without legal consequence, the first thing they do is "kill all the lawyers."[22]

In spite of the Founders' efforts to safeguard the accessibility and independence of legal counsel, government officials throughout America's history have sought to intimidate and punish lawyers of politically disfavored clients as a means of evading the rule of law. These tactics span more than two centuries, have been employed at both the state and federal level, and have consistently targeted lawyers for unpopular clients—such as British loyalists, alleged communists, and Guantanamo detainees—and lawyers who challenge controversial policies—including racial discrimination and government sterilization. We outline this pattern of government pressure on the bar in the following subsection.

B. HISTORICAL GOVERNMENT INTIMIDATION OF THE BAR

Attorneys are sworn to uphold the Constitution and, as officers of the legal system, have a special responsibility for the quality of justice.[23] The profession's ethical rules urge lawyers to be mindful of "deficiencies in the administration of justice" and the reality that not everyone can afford legal representation.[24] Legal representation should not be denied to persons because of their indigency, or because their "cause is controversial or the subject of popular disapproval,"[25] for a lawyer's representation is not an endorsement of the client's views or activities.[26] These principles are a "foundation of the legal profession."[27]

And yet, early in the Republic and many times since, the government has challenged, ostracized, or punished lawyers for representing disfavored clients or challenging official policies. Lawyers who represented British Loyalists in the wake of the Revolutionary War were some of the earliest targets. Enacted at war's end, the Trespass Act of 1783 permitted patriots to sue Loyalists for damages. Alexander Hamilton came to their defense, representing a British merchant who was sued under the Act in a widely publicized case.[28] Hamilton obtained partial success for his client, but his advocacy on behalf of such a deeply unpopular individual brought notoriety and provoked outrage from lawmakers and the

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21. *Legal Servs. Corp.*, 531 U.S. at 546.

22. WILLIAM SHAKESPEARE, HENRY VI, PART 2, act 4, sc. 2, l. 75; *see* Walters v. Nat'l Ass'n of Radiation Survivors, 473 U.S. 305, 371 n.24 (1985) (Stevens, J., dissenting) ("As a careful reading of [Henry VI] will reveal, Shakespeare insightfully realized that disposing of lawyers is a step in the direction of a totalitarian form of government.").

23. MODEL RULES OF PROF'L CONDUCT pmbl. (1) (2023) [HEREINAFTER MODEL RULES].

24. MODEL RULES pmbl. (6).

25. MODEL RULES R. 1.2 cmt. 5.

26. MODEL RULES R. 1.2 cmt. 5.

27. *See* Mary Elizabeth Basile, *Loyalty Testing for Attorneys: When is it Necessary and Who Should Decide?*, 30 CARDOZO L. REV. 1843, 1847 (2009).

28. *See Rutgers v. Waddington, 1784*, Hist. Soc'y N.Y. Cts., https://history.nycourts.gov/case/rutgers-v-waddington/ [https://perma.cc/UAS9-8SRP] (last visited Sept. 7, 2025).

public.[29] Hamilton was accused of "betraying the Revolution and tarnishing his bright promise."[30] He was villainized as a "turncoat" and a "crypto-Tory."[31] To state lawmakers, lawyers who represented Loyalists were unpatriotic, if not traitorous.[32]

Hostility towards Loyalists had more than reputational consequences for their attorneys. Lawyers who represented disfavored clients risked being labeled by authorities as disloyal or subversive, and they often faced professional discipline.[33] The Massachusetts Banishment Act of 1778, for example, effectively disbarred some lawyers who had Loyalist sympathies or had represented Loyalists. The Act made it a crime for Loyalists, including lawyers, to return to Massachusetts, thereby denying lawyers the right to practice law or obtain access to the state's courts.[34] A prominent Massachusetts lawyer and the state's former attorney general, Jonathan Sewall, was banished under the Act. His promising legal career ended with his exile to England.[35]

This period in the early Republic set a precedent that has continued for more than two centuries. When American lawyers represent unpopular or disfavored clients, the government often accuses them of disloyalty. After the Second World War, during a time popularly referred to as the "second Red Scare,"[36] government

29. Although Hamilton's success in representing Loyalists sullied his reputation with government officials and the public generally, it did boost demand for his legal services among Loyalists. *See* JOHN C. MILLER, ALEXANDER HAMILTON: PORTRAIT IN PARADOX 109 (1959); *see also* Alfred A. Duffy, *An Early Chapter in the History of Judicial Review*, 71 U.S. L. Rev. 516, 518–19 (1937); PETER CHARLES HOFFER, RUTGERS V. WADDINGTON: ALEXANDER HAMILTON, THE END OF THE WAR FOR INDEPENDENCE, AND THE ORIGINS OF JUDICIAL REVIEW (2016) (stating that Hamilton's office was busy with Loyalists seeking to defend themselves against the Trespass Act).

30. RON CHERNOW, ALEXANDER HAMILTON 196 (2004); *see also* BROADUS MITCHELL, ALEXANDER HAMILTON: YOUTH TO MATURITY 345 (1957) (asserting Hamilton was branded in hostile quarters as an Anglophile).

31. Chernow, *supra* note 30, at 198.

32. *See* MILLER, *supra* note 29, at 105-110 (describing the political uproar after Hamilton's arguments in *Rutgers*, and the "veiled threats" from the Assembly to discipline or sideline those enabling Loyalist claims); CHERNOW, *supra* note 30, at 199 (explaining that Hamilton became a target of political attacks, and that this contributed to tensions between New York populists and Federalists); STAUGHTON LYND, CLASS CONFLICT, SLAVERY, AND THE UNITED STATES CONSTITUTION 124 (2009) ("The New York Assembly expressed its indignation at the *Rutgers* decision and Hamilton's arguments, and considered legislative remedies to rein in the courts."); *see also* Nathan Dorn, Library of Congress, *Alexander Hamilton Defending Loyalist Property Rights,* July 16, 2020, https://blogs.loc.gov/law/2020/07/alexander-hamilton-defending-loyalist-property-rights/ [https://perma.cc/63XA-6LXS] (recounting that the New York legislature enacted a forfeiture act in 1779 that empowered the state to seize and sell property of loyalists and included a list of known loyalists who faced confiscation of their property and banishment from the state).

33. Basile, *supra* note 27, at 1849.

34. *See* Larry C. Kerpelman, *The Plight of Massachusetts Loyalists*, 69 AM. HERITAGE (Spring 2024), https://www.americanheritage.com/plight-massachusetts-loyalists [https://perma.cc/BN5E-JVC5] (stating that the Banishment Act listed over 300 individuals, including prominent lawyers, who were forbidden from returning to the state).

35. *See generally* JAMES H. STARK, THE LOYALISTS OF MASSACHUSETTS AND THE OTHER SIDE OF THE AMERICAN REVOLUTION (1910) (providing biographical accounts of Loyalist lawyers and others affected by the Banishment Act).

36. The First Red Scare is the popular name given to the time period between 1917 and 1920, which followed the end of the First World War and the Bolshevik revolution in Russia, and in which government officials responded to widespread fears of anarchism and socialism taking root in the United States. The Second Red

officials challenged the loyalty of lawyers who represented alleged communists. The following exchange in a Pennsylvania courtroom captures the blatant intimidation these lawyers sometimes faced:

> Judge Musmanno, Court of Common Pleas, Allegheny County (PA): "Before we proceed in this case, I want to interrogate, and my duties require that I interrogate, counsel for the plaintiff. . . . Hymen Schlesinger, have you ever been a member of the Communist Party; Are you a member of the Civil Rights Congress; . . . Did you or did you not form the Civil Rights Congress, which is a Communist Front Organization . . . ."
>
> Attorney Schlesinger refused to answer these questions.
>
> Judge Musmanno: "We have formally adjudged you unfit to try a case in this Court as of today, morally unfit. You do not possess an allegiance to the United States."[37]

When the government acts to intimidate the bar, it chills the willingness of lawyers to represent politically disfavored individuals and causes, effectively "censor[ing] indirectly that which [government] cannot censor outright."[38] During the Second Red Scare, this intimidation was accomplished, in part, through investigations into communist activity conducted by the House Un-American Activities Committee (HUAC). HUAC members challenged lawyers who appeared on behalf of suspected communists, questioning, "How can a lawyer maintain his oath to uphold and defend the Constitution of the United States when he is an agent of a conspiratorial apparatus designed to destroy the Constitution?"[39] Critics of HUAC's tactics charged that the Committee leveraged its claims of disloyalty for partisan purposes,[40] seeking "to purge unpopular opinions or sympathies among members of the bar."[41] They argued that demanding loyalty oaths from lawyers contradicted lawyers' duties to society and impinged upon their

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Scare occurred after the Second World War between 1947 and 1957 and in response to perceived threats of communist infiltration in the country. *See* Marcie K. Cowley, *Red Scare*, FREE SPEECH CTR. (July 26, 2024), https://firstamendment.mtsu.edu/article/red-scare/ [https://perma.cc/7MSB-U7K6].

37. Basile, *supra* note 27, at 1843 (describing the case in which this exchange occurred). The Pennsylvania Supreme Court subsequently found that Judge Musmanno was without jurisdiction to determine that Schlesinger was unfit to practice law or to inquire as to whether he was a member of the Communist Party. *Id.* at 1843 n.1. Still, the judge's actions "illustrate[] the popular attitude that individuals associated with Communist organizations should be presumed guilty of disloyalty to the United States." *Id.*

38. *See* Kathryn A. Sabbeth, *Towards an Understanding of Litigation as Expression: Lessons from Guantánamo*, 44 U.C. DAVIS L. REV. 1487, 1487 (2011).

39. Basile, *supra* note 27, at 1849, 1849 n.24.

40. *See id.* at 1849 n.23; *see also id.* at 1849 n.21 (citing an article that "traces instances throughout the twentieth century where the 'bar machinery' was misused to punish governmental dissenters in efforts to maintain the political status quo"); *id.* at 1864–65, 1881 (stating Erwin Griswold—future Solicitor General of the United States—opposed automatic disbarment for attorneys who claimed the Fifth Amendment when faced with charges of communist activities or sympathies, instead supporting an investigation into the attorney's conduct that retained the procedural safeguards of a criminal trial).

41. *Id.* at 1850.

right to choose their clients, all without evidence that the attorneys posed a threat to national security.[42]

Nonetheless, lawyers faced serious personal and professional consequences for representing unpopular clients. Five lawyers who defended clients accused of advocating communism in violation of the Smith Act[43] were sentenced for contempt after contentious exchanges in court between the lawyers and the presiding judge.[44] Immediately following the conviction of their clients, the judge sentenced the lawyers to jail terms ranging from thirty days to six months, had them handcuffed on the spot, and sent them to prison.[45] The Supreme Court upheld the lawyers' contempt citations, but Justice Hugo Black wrote a dissenting opinion in which he characterized attacks on lawyers as an "overhanging menace to the security of every courtroom advocate in America."[46] These attacks on lawyers made it difficult for unpopular clients to find counsel,[47] which most heavily impacted under-resourced and socially-marginalized clients.[48] Two lawyers in the Smith Act case, Harry Sacher and Abraham Isserman, were ultimately disbarred after their incarceration.[49]

Many lawyers declined to provide representation rather than face professional discipline, leaving many of the accused without counsel.[50] In a *New York Times* article published in 1952, Justice William O. Douglas lamented a "black silence of fear"[51] that had descended on society, and which imposed harsh consequences upon the practicing bar. He described the fear experienced by practicing lawyers in stark terms:

> Fear runs rampant. Fear even strikes at lawyers and the bar. Those accused of illegal Communist activity-all presumed innocent, of course, until found guilty-have difficulty getting reputable lawyers to defend them. Lawyers have

42. *Id.*

43. The Smith Act prohibited "wil[l]fully and knowingly conspiring to organize the Communist Party of the United States as a group to teach and advocate the overthrow and destruction of the government by force and violence." United States v. Dennis, 183 F.2d 201 (2d Cir. 1950) (internal quotation marks omitted), *aff'd*, 341 U.S. 494 (1951).

44. *Id.*; *see also* James E. Moliterno, *Politically Motivated Bar Discipline*, 83 WASH. U. L. REV. 725, 737 (2005).

45. *See* JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 242–44 (1976).

46. Justice Black further warned that "the menace is most ominous for lawyers who are obscure, unpopular [,] or defenders of unpopular persons or unorthodox causes." Sacher v. United States, 343 U.S. 1, 18 (1952) (Black, J., dissenting); Moliterno, *supra* note 44, at 737 n.62.

47. W. Bradley Wendel, *Lawyer Shaming*, 2022 UNIV. ILL. L. REV. 175, 189–90 (2022).

48. *Id.*

49. Moliterno, *supra* note 44, at 737. Sacher and Isserman were veteran attorneys who had devoted their work to civil rights and labor defense cases, and they were reinstated after the Red Scare had subsided. *See id.* at 738 n.68.

50. *Id.* at 738.

51. William O. Douglas, *The Black Silence of Fear*, N.Y. TIMES, (Jan. 13, 1952), https://www.nytimes.com/1952/01/13/archives/the-black-silence-of-fear-if-we-are-afraid-of-ideas-justice-douglas.html [https://perma.cc/2S6T-5FVL].

> talked with me about it. Many are worried. Some could not volunteer their services, for if they did they would lose clients and their firms would suffer. Others could not volunteer because if they did they would be dubbed "subversive" by their community and put in the same category as those they would defend. This is a dark tragedy.[52]

Among the many government officials who produced this fear, J. Edgar Hoover was a powerful force. As director of the FBI, Hoover worked alongside Senator Joseph McCarthy to surveil and purge suspected communists "at every level of society."[53] Hoover had little tolerance for legal opposition, and that included the National Lawyers Guild (the Guild), which describes itself as "the nation's oldest and largest progressive bar association."[54] When the Guild defended alleged communists and published a report criticizing the FBI,[55] Hoover sought to intimidate the organization into submission.[56] First, Hoover orchestrated a report of his own, entitled "The National Lawyers Guild: Legal Bulwark of the Communist Party."[57] The report blatantly targeted the Guild for its legal advocacy, accusing it of "never fail[ing] to rally to the legal defense of the Communist Party."[58] The report listed the names of individual Guild litigators, accused them of "contempt for American courts," and recommended that all Guild members "be barred from Federal employment."[59] And it implored the ABA to consider whether Guild membership "is compatible with admissibility to the American bar."[60] If Hoover's goal in facilitating the report was to stoke fear, he succeeded. Guild members resigned en masse after its publication, and the Guild soon struggled to recruit young lawyers for fear "their careers would be destroyed by association with [the] organization."[61]

Hoover also enlisted the Attorney General to exert pressure on the Guild. Together, they sought to add the Guild to the government's list of "Subversive Organizations,"[62] which—at the time—included the Nazi Party and the Ku Klux

52. *Id.*

53. *How J Edgar Hoover Became One of the Most Powerful Men in America*, BBC, https://www.bbc.co.uk/programmes/articles/2gVWtHKKC2pdWbRyDrQRZmD/how-j-edgar-hoover-became-one-of-the-most-powerful-men-in-america [https://perma.cc/4LQ4-YNPK] (last visited Feb. 1, 2026).

54. *About*, NAT'L LAWS. GUILD, https://www.nlg.org/about/ [https://perma.cc/D8G9-V8PW] (last visited Feb. 1, 2026).

55. *See* Jules Lobel, *Transformational Movements: The National Lawyers Guild and Radical Legal Service*, 72 NAT'L LAWS. GUILD REV. 193, 207–08 (2015); A HISTORY OF THE NATIONAL LAWYERS GUILD: 1937-1987 26–28 (Victor Rabinowitz & Time Ledwith eds., 1987).

56. *See* A HISTORY OF THE NATIONAL LAWYERS GUILD: 1937-1987, *supra* note 55, at 28.

57. Lobel, *supra* note 55, at 207–08.

58. H.R. REP. NO. 81-3123, at 1–2 (1950).

59. *Id.* at 3–5, 18–21.

60. *Id.* at 21.

61. Lobel, *supra* note 55, at 208.

62. *Id.* at 208–09.

Klan.[63] More than 700 Guild members resigned in response, shrinking the organization to one-fifth its former size within two years.[64] Those who remained went to court to prevent the Attorney General from adding the Guild to the list of subversives.[65] After five years, the Guild succeeded, with the Justice Department dropping its effort after an internal recognition it "ha[d] no credible evidence" to win the case.[66] But Hoover's attempt to evade the rule of law was nonetheless effective. "Virtually the entire energy of the [Guild] in the '50s had been devoted to its own defense," reducing the availability of counsel to the political dissidents in Hoover's crosshairs.[67]

Lawyers in the civil rights movement also faced government attacks when they advocated for equality on behalf of their clients. Edna Smith Primus was a South Carolina lawyer handling ACLU litigation on a pro bono basis. Primus spoke to low-income women who were sterilized as a condition of receiving Medicaid assistance, and she offered to provide them with free ACLU representation.[68] South Carolina responded by disciplining Primus for engaging in what it called unlawful solicitation of clients.[69] Although the Supreme Court ultimately found Primus's actions were protected activity,[70] the chilling message to other civil rights lawyers was clear.

Elsewhere in the South, state and local authorities—in concert with bar associations—brought attorney discipline and criminal charges against NAACP-affiliated attorneys for illegally soliciting clients. In Mississippi,[71] Alabama,[72] and

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63. Robert Justin Goldstein, *Prelude to McCarthyism: The Making of a Blacklist*, 38 PROLOGUE MAG., no. 3, Fall 2006, https://www.archives.gov/publications/prologue/2006/fall/agloso.html [https://perma.cc/R98B-RT69].

64. Lobel, *supra* note 55, at 209.

65. A HISTORY OF THE NATIONAL LAWYERS GUILD: 1937-1987, *supra* note 55, at 30.

66. *Id.*

67. Lobel, *supra* note 55, at 209.

68. In re Primus, 436 U.S. 412, 414–17 (1978).

69. *Id.* at 417–21.

70. *Id.* at 439. The Supreme Court found that Primus's discipline was violative of her First Amendment rights of political expression and association, and that litigation on behalf of unpopular viewpoints or clients constituted protected political dissent. *Id.* at 426, 439.

71. R. Jess Brown, one of only four Black lawyers in Mississippi in the 1950's, was credited with filing the state's first civil rights suit. *R. Jess Brown, 77, Civil Rights Lawyer in Mississippi Cases*, N.Y. TIMES (Jan. 3, 1990), https://www.nytimes.com/1990/01/03/obituaries/r-jess-brown-77-civil-rights-lawyer-in-mississippi-cases.html [https://perma.cc/8N37-8TA9]. When Brown agreed to serve as local counsel in a highly charged voting rights case along with three NAACP lawyers, he faced disbarment and criminal prosecution under a Mississippi law that was later ruled unconstitutional. *See* Sarah C. Campbell, *The Role of Lawyers in the Civil Rights Movement in Mississippi*, MISS. HISTORYNOW (Feb. 2022), https://mshistorynow.mdah.ms.gov/issue/role-lawyers-civil-rights-movement-mississippi [https://perma.cc/6YYX-BQ6V].

72. Arthur Shores was a civil rights lawyer in Alabama who was well known for his representation of Autherine Lucy, a Black woman whose admission to the all-white University of Alabama in 1955 was fought by powerful white officials. *Arthur Davis Shores*, ENCYCLOPEDIA OF ALA., https://encyclopediaofalabama.org/article/arthur-davis-shores/ [https://perma.cc/K4VE-34MV] (last visited Sep. 17, 2025). Shores's legal representation and leadership in the civil rights movement in Alabama placed his life in danger. Bombs were exploded in his Birmingham home, and he and his family received threatening letters and phone calls. Phillip Howard, *Preserving the Legacy of Arthur Shores*, CONSERVATION FUND (Feb. 20, 2024), https://www.conservationfund.org/our-impact/news-insights/preserving-legacy-arthur-shores/ [https://perma.cc/N3FA-8GPQ].

Virginia,[73] lawyers faced the loss of their professional licenses and, at times, were the targets of personal violence directed at their homes and families. In one incident, police officers in Columbia, Tennessee, abducted Thurgood Marshall, who had recently won an acquittal for a Black man charged with attempted murder.[74] The police attempted to transport Marshall to a waiting lynch mob, but Marshall was saved when another lawyer and a journalist intervened.[75]

Several states passed laws to dissuade lawyers from accepting race discrimination cases. Mississippi prohibited in-state lawyers from accepting fees to file lawsuits attempting to change state policy.[76] Virginia passed emergency laws expanding criminal offenses such as barratry, champerty, and the unauthorized practice of law aimed squarely at civil rights litigation filed by the NAACP.[77] A Virginia legislative committee subpoenaed NAACP membership rosters and urged the state bar to prosecute attorneys who brought civil rights lawsuits.[78] Alabama obtained a court order forcing the NAACP to disclose the identity of its members,[79] a move intended to intimidate and disrupt the organization's ability

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73. Samuel Tucker was a civil rights lawyer who challenged the decision of Virginia officials to close public schools rather than desegregate them after the Supreme Court's decision in *Brown v. Board of Education* in 1954. His efforts to achieve desegregation resulted in an effort to disbar him from the practice of law in the 1960s. Virginia officials also sought to prosecute Tucker for solicitation activities and claims that he enlisted plaintiffs in litigation under false pretenses. BRIAN J. DAUGHERITY, KEEP ON KEEPING ON: THE NAACP AND THE IMPLEMENTATION OF BROWN V. BOARD OF EDUCATION IN VIRGINIA 46, 52-54, 87-89 (2016).

74. Ron Cassie, *Fifty Years After Thurgood Marshall's Supreme Court Confirmation, Baltimore's Great Dismantler of Jim Crow Remains a Colossus of U.S. History*, BALT. MAG., https://www.baltimoremagazine.com/section/historypolitics/justice-for-all-50-years-after-thurgood-marshall-supreme-court-confirmation/ [https://perma.cc/KC4S-WXEM] (last visited Aug. 17, 2025).

75. *50 Years After Historic Confirmation to Supreme Court, Thurgood Marshall's Legacy Continues to Shape Future*, DEATH PENALTY INFO. CTR. (Mar. 14, 2025), https://deathpenaltyinfo.org/50-years-after-historic-confirmation-to-supreme-court-thurgood-marshalls-legacy-continues-to-shape-future [https://perma.cc/T2LP-QJ7M].

76. In an effort to counter NAACP litigation, Mississippi legislators passed a law prohibiting lawyers licensed by the state from "accepting fees from individuals or organizations, for the purpose of filing suits to change the policy of the state." Campbell, *supra* note 71.

77. As part of Virginia's resistance to NAACP desegregation efforts, state officials passed a package of bills expanding the definitions of common law legal ethics offenses and actively sought to prosecute client solicitation. *See The South's Amended Barratry Laws: An Attempt to End Group Pressure Through the Courts*, 72 Yale L.J. 1613, 1618–22 (1963); *see also* NAACP v. Button, 371 U.S. 415, 423–27 (1963).

78. *See* Nat'l Ass'n for the Advancement of Colored People v. Comm. on Offenses Against the Admin. of Just., 199 Va. 665, 665, 101 S.E.2d 631, vacated sub nom. Nat'l Ass'n for the Advancement of Colored People, Inc. v. Comm. on Offenses Against the Admin. of Just., 358 U.S. 40, 79 S. Ct. 24, 3 L. Ed. 2d 46 (1958) (reviewing subpoenas that ordered the production of documents disclosing, among other things, the names of the members of the NAACP and its voluntary workers and associates in Virginia); *see also* Project DAPS – *Report of the Committee on Offenses Against the Administration of Justice* (Boatwright Committee) 1959, https://projectdaps.org/items/show/1196 [https://perma.cc/42AB-CEAQ] (making recommendations regarding proper actions of lawyers in ways that would seriously impair the legal activities of NAACP). The Virginia State Bar subsequently attempted to disbar Samuel Tucker, a Virginia lawyer providing representation along with NAACP lawyers to desegregate local public schools. See DAUGHERITY, *supra* note 73 at 52-54, 87-89; see also S.J. Ackerman, *The Trials of S. W. Tucker*, WASH. POST 14, 24 (Jun. 11, 2000).

79. NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958).

to represent clients.[80] And when NAACP lawyers informed Virginia residents of their legal rights and encouraged them to retain their services to challenge racial segregation in public schools, the lawyers were disciplined for illegal solicitation.[81] These intimidation tactics had their intended impact. Exceedingly few white Southern lawyers represented civil rights workers in the Deep South,[82] and at least one white lawyer who did was disbarred.[83]

More recently, lawyers who represent individuals perceived to threaten national security in times of crisis have faced government intimidation and interference with their professional obligations. After the terrorist attack on September 11, 2001, President George W. Bush authorized the interception of international communications that might reveal links to Al Qaeda and other terrorist organizations in what was called the Terrorist Surveillance Program.[84] The program targeted not only suspected terrorists but also their attorneys, including lawyers who represented detainees at Guantánamo Bay.[85] In addition to practicing surveillance, executive officials claimed that detainees were "not entitled to unfettered access to counsel."[86] As one scholar explained, "the Guantánamo case study provides dramatic examples of [abuses of government power]. The government is not an 'ordinary' adversary but rather one with extraordinary power over the individual litigant and society as a whole. The government has an unparalleled breadth of coercive tools at its disposal."[87]

When law firms came under attack for representing Guantánamo detainees,[88] former U.S. Solicitor General Charles Fried rose to their defense. He wrote, "not only is the representation of the dishonorable honorable," but "it is the duty of the profession to make sure that every man has that representation."[89] As lawyers fulfilled this important professional responsibility, Fried urged the public to draw "no inference from the identity or objectives of a lawyer's client to the lawyer's

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80. The U.S. Supreme Court blunted this attack, ruling it unconstitutionally infringed on the NAACP's associational interests and advocacy, especially of dissident viewpoints. *Id.* at 462.

81. The NAACP later succeeded before the Supreme Court in challenging charges of illegal solicitation. In a landmark decision, the Supreme Court held that the NAACP's litigation activities were an exercise of free speech protected by the Constitution. NAACP v. Button, 371 U.S. 415, 437 (1963).

82. Moliterno, *supra* note 44, at 742.

83. *Id.* at 742–43, 743 n.112.

84. *See* Sabbeth, *supra* note 38, at 1512–13.

85. *See id.* at 1514.

86. *Id.*

87. *Id.* at 1534; *see also* Vincent Blasi, *The Pathological Perspective and the First Amendment*, 85 COLUM. L. REV. 449, 449–50 (1985) ("[T]he overriding objective at all times should be to equip the first amendment to do maximum service in those historical periods when intolerance of unorthodox ideas is most prevalent and when governments are most able and most likely to stifle dissent systematically. The first amendment, in other words, should be targeted for the worst of times."); Frederick Schauer, *The Second-Best First Amendment*, 31 WM. & MARY L. REV. 1, 2–5 (1989).

88. Wendel, *supra* note 47, at 185–86.

89. *Id.* at 186 (citing Charles Fried, *Mr. Stimson and the American Way*, WALL ST. J. (Jan. 16, 2007, 12:01 AM), https://www.wsj.com/articles/SB116892102246577373 [https://perma.cc/8UBW-3BDP]).

own moral character."[90] This imperative is underscored in the *Model Rules of Professional Conduct*, which provide that the representation of a client does not constitute an endorsement of the client's political, economic, social, or moral views or activities.[91]

Government pressure imposed on lawyers over the clients they represent has long threatened, and will continue to threaten, the rule of law.[92] In the next section, we describe the executive orders issued by President Trump against large law firms, which constitute the government's most recent campaign against the bar. Under the weight of the executive orders, the President has coerced powerful law firms into entering agreements that threaten their independence in providing pro bono legal assistance and that impact their willingness to represent future clients who may challenge the President's agenda. These executive orders and the resulting agreements—in the context of the government's historical intimidation of lawyers—demand that the organized bar reexamine and strengthen its ethical rules to ensure that lawyer independence is not compromised when threatened with political or financial harm.

II. THE WHITE HOUSE/LAW FIRM AGREEMENTS

Executive Orders and Memoranda are written directives from the President issued to government agencies and private parties to shape policy and direct the administration.[93] When issued within the executive powers granted to the President by the Constitution or by a Congressional delegation of power, these directives carry the force of law.[94] In 2025, President Trump issued an unprecedented 130 executive orders during the first 100 days of his second term in office.[95] These orders followed earlier commitments from then-candidate Trump to sanction his political opponents if he won the 2024 presidential campaign. He

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90. *Id.*

91. MODEL RULES R. 1.2(b).

92. Indeed, government attacks on lawyers for representing disfavored clients or challenging official policies are a world-wide phenomenon. As a result, the United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted a set of governing principles, known as the Basic Principles on the Role of Lawyers, which provide that "[g]overnments shall ensure that lawyers . . . are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference." THE EIGHTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS, HAVANA, CUBA, BASIC PRINCIPLES ON THE ROLE OF LAWYERS Principle 16 (Sep. 7, 1990), https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers [https://perma.cc/7UB8-4S8L]; *see also* Joseph R. Crowley Program, *Justice on Trial: State Security Courts, Police Impunity, and the Intimidation of Human Rights Defenders in Turkey*, 22 FORDHAM INT'L L. J. 2129, 2209–12 (1999).

93. *See* Abigail A. Graber, *Executive Orders: An Introduction*, CONG. RSCH. SERV. (Mar. 29, 2021), https://www.congress.gov/crs-product/R46738 [https://perma.cc/F6RQ-8THC].

94. *See* Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring).

95. Alexandra Hutzler, '*Unprecedented*'*: How Trump Has Pushed the Limits of Presidential Power in His First 100 Days*, ABC NEWS (Apr. 29, 2025), https://abcnews.go.com/Politics/unprecedented-trump-pushed-limits-presidential-power-100-days/story?id=121124189 [https://perma.cc/7AB8-C4HY].

made clear "this legal exposure extend[ed] to lawyers."[96] After winning the election, the President reiterated his intent to target certain law firms for engaging in litigation he deemed detrimental to American interests and "because they were very dishonest people."[97]

On February 25, 2025, the President ordered the suspension of security clearances for employees of the law firm Covington & Burling who had assisted former Special Counsel Jack Smith,[98] and he directed federal agencies to terminate existing contracts with the law firm.[99] In the following weeks, the President issued executive orders imposing punitive measures against four other major law firms: Perkins Coie,[100] Paul Weiss,[101] Jenner & Block,[102] and WilmerHale.[103]

These executive orders alleged the targeted law firms had "abused [their] pro bono practice[s] to engage in activities that undermine justice and the interests of the United States."[104] In response, the orders suspended security clearances held by law firm individuals; terminated law firm contracts with federal agencies; required government contractors doing business with targeted law firms to disclose whether their business was related to government contracts; prohibited access by law firm employees to federal government buildings; and limited government officials acting in their official capacity from engaging with law firm employees.[105] Additionally, federal agencies were ordered to refrain from hiring law firm employees for government jobs.[106] In short, the executive orders imposed punitive measures designed to disrupt the ability of law firms to represent their clients and engage in the practice of law.[107]

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96. *See* Wilmer Cutler Pickering Hale and Dorr LLP v. Exec. Off. of President, 784 F. Supp. 3d 127, 138 (D.D.C. 2025) [hereinafter WilmerHale Summary Judgment Opinion].

97. *Id.*; *see also* John R. Vile, *Trump's Executive Orders Against Law Firms,* FREE SPEECH CTR. (Oct. 2, 2025) https://firstamendment.mtsu.edu/article/trumps-executive-orders-against-law-firms/ [https://perma.cc/5V79-ML4F].

98. As Special Counsel, Jack Smith had brought criminal charges against then-former President Trump. After Trump was reelected, a watchdog agency launched an investigation into Smith's conduct as Special Counsel. Darlene Superville & Eric Tucker, *Watchdog Agency Investigates Ex-Trump Prosecutor Jack Smith for Alleged Illegal Political Activity*, PBS (Aug. 2, 2025), https://www.pbs.org/newshour/politics/watchdog-agency-investigates-ex-trump-prosecutor-jack-smith-for-alleged-illegal-political-activity [https://perma.cc/6CXJ-3SLE].

99. *See* Memorandum on Suspension of Security Clearances and Evaluation of Government Contracts, 2025 DAILY COMP. PRES. DOC. 303 (Feb. 25, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/suspension-of-security-clearances-and-evaluation-of-government-contracts/ [https://perma.cc/AAZ3-GVXC].

100. Exec. Order No. 14230, 90 Fed. Reg. 11781 (Mar. 6, 2025).

101. Exec. Order No. 14237, 90 Fed. Reg. 13039 (Mar. 14, 2025).

102. Exec. Order No. 14246, 90 Fed. Reg. 13997 (Mar. 25, 2025).

103. Exec. Order No. 14250, 90 Fed. Reg. 14549 (Mar. 27, 2025).

104. *Id.* The executive orders also claimed that the law firms had supported efforts to discriminate on the basis of race, obstructed efforts to prevent illegal aliens from committing crime and trafficking in drugs, and degraded the quality of American elections. *See, e.g.*, *id.*

105. *See, e.g.*, *id.*

106. *See, e.g.*, *id.*

107. The executive orders also instructed the Equal Employment Opportunity Commission to review the employment practices of law firms for consistency with Title VII of the Civil Rights Act of 1964 and directed

The executive orders recounted examples of "dangerous activity" by the targeted firms. The order against Perkins Coie cited the law firm's representation of "failed Presidential candidate Hillary Clinton" in 2016.[108] The Paul Weiss executive order referenced the representation of law firm partner Mark Pomerantz, who joined the Manhattan District Attorney's office and helped prosecute Trump on charges brought by that office.[109] Jenner & Block's order alleged that the firm condoned partisan "lawfare" and abused its pro bono practice by supporting attacks "against women and children based on a refusal to accept the biological reality of sex."[110] In addition, it claimed that Jenner & Block re-hired a lawyer involved in Robert Mueller's investigation of Trump.[111] WilmerHale allegedly welcomed Robert Mueller and one of his top aides into their firm after they led an investigation of the President.[112]

On April 9, 2025, the President targeted a fifth law firm, Susman Godfrey.[113] Again, through an executive order, the President sought to sanction the law firm by terminating its security clearances and federal contracts.[114] The order explained Susman Godfrey "should not have access to our Nation's secrets nor be deemed [a] responsible steward[] of any Federal funds," as the firm had been involved in the election and "administer[ed] a program where it offer[ed] financial awards and employment opportunities only to 'students of color.'"[115]

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the Attorney General to investigate whether large law firms doing business with federal entities were in compliance with "race-based and sex-based non-discrimination laws." Exec. Order No. 14230, 90 Fed. Reg. 11781 (Mar. 6, 2025).

108. *Id.* The executive order claimed, *inter alia*, that the law firm had manufactured a false dossier designed to steal the election and worked with George Soros to overturn election laws requiring voter identification. *Id.*

109. Exec. Order No. 14237, 90 Fed. Reg. 13039 (Mar. 14, 2025). The President similarly criticized the firm for this and other activity on social media. *See* Daniel Barnes, *Inside the Fallout at Paul, Weiss After the Firm's Deal with Trump*, POLITICO (June 29, 2025), https://www.politico.com/news/2025/06/29/paul-weiss-brad-karp-trump-fallout-00420354 [https://perma.cc/2ABB-S9FQ.].

110. Exec. Order No. 14246, 90 Fed. Reg. 13997 (Mar. 25, 2025).

111. *Id.*

112. Exec. Order No. 14250, 90 Fed. Reg. 14549 (Mar. 27, 2025).

113. Exec. Order No. 14263, 90 Fed. Reg. 15615 (Apr. 9, 2025); *see also* CNBC Television, *President Trump Discusses Tariff Reversal and Signs Executive Order in the Oval Office*, YOUTUBE (Apr. 9, 2025), https://www.youtube.com/live/mYm7kmOC37s?t=649s [https://perma.cc/4WSL-GYUA] (at 10:48–13:00) (recording the signing of the Susman order).

114. Exec. Order No. 14263, 90 Fed. Reg. 15615 (Apr. 9, 2025).

115. *Id.* Apparently, the executive order is referring to representational activities by Susman Godfrey on behalf of Dominion Voting Systems in defamation lawsuits against Fox News, Rudy Giuliani, and Sidney Powell, among others, for unfounded claims that Dominion and others had rigged the 2020 election against Donald Trump. *See, e.g.*, Melissa Quinn, *Judge Finds Trump Executive Order Punishing Susman Godfrey law Firm Unconstitutional*, CBS NEWS (June 27, 2025), https://www.cbsnews.com/news/judge-strikes-down-trump-executive-order-punishing-susman-godfrey-law-firm/ [https://perma.cc/WF5E-CKNX]. In addition, Susman Godfrey administered a law firm diversity scholarship, the Susman Godfrey Prize, that recognizes and supports students of color who are in their first and second year of law school. *See* Tatyana Monnay, *Susman Puts Money Into DEI Scholarships During Trump Battle (1)*, BLOOMBERG L. (May 16, 2025), https://news.bloomberglaw.com/business-and-practice/susman-puts-more-money-into-dei-scholarships-during-trump-battle [https://perma.cc/7FE7-QWEN].

Through these executive orders, the President leveraged the full weight of the federal government against the nation's largest and most powerful law firms for representing clients who opposed him or had advanced causes contrary to his agenda. Stripped of security clearances and access to federal buildings, and to clients with federal contracts, these law firms faced potentially devastating consequences. If executive power could render these elite law firms impotent against a president's administration, it would communicate to the entire legal profession that lawyers better toe the line.[116]

The President underscored this message on March 22, 2025, when he issued a Memorandum entitled, "Preventing Abuses of the Legal System and the Federal Court."[117] This Memorandum asserted that "misconduct by lawyers and law firms threaten[ed] our national security, homeland security, public safety, or election integrity."[118] It claimed that lawyers litigating against the federal government were engaged in "baseless partisan attacks," and it directed the Attorney General to seek sanctions against lawyers and refer them for disciplinary action, and to review lawyer representation over the past eight years to determine whether additional lawyers should lose their security clearances or federal contracts.[119] This Memorandum made clear no member of the bar was exempt from government sanction.[120]

Under the weight of the executive orders, the President offered the targeted firms an opportunity to escape grievous harm by negotiating with him and acceding to his demands. As a former business negotiator, the President knew his executive orders could cost the law firms lucrative clients who possessed contracts with the federal government, as well as future clients who wanted to stay in the

116. *See* David Schultz, *Trump Attacks Could Have Killed Law Firms, Yale Prof Says*, BLOOMBERG L. (Oct. 7, 2025), https://news.bloomberglaw.com/us-law-week/trump-attacks-could-have-killed-law-firms-yale-prof-says [https://perma.cc/3THK-XH7U] ("[A]ccording to Yale Law School professor John Morley . . . [t]he point here is to extract a demonstrative form of obedience . . . . [and we have] already seen a chilling effect with firms less willing to take on matters pushing back against the administration than in Trump's first term.") (internal quotation marks omitted).

117. Memorandum on Preventing Abuses of the Legal System and the Federal Court, 2025 DAILY COMP. PRES. DOC. 387 (Mar. 22, 2025), https://www.whitehouse.gov/presidential-actions/2025/03/preventing-abuses-of-the-legal-system-and-the-federal-court/ [https://perma.cc/3FSC-Z4G2].

118. *Id.*

119. *Id.* The ABA has characterized the President's executive orders and memoranda as representing a "Law Firm Intimidation Policy," whose targets include, "at minimum," lawyers who represented clients or causes disfavored by President Trump, "or who engaged in other disfavored forms of expression." Complaint for Declaratory and Injunctive Relief at ¶ 4, 66–67, A.B.A. v. Exec. Off. President, No. 1:25-cv-01888 (D.D.C. June 16, 2025) [hereinafter ABA Complaint].

120. Walter Olson, a senior fellow at the Cato Institute, put it this way: "These orders do more than just take revenge against particular lawyers who have crossed Donald Trump . . . . They are meant to send the message that it is dangerous to oppose him in court, that you are apt to suffer not just yourself, but also law firms that you're associated with will suffer sweeping penalties that can threaten their very ability to go on existing." Melissa Quinn, *Trump's Crusade Against Big Law Firms Sparks Fears of Long-lasting Damage*, CBS NEWS (Apr. 2, 2025), https://www.cbsnews.com/news/trumps-big-law-firms-retribution/ [https://perma.cc/843Y-5T5Y].

President's favor.[121] By first imposing harsh sanctions, he rendered subsequent negotiations ripe for obtaining major concessions.

Within days, Paul Weiss agreed to the President's terms and pledged to provide "$40 million in pro bono legal services over the course of President Trump's term in office to support the Administration's initiatives."[122] With this quick victory in hand as precedent, the President revoked his prior executive order against Paul Weiss.[123] Soon thereafter, three other major law firms proactively sought to avoid the President's ire, making deals with the administration before executive orders were issued against them. Skadden Arps, Willkie Farr, and Milbank promptly agreed to provide $100 million or more in uncompensated legal services to causes or issues the President supports.[124] Skadden Arps, highly regarded for its post-graduate, public interest fellowship program that provides essential legal help to impoverished and disadvantaged clients, now agreed that it would fund fellowships for promising law school graduates to work on "causes in line with the administration's priorities."[125]

Five more large law firms quickly followed suit, making substantial concessions to the administration. Cadwalader, Kirkland, Latham, Simpson Thacher, and A&O Shearman all committed to providing at least $100 million in free legal services for work on causes backed by the White House.[126] In a matter of weeks, nine of the nation's leading law firms had committed close to one billion dollars in free legal services to causes acceptable to the President. In addition, the firms agreed not to engage in "illegal DEI discrimination" and to document their compliance to the EEOC prospectively.[127] That law firms rushed to agree preemptively to the President's demands, even without being named as targets of an executive order, demonstrates the government's ability to intimidate even the most powerful law firms.[128]

121. *See* 363 Law Professors, *supra* note 6, at 17 n.11 ("The Executive Order has . . . caused Perkins Coie to lose clients.").

122. Ali Abbas Ahmadi, *Trump Rescinds Order Targeting Law Firm After It Makes $40m Promise*, BBC (Mar. 21, 2025), https://www.bbc.com/news/articles/c2d4kex0w2ro [[https://perma.cc/XSJ4-DTMX] (quoting President Trump's Truth Social post).

123. Exec. Order No. 14244, 90 Fed. Reg. 13685 (Mar. 21, 2025) (revoking Exec. Order No. 14237).

124. 363 Law Professors, *supra* note 6, at 3 n.5.

125. *Id.*

126. Matthew Goldstein, *Five More Big Law Firms Reach Deals with Trump*, N.Y. TIMES (Apr. 11, 2025), https://www.nytimes.com/2025/04/11/business/trump-law-firms-kirkland-ellis-latham-watkins.html [https://perma.cc/VDJ8-7N52]; Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Apr. 11, 2025 at 09:19 ET), https://truthsocial.com/@realDonaldTrump/posts/114320237164839938 [https://perma.cc/4MKL-BSLN] (announcing Cadwalader agreement); Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Apr. 11, 2025 at 09:21 ET, https://truthsocial.com/@realDonaldTrump/posts/114320245355397433 [https://perma.cc/ALE6-DF8A] (announcing Kirkland, Latham, Simpson Thacher, and A&O Shearman agreements).

127. Brian Baxter & Meghan Tribe, *Trump's Big Law Deals Spell Out Broad Enforcement Terms*, BLOOMBERG L. (May 2, 2025), https://news.bloomberglaw.com/business-and-practice/trumps-big-law-deals-spell-out-broad-enforcement-terms [https://perma.cc/7XRR-PC9Q].

128. *See* Erin Mulvany & C. Ryan Barber, *Fear of Trump Has Elite Law Firms in Retreat*, WALL ST. J. (Mar. 9, 2025), https://www.wsj.com/us-news/law/fear-of-trump-has-elite-law-firms-in-retreat-6f251dec [https://perma.cc/3Q7S-UNU6] ("[T]he industry is fearful of taking on a president who hasn't shied away from punishing his enemies.").

The President's campaign against prominent law firms rich with talent and resources suggests that he regards the bar as a formidable check on his exercise of presidential power. But President Trump's strong actions against institutions extend beyond the bar. His deployment of financial pressure, withholding of federal funds, and threats of adverse action by federal agencies, followed by negotiations to secure concessions, mirrors similar dealings with mainstream media[129] and higher educational institutions[130] that threaten to undermine the administration's independence and control. In each case, these actions send a message: for these institutions to financially succeed, they must play ball with the administration.

A. CONCESSIONS UNDER DURESS

The President's agreement with Paul Weiss illustrates the difficult position law firms faced in the wake of his punitive executive orders. Paul Weiss was targeted in retribution for its pro bono representation which the firm had provided at the request of the District of Columbia's Attorney General in a lawsuit against the Proud Boys and Oath Keepers for their participation in the January 6 attack on the Capitol, and for the firm's involvement in furtherance of the criminal prosecution of President Trump in New York in which a firm partner investigated Trump

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129. President Trump sued both ABC and CBS in separate lawsuits. He sued CBS for its 60 Minutes interview of Kamala Harris, contending the network modified the transcript to promote her candidacy. Legal experts agreed that the lawsuit was without merit. CBS's corporate owner, Paramount, nonetheless entered a multi-million-dollar settlement, seemingly concerned the administration would not otherwise approve a planned merger. *See* Brian Stelter & Liam Reilly, *Paramount Settles Trump's '60 Minutes' Lawsuit with $16 million Payout and No Apology*, CNN (July 2, 2025), https://www.cnn.com/2025/07/02/media/cbs-trump-60-minutes-paramount-settlement [https://perma.cc/ZKL3-PMRP]. Soon after, CBS announced it was canceling Stephen Colbert's Late-Night Show, the long-time leader among all network programming in its time slot, after Colbert—a frequent critic of the President—publicly criticized the settlement. CBS asserted the show's cancellation was "purely a financial decision." Yurii Stasiuk & Nicole Markus, *CBS Cancels Stephen Colbert's Show Days After Trump Settlement Criticism*, POLITICO (July 18, 2025), https://www.politico.com/news/2025/07/18/cbs-cancels-stephen-colbert-00462089 [https://perma.cc/QB5L-XH4C]. ABC News similarly settled for $15 million when Trump sued the organization for defamation. Giselle Ruhiyyih Ewing, *ABC and Stephanopoulos to Pay Trump $15M, Apologize in Defamation Suit Settlement*, POLITICO (Dec. 14, 2024), https://www.politico.com/news/2024/12/14/trump-abc-stephanopoulos-settlement-00194391 [https://perma.cc/NM5B-8G7T].

130. The President imposed sanctions against, and sought subsequent deals with, leading institutions of higher education. In a letter dated April 11, 2025, his administration requested changes to Harvard University's admissions and hiring practices. When Harvard refused to acquiesce, the President stripped it of billions of dollars in research funding, barred it from enrolling international students, and sought to revoke its non-profit tax status. His administration then sought to extract concessions through an agreement, but Harvard chose to litigate. *See* Alvin Powell, *Harvard Files Lawsuit Against Trump Administration*, HARV. GAZETTE (Apr. 21, 2025), https://news.harvard.edu/gazette/story/2025/04/harvard-files-lawsuit-against-trump-administration/ [https://perma.cc/X8RV-DWKL]. Other universities have made concessions in the face of similar pressure, such as agreeing to internal policy changes and committing to pay hundreds of millions in fines for the restoration of federal funding. *See* Alan Blinder, *Penn Agrees to Limit Participation of Transgender Athletes*, N.Y. TIMES (July 1, 2025), https://www.nytimes.com/2025/07/01/us/penn-title-ix-transgender-swimmer-trump.html [https://perma.cc/5K4F-HK9L]; Sharon Otterman, *Columbia Agrees to $200 Million Fine to Settle Fight with Trump*, N.Y. TIMES (July 23, 2025), https://www.nytimes.com/2025/07/23/nyregion/columbia-trump-funding-deal.html [https://perma.cc/5M74-JA3H] ("The deal is a significant milestone in the Trump administration's quest to bring elite universities to heel . . . The expectation is that the Columbia settlement will provide a template for future deals.").

as a special prosecutor in the Manhattan District Attorney's office.[131] President Trump's March 14, 2025 executive order entitled "Addressing Risks From Paul Weiss" threatened the law firm with the same punitive measures imposed in other executive orders, designed to disrupt the firm's business.[132]

The White House rescinded the executive order against Paul Weiss one week after the law firm ceded to the President's demands.[133] On March 20, 2025, Trump announced his agreement with Paul Weiss on social media. He described the agreement as providing $40 million of free legal services to clients with a "full spectrum of political viewpoints" on "mutually agreed projects."[134] He revoked his prior order against Paul Weiss the following day, in a new executive order citing the firm's "remedial action."[135]

The text of the revoking executive order claimed that Paul Weiss was among the "[g]lobal law firms [that] for years played an outsized role in undermining the judicial process and in the destruction of bedrock American principles."[136] But now, according to the President, "Paul Weiss indicated that it will engage in a remarkable change of course," communicating to the world—and especially to the legal profession—that Paul Weiss had done wrong but would now adhere to the President's policy preferences. To this end, the President asserted that Paul Weiss was

> [A]dopting a policy of political neutrality with respect to client selection and attorney hiring; taking on a wide range of pro bono matters representing the full political spectrum; committing to merit-based hiring, promotion, and retention, instead of "diversity, equity, and inclusion" policies; dedicating the equivalent of $40 million in pro bono legal services during [his] term in office to support causes including assisting our Nation's veterans, fairness in the justice system, and combating anti-Semitism; and other similar initiatives.[137]

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131. Exec. Order No. 14237, 90 Fed. Reg. 13039 (Mar. 14, 2025); *see* Amanda Robert, *Paul Weiss is Latest Law Firm Targeted by Trump Administration*, ABA J. (Mar. 17, 2025), https://www.abajournal.com/news/article/paul-weiss-is-latest-firm-targeted-by-trump-administration [https://perma.cc/XH97-WKXL]; David Thomas, *For Proud Boys Lawsuit, D.C. Turns to Paul Weiss, Dechert,* REUTERS (Dec. 14, 2021), https://www.reuters.com/legal/government/proud-boys-lawsuit-dc-turns-paul-weiss-dechert-2021-12-14/ [https://perma.cc/DR6T-SCTB].

132. Exec. Order No. 14237, *supra* note 131. The Paul Weiss Order mirrored, and at times cross-referenced, the prior order against Perkins Coie. ABA Complaint, *supra* note 119, at ¶ 85.

133. Exec. Order No. 14244, 90 Fed. Reg. 13685 (Mar. 21, 2025) (revoking Exec. Order No. 14237); David Lat, *Paul Weiss Cuts A Deal With Donald Trump*, ORIGINAL JURISDICTION (Mar 21, 2025), https://davidlat.substack.com/p/paul-weiss-and-brad-karp-cut-a-deal-with-donald-trump-to-rescind-the-executive-order [https://perma.cc/H427-4UD4] ("Trump will rescind his executive order targeting the firm, in exchange for various concessions agreed to by chair Brad Karp.").

134. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Mar. 20, 2025 at 15:10 ET), https://truthsocial.com/@realDonaldTrump/posts/114197044617921519 [https://perma.cc/FUA3-K8BH].

135. Exec. Order No. 14244, 90 Fed. Reg. 13685 (Mar. 21, 2025) (revoking Exec. Order No. 14237).

136. *Id.*

137. *Id.*

The message was clear. To escape punitive sanctions, Paul Weiss was admitting to past sins and committing to changes in its client selection and attorney hiring practices, pro bono programs, and diversity initiatives in ways the President found acceptable. This agreement was likely intended as a blueprint for other law firms to follow.

The White House announced its intent to withdraw the executive order against Paul Weiss after a meeting with the law firm's chairman in which the chair agreed to the settlement with the administration and acknowledged wrongdoing by a former Paul Weiss partner who had led the New York state criminal prosecution of President Trump.[138] As the President later stated on social media, the firm agreed not to "deny representation to clients, including in pro bono matters and in support of non-profits, because of the personal political views of individual lawyers," and to "take on a wide range of pro bono matters that represent the full spectrum of political viewpoints of our society, whether 'conservative' or 'liberal.'"[139] This was in addition to the firm's "dedicat[ion of] the equivalent of $40 million in pro bono legal services over the course of President Trump's term to support the Administration's initiatives such as assisting our Nation's veterans, fairness in the Justice System, the President's Task Force to Combat Antisemitism, and other mutually agreed projects."[140] Paul Weiss's chair responded that he was gratified by the agreement and looked forward to a constructive relationship with the President and his administration.[141]

On March 23, 2025, the chair of Paul Weiss sent a message to the firm's lawyers acknowledging the agreement and explaining the reasons for his decision. The message justified the agreement on the basis that the President's executive order had posed "an unprecedented threat to [the] firm unlike anything [in its history,]" and one that "could easily have destroyed [the] firm" with the "full weight of the government down on [it], [its] people, and [its] clients."[142] This description, and the speed at which Paul Weiss acceded to the administration's demands, makes plain the coercive impact of the executive orders.

The chair's message further explained that the executive order "threatened our clients with the loss of their government contracts, and the loss of access to the government, if they continued to use the firm as their lawyers."[143] He emphasized that the executive order targeted everyone at the law firm, because it "raised the specter that the government would not hire our employees."[144] He claimed that

138. *See* Lat, *supra* note 133.
139. *Id.*
140. *Id.*
141. *Id.*
142. David Lat, *Brad Karp's Email To Paul Weiss About Its Deal With The Trump Administration*, ORIGINAL JURISDICTION (Mar. 23, 2025), https://davidlat.substack.com/p/brad-karp-firmwide-email-to-paul-weiss-about-the-trump-administration-deal [https://perma.cc/6UZT-GG66].
143. *Id.*
144. *Id.*

other firms had not come out to support Paul Weiss, but that some firms were "seeking to exploit [its] vulnerabilities by aggressively soliciting [its] clients and recruiting [its] attorneys."[145] He shared that he was faced with a "seemingly intractable problem" for which "there was no right answer," and he thought that a legal challenge in court would not erase the consequences of the executive order or prevent the firm's clients from taking their business elsewhere.[146] Accordingly, under such onerous conditions, he emphasized that an agreement with the President was in the law firm's best interest.

At the same time, the chair's communication to Paul Weiss's lawyers did not explain how the firm and the White House would engage in "mutually agreed projects" as referenced in their agreement.[147] It acknowledged that the firm could not ethically agree to have the administration decide what matters the law firm accepted, but it offered no detail on how the law firm would be able to comply with the agreed-upon terms, consistent with its professional obligations. And, particularly troubling, the Paul Weiss agreement—like the other agreements reached with major law firms—is apparently not in writing. Rather, the terms are largely found in the revoking executive order and in Trump's social media posts. If so, the law firm is vulnerable to future executive orders or sanctions if it violates the President's understanding of this loosely framed agreement.[148] Without a signed writing by both parties, the terms are not transparent, and vague reports of their details only contribute to a chilling effect on future conduct, something that law firms would not likely accept on behalf of their own clients.

After Paul Weiss became the first law firm to settle with the President, some members of the bar reacted with anger and criticism.[149] A former partner at Wachtell Lipton called the law firm's agreement "disgraceful" and a "capitulation."[150] A lawyer for a non-profit organization commented that the agreement was a "bad look" but might simply represent what the law firm was already doing or planning to do on its own.[151] And a former head of Arnold & Porter, the DC Bar, and the Legal Services Corporation, who is a longtime advocate for pro bono work, called the law firm—and others that later settled with the administration—a "capitulating firm."[152] Referencing Paul Weiss, he stated "[t]hey now have a new partner in vetting every pro bono decision they make: Donald

145. *Id.*

146. The chair further shared with his colleagues that "no one in the wider world can appreciate how stressful it is to confront an executive order like this until one is directed at you." *Id.*

147. Lat, *supra* note 133.

148. *See* ABA Complaint, *supra* note 119, at ¶ 88.

149. Barnes, *supra* note 109.

150. Lat, *supra* note 133; *see also id.* ("Reactions to the Trump/Paul Weiss deal on social media, at least from the folks that I follow, were largely negative.").

151. *Id.*

152. Katelyn Polantz, *Trump's Crackdown on Law Firms is Chilling the Future of Pro Bono Legal Work*, CNN (May 7, 2025), https://www.cnn.com/2025/05/07/politics/trump-law-firm-crackdown-pro-bono-work [https://perma.cc/2W9M-PF27].

Trump."[153] "They effectively disqualified themselves in playing any role in opposing the Trump administration's attacks on the rule of law."[154]

Paul Weiss's leadership acted in what it considered to be the law firm's best business interest.[155] However, its agreement only emboldened greater government intrusion into the independence of lawyers, especially for less powerful and more vulnerable law firms.[156]

B. THE LITIGATING LAW FIRMS

Not all targeted law firms entered into agreements with the White House. Perkins Coie, Jenner & Block, WilmerHale, and Susman Godfrey filed federal lawsuits challenging the executive orders entered against them. The four law firms quickly obtained temporary relief in the courts and ultimately succeeded on summary judgment, at least pending appeal.[157] Perkins Coie was the first law firm to file a federal

153. *Id.*

154. *Id.* This criticism is ongoing almost a year after Paul Weiss made its agreement with the White House. When the firm's chairman was slated to speak at a bar association event, dozens of protesters gathered outside with signs that read "PAUL WEISS SELLS OUT DEMOCRACY," and a heckler within the event repeatedly interrupted the chairman's speech. Mike Vilensky, *Brad Karp Heckled at Gala as He Defends Paul Weiss Pro Bono*, BLOOMBERG L. (November 8, 2025), https://news.bloomberglaw.com/business-and-practice/brad-karp-heckled-at-gala-as-he-defends-paul-weiss-pro-bono [https://perma.cc/U4YP-M8AX].

155. *See* Barnes, *supra* note 109 ("Firm chair Brad Karp said he struck a deal with the White House to save his business.").

156. Most partners at Paul Weiss have declined to speak publicly about issues surrounding the firm's agreement with the President, but Kannon Shanmugam, a leading Supreme Court litigator at the firm and a former clerk to Justice Scalia, has called the President's actions "regrettable." Justin Henry, *Paul Weiss Top SCOTUS Lawyer Calls Trump Attacks 'Regrettable'*, BLOOMBERG L. (Oct. 23, 2025), https://news.bloomberglaw.com/business-and-practice/paul-weiss-top-scotus-lawyer-calls-trump-attacks-regrettable [https://perma.cc/V5QF-2S3Z]. Shanmugam stated that Trump's executive orders targeting firms "raise real issues concerning the rule of law and our legal system" and that, if institutions have problems, "we should try to fix those problems rather than destroy the institutions." *Id.*

157. *See generally* Perkins Coie LLP v. U.S. Dep't of Just., No. 25-716, 2025 WL 1276857 (D.D.C. May 2, 2025) (finding, *inter alia*, that the executive order targeting Perkins Coie "Takes Retaliatory Actions Sufficient to Chill Speech," as evidenced by the fact several other highly successful law firms opted to pay hundreds of millions of dollars rather than subject themselves to the risk of a similar order); Jenner & Block LLP v. U.S. Dep't of Just., No. 25-916, 2025 WL 1482021 (D.D.C. May 23, 2025); WilmerHale Summary Judgment Opinion, *supra* note 96; Susman Godfrey LLP v. Exec. Off. of President, No. 25-1107, 2025 WL 1779830 (D.D.C. June 27, 2025). Some scholars speculated that the Trump Administration would not appeal these rulings. *See* Adam Liptak, *Trump's Strategy in Law Firm Cases: Lose, Don't Appeal, Yet Prevail*, N.Y. TIMES (June 16, 2025), https://www.nytimes.com/2025/06/16/us/politics/trump-strategy-law-firms-appeals.html [https://perma.cc/QZ3M-JMT6] ("[The government] knew that these were losing positions from the beginning . . . . I don't think they ever thought these were serious positions."). However, this speculation proved to be inaccurate. The government ultimately appealed all four law firm cases, with the last appeal filed on August 22, 2025, in the case enjoining the executive order against Susman Godfrey. *See* Abigail Adcox, *DOJ to Appeal Fourth Law Firm EO Case*, LAW.COM (Aug. 22, 2025), https://www.law.com/nationallawjournal/2026/03/02/sources-doj-plans-to-abandon-appeal-of-law-firm-eo-cases/ [https://perma.cc/MQ7C-HURG]. On March 2, 2026, the Justice Department moved to voluntarily dismiss the appeals before the U.S. Circuit Court for the District of Columbia, but DOJ reversed course the next day and requested that the appeals continue. On March 16, 2026, the Court granted DOJ's request and entered an Order permitting DOJ to withdraw its prior motion to voluntarily dismiss the appeals. Perkins v. Coie LLP v. U.S. Dep't of Just., No. 25-5241, ECF. No. 33 (D.C. Cir., Mar. 16, 2026); s*ee also* Kaelan Deese, Court Allows DOJ to Proceed with Appeal over Law Firm Executive Orders, Wash. Examiner (Mar. 16, 2026), https://www.msn.com/en-us/news/politics/court-allows-doj-to-proceed-with-appeal-over-law-firm-executive-orders/ar-AA1YLen6?ocid=BingNewsSerp [https://perma.cc/7UAR-AZBT].

complaint on March 11, 2025, and Jenner & Block filed on March 28, 2025. Both obtained temporary injunctions blocking implementation of the executive orders.[158] On March 28, 2025, WilmerHale filed a complaint and sought a temporary restraining order, which was granted the same day by the district court.[159]

Susman Godfrey filed its lawsuit on April 11, 2025, and a motion for a temporary restraining order three days later.[160] The district court judge granted the temporary restraining order, stating that "[t]he government has sought to use its immense power to dictate the positions that law firms may and may not take. The executive order seeks to control who law firms are allowed to represent. And this immensely oppressive power threatens the very foundation of legal representation in our country."[161] The judge lamented that "[w]e've already seen the effects of similar executive orders against other law firms. Law firms across the country are entering into agreements with the government out of fear that they will be targeted next, and that coercion is plain and simple."[162]

In the Perkins Coie lawsuit, 504 law firms signed an amicus brief on Perkins's behalf, calling the President's executive orders "a grave threat to our system of constitutional governance and to the rule of law."[163] At the injunction hearing, the district court judge stated that the "retaliatory animus" of the Perkins executive order is "clear on its face" and appears to violate constitutional restrictions on "viewpoint discrimination."[164] In the Jenner & Block case, the district court stated in its summary judgment order that the President's actions "cast[] a chill over the whole of the legal profession, leaving lawyers around the country weighing the necessity of vigorous representation against the peril of crossing the federal government."[165] And the district court in the WilmerHale case stated that the executive orders threatened "[t]he cornerstone of the American system of

158. Perkins Coie LLP v. U.S. Dep't of Just., 770 F. Supp. 3d 190, 191 (D.D.C. 2025); Jenner & Block LLP v. U.S. Dep't of Just., No. 25-916, 2025 WL 942426, at *2 (D.D.C. Mar. 28, 2025).

159. Wilmer Cutler Pickering Hale and Dorr LLP v. Exec. Off. Of President, 774 F. Supp. 3d 86, 88 (D.D.C. Mar. 28, 2025).

160. *Filings Relating to the Administration's Executive Order Against Susman Godfrey*, SUSMAN GODFREY, available at https://www.susmangodfrey.com/filings-relating-to-the-administrations-executive-order-against-susman-godfrey/ [https://perma.cc/D9SS-LQM3] (last visited Sept. 9, 2025).

161. Transcript of Motion Hearing at 51:6–11, Susman Godfrey LLP v. Exec. Off. Of President, No. 25-1107, 2025 WL 1113408 (D.D.C. Apr. 15, 2025).

162. *Id.* at 51:22–52:1.

163. Ben Protess, *More Than 500 Law Firms Back Perkins Coie in Fight With Trump*, N.Y. TIMES (Apr. 4, 2025), https://www.nytimes.com/2025/04/04/business/law-firms-perkins-coie-trump.html [https://perma.cc/X467-HXFJ]; *see also* Elizabeth Williamson, *Big Law Firms Bowed to Trump. A Corps of 'Little Guys' Jumped in to Fight Him*, N.Y. TIMES (July 21, 2025), https://www.nytimes.com/2025/07/21/us/politics/trump-big-law-firms-fight.html [https://perma.cc/2RP3-BSZW].

164. Transcript of Motion Hearing at 76:4–5, 75:12–13, 78:18–21, Perkins Coie LLP v. U.S. Dep't of Just., 770 F. Supp. 3d 190 (D.D.C. 2025) (No. 25-716).

165. Jenner & Block LLP v. U.S. Dep't of Just., No. 25-916, 2025 WL 1482021 at *115 (D.D.C. May 23, 2025).

justice[,] . . . an independent judiciary and an independent bar willing to tackle unpopular cases, however daunting."[166]

Despite the early success enjoyed by the litigating law firms, the chilling effect of the President's executive orders upon major law firms remained strong. When amici support, for example, was sought on behalf of Perkins during the filing of its legal challenge, the largest law firms did not agree to sign the amicus brief. None of the twenty largest firms (by revenue) signed the brief, and only eight of the top 100 signed.[167] Of the New York law firms that did not sign the amicus filing, some justified their refusal by stating that, if they had signed on, they would have drawn the President's ire, something they were unwilling to do.[168]

C. TERMS OF WHITE HOUSE/LAW FIRM AGREEMENTS

The depth of fear felt by large law firms was not diminished by the litigation success of others. Many firms chose to enter into settlements with the President even without the issuance of an executive order against them. Skadden Arps was one of these. Without an executive order—although one was anticipated—the law firm pledged $100 million in pro bono legal services to causes agreed upon by Skadden and the White House.[169] The President described the deal on social media as one in which

> Skadden will provide a total of at least $100 Million Dollars in pro bono Legal Services, during the Trump administration and beyond, to causes that the President and Skadden both support . . . [and a] pro bono Committee will be constituted to ensure that pro bono matters are consistent with the objectives of the program.[170]

This agreement was announced two weeks after Perkins Coie had obtained a favorable court order in its case, and on the same day that Jenner & Block and WilmerHale received favorable rulings in their cases.

Similar agreements quickly followed involving Willkie Farr[171] and Milbank.[172] Both firms pledged $100 million in pro bono legal services to causes agreed upon

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166. WilmerHale Summary Judgment Opinion, *supra* note 96, at 16. The court found that the executive order violated the First, Fifth, and Sixth Amendments, as well as separation of powers principles. *Id.* at 172.

167. ABA Complaint, *supra* note 119, at ¶ 81. This was in contrast to the more than 500 smaller law firms that did sign on as amici in support of Perkins Coie. Protess, *supra* note 162.

168. Protess, *supra* note 163; Amanda O'Brien, *Amicus Brief Supporting Perkins Coie Gets 170 Signatures so Far, but Few Am Law 100 Firms*, LAW.COM (Mar. 31, 2025), https://www.law.com/americanlawyer/2025/03/31/amicus-brief-supporting-perkins-coie-gets-170-signatures-so-far-but-few-am-law-100-firms/ [https://perma.cc/WCA5-ZQK2].

169. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Mar. 28, 2025, 10:57 AM), https://truthsocial.com/@realDonaldTrump/posts/114241348699704594 [https://perma.cc/U8Y4-XZFA]; Daniel Barnes, *Major Law Firm Strikes Preemptive Deal with White House*, POLITICO (Mar. 28, 2025), https://www.politico.com/news/2025/03/28/skadden-arps-trump-law-deal-028324 [https://perma.cc/GL48-L4EN].

170. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Mar. 28, 2025, 1:57 PM), https://truthsocial.com/@realDonaldTrump/posts/114241348699704594 [https://perma.cc/U8Y4-XZFA].

171. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Apr. 1, 2025, 1:47 PM), https://truthsocial.com/@realDonaldTrump/posts/114264667777137553 [https://perma.cc/MP83-HXKU].

172. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Apr. 2, 2025, 11:05 AM), https://truthsocial.com/@realDonaldTrump/posts/114269692330126501 [https://perma.cc/9AKS-2V7F].

by both the firms and the administration. Fearing future executive orders, the firms justified the agreements as necessary to "avoid[] potentially grave consequences."[173] One week later, the President touted these deals at a White House press event:

> Have you noticed that lots of law firms have been signing up with Trump? $100 million, another $100 million for, uh, damages that they've done. They give you $100 million and then they announce that, "But we have done nothing wrong." And I agree, they've done nothing wrong. But what the hell, they give me a lot of money considering they've done nothing wrong.[174]

As previously discussed, the President announced deals several days later with five more major law firms,[175] each agreeing to provide at least $100 million in pro bono work and "other free Legal services."[176] The firms also made promises related to DEI and their hiring practices.[177] In all, the President's agreements with nine law firms added up to at least $940 million worth of pro bono legal services for causes that the firms and his administration both supported.[178]

While relatively few details have surfaced about the full content of these pro bono concessions, available information evidences a *quid pro quo*. The firms obtained relief from intrusive EEOC requests for information, potential sanctions regarding their hiring, compensation, and diversity practices,[179] and from

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173. Kathryn Rubino, *Willkie Farr Surrenders to Trump*, ABOVE THE L. (Apr. 1, 2025), https://abovethelaw.com/2025/04/willkie-farr-surrenders-to-trump/ [https://perma.cc/55LM-763F].

174. Steve Benen, *As the White House's Campaign Against Law Firms Continues, Trump Says A Bit Too Much*, MSNBC (Apr. 9, 2025), https://www.ms.now/rachel-maddow-show/maddowblog/white-houses-campaign-law-firms-continues-trump-says-bit-much-rcna200417 [https://perma.cc/HH53-KFDJ]; *see also* Abigail Adcox & Amanda O'Brien, *'They Give Me A Lot of Money': Trump Nods to Law Firm Deals in Coal Event*, LAW.COM (Apr. 8, 2025), https://www.law.com/americanlawyer/2025/04/08/they-give-me-a-lot-of-money-trump-nods-to-law-firm-deals-in-coal-event/ [https://perma.cc/A9GH-VS73]. At an earlier event, President Trump similarly reported that colleges and law firms were "bending and saying, 'sir, thank you very much.' . . . They are saying where do I sign? Where do I sign? Nobody can believe it. And there's more coming." The White House, *President Trump Participates in a Women's History Month Event*, YOUTUBE (Mar. 26, 2025), https://www.youtube.com/live/37yfOP8cVPQ?feature=shared&t=2198 (at 36:39–37:01) [https://perma.cc/V3EB-QTHJ].

175. The four law firms were Kirkland & Ellis, A&O Shearman, Simpson Thacher, and Latham & Watkins. Goldstein, *supra* note 126.

176. *Id.*; Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Apr. 11, 2025, 9:21 AM), https://truthsocial.com/@realDonaldTrump/posts/114320245355397433 [https://perma.cc/4E9R-JM9T].

177. Press Release, *In EEOC Settlement, Four 'BigLaw' Firms Disavow DEI and Affirm Their Commitment to Merit-Based Employment Practices*, EEOC (Apr. 11, 2025), https://www.eeoc.gov/newsroom/eeoc-settlement-four-biglaw-firms-disavow-dei-and-affirm-their-commitment-merit-based [https://perma.cc/J9ZM-RJ6C].

178. *See* Amanda O'Brien, *Law Firm Deals with Trump Remain 'Front-of-Mind' in Public Scrutiny*, LAW.COM (July 17, 2025), https://www.law.com/americanlawyer/2025/07/17/law-firm-deals-with-trump-remain-front-of-mind-in-public-scrutiny/?slreturn=20250721102955 [https://perma.cc/827K-8763].

179. Habiba Cullen-Jafar & Abigail Adcox, *Big Law Firms Quietly Update Diversity Language, as Deadline Passes to Disclose Data*, LAW.COM (Apr. 16, 2025), https://www.law.com/americanlawyer/2025/04/16/big-law-firms-quietly-update-diversity-language-as-deadline-passes-to-disclose-data-/ [https://perma.cc/NN5R-6D2B].

looming restrictions on security clearances, government contracts and the like, all in exchange for shelving internal DEI and making the White House a partner in their *pro bono* legal practices. The firms agreed to provide free legal services for matters that satisfied their mutual interests with the White House, while silencing—at least implicitly—free legal help to disfavored clients and non-profit organizations challenging the administration's policies. In White House Press Secretary Karoline Leavitt's words, "Big Law continues to bend the knee to President Trump because they know they were wrong, and he looks forward to putting their pro bono legal concessions toward implementing his America First agenda."[180]

These agreements compromise the independence of law firms to select their clients and to provide representation as they deem professionally appropriate.[181] In addition, they appear to run counter to the legal profession's pro bono responsibilities as provided in the Model Rules of Professional Conduct. Rule 6.1 instructs that every lawyer should aspire to render fifty hours of pro bono legal services each year, with a substantial majority of hours directed, without fee, to persons of limited means or to organizations addressing the needs of persons of limited means.[182] The rule also urges lawyers to consider providing additional pro bono services to individuals, groups, or organizations seeking to secure or protect civil rights and civil liberties.[183] These provisions "recognize the critical need for legal services that exists among persons of limited means" and the importance of protecting the civil rights of vulnerable individuals.[184]

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180. Ben Protess, Maggie Haberman, & Michael S. Schmidt, *How Trump Is Putting Law Firms in a No-Win Situation*, N.Y. TIMES (Apr. 9, 2025), https://www.nytimes.com/2025/04/09/us/politics/trump-law-firms-orders.html [https://perma.cc/W2XT-82VS]. *But see* Erin Mulvaney, C. Ryan Barber, & Jess Bravin, *Pro Bono or Pro Nono? Law Firms Split on Fulfilling Deals with Trump*, WALL ST. J. (Aug. 14, 2025), https://www.wsj.com/politics/policy/trump-pro-bono-law-firms-1402b772 [https://perma.cc/46US-A346] (reporting that some law firms have shrugged off the agreements as unenforceable).

181. *See* Dan Roe, *Despite Affirming Their Independence, Law Firm Leaders Remain Quiet on How They're Satisfying Trump Pro Bono Commitments*, LAW.COM (July 22, 2025), https://www.law.com/americanlawyer/2025/07/22/despite-affirming-their-independence-law-firm-leaders-remain-quiet-on-how-theyre-satisfying-trump-pro-bono-commitments/ [https://perma.cc/H84Y-ZD6P].

182. MODEL RULES R. 6.1(a)(1) & (2). *But see id.* cmt. 12 (noting that Rule 6.1 is an aspirational rule not intended to be enforced through the disciplinary process).

183. MODEL RULES R. 6.1(b).

184. MODEL RULES R. 6.1(b) cmt. 2. Rule 6.1 was substantially amended at the 1993 Mid-Year Meeting of the ABA House of Delegates to set a specific target of hours of pro bono service each year, and to direct that a substantial majority of those hours be provided to persons of limited means or to organizations addressing the needs of persons of limited means. James L. Baillie & Judith Bernstein-Baker, *In the Spirit of Public Service: Model Rule 6.1, the Profession and Legal Education*, 13 L. & INEQ. 51, 58–59 (1995). Additionally, the preamble to the *Model Rules* recognizes that there are "deficiencies in the administration of justice" and therefore lawyers should ensure access to justice "for all those who because of economic or social barriers cannot afford or secure adequate legal counsel." MODEL RULES, pmbl (6). These ethical responsibilities are particularly important because, as the Legal Services Corporation has documented, a serious justice gap exists in the nation, in which low-income Americans are unable to receive any or enough legal help for 92% of their civil legal problems. *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans*, LSC, https://justicegap.lsc.gov/ [https://perma.cc/W7KG-7C5D] (last visited Sept. 10, 2025). Pro bono legal services to the poor and

The White House/Law Firm agreements appear to require increased free legal help to support the President's priorities while redirecting free legal help away from disfavored populations.[185] In agreeing to these terms, law firms risk placing their own financial interests above their professional responsibilities. Instead of assisting asylum-seeking immigrants or transgender individuals in need of legal help, for example, or partnering with non-profit organizations to challenge illegal government policies, law firm expertise and resources will—at least in part—be directed to support the administration's tariff policies[186] and natural resource policies,[187] or to defend law enforcement officers accused of misconduct.[188] The President's agenda threatens to replace the settling law firms' distinguished records of pro bono service to America's neediest families. This comes at the same time that the White House's congressional budget proposal has zeroed out all funding for the Legal Services Corporation, which provides free civil legal services to the poor in all fifty states.[189]

D. REACTIONS INSIDE SETTLING LAW FIRMS

The settlement agreements have faced criticism from inside the settling law firms. By mid-June, 2025, approximately twenty Willkie lawyers, including managing partners, litigation partners, and associates, left the law firm and moved to

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disadvantaged are an essential component of the legal profession's commitment to access to justice. Indeed, the American Lawyer's A-List rankings includes pro bono as one of its five criteria when ranking America's most prestigious law firms. ALM Staff, *The 2025 A-List: Top 20 Firms*, LAW.COM (Aug. 13, 2025), https://www.law.com/americanlawyer/2025/08/13/the-2025-a-list-top-20-firms/ [https://perma.cc/6ZV7-59RQ].

185. *See* Ryan Lucas, *Trump Attacks on Law Firms Begin to Chill Pro Bono Work on Causes He Doesn't Like*, NPR (Apr. 13, 2025), https://www.npr.org/2025/04/13/g-s1-59497/trump-law-firms-pro-bono [https://perma.cc/VK2P-AS7Z]; Josh Dawsey & C. Ryan Barber, *Trump's $1 Billion Law Firm Deals Are the Work of His Personal Lawyer*, WALL ST. J. (Apr. 14, 2025), https://www.wsj.com/us-news/law/trumps-1-billion-law-firm-deals-are-the-work-of-his-personal-lawyer-77bd7b8c [https://perma.cc/6MHR-RN7U].

186. *See Remarks: Donald Trump Attends a Cabinet Meeting at The White House*, ROLL CALL (Apr. 10, 2025), https://rollcall.com/factbase/trump/transcript/donald-trump-remarks-cabinet-meeting-april-10-2025/#267 [https://perma.cc/T65K-YM7P]; *see also* Mulvaney et al., *supra* note 180 (reporting that at least one law firm, Kirkland & Ellis, has pursued trade work for the Administration).

187. *See Speech: Donald Trump Signs Executive Orders to Promote Coal Production*, ROLL CALL (Apr. 8, 2025), https://rollcall.com/factbase/trump/transcript/donald-trump-speech-energy-exploration-executive-order-april-8-2025/#68 [https://perma.cc/6ZZR-MN78].

188. *See* Exec. Order No. 14288, 90 Fed. Reg. 18765 (Apr. 28, 2025) ("The Attorney General shall take all appropriate action to create a mechanism to provide legal resources and indemnification to law enforcement officers . . . . This mechanism shall include the use of private-sector pro bono assistance for such law enforcement officers.").

189. President Trump's FY 2026 budget proposal would deny LSC's funding request of $2.13 billion which provides funding to 130 legal aid organizations across the country that serve the legal needs of the poor. In FY 2025, LSC received an appropriation of $560 million from Congress through a continuing resolution. Instead, President Trump proposes to give the organization only $21 million for close-out costs. *White House Budget Proposes Eliminating LSC, Defunding Civil Legal Aid for Millions of Low-Income Americans*, LSC (May 30, 2025), https://www.lsc.gov/press-release/white-house-budget-proposes-eliminating-lsc-defunding-civil-legal-aid-millions-low-income-americans [https://perma.cc/87HF-YQ8Y]. President Trump sought unsuccessfully to defund LSC during each year of his first term as President (2017–2020). *LSC Submits 2021 Budget as White House Again Calls for Defunding*, LSC (Feb. 10, 2020), https://www.lsc.gov/press-release/lsc-submits-2021-budget-white-house-again-calls-defunding [https://perma.cc/4ML7-RLHR].

Cooley, motivated in large part by the deal struck between President Trump and Willkie management.[190] The departing lawyers criticized Willkie's decision to enter a deal, calling it a "grave mistake" they "couldn't live with."[191] They praised Cooley for representing Jenner & Block in its litigation against the administration. One departing associate wrote, "It should be clear to you at this point why I am leaving. Willkie's decision . . . has not only strengthened the authoritarian hold grabbing our country but also confirms that this firm is willing to compromise its autonomy and its values for the bottom line."[192]

More than 500 associate attorneys and staff at A&O Shearman signed a letter urging firm leadership not to trade pro bono work for the President's administration in exchange for the safety of firm security clearances.[193] Their letter acknowledged that the law firm faced an unprecedented threat but expressed their belief "that agreements of this nature contribute to the degradation of the rule of law in the United States," and that such a deal is "detrimental to A&O Shearman's business interests both in the United States and internationally, in terms of client relationships, employee retention, recruitment, and the firm's US and global reputation, both now and in the future."[194]

More firms have experienced a loss of attorneys following their deals with the White House. According to reports, settling law firms have "seen a flurry of exits," including Paul Weiss, Cadwalader, Kirkland & Ellis, Simpson Thacher, and Latham & Watkins.[195] And former Skadden fellows, recipients of Skadden Arps's prestigious public interest fellowship program, have raised concerns that the firm's agreement will impact the Skadden Foundation's public interest work. The firm has reportedly adjusted its foundation's website and the application criteria for prospective 2026 fellows, allegedly removing a question on the "role of public interest work in addressing systemic racism."[196] As a former Skadden fellow put it, "the work that we do is anti-poverty work, and the insinuation that that

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190. Amanda O'Brien, *As Willkie Exits Grow, Associates Are Publicly Criticizing Trump Deal*, LAW.COM (June 18, 2025), https://www.law.com/2025/06/18/as-willkie-exits-grow-associates-are-publicly-criticizing-trump-deal/?slreturn=20250623102414 [https://perma.cc/D9YU-TXU5].

191. *Id.*

192. *Id.* For additional reactions from law firm lawyers, see Patrick Smith and Abigail Adcox, *Associates —'Professionally Cautious' by Nature—Have Found a Voice in the Trump Era*, LAW.COM (July 21, 2025), https://www.law.com/americanlawyer/2025/07/21/associatesprofessionally-cautious-by-naturehave-found-a-voice-in-the-trump-era/ [https://perma.cc/8PVE-3M65].

193. Sam Stein, *An Uprising at a Big Law Firm Targeted by Trump*, THE BULWARK (Apr. 11, 2025), https://www.thebulwark.com/p/uprising-at-big-law-firm-allen-overy-shearman-targeted-by-trump-associates-letter [https://perma.cc/E8GH-SBVX].

194. *Id.*

195. O'Brien, *supra* note 178; *see also* Barnes, *supra* note 109; David Lat, *Some—But Not All—Firms Striking Trump Deals See Attrition*, BLOOMBERG L. (Sept. 10, 2025), https://news.bloomberglaw.com/legal-exchange-insights-and-commentary/some-but-not-all-firms-striking-trump-deals-see-attrition [https://perma.cc/T56E-J3NP] ("[T]he settling firms' average attrition rate was 75% larger than that of the fighting firms.").

196. Abigail Adcox, *Former Skadden Fellows Call Out 'Problematic' Effects From Trump Deal*, LAW.COM (June 23, 2025), https://www.law.com/americanlawyer/2025/06/23/former-skadden-fellows-call-out-problematic-effects-from-trump-deal-/ [https://perma.cc/23WD-XVA6].

is a political issue is really problematic."[197] Additionally, the Skadden agreement also requires that all pro bono work be done in the name of the law firm, rather than in the name of individual attorneys, something that has not surfaced in other law firm settlements with the administration. Some observers fear this change will make it easier for the law firm to limit the types of pro bono activities the firm undertakes to avoid offending the President.[198]

Additionally, some major law firm clients have expressed their displeasure with the settlements. Microsoft reportedly shifted work away from Simpson Thacher and Latham & Watkins because of their agreements with the White House.[199] Meanwhile, law firms that chose to litigate against the President reported an influx of new business from large companies.[200]

E. CONGRESSIONAL INQUIRIES ADDRESSED TO SETTLING LAW FIRMS AND THEIR RESPONSES

On April 18 and April 24, 2025, Senator Richard Blumenthal, Ranking Member of the Senate Permanent Subcommittee on Investigations, and Representative Jamie Raskin, Ranking Member of the House Committee on the Judiciary, expressed concern about the White House/Law Firm agreements and sent letters to the settling law firms demanding information and records pertaining to their response to President Trump's executive orders. The letters alleged that the President's executive orders were part of a broader effort to intimidate and silence his enemies and to chill speech and legal advocacy. The letters demanded full details about the circumstances surrounding the agreements with President Trump, as well as the specific terms agreed upon.[201]

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197. *Id.* ("Skadden Foundation's executive director Kathleen Rubenstein publicly resigned earlier this month, writing on LinkedIn that 'this moment in history calls on us to provide more and better support for public interest lawyers.'").

198. "When [pro bono work is done] in a larger firm's name, I'm going to be honest, it makes it easier for the firm to say no to a certain client and say yes to others." *Id.* Still, it is reported that Skadden *did* accept pro bono representation of a Mexican woman who sued U.S. Citizenship and Immigration Services for denying her a visa, raising the specter that the agreement may not block all disfavored representation. Roy Strom, *Skadden's New Pro Bono Case Runs Counter to Trump on Immigration*, BLOOMBERG L. (May 27, 2025), https://news.bloomberglaw.com/business-and-practice/skaddens-new-pro-bono-case-runs-counter-to-trump-on-immigration https://perma.cc/UA4N-8396]. Moreover, many other law firms have long required that pro bono work be done in the name of the law firm, and so this change, in and of itself, may not be overly significant.

199. Sophie Clark, *Major Companies Abandon Law Firms That Signed Deals with Trump: Report*, NEWSWEEK (June 5, 2025), https://www.newsweek.com/major-companies-abandon-law-firms-that-signed-deals-trump-report-2079712 [https://perma.cc/D57S-EA5K] ("[A] top lawyer at the hedge-fund Citadel, told other lawyers [at a legal luncheon] that they like working with lawyers who don't run from a fight."). Reportedly, Microsoft later reinstated Latham & Watkins upon receiving strong assurances from the law firm that the agreement presented no conflicts of Interest. *Id.*

200. MSNBC, *Law Firms That Made Deal with Trump, See Major Clients Abandon Them for Firms That Stood Up to Him*, YOUTUBE (June 2, 2025), https://www.youtube.com/watch?v=UL1l9YQEcHo [https://perma.cc/26ZD-8PRR].

201. Requests were sent from members of the House and Senate and directed to Paul Weiss, Skadden Arps, Willkie Farr, Millbank, A&O Shearman, Kirkland & Ellis, Latham & Watkins, Simpson Thacher, and Cadwalader. Press Release, Richard Blumenthal, Senior Senator from Connecticut, Senate, *Blumenthal &*

At least five settling law firms defended their actions in written responses, asserting they retained "complete independence" in the matters and clients they accepted for representation.[202] A&O Shearman stated that it "fully intends to continue its longstanding and extensive practice of zealously representing clients who find themselves adverse to the federal government, in both paying and pro bono matters."[203] The firm also stated that the terms of its deal with the President were contained in his social media post on April 11, 2025, adding that the firm has "no other agreements or understandings" with the President.[204] Latham & Watkins also claimed to maintain "complete independence as to the clients and matters the firm takes on, whether in our pro bono or commercial engagements."[205] While claiming no diminution in their independence, the law firms acknowledged deep concerns about the consequences of failing to settle, including hiring and employment inquiries from the Equal Employment Opportunity Commission and potential criminal charges from the Justice Department, which might have resulted in close, lengthy examinations of the law firms and their employees.[206]

Paul Weiss, Willkie, Milbank, Sullivan & Cromwell, and Kirkland & Ellis also responded to requests by the lawmakers.[207] Paul Weiss defended its actions, stating that the law firm "already does significant pro bono work" in the three areas outlined in the deals—helping veterans, combating antisemitism, and improving fairness in the justice system.[208] The firm again claimed that the "Administration will not determine what matters [they] take on . . . [T]he resolution [the firm] reached with the Administration will have no material effect on [its] work."[209] Milbank similarly responded by assuring congressional leaders

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Raskin Demand Transparency & Accountability from Big Law Firms as Trump Continues Assault on the Rule of Law (Apr. 22, 2025), https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-and-raskin-demand-transparency_accountability-from-big-law-firms-as-trump-continues-assault-on-the-rule-of-law [https://perma.cc/94EQ-CC33]; Press Release, Dave Min, Congressman, House of Representatives, *Reps. Dave Min and April McClain Delaney Lead Letters to Law Firms Requesting Details on Their Agreements with President Trump; Raising Legal and Ethical Concerns Under Federal and State Laws and Professional Ethics Codes*, Congressman Dave Min (Apr. 24, 2025), https://min.house.gov/media/press-releases/reps-dave-min-and-april-mcclain-delaney-lead-letters-law-firms-requesting [https://perma.cc/38JJ-B9CC].

202. Abigail Adcox, *5 Big Law Firms Defend Their Deals With Trump, Explain 'Independence' on Client Matters*, LAW.COM (May 6, 2025), https://www.law.com/nationallawjournal/2025/05/06/5-big-law-firms-defend-their-deals-with-trump-reiterating-independence-on-client-pro-bono-matters/ [https://perma.cc/5ENQ-76ER]. The five law firms were Cadwalader, A&O Shearman, Latham & Watkins, Simpson Thacher, and Kirkland & Ellis. *Id.*

203. *Id.* "All such work is in service of the rule of law and is in no way constrained by the agreement with Trump, said William White, co-U.S. general counsel, and William Roll, co-U.S. general counsel, at A&O Shearman, in their letter response dated April 28, 2025." *Id.*

204. *Id.*

205. *Id.*

206. *Id.* Richard Trobman, chair and managing partner of Latham & Watkins, wrote that the firm had received an "extensive and detailed information and document request" from the EEOC. *Id.*

207. *Id.*; *see also* Abigail Adcox, *Democratic Lawmakers Urge Big Law Firms to 'Disavow' Deals with Trump*, LAW.COM (Apr. 24, 2025), https://www.law.com/nationallawjournal/2025/04/24/democratic-lawmakers-urge-big-law-firms-to-disavow-deals-with-trump/ [https://perma.cc/L5UR-TSW4].

208. Adcox, *supra* note 196.

209. *Id.*

that the agreement does not give the President authority to dictate or approve paying or pro bono matters.[210] However, no settling law firm produced any writing signed by the parties evidencing these terms.

The settling law firms' responses to Congress suggest that they felt vulnerable to the President's pressure and were motivated to enter the agreements to protect their best business and financial interests. Simpson Thacher responded to congressional representatives by candidly stating that its primary goal was "to protect the best interests of the Firm, including our thousands of lawyers and business professionals, and our clients."[211] The firms generally acknowledged they had acted out of a legitimate fear that the White House could put them out of business.[212]

But the settlements themselves carry a troubling degree of secrecy. At least four of the settling firms agreed to retain outside counsel, which will provide "confidential written certification[s]" of the firms' compliance with "federal antidiscrimination laws"—starting July 11, 2025, and every six months through January 2029—and "which shall be shared only with the White House."[213] This secrecy offers little confidence that the law firms retain complete independence, especially as some reportedly scrub selective descriptions of pro bono activities from their websites and firm reports.[214] If anything, the differences between the President's

210. *See* Letter from Andrew Schapiro, Partner, Quinn Emanuel Urquhart & Sullivan, LLP, on behalf of Milbank LLP, to Dave Min, U.S. Representative for Cal. 47th Congressional Dist., et al. (May 8, 2025), https://abovethelaw.com/wp-content/uploads/sites/4/2025/05/Firm-Responses.pdf [https://perma.cc/33H7-ZV64] (directing congressional leaders to an internal Milbank email describing the firm's agreement); Kathryn Rubino, *Milbank Joins List Of Pushover Biglaw Firms Bowing To Trump*, ABOVE THE L. (Apr. 2, 2025), https://abovethelaw.com/2025/04/milbank-joins-list-of-pushover-biglaw-firms-bowing-to-trump/ [https://perma.cc/8AFS-VULA] ("There is nothing in our agreement that gives the Administration the right to dictate or approve the matters we take on. Nor have we restricted our pro bono activities or limited positions we could take on behalf of our clients. And, of course, no Milbank lawyer will be required to work on any pro bono matter that they do not support.").

211. Carrie Johnson, *Trump's Deals with Law Firms are Like Deals 'Made with a Gun to the Head,' Lawyers Say*, NPR (May 31, 2025), https://www.npr.org/2025/05/31/nx-s1-5406173/trump-deals-law-firms [https://perma.cc/4AHC-TCSV].

212. *Id.*

213. Baxter & Tribe, *supra* note 127. The firms are Kirkland & Ellis, Latham & Watkins, Simpson Thacher, and A&O Shearman. *Id.*

214. Mike Spector et al., *How Trump's Crackdown on Law Firms is Undermining Legal Defenses for the Vulnerable*, REUTERS (Aug. 3, 2025), https://www.reuters.com/investigations/trumps-war-big-law-leads-firms-retreat-pro-bono-work-underdogs-2025-07-31/ [https://perma.cc/MV72-NXHY]; Molly Redden, *Trump's War on Big Law Means It's Harder to Challenge the Administration*, PROPUBLICA (Aug. 6, 2025), https://www.propublica.org/article/trump-law-firms-accountability-environment-police-lgbtq [https://perma.cc/94YG-J4L2] ("[Whereas] Winston & Strawn's . . . . 2023 [pro bono] impact report highlighted its advocacy on behalf of a transgender competitive marathoner[,] . . . . [its] 2024 report, published after Trump's reelection, contained zero mentions of 'equity' and spotlighted attorneys who helped small nonprofits navigate 'complex mergers and business challenges.'"). Many firms have also reportedly removed references to DEI. *See id.*; *see also* Sophie Dillon, *Law Society Condemns Trump's Attack on Lawyers as Top Firms Quietly Remove DEI Content from Their Websites*, LEGAL CHEEK (Mar. 19, 2025), https://www.legalcheek.com/2025/03/law-society-condemns-trumps-attack-on-lawyers-as-top-firms-quietly-remove-dei-content-from-their-websites/ [https://perma.cc/SJ8J-7CDP] (reporting Latham & Watkins changed the name of its "diversity scholars program" to the "pathways scholars program"); ABA Complaint, *supra* note 119, at ¶ 180 ("[N]early two dozen law firms ha[ve] changed their websites' language related to diversity and pro bono work to make those websites 'more closely align with Donald Trump's priorities.'").

portrayal of the agreements on social media and in press conferences, and the descriptions provided by law firms, present serious cause for concern.[215] The President contends he will leverage the law firms to defend police officers accused of misconduct, work on tariff issues, and help revive the coal industry,[216] and there is little reason to believe otherwise, as settling law firms say little about the precise terms of their agreements or how they will satisfy their commitments.[217] Indeed, some settling law firms have already begun negotiating trade deals on behalf of the White House.[218]

F. EMERGING CONSEQUENCES OF THE WHITE HOUSE/LAW FIRM AGREEMENTS

The President's effort to effect changes in the bar's representation of clients through executive orders, memoranda, and firm settlements has had an early impact. According to the Washington Post, small non-profit organizations claim the "well-resourced law firms that once would have backed them are now steering clear."[219] Law360 similarly noted that pro bono help from major law firms is now difficult to access for leading advocacy organizations, such as the D.C. Appleseed Center for Law and Justice, the Lawyers' Committee for Civil Rights Under Law, and Immigration Equality.[220] ProPublica reported that some large law firms have refused to take pro bono or paid legal work from groups that seek to challenge the government on issues like environmental protection, LGBTQ+ rights, and police accountability.[221] One Big Law partner from a firm not targeted

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215. The President's statements on social media, described above, claim more control over the law firms than their managing partners acknowledge. This is a recurring theme in the President's dealings with other sectors. For example, some report Paramount's "60 Minutes" settlement with President Trump contains steeper terms than what was publicly reported, suggesting Paramount agreed to pay more than double the public figure in the form of advertisements supporting conservative causes. *See, e.g.*, Jeremy Barr, *Senators Press Incoming CBS Owner on Trump's Claim of Settlement Side Deal*, WASH. POST (July 21, 2025), https://www.washingtonpost.com/business/2025/07/21/paramount-skydance-trump-cbs-settlement/ [https://perma.cc/9JW4-LXCY] (reporting that lawmakers are pressing corporate owners to determine if side-deals exist beyond what has been publicly reported).

216. Baxter & Tribe, *supra* note 127.

217. *See* Roe, *supra* note 181.

218. Mulvaney et al., *supra* note 180. These negotiations have prompted yet another investigation of the settling law firms by congressional leaders, with lawmakers questioning whether the firms' provision of legal services to the White House violates the Antideficiency Act, which "prohibits the government from accepting voluntary services and has limited exceptions." Michael S. Schmidt & Maggie Haberman, *Democrats Investigating Law Firms Over Their Work for Trump's Commerce Dept.*, N.Y. TIMES (Sept. 24, 2025), https://www.nytimes.com/2025/09/24/us/politics/democrats-law-firms-trump-investigation.html [https://perma.cc/UYW5-XB7D].

219. Michael Birnbaum, *Law Firms Refuse to Represent Trump Opponents in the Wake of His Attacks*, WASH. POST (Mar. 25, 2025), https://www.washingtonpost.com/politics/2025/03/25/trump-law-firms/ [https://perma.cc/5QJ4-UZYJ].

220. *See* Alison Knezevich, *BigLaw Shying Away From Some Pro Bono Work 'Out of Fear'*, LAW360 (Apr. 10, 2025), https://www.law360.com/pulse/articles/2323753 [https://perma.cc/W5KP-EUDB] ("We've definitely had a couple of firms that we've worked with in the past, who declined to work with us to even investigate a matter, out of fear[.]").

221. *See* Molly Redden, *Trump's War on Big Law Means It's Harder to Challenge the Administration*, PROPUBLICA (Aug. 6, 2025), https://www.propublica.org/article/trump-law-firms-accountability-environment-police-lgbtq [https://perma.cc/M3CV-MMWB].

by President Trump summarized this refusal by stating, "What's become radioactive has grown from a very small number of things to anything this administration and Trump might notice and get angry about."[222]

Organizations dedicated to assisting populations disfavored by the President have reported similar concerns about accessing pro bono legal services. This is especially profound for organizations specializing in free legal services to immigrants.[223] Juan Proaño, head of The League of United Latin American Citizens (LULAC), the nation's oldest and largest Latino civil rights organization, explained that the President's actions will impact the provision of pro bono legal services in areas that used to be typical—defending people's rights, such as to reproduction and abortion, LGBTQ and voting access cases, and in legal work around immigration. "We cannot do this work without the support of the legal community and without the significant benefit of legal services that they provide," Proaño reported. "We rely on the ability to have access to these lawyers and these law firms."[224]

Even the American Bar Association, in a lawsuit against the administration over its "Law Firm Intimidation Policy," has reported difficulty obtaining pro bono legal services from its typical law firm partners.[225] The ABA has been a frequent target of the President's administration—as the nation's largest and most influential bar association, it has been critical of the President's effort to "intimidate" the legal profession.[226] The Justice Department has blocked the ABA from evaluating the President's picks for the federal bench, and the administration has cut $69 million of the ABA's federal grant funding. The Justice Department is also seeking to cut an additional $3.2 million from the ABA's federal grants and

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222. *Id.*

223. Polantz, *supra* note 152; *see also* Mark Berman, *Trump's Law Firm Sanctions, Harshly Rejected in Court, Still Have Impact*, WASH. POST (June 1, 2025), https://www.washingtonpost.com/politics/2025/06/01/trump-law-firms-punishment-sanctions/ [https://perma.cc/D4E9-AMZG].

224. Polantz, *supra* note 152 ("[H]ours before [Paul Weiss's] deal with the White House was announced, a Paul Weiss lawyer called LULAC to tell the group the firm could no longer represent it on one matter . . . . The story of LULAC being dropped as a legal client was noted in national magazines, and shortly after that, Paul Weiss reversed course."). At the same time, some smaller firms and new non-profit entities have emerged to help meet some of the demand for pro bono service. Brenda Sapino Jeffreys, *With Big Law in the Government's Crosshairs, Boutique, Retired Lawyers Take on Public Interest Matters Pro Bono*, LAW.COM (July 23, 2025), https://www.law.com/2025/07/23/with-big-law-in-the-governments-crosshairs-boutique-retired-lawyers-take-on-public-interest-matters-pro-bono/ [https://perma.cc/5QKE-TMM4].

225. *See* ABA Complaint, *supra* note 119, at ¶ 203–05.

226. *See, e.g.*, Statement of ABA, *ABA Condemns Remarks Questioning Legitimacy of Courts and Judicial Review* (Feb. 11, 2025), https://www.americanbar.org/news/abanews/aba-news-archives/2025/02/aba-statement-re-remarks-questioning-judicial-review/ [https://perma.cc/NE6N-V4CK]; A Martínez, Milton Guevara, & Ally Schweitzer, *American Bar Association President Speaks Out Against Attacks on Judges and Lawyers*, NPR (Mar. 11, 2025), https://www.npr.org/2025/03/11/nx-s1-5317656/american-bar-association-trump-administration-attacks-judges-lawyers [https://perma.cc/DLS7-A8NU]; Karen Sloan & Mike Scarcella, *American Bar Association Adopts Resolution Against Trump's Law Firm Crackdown*, REUTERS (Aug. 11, 2025), https://www.reuters.com/legal/government/american-bar-association-adopts-resolution-against-trumps-law-firm-crackdown-2025-08-11/ [https://perma.cc/LA9U-GHWU].

has barred Justice Department employees from participating in ABA events while on their "official time."[227]

In its lawsuit against the Executive Office of the President, the ABA contended the President's actions against law firms violate the Constitution. The ABA's complaint alleges that,

> The President's attacks on law firms through the Law Firm Orders are . . . not isolated events, but one component of a broader, deliberate policy designed to intimidate and coerce law firms and lawyers to refrain from challenging the President or his Administration in court, or from even speaking publicly in support of policies or causes that the President does not like.[228]

In addition, on August 11 and 12, 2025, the ABA adopted a resolution opposing "any efforts by any government actor to punish or threaten to punish lawyers, law firms, or other organizations for representing or having represented any particular client or cause disfavored by the government."[229]

In addition to the ABA's actions, twenty-one state attorneys general have written an open letter decrying the orders, warning that the purpose of the executive orders is to "break apart the very foundation of the law we practice."[230] The letter further claims that the orders "seek[] retribution over ideological differences, punishing firms for the actions of individual attorneys representing clients adverse to the President or his supporters."[231]

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227. Tatyana Monnay, *Trump Sued Over 'Intimidation' Campaign Against Law Firms*, BLOOMBERG L. (June 16, 2025), https://news.bloomberglaw.com/business-and-practice/trump-sued-over-intimidation-campaign-against-major-law-firms [https://perma.cc/SQX9-5H5L].

228. *See American Bar Association Files Suit to Halt Government Intimidation of Lawyers and Law Firms*, AM. BAR ASS'N (June 16, 2025), https://www.americanbar.org/news/abanews/aba-news-archives/2025/06/aba-files-suit-to-halt-govt-intimidation/ [https://perma.cc/8S99-PS5Y]; ABA Complaint, *supra* note 119, at ¶ 4. On August 8, 2025, the government filed a motion to dismiss the ABA's lawsuit, alleging that the ABA lacks organizational and associational standing and that its claims are not ripe for adjudication. *See* Memorandum of Law in Support of Defendants' Motion to Dismiss, A.B.A. v. Exec. Off. Of President, et al., No. 1:25-cv-01888-AHA (D.D.C. Aug. 8, 2025); Brenda Sapino Jeffreys, *Has President Trump Filed His Last Executive Order Against Law Firms?*, LAW.COM (Aug. 11, 2025), https://www.law.com/americanlawyer/2025/08/11/has-president-trump-filed-his-last-executive-order-against-law-firms-/ [https://perma.cc/6VJX-M46F].

229. ABA Res. 509, https://www.americanbar.org/content/dam/aba/directories/policy/annual-2025/509-annual-2025.pdf [https://perma.cc/DFC8-PZU4] (last visited Feb. 28, 2026). Additionally, at the ABA's mid-year 2025 meeting in Chicago on March 26, 2025, many other bar associations and legal organizations signed a statement in support of the American Bar Association to defend the rule of law and reject efforts to undermine the courts and the legal profession. *Bar Organizations' Statement in Support of the Rule of Law*, AM. BAR ASS'N (Mar. 26, 2025), https://www.americanbar.org/news/abanews/aba-news-archives/2025/03/bar-organizations-statement-in-support-of-rule-of-law/ [https://perma.cc/7AQ4-AD65].

230. Kwame Raoul et al., *An Open Letter to the Legal Community Regarding the President's Attacks on the Legal Profession and the Federal Judiciary*, OFF. ILL. ATT'Y GEN. 1, (2025) https://illinoisattorneygeneral.gov/News-Room/Current-News/Open%20Letter%20to%20the%20Legal%20Community%20Regarding%20the%20President%27s%20Attacks%20on%20the%20Legal%20Profession%20and%20the%20Federal%20Judiciary.pdf [https://perma.cc/YN3X-ZXGK].

231. *Id*. at 1–2.

The State Bar of California, like many state and local bar associations, has warned that the administration's orders threaten core principles of the rule of law. On May 10, 2025, the organization stated that "[s]uch actions directly imperil the ability of lawyers at these firms to competently represent their clients, and have a chilling effect on the availability of competent legal counsel to represent clients unpopular with the Administration."[232] It expressed deep concern that the White House's orders could cause particular harm to people with limited means, who depend upon free legal services.[233]

At a time of such pervasive fear and intimidation, many law firms have sought to remain under the radar, hoping to avoid the attention or ire of the President. In a practical sense, this means declining to accept cases that directly challenge the President or threaten his agenda, and avoiding pro bono work that advocates for disfavored populations or causes.[234] Law firm managing partners are attuned to their bottom line and, accordingly, are positioned to react like traditional business leaders in profit-making industries: to protect their financial interests, they are inclined to either seek President Trump's good graces or avoid his attention altogether. These business-minded responses are understandable, if not predictable, in a climate of fear and with so much money at stake. But agreement and inaction promote a system-wide chill that undermines checks and balances on executive power and curtails access to justice for those who need it most. Harold Koh, former dean of Yale Law School, traces this system-wide impact back to the White House/Law Firm agreements, stating,

> The Trump administration probably feels like it has already succeeded beyond its wildest dreams . . . . It never expected such capitulation. Through blatantly unconstitutional actions, it extracted deals from nine leading law firms for approaching $1 billion in coerced pro bono legal services and has chilled litigation and public opposition from law firms nationwide."[235]

Though they share a profit-centered business model, law firms are much more than traditional businesses. Lawyers have time-honored professional responsibilities to society, guided by self-enforced ethical rules, to serve the administration of justice and ensure that clients have access to the courts. "Lawyers are not spectators to the Constitution; we are its agents," wrote twenty-one state attorneys general in an open letter to the legal profession.[236] "We cannot allow the President to scare law firms and lawyers into silence. Law firms must refuse to

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232. The State Bar of California News Release, *Statement on Recent Executive Actions Threatening the Availability of Legal Counsel and the Rule of Law* (May 10, 2025), https://www.calbar.ca.gov/About-Us/News/News-Releases/statement-on-recent-executive-actions-threatening-the-availability-of-legal-counsel-and-the-rule-of-law.

233. *See* Johnson, *supra* note 211.

234. *See* ABA Complaint, *supra* note 119, at ¶ 14.

235. Liptak, *supra* note 157.

236. Raoul et al., *supra* note 230.

bow to illegal and unconstitutional threats of retribution for having the temerity to represent clients and cases opposing the administration."[237]

The legal profession's ethical rules require that lawyers fulfill essential obligations to clients, courts, and the public, even when such mandatory actions may not serve their best financial or business interests. The profession's commitment to self-regulation of its ethical obligations is foundational and more important than ever in the face of government intrusion. The preamble to the *Model Rules* reminds all lawyers that "the profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar."[238] In difficult situations involving serious conflicts of interest, ethics rules eliminate attorney discretion that might lead lawyers to choose personal or business interests over public responsibilities. When the government or other third parties intrude upon the independence of the bar and threaten the rule of law, the ethics rules must provide an immovable guardrail to guide lawyers to the proper course of conduct. Especially in cases of government coercion, the *Model Rules of Professional Conduct* must explicitly prohibit all lawyers from agreeing to shared decision-making authority with third-party intruders over their case acceptance and pro bono delivery systems. There can be no room for ambiguity or uncertainty about this cornerstone ethic of the legal profession.

In the following section, we contend that there is already such a guardrail in place in Rule 5.6(b) of the *Model Rules of Professional Conduct*, but it has been misunderstood and needs revision to meet the challenges lawyers face today.

III. MODEL RULE 5.6(B)

For more than a century, lawyers have looked to the ABA's model ethical guidance and interpretive "Ethics Opinions" to guide their practice.[239] For just as long, that guidance has recognized the bar's pivotal role in preserving the rule of law. The ABA's first model document, the 1908 Canons of Professional Ethics, stipulated that "[t]he future of the republic . . . depends upon . . . the conduct and the motives of the members of [the legal] profession."[240] Its second iteration, the 1969 Model Code of Professional Responsibility, provided that "[l]awyers, as

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237. *Id*. While Yale Law professor John Morley has said the settling law firms had no choice but to deal with the President because of the risk to their partnerships, David McGowan, professor at the University of San Diego School of Law, charged that "the firms that settled did so because they forgot the unique role they play in the American justice system and, instead, see themselves as more of [a] business venture." David Schultz, *Firms That Did Trump Deals Forgot They Were Law Firms, Says Prof*, BLOOMBERG L. (Oct. 28, 2025), https://news.bloomberglaw.com/us-law-week/firms-that-did-trump-deals-forgot-they-were-law-firms-says-prof [https://perma.cc/9L7Q-KJQZ].

238. MODEL RULES pmbl. (12).

239. *See Publications*, AM. BAR ASS'N, https://www.americanbar.org/groups/professional_responsibility/publications/ [https://perma.cc/6YQW-BPHD] (last visited Feb. 26, 2026).

240. CANONS OF PROF'L ETHICS pmbl. (1908) [HEREINAFTER 1908 CANONS].

guardians of the law, play a vital role in the preservation of society."[241] And the ABA's current guidance, the *Model Rules of Professional Conduct*, instruct lawyers, as "public citizen[s], . . . [to] seek improvement of the law [and] access to the legal system" as "[a]n independent legal profession is an important force in preserving government under law."[242] This model guidance serves "as the basis for the mandatory lawyer ethics rules in every state."[243]

But a lawyer's personal interest and duty to uphold the integrity of the legal system sometimes conflict. The ABA's guidance seeks to strike a balance, accounting for lawyers' personal interests, the interests of their clients, and their duty to the public.[244] This balancing recognizes "[t]he practice of law . . . is a profession, not [merely] a business or commercial enterprise."[245] Accordingly, several rules restrict lawyers from acting solely as business people, removing attorney discretion when business interests conflict with professional obligation.[246] Importantly, Rule 5.6(b) prohibits lawyers from restricting their future right to practice in certain settlement agreements.[247] This ethical overlay distinguishes law from many other profit-making enterprises, where institutional leaders are not similarly constrained by mandatory self-regulation.[248]

And yet, some argue that the ethical rules do too little. These ethicists contend "forces within . . . society [have pushed] the legal profession towards being more profit-centered . . . erod[ing] the ethics of the profession."[249] They point out "the vast majority of the [model] rules deal with the attorney-client relationship and with duties lawyers owe their clients, while only a handful of rules specify lawyers' duties" to other constituents, especially the public.[250] Rule 5.6(b) is

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241. MODEL CODE OF PROF'L RESPONSIBILITY pmbl. (1980) [HEREINAFTER MODEL CODES].

242. MODEL RULES pmbl. (6), (11).

243. Peter A. Joy, *Ethical Duty to Investigate Your Client?*, 11 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 414, 422 (2021).

244. *See* Eli Wald, *The Access and Justice Imperatives of the Rules of Professional Conduct*, 35 GEO. J. LEGAL ETHICS 375, 377 (2022) ("The . . . traditional answer offered by the profession to the query 'who is served by the *Rules*?' is clients, the legal system, and the public.").

245. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 300 (1961).

246. *See* MODEL RULES R. 5.6(a) cmt. 1 (prohibiting law firms from restricting their former employees' right to practice, as such restrictive covenants would "limit[] the freedom of clients to choose a lawyer"); MODEL RULES R. 3.3(a)(1) cmt. 2 (prohibiting dishonesty to a tribunal); MODEL RULES R. 5.4(c) (prohibiting delegation of a lawyer's professional judgment to third parties); MODEL RULES R. 1.8(f)(2) (prohibiting a lawyer from accepting compensation for representing a client from a third party unless there is no interference with the lawyer's professional judgment).

247. *See* MODEL RULES R. 5.6(b).

248. *See* Veronica Root Martinez & Caitlin-Jean Juricic, *Toward More Robust Self-Regulation Within the Legal Profession*, 69 WASH. U. J.L. & POL'Y 241, 243–44 (2022) (characterizing law and a handful of similar "professions" as unique in their self-regulation).

249. Neil W. Hamilton, *Are We a Profession or Merely a Business? The Erosion of Rule 5.6 and the Bar Against Restrictions on the Right to Practice*, 22 WM. MITCHELL L. REV. 1409, 1431 (1996); *see also* Martinez & Juricic, *supra* note 248, at 266.

250. Wald, *supra* note 244, at 385.

accordingly among a small, but critically important subset of rules that "purport to serve and protect" the interests of the legal system itself.[251]

Rule 5.6(b) recognizes a simple reality. Left to their own professional judgment, lawyers acting in good faith to protect their clients will generally seek not only to resolve present disputes but to proactively avoid future liabilities. Good lawyers are expected to fiercely protect their clients, after all.[252] But this desire to avoid future liability, if unchecked, threatens to jeopardize a lawyer's "ethical mandate" to preserve the integrity of the justice system.[253] And so, when a lawyer's effort to avoid liability goes too far, Rule 5.6(b) stands as a firm guardrail.

This is why some have raised Rule 5.6(b) in relation to the law firm settlements with the White House, questioning whether the agreements place self-interest over professional obligation.[254] These objectors fear the agreements will prevent firms from representing clients and causes adverse to the administration's agenda, but few scholars or practitioners, if any, have provided a substantive analysis of Rule 5.6(b)'s application in this context.[255] Indeed, when several prominent law professors filed an ethics complaint in New York, alleging that the settling law firms violated the state's ethics rules in at least five respects, their complaint failed to cite Rule 5.6(b) as a basis for challenging the propriety of the agreements.[256] A New York Supreme Court committee subsequently declined

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251. *Id.* at 384.

252. *See* MODEL RULES R. 1.3 cmt. 1 (insisting lawyers act as zealous advocates for their clients' interests).

253. *See* ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 371, at 5 (1993).

254. *See, e.g.*, Letter from Dave Min, U.S. Representative for Cal. 47th Congressional Dist., et al., to Brad S. Karp, Managing Partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP (Apr. 24, 2025), https://min.house.gov/sites/evo-subsites/min.house.gov/files/evo-media-document/04.24.25-letters-to-law-firms-on-trump-administration-agreements-all.pdf [https://perma.cc/T3WX-J3WM] [hereinafter Letter from Dave Min] (suggesting the White House/Law Firm agreements potentially violate Rule 5.6(b) and expressing "concern[] that the cumulative impact of [the] settlements . . . will damage the availability of robust legal representation"); Joshua Robbins & Sherry Haus, *Law Firm Executive Orders Create A Legal Ethics Minefield*, LAW360 (Apr. 1, 2025), https://www.law360.com/articles/2318239/law-firm-executive-orders-create-a-legal-ethics-minefield [https://perma.cc/99YD-HUEE] ("[The President's] March 22 memorandum, targeting law firms that mount legal challenges against administration[,] . . . could be aimed at setting up future agreements that restrict firms' involvement in such litigation going forward. If so, they could be viewed as [violating Rule 5.6(b)]."); D.C. Bar Legal Ethics Comm. Ethic Op. 391 (2025), https://www.dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-391 [https://perma.cc/92GH-NH8P] (cautioning law firm agreements with the government may implicate Rule 5.6(b) to the extent they contain "conditions that may limit or shape a lawyer's practice").

255. *See, e.g.*, Letter from Dave Min, *supra* note 254.

256. *See* Roy Strom, *Law Firms' Trump Deals Escape NY Lawyer Ethics Investigation*, BLOOMBERG L. (Oct. 9, 2025), https://news.bloomberglaw.com/business-and-practice/law-firms-trump-deals-escape-ny-lawyer-ethics-investigation [https://perma.cc/9KSQ-58GR] (attaching the ethics complaint). A more recent New York ethics complaint issued against Boris Opshteyn for his role in facilitating the White House/Law Firm agreements, however, does invoke New York's 5.6(b)-equivalent ethics rule, contending "Epshteyn's 'participat[ion] in offering or making' the settlement agreements with nine settling law firms limits the practices of the settling law firms in violation of" the rule. *See Ethics Complaint Targets Boris Epshteyn's Alleged Role in Trump Administration Campaign to Pressure Law Firms*, DEMOCRACY DEFS. FUND (Mar. 16, 2026), https://www.democracydefendersfund.org/prs/03.16.26-pr [https://perma.cc/9D5R-N673] (quote in the attached ethics complaint).

to take up the complaint, reasoning that "the business decisions of law firms" generally fell outside the committee's purview.[257]

The D.C. Bar Legal Ethics Program, however, has explicitly invoked Rule 5.6(b) in relation to law firm agreements with the government. In an October 2025 Ethics Opinion, the Bar cautioned that, when considering a prospective agreement with the government that "may limit or shape" a firm's practice, lawyers "should consider" Rule 5.6(b).[258] But the Ethics Opinion stops short of *applying* the rule to such prospective agreements.[259] Instead, the opinion provides that the D.C. Bar and its courts have "long . . . taken a broad view" of the rule, with the D.C. Court of Appeals ruling in 2021 that "agreements prohibited by Rule 5.6 are void as against public policy."[260]

A difficulty in applying Rule 5.6(b) is that the rule itself is too succinct. It provides,

> "A lawyer shall not participate in offering or making . . . an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy."[261]

The comment to the rule states simply that 5.6(b) "prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client."[262] Virtually every state has adopted this provision, or some slight variation.[263]

Applying Rule 5.6(b) to government acts leveling pressure on the bar generally—and to the White House/Law Firm agreements in particular—requires more than a simple reading of the rule's text. On its face, 5.6(b) plainly forbids at least one type of transaction. A lawyer may not, as consideration for the settlement of a client's claim, offer or agree not to represent certain other clients in the future. For example, suppose Consumer hires Lawyer to sue Company. Consumer alleges Company produced a product that injured Consumer, and Company—concerned about costly litigation—wants to settle. But Company also fears that other consumers may also sue Company for similar claims with the assistance of Lawyer, who has gained valuable knowledge and expertise from representing Consumer against Company. Company wants to insulate itself from that potential liability. So, Company offers Consumer

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257. *Id.* (attaching the committee's decision).

258. D.C. Legal Ethics Opinion 391 (2025). The opinion examines at least three areas of potential concern for government-law firm agreements: conflicts of interest for current or future matters adverse to the government, improper restrictions on a lawyer's practice, and interference with a lawyer's professional independence. *Id.*

259. *Id.*

260. *Id.*

261. MODEL RULES R. 5.6(b).

262. MODEL RULES R. 5.6(b) cmt. 2.

263. *See* ABA CPR Pol'y Implementation Comm., *Variations of the ABA Model Rules of Professional Conduct, Rule 5.6* (Mar. 15, 2024), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc-5-6.pdf [https://perma.cc/RYN6-65UD] (cataloging Rule 5.6's adoption across jurisdictions).

the following settlement: Company will compensate Consumer for her injury, but only if Consumer's Lawyer agrees not to represent other consumers in the future. Company is even willing to pay a premium to this Consumer, as Company is concerned that Consumer's Lawyer will use information they have learned against Company in future representations. While this agreement may provide financial advantages to both parties to the dispute, it violates Rule 5.6(b). No lawyer may even *offer*, let alone agree to, an agreement with these terms.[264]

But why are these terms impermissible, and how far does 5.6(b) reach? What if Consumer has not yet sued Company, but, aware it has made a faulty product, Company approaches Lawyer directly and offers Lawyer some consideration if, in exchange, Lawyer agrees not to represent *any* consumers with product liability claims against Company? Or what if Company is instead a government agency anticipating future litigation and promises to terminate existing investigations into Lawyer, or to reinstate Lawyer's access to government resources, if Lawyer restricts his future right to practice law?

Whether these potential agreements violate 5.6(b) depends on the rule's core functions, *i.e.*, why it was created and what conduct it intends to prevent. To define these functions, we must look to the rule's text, guidance opinions, and legislative history. This interpretive method—a balance of text and history—is fundamental to understanding the *Model Rules of Professional Conduct*.[265] And it reflects the ABA's own approach in its effort to give meaning to 5.6(b) through formal and informal ethics opinions.[266]

After a close examination of Rule 5.6(b), we contend legal scholars and ABA publications have long misunderstood the rule's history. Until now, scholars assumed the rule was an "afterthought" enacted in 1970 at the suggestion of a single practitioner.[267] Some contend the rule rests on "flimsy" justifications and exists to protect certain lawyers' financial interests, not the integrity of the legal

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264. MODEL RULES R. 5.6(b). Similarly, Rule 8.4(a) prohibits any lawyer from *requesting* an agreement violative of Rule 5.6(b). ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 394, at 1–2 (1995).

265. *See* AM. BAR FOUND., ANNOTATED CODE OF PROF'L RESPONSIBILITY ix (Lucille V. Alaska et al. eds., 1979) [HEREINAFTER ANNOTATED CODE] (explaining that courts and ethics committees have long relied on historical sources to interpret the ABA's model ethical guidelines, treating these authorities as a "'common law' of sorts"). The importance of history to the *Model Rules* is reflected in the ABA's effort to compile legislative histories to the rules, which aim "to aid all those who interpret or apply the Model Rules." ABA, A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT, 1982-2013 vii (Art Garwin, ed., 2013) [hereinafter LEGISLATIVE HISTORY].

266. *See, e.g.*, ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 371 (1993) (relying on the text of 5.6(b)'s predecessor rule, prior ethics opinions, and "legislative history" to interpret Rule 5.6(b)); *see also* Hamilton, *supra* note 249, at 1413 (contending Rule 5.6's similar wording to its predecessor rule renders cases interpreting the predecessor rule relevant to the modern meaning of 5.6).

267. *See, e.g.*, Stephen Gillers & Richard W. Painter, *Free the Lawyers: A Proposal to Permit No-Sue Promises in Settlement Agreements*, 18 GEO. J. LEGAL ETHICS 291, 292 (2005); ANNOTATED CODE, *supra* note 265, at 114; Lynn A. Baker, *Mass Torts and the Pursuit of Ethical Finality*, 85 FORDHAM L. REV. 1943, 1958 (2017); Stephen Gillers, *A Rule without a Reason*, 79 A.B.A. J. 118, 118 (1993).

system.[268] To the contrary, our research reveals the rule is derived from the ABA's first model ethical guidance, the *1908 Canons of Professional Ethics*,[269] and was considered "basic" to "the purpose of [the legal] profession"—to "make available legal services . . . to the public."[270] This corrected history confirms 5.6(b) serves two essential functions: safeguarding lawyers' independence and the public's access to qualified counsel.

Whether 5.6(b) exists as a self-serving afterthought or, alternatively, a sweeping directive to preserve the public's access to counsel, holds critical importance for the rule's present meaning and application. In the following subsections, we examine these consequences, evaluate the rule's application to acts of government intimidation that threaten the ability of lawyers to represent their clients and serve the public, and propose a long overdue amendment to the rule to clearly state its core functions and fulfill its intended purposes.

Subsection A summarizes the long-held misunderstanding of 5.6(b)'s origin. Subsection B provides a corrected legislative history based on new research. And Subsection C applies that history to the White House/Law Firm agreements, concluding, to the extent their terms are currently known, the agreements run afoul of the rule's core functions. Lastly, subsection D proposes an amendment to the rule. 5.6(b) cannot provide effective and predictable guidance unless its meaning is plain on its face. An amendment is needed to clarify that the rule (1) applies to agreements with the government as well as between private parties, (2) prohibits any provision that "materially limits" a lawyer's future representations, and (3) applies to agreements of any kind with adverse parties or entities, whether or not the agreement involves the resolution of a "*client* controversy."

A. MODERN MISUNDERSTANDING OF MODEL RULE 5.6(B)

Misunderstandings of Rule 5.6(b) begin with its predecessor, Disciplinary Rule ("DR") 2-108(B), which existed under the ABA's former model ethical guidance, the *Model Code of Professional Responsibility* (the "Code"). Written in similar terms to its modern counterpart, DR 2-108(B) provided,

> In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law."[271]

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268. Gillers & Painter, *supra* note 267, at 292, 311; *id.* at 311 ("The motive behind the effort to maintain [5.6(b)] may not be about [e]nsuring the availability of . . . lawyers, but about something less charitable. Lawyers who do not want to enter [the agreements prohibited by the rule] may see a competitive disadvantage if other lawyers, if allowed, are willing to do so and then hold out that promise in order to attract clients. Perhaps to prevent competition on that basis, opponents of a libertarian rule prefer to deny any lawyer the freedom to accept . . . agreement[s] that they themselves would reject.").

269. *See* ABA Comm. on Prof'l Ethics, Informal Op. 1039 (1968).

270. ABA House of Delegates Proceedings, Feb. 24, 1970, at 49 [hereinafter Transcript] (on file with authors).

271. MODEL CODES, *supra* note 241, at DR 2-108(B).

How DR 2-108(B) entered the Code with this precise language, a broad prohibition on agreements restricting the right to practice law, is a muddy history and the origin of modern misunderstandings of Rule 5.6. The history is muddy, in part, on purpose. The Wright Committee, which was responsible for drafting DR 2-108, "intentionally compiled no record of its discussions and deliberations," as members believed recordings of their debates would prevent candor.[272] As a result, scholars and the ABA have had to compile evidence of the Wright Committee's intent through scattered transcripts and a handful of interviews.[273] To understand where this reconstructed history goes awry, it's useful to begin with the present and work backwards: how recent scholarship understands 5.6(b), and how it is intertwined with its predecessor, DR 2-108(B).

Most modern commentary analyzing Rule 5.6(b) has expressed interest in a narrow class of agreements: mass tort settlements.[274]

This scholarship partly exists as a reaction to the "leading ABA formal ethics opinion" interpreting Rule 5.6(b), ABA Formal Opinion 371.[275] Issued in 1993, Formal Opinion 371 found 5.6(b)'s prohibition on practice-restrictive settlements applied to "mass tort or other class action litigation."[276] While allowing practice restrictions in mass tort settlements might help practitioners achieve an end to otherwise complex litigation, Formal Opinion 371 reasoned these agreements would violate three public policy rationales embedded in 5.6(b)'s text and history: (1) ensuring "the access of the public to lawyers who, by virtue of their background and experience, might be the very best available talent to represent these individuals," (2) promoting settlements that reflect the merits of a plaintiff's claim rather than "the desire of the defendant to 'buy off' plaintiff's counsel," and (3) preventing lawyers from facing conflicts of interest between present and future clients.[277]

Formal Opinion 371 derived these rationales from 5.6(b) based on the rule's legislative history, including its predecessor rule, DR 2-108(B). In particular, Formal Opinion 371 discerned an intent among DR 2-108(B)'s drafters that the rule sweep broadly. The opinion observed that, when DR 2-108(B) was first adopted by the ABA in 1969, it contained an exception, which allowed lawyers to restrict their future right to practice in one type of settlement agreement. This exception allowed lawyers to agree in a settlement not to represent future clients *with claims related to the subject matter of the current settlement* (*i.e.*, "In settling this negligence action, I promise not to sue you again, on behalf of other clients,

272. ANNOTATED CODE, *supra* note 265, at xi.

273. ANNOTATED CODE, *supra* note 265, at xi.

274. A "mass tort" is "[a] civil wrong that injures many people. Examples include toxic emissions from a factory, the crash of a commercial airliner, and contamination from an industrial-waste-disposal site." *Tort*, Black's Law Dictionary (12th ed. 2024).

275. Baker, *supra* note 267, at 1958.

276. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 371, at 2 (1993).

277. *Id.* at 3, 5.

over the same act of negligence").[278] But "[i]n February 1970, . . . the [ABA] amend[ed the rule] . . ., repealing [this exception] . . . to [better] make legal counsel available."[279] Accordingly, Formal Opinion 371 reasoned, modern Rule 5.6(b) should also be read broadly and without exception.[280]

In the wake of Formal Opinion 371, a flurry of scholarship emerged criticizing the opinion and Rule 5.6(b) itself.[281] These articles invoke "lawyers' and litigants' freedom to contract" to attack the rule and its proffered policy justifications.[282] Some call for amendments to the rule to permit "no-sue" agreements, settlements in which "a plaintiff's lawyer [promises] not to sue the same defendant on behalf of a later client with a substantially related claim."[283] Scholars in this camp turn the legislative history described in Formal Opinion 371 on its head. They contend the ABA's deletion of DR 2-108(B)'s sole exception, which had permitted some types of practice-restrictive settlements, is not evidence that the rule was intended to sweep broadly but rather evidence an "absolute prohibition [on] no-sue promises almost didn't happen."[284] In other words, they assume that the rule's broad application was an "afterthought" of its drafters, not the product of reasoned deliberation.[285] And even then, they contend DR 2-108(B) was broadened only "over opposition," arguably because some feared "the motive behind [the rule] . . . may not [have been] about insuring the availability of [counsel], but about something less charitable"—avoiding the creation of a "competitive disadvantage" for lawyers unwilling to enter practice-restrictive settlements.[286]

Scholarly criticism of Rule 5.6(b) also relies on other ABA Ethics Opinions, some of which give more attention to the rule's limiting language than Formal Opinion 371. For example, whereas 371 weighed heavily the rule's existence without exception, Formal Opinions 394 and 417 at least partly acknowledge text in the modern rule that potentially limits its application. Formal Opinion 394, discussed further *infra*, opined that the comment to Rule 5.6(b) "make[s] clear that the [rule's] prohibition is intended to apply in circumstances where the lawyer is 'settling a claim on behalf of a *client*.' Thus, it would not apply to disciplinary proceedings[, in which] . . . a settlement will [often] involve the lawyer's agreeing

278. The exception's exact language read that a lawyer may "enter into an agreement not to accept any other representation arising out of a transaction or event embraced in the subject matter of the controversy or suit thus settled." *Id.* at 3.

279. *Id.* at 4–5.

280. *Id.* at 5.

281. *See generally* Gillers, *supra* note 267; Yvette Golan, *Restrictive Settlement Agreements: A Critique of Model Rule 5.6(b)*, 33 SW. U. L. REV. 1 (2003); Gillers & Painter, *supra* note 267; Ronnie Gomez, *Ethics Rules in Practice: An Analysis of Model Rule 5.6(b) and Its Impact on Finality in Mass Tort Settlements*, 32 REV. LITIG. 467 (2013).

282. ANNOTATED MODEL RULES OF PROF'L CONDUCT R. 5.6 (2023) [HEREINAFTER ANN. MODEL RULES].

283. Gillers & Painter, *supra* note 267, at 292.

284. *Id.* at 295; *see also* Baker, *supra* note 267, at 1958 ("Prior to 1970, [no-sue] provisions were unproblematic under the equivalent to current Rule 5.6.").

285. Gillers & Painter, *supra* note 267, at 292.

286. *Id.* at 296, 311 & n.85.

to suspension or disbarment from practice."[287] And Formal Opinion 417, also discussed *infra*, noted that "Rule 5.6(b) applies only to restrictions imposed as part of [the] *settlement of a controversy*."[288]

Together, these ABA Ethics Opinions and scholarly commentary present a conflicting picture, with the Ethics Opinions asserting Rule 5.6(b) was designed to broadly protect the public's access to qualified counsel, and some scholars contending that, "in reality," 5.6(b) entered the ABA's model ethical guidance only as an afterthought and over opposition, and that it applies only to a subset of agreements. Proponents on either side of this line—for a broad or narrow reading of the rule—draw their evidence from the same source: the Annotated *Model Code of Professional Responsibility* (the "*Annotated Code*"). Published in 1979, this text sought "to provide a substitute for the [scant] legislative history" to the Code, which had been intentionally written in secret.[289] Until now, the Annotated Code was the primary evidence of the history of 5.6(b)'s predecessor, DR 2-108(B); indeed, the ABA relied on the Annotated Code in its Formal Opinion 371,[290] and scholars have likewise relied on the text in their critique of 371 and Rule 5.6(b).[291] Their reliance was reasonable. The Annotated Code was the product of the American Bar Foundation (ABF), a research institute founded by the ABA and funded by the American Bar Endowment, an ABA-affiliated charity.[292] The ABF was well-situated to decipher the rule's origins, and their work constitutes a source of "rigorous, empirical research that explores the intersection of law and society."[293]

But it is this text, the Annotated Code, relied on by the ABA and scholars for decades, that first misunderstood the origin of DR 2-108(B) and that, in turn, has led to misunderstandings of 5.6(b). The Annotated Code contends DR 2-108(B) first appeared in the January 1969 preliminary draft of the Code. It asserts the Wright Committee included the rule in the draft at the request of the Committee's chairman, Edward Wright, "based on a similar provision in his practice."[294] And it suggests DR 2-108(B)'s first draft was not a categorical bar on practice-restrictive settlements but featured the exception discussed above, which allowed lawyers to agree in a settlement not to represent future clients with claims related to the subject matter of the current settlement.[295]

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287. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 394, at 2 (1995) (emphasis added).

288. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 417, at 3 n.4 (2000) (emphasis added).

289. ANNOTATED CODE, *supra* note 265, at xi.

290. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 371, at 5 (1993).

291. *See, e.g.*, Gillers & Painter, *supra* note 267, at 293 n.12, 295, 307; Golan, *supra* note 281, at 21 n.108.

292. *About*, AM. BAR FOUND., https://www.americanbarfoundation.org/about/(last visited July 2, 2025).

293. AM. BAR FOUND., *Research Advancing Justice: Annual Report 2024*, at 4 (2025), https://www.americanbarfoundation.org/wp-content/uploads/2025/04/ABF-2024-Annual-Report-Digital.pdf. [https://perma.cc/Y92L-3297].

294. ANNOTATED CODE, *supra* note 265, at 114.

295. *See id.*

The Annotated Code reports this exception remained part of the rule until February 1970, when "an amendment [was] proposed . . . by the Standing Committee on Ethics and Professional Responsibility" to strike from the rule its sole exception.[296] Several ABA sections opposed the amendment to strike the exception, it explains, while the chairman of the Committee on Ethics and Professional Responsibility, Walter P. Armstrong, Jr., spoke in its favor. Armstrong urged that the amendment was necessary because the existing exception to the rule would permit agreements that

> "would, in effect, restrict . . . a lawyer's ability to engage in the practice of law by agreeing in advance . . . that he would not represent certain types of clients. Secondly, [he] felt that a covenant of that type would inevitably involve a conflict of interests [between current and future clients]."[297]

Finally, the Annotated Code notes that Armstrong also argued the practice-restrictive settlements permitted by the rule's exception "would go 'directly contrary to the letter and the meaning and the spirit of Canon 2'" of the Code, which "urged lawyers to make legal counsel available."[298]

In sum, the Annotated Code erroneously asserts DR 2-108(B) only exists because the chairman of the Code's Drafting Committee, Edward Wright, requested its creation based on his personal experience in private practice. It contends the rule was first drafted narrowly, with a substantial exception permitting certain practice-restrictive settlements and only broadened for a fear it would run afoul of other provisions of the Code. And, even then, it asserts the ABA only broadened the rule over opposition. This narrative then informed the ABA's reading of modern Rule 5.6(b) in Formal Opinion 371 and, subsequently, scholars' criticism of that opinion and the rule.

Our research, however, reveals the Annotated Code misunderstood DR 2-108(B)'s history, leading to subsequent misunderstandings of Rule 5.6(b). Edward Wright did not create the rule—it stems from the 1908 Canons of Professional Ethics, the predecessor to the Model Code. Nor did Wright suggest the rule's inclusion in the Code—his practice as a private practitioner was to enter the very settlements the rule prohibited. And the rule was not first written narrowly with a prominent exception—it was drafted broadly and only *narrowed* as an afterthought, before that narrowing was undone by the amendment championed by Walter Armstrong, Chair of the Committee on Ethics and Professional Responsibility. And finally, Armstrong and the other voting members of the ABA's House of Delegates favored a broad, exceptionless version of the rule not simply to ensure its consistency with other provisions of the Code, but because they deemed it foundational to legal practice that a lawyer's job is to "make available legal services without reservation to the public."

296. *Id.*
297. *Id.* at 114–15.
298. *Id.* at 115.

Without access to qualified counsel, they recognized, aggrieved members of the public cannot vindicate their rights.

This corrected history demonstrates DR 2-108(B) was not only the product of reasoned deliberation but designed to protect the integrity of the legal system. Rule 5.6(b) inherited this purpose, and, accordingly, the rule must be read in this light when the government seeks to restrict the independence and availability of counsel through practice-restrictive agreements.

B. A CORRECTED UNDERSTANDING OF THE MODEL RULE

1. THE RULE'S ORIGIN

Three sources correct the misunderstandings made in the Annotated Code's treatment of 5.6(b)'s predecessor and reveal the rule's core functions: (1) ABA Informal Opinion 1039, the true origin of the rule,[299] (2) the transcript of debates surrounding DR 2-108(B)'s amendment in February 1970, in which Walter Armstrong explains the House of Delegates' vision of the rule,[300] and (3) a transcript of a 1976 interview with Edward Wright regarding his role in shaping the Code, which helps explain the Annotated Code's basis for misunderstanding the rule.[301]

Rule 5.6(b)'s prohibition on practice-restrictive settlements first appeared not in DR 2-108(B) but in ABA Informal Opinion 1039, which arose under the ABA's first model ethical guidance, the 1908 Canons of Professional Ethics (the "Canons"). Informal Opinion 1039, published May 29, 1968, applied the Canons to determine "whether a lawyer may ethically sign an agreement which settles his client's litigation when the settlement agreement contains a covenant that the lawyer will not represent other plaintiffs against the defendant."[302] The issue came before the Standing Committee on Ethics and Professional Responsibility in the context of antitrust litigation and "an ever-increasing practice" in that area of practice-restrictive settlements.[303] Independent of its ethical analysis, the Committee recognized restrictive settlements posed a potential threat to the public interest as "government actions do not completely solve antitrust problems," creating a need for private litigants [to prosecute antitrust violations] and, in turn, a need for the availability of "attorneys who specialize in the plaintiffs' side[] of antitrust litigation."[304]

Effectively, Informal Opinion 1039 addressed two discrete questions: whether "a lawyer [may] ethically bind himself not to represent members of the public" in

299. ABA Comm. on Prof'l Ethics, Informal Op. 1039 (1968).

300. Transcript, *supra* note 270, at 49.

301. Interview by Olavi Maru with Edward L. Wright, Former ABA President, in Little Rock, Ark. (Oct. 28, 1976), AM. BAR FOUND. ORAL HIST. PROJ., https://commons.stmarytx.edu/cgi/viewcontent.cgi?article=1005&context=abfhistories [https://perma.cc/M9RT-WRVJ] [hereinafter Interview].

302. ABA Comm. on Prof'l Ethics, Informal Op. 1039 (1968).

303. *Id.*

304. *Id.*

the future, and whether a defense lawyer may request such a promise from a plaintiff's lawyer as a condition to settlement.[305] The opinion answered both questions in the negative, finding practice restrictions of this nature would violate portions of seven discrete Canons.[306] These Canons, which were created when the ABA adopted its first model ethical guidance in 1908, included mandates prohibiting lawyers from encroaching upon each other's business and demanding that every lawyer exercise independent responsibility over the causes she accepts or rejects as counsel.[307] Informal Opinion 1039 discerned from these provisions a purpose to preserve lawyers' independence and the availability of their services to clients—a purpose it found the practice-restrictive agreements at issue would contravene.[308] And it recognized these agreements might threaten the public's access to counsel in "many other fields of law" beyond antitrust, including "condemnation cases, products liability, personal injury actions . . . [and] many other areas." [309] Opinion 1039 quickly entered the "common law" used to interpret the Canons and became associated with Canon 31 in particular.[310]

That Informal Opinion 1039 was the progenitor of DR 2-108(B) and subsequently 5.6(b) is confirmed by a 1970 transcript of debates before the ABA House of Delegates,[311] the Association's "ultimate governing body."[312] The transcript records the House's vote over the February 1970 amendment to DR 2-108 (B), discussed previously, which removed the rule's sole exception and created a blanket prohibition on practice-restrictive settlements.[313] And, in addition to confirming DR 2-108(B)'s origin, it reveals the intentions of its drafters.

Walter Armstrong, Chair of the Committee on Ethics and Professional Responsibility, formally moved to adopt the amendment broadening DR 2-108(B) at the February 1970 House of Delegates meeting. He began with "a little bit of [the rule's] history."[314] Armstrong explained the Committee on Ethics and Professional Responsibility first encountered the issue of practice-restrictive settlements in 1968 and, in response, published Informal Opinion 1039, deeming such settlements

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305. *Id.*

306. These included Canons 7, 10, 15, 29, 30, 31, and 32. *Id.*

307. *See* 1908 CANONS, *supra* note 240, at Canon 7 (1908) ("Efforts, direct or indirect, in any way to encroach upon the business of another lawyer, are unworthy of those who should be brethren at the Bar."); *id.* at Canon 31 ("Every lawyer upon his own responsibility must decide what business he will accept as counsel, what causes he will bring into Court for plaintiffs, what causes he will contest in Court for defendants.").

308. ABA Comm. on Pro. Ethics, Informal Op. 1039 (1968).

309. *Id.* Notably, however, the opinion expressed no conclusion on the permissibility of similar agreements in the context of class action settlements approved by a court.

310. *See* AM. BAR FOUND., Opinions of the Committee on Professional Ethics with the Canons of Professional Ethics Annotated and Canons of Judicial Ethics Annotated 46 (1967 ed., Supp. June 1968) (cataloging Opinion 1039 as interpretive guidance to Canon 31).

311. Transcript, *supra* note 270.

312. *ABA House of Delegates*, ABA., https://www.americanbar.org/groups/leadership/house_of_delegates/ [https://perma.cc/HH4F-2F4Z] (last visited July 2, 2025).

313. Transcript, *supra* note 270, at 25–26.

314. *Id.* at 27.

unethical under the 1908 Canons.[315] Armstrong reported that, after a number of "large law firms" objected to the Opinion, the Committee decided to reconsider the issue but "adhere[d] to [their] original ruling."[316] Then, when the Wright Committee met to draft the new *Model Code of Professional Responsibility*, "[t]he matter was brought up," and Informal Opinion 1039 was codified as DR 2-108(B), but with an exception at Chairman Wright's insistence—the very exception Armstrong now sought to strike:

> [I]n the discussions in [the Wright] committee, it was decided to insert in[to the] Code a specific exception to DR 2-108(b) [permitting some types of practice-restrictive settlements]. . . . That is the [exception] which our amendment seeks to strike. We[, the Committee on Ethics and Professional Responsibility,] made the recommendation to the Wright committee that this [exception] be deleted. . . . [I] was present at those discussions . . . [and] the decision was not to [strike the exception from the draft Code]. It was then necessary . . . to go back to my committee . . . and determine whether they felt the matter was serious enough to bring before the floor of this House. . . . [They determined the matter] should be decided by the House of Delegates because it [was] of sufficient importance.[317]

Armstrong explained the Ethics Committee's objection to the exception in terms consistent with the reasoning of Informal Opinion 1039—that allowing lawyers to promise not to represent future clients as a condition of settlement would have "[t]he effect . . . not to make legal counsel available, . . . but] to cut off or to permit the cutting off of access to specialized counsel in specialized fields so that certain clients cannot receive unlimited access to adequate representation."[318] But he also went further, urging as Chair of the Committee on Ethics and Professional Responsibility that permitting any practice-restrictive settlements would be antithetical to the purpose of the profession:

> Gentlemen, we consider this matter basic in the practice of law. And if you honestly believe that this, the allowance of this type of [restrictive] covenant carries out the canon to make available legal services, then you ought to vote for the covenant. But if you feel that the purpose of our profession is to basically make available legal services without reservation to the public, then I do not see how consistently you can permit this practice.[319]

A delegate from the Section of General Practice spoke to the House in support of Armstrong's position, contending any allowance for practice-restrictive settlements would be "detrimental to the best interests of a great mass of injured claimants."[320]

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315. *Id.* at 27–28.
316. *Id.* at 29–30.
317. *Id.* at 30–32.
318. *Id.* at 33.
319. *Id.* at 49.
320. *Id.* at 37–38.

While few delegates challenged the substance of Armstrong's arguments, some delegates opposed the amendment broadening the rule. They argued only that the amendment had been proposed without enough notice,[321] or that, rather than prohibiting lawyers from *agreeing* to enter these settlements, the Code should prohibit lawyers from *demanding* them in the first place.[322] Edward Wright, as the chair of the committee that drafted the Code, most strongly opposed the amendment. Wright explained that DR 2-108(B) was first drafted broadly and *without* exception in January 1969, but that he added the exception permitting some practice-restrictive settlements at the insistence of some members of the bar.[323] He saw no issue with the exception, in part, because he understood the settlements it permitted were "common . . . in many parts of the country"—indeed, Wright himself had "utilized such [settlements] in a series of cases in [his] home state."[324] Still, Wright equivocated, explaining that the rule's precise language made no real difference to him.[325] With that as essentially the only support for the narrow version of the rule, the proposed amendment removing the exception passed the House of Delegates with a three-fifths supermajority, and DR 2-108(B)'s sweeping language was restored.[326]

But why did the drafters of the Annotated Code misstate this history, erroneously asserting DR 2-108(B) only exists because Edward Wright requested its creation based on his personal experience in private practice? The answer may be explained by the Annotated Code's reliance on a separate, semi-ambiguous transcript, which records an interview[327] between Edward Wright and the director of the project to create the Annotated Code.[328] Six years after the ABA voted to adopt DR 2-108(B)'s final language, the men met to discuss, among other things, the rule's creation. When prompted to "say something about . . . the history" of DR 2-108(B), Wright initially responded "Yes. I was the advocate of that . . . [h]aving had some experience in that area."[329] In isolation, Wright's statement seemingly suggests *he* advocated for the rule's inclusion in the Code based on his time in private practice, as the Annotated Code would later report.[330] But in context, it is clear Wright was *not* referring to DR 2-108(B) itself. Rather, he meant to say he advocated for the briefly-lived *exception* to the rule, which *permitted* some practice-restrictive settlements and was later removed by the Armstrong amendment:

321. *See id.* at 27, 35–36, 42.
322. *Id.* at 47.
323. *Id.* at 44.
324. *Id.* at 45.
325. *Id.* at 44.
326. The proposed amendment passed 129 votes to 86. *Id.* at 50.
327. Interview, *supra* note 301.
328. *Compare id.* at 1 (recording Olavi Maru as the interviewer) *with* ANNOTATED CODE, *supra* note 265, at vii (recording Olavi Maru as "Director, Project to Annotate the Code of Professional Responsibility").
329. Interview, *supra* note 301, at 22.
330. ANNOTATED CODE, *supra* note 265, at 114.

> [Interviewer]: There is a reference to restrictive covenants in DR [2]-108 (B). Could you tell us something about that, the history behind that?
>
> [Wright]: Yes. I was the advocate of that. The committee . . . went along reluctantly. Walter P. Armstrong, Jr., who was my intimate dear friend, felt very strongly. . . . Having had some experience in that area, I advocated that it was *not unreasonable or improper* for a lawyer in consideration of his settlement to agree not to engage in any derivative or allied action. . . . [A] year later Walter Armstrong . . . proposed an amendment. It went to the House . . . . and the House adopted his amendment of deletion on the ground that a lawyer should be free to accept any legitimate employment at any time. His rationale was that it was counter to the independence of the lawyer to have him sign away his right to represent people [when] he possibly had an expertise [in the matter].[331]

This interview transcript and the above authorities confirm Rule 5.6(b)'s true origin. The rule is derived from principles first embedded over 100 years ago in the 1908 Canons, that were affirmed when the Wright Committee codified Informal Opinion 1039 in DR 2-108(B), and that were reaffirmed when the ABA approved Armstrong's amendment removing the short-lived exception to the rule: that it is every lawyer and law firm's duty to exercise independent judgment over the causes and clients they accept as counsel, and that it is the fundamental purpose of the bar to make skilled legal services available to the public. These principles still underpin modern Rule 5.6(b).

2. THE RULE'S EVOLUTION

With Rule 5.6(b), the ABA imported the principles underlying DR 2-108(B) into the modern *Model Rules of Professional Conduct* (the "*Rules*"). This proposition is uncontroversial—even critics of 5.6(b) concede it is "differently phrased but substantively identical to" DR 2-108(B).[332] Still, 5.6(b) has evolved under the Rules in ways directly relevant to the terms of the White House/Law Firm agreements. In short, while the ABA first adopted 5.6(b) with potentially limiting language, the ABA subsequently applied the rule broadly in formal ethical guidance and amendments. These include Formal Opinion 394, which determined the rule prohibits practice-restrictive settlement agreements with the *government* as well as between private parties, and which prompted an amendment to the rule, and Formal Opinion 417, which determined 5.6(b) prohibits settlement agreements that directly *or indirectly* restrict a lawyer's right to practice.[333]

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331. Interview, *supra* note 301, at 22 (emphasis added).

332. Gillers & Painter, *supra* note 267, at 296. *But see* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 417, at 1 n.1 (2000) (noting 5.6(b) is "an expansion of former disciplinary rule DR 2-108(B)" insofar as 5.6(b) proscribes "participating in the offering" of a practice-restrictive settlement and not merely entering into such a settlement).

333. The rule was also read to prohibit "no-sue" agreements in mass tort settlements in Formal Opinion 371, as discussed *supra* Section III.A.

DR 2-108(B) became Rule 5.6(b) under the Kutak Commission, the body charged with transforming the former *Model Code of Professional Responsibility* into the modern Rules.[334] Rule 5.6(b) first appeared in the Commission's 1981 "Proposed Final Draft" as Rule 1.8(h)(2),[335] before it was relocated to Rule 5.5 and, ultimately, modern Rule 5.6(b) in 1983.[336] It provided, "[a] lawyer shall not participate in offering or making . . . an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties."[337] And, when 5.6(b) was finalized, it would feature the same comment that accompanies the rule today, which explains 5.6(b) "prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client."[338]

Why the Kutak Commission did not simply import the exact text of DR 2-108(B) into the Rules is opaque. Under the former Code, DR 2-108(B) read simply, "[i]n connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law."[339] New to Rule 5.6(b), then, was language clarifying it applied to settlements "between private parties" and "on behalf of . . . client[s]." The Kutak Commission's working drafts do not explain these additions or their rationale, nor do the debates before the ABA's House of Delegates provide clarification—the House adopted the Rules and their Comments in one sweeping vote rather than rule-by-rule and, while some rules were the subject of particularized debate, 5.6(b) was not discussed.[340] The ABA has recognized this dearth of evidence, calling the rationale for the Kutak Commission's rephrasing of the rule "obscure."[341]

Without the benefit of robust legislative history, the ABA has had to reconcile the Kutak Commission's rephrasing of 5.6(b) with the rule's sweeping functions. It has accomplished that reconciliation by reading the Kutak Commission's additions "as merely descriptive rather than prescriptive: i.e., as referring to the circumstances where [a practice restriction], as a condition of settlement, is most likely to be proposed; rather than as limiting the kinds of settlements to which the [rule's] prohibition is applicable."[342]

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334. LEGISLATIVE HISTORY, *supra* note 265, at vii.

335. MODEL RULES R. 1.8(h).

336. *See* ABA Comm. on Evaluation of Pro. Standards, Report to the ABA House of Delegates (June 30, 1982), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/kutak_8-82.pdf [https://perma.cc/BE4S-KR7A] (stating without explanation that the Kutak Commission transferred "Rule 1.8(h) to a new Rule 5.5" at the suggestion of the Florida Bar); LEGISLATIVE HISTORY, *supra* note 265, at 667 (recording that Rule 5.5 was later "renumbered 5.6 as a result of the addition of a new Rule 5.5" in 1983).

337. LEGISLATIVE HISTORY, *supra* note 265, at 667–68.

338. *Id.* at 668.

339. MODEL CODES, *supra* note 241, at DR 2-108(B)

340. *See, e.g.*, Proceedings of the 1983 Annual Meeting of the House of Delegates, 108 ANN. Rep. ABA 763, 766-78 (1983) (recording the ABA's adoption of the *Model Rules* and debates surrounding certain rules other than Rule 5.6(b)); Proceedings of the 1982 Annual Meeting of the House of Delegates, 107 ANN. Rep. ABA 603, 614-29 (1982) (same).

341. *See* ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 394, at 2 (1995).

342. *Id.* at 3.

Specifically, in Formal Opinion 394, the ABA found that 5.6(b)'s application to settlements "between private parties" did not exclude from its reach settlements with the government.[343] At the outset, the opinion acknowledged that "[t]he government, as a party in a civil dispute, is not in ordinary parlance considered to be a 'private' party."[344] But the opinion also recognized Rule 5.6(b) was designed, in part, to preserve "the access of the public to lawyers who, by virtue of their background and experience, might be the very best available talent."[345] It reasoned that, "if the drafters of Rule 5.6(b), in the face of [such] powerful considerations of policy, had intended an exception for circumstances where the government is a party to the controversy, they would clearly have said so."[346] Accordingly, the opinion concluded the Kutak Commission's rephrasing of 5.6(b) must have sought merely to identify the type of agreements in which practice-restrictive provisions were most likely to occur—those between private parties—not to permit practice-restrictive agreements in other contexts.[347]

Several years after the ABA published Formal Opinion 394, it revised 5.6(b)'s text to make its broad meaning plain. The revision occurred as part of the ABA's "Ethics 2000 Commission," an effort to "comprehensive[ly] study" and revise the Rules.[348] Rule 5.6(b) received just one modification. To "clarif[y] that the Rule applies to settlements not only between purely private parties, but also between a private party and the government,"[349] the ABA made the following modifications to 5.6(b): "A lawyer shall not participate in offering or making . . . an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy ~~between private parties~~."[350] This remains the rule's current language.[351]

Rule 5.6(b) was also read broadly in Formal Opinion 417, which determined "the rule applies not only to . . . explicit limitation[s on a lawyer's right to practice], *but also to other limitations* that indirectly restrict[] a lawyer's right to

343. *See id.*

344. *Id.* at 1.

345. *Id.* at 3.

346. *Id.*

347. *Id.*

348. The Ethics 2000 Commission resulted in "substantive changes" to existing rules, the creation of "entirely new rules," and "editorial and stylistic changes" to others. Margaret Colgate Love, *The Revised ABA Model Rules of Professional Conduct: Summary of the Work of Ethics 2000*, 15 GEO. J. LEGAL ETHICS 441, 441, 443 (2002).

349. ABA Standing Comm. On Ethics and Prof'l Responsibility, Reporter's Explanation of Changes (2000), available at https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/e2k_migated/10_85rem.pdf [https://perma.cc/F3JE-55C2] (last visited Feb. 24, 2026); *see also* Love, *supra* note 348, at 471 & n.54.

350. *Model Rules Of Professional Conduct As Adopted By Aba House Of Delegates, February 2002 – Center for Professional Responsibility*, AM. BAR ASS'N, https://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_redline/ [https://perma.cc/E6CV-STY3] (last visited July 2, 2025).

351. MODEL RULES R. 5.6(b).

practice."[352] The opinion sought to answer whether "a lawyer representing a party in a controversy may agree," as a condition of settlement, "not [to] us[e] any of the information learned during the current representation in any future representation against the same opposing party."[353] Formal Opinion 417 began with 5.6 (b)'s purpose, recognizing that—by preserving "the public's unfettered choice of counsel"—the rule effectuates the statement in the Rule's Preamble that a lawyer is "an officer of the legal system and a public citizen having special responsibility for the quality of justice."[354] The opinion reasoned that, while agreements restricting the use of information learned during litigation are "not [an] outright bar[] on future representation," they "have the effect of limiting [a] lawyer's right to practice" and "restrict the access of the public to lawyers."[355] Worse still, they restrict access to lawyers who "by virtue of their background and experience, might be the most qualified lawyers available to represent future clients against the same opposing party."[356]

Like the legislative history of DR 2-108(B), these ethics opinions confirm Rule 5.6(b)'s core functions—the preservation of the bar's independence and the public's unfettered access to counsel—and make clear that the rule should be broadly applied to achieve these ends.

C. RULE 5.6(B) AND THE WHITE HOUSE/LAW FIRM AGREEMENTS

With the benefit of this corrected legislative history, it is apparent the White House/Law Firm agreements implicate Rule 5.6(b)'s core functions: the preservation of the bar's professional independence and the public's access to qualified counsel. The authors of 5.6(b)'s progenitors, Informal Opinion 1039 and DR 2-108(B), understood these functions as foundational to legal practice. They recognized attorneys as crucial players in American justice who possess a special duty to safeguard their independence, not to prospectively "sign [it] away."[357] The alternative would invite well-resourced and litigation-weary actors to sidestep accountability by "cutting off" the public's "unlimited access to adequate representation" and inhibiting the bar's duty to "make available legal services . . . . to the public."[358] This history underscores that 5.6(b)'s preservation of access to counsel was never merely an end in itself but rather key to securing the rule of law. As the first ABA guidance announcing the rule opined, the availability of

352. John K. Villa, *Practice Restrictions in Settlement Agreements*, ACC DOCKET, June 2007, at 88, https://www.wc.com/portalresource/lookup/poid/Z1tOl9NPluKPtDNIqLMRVPMQiLsSwa3Dq0!/document.name=/Line%20310_PUBLICATION%20-%20Practice%20Restrictions%20in%20Settlement%20Agreements.pdf [https://perma.cc/N9S5-ZVLX] (emphasis added).

353. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 417, at 1 (2000).

354. *Id.* at 2.

355. *Id.* at 3, 5.

356. *Id.* at 5. The opinion noted that lawyers may, however, agree in a settlement not to *disclose* (rather than *use* in litigation) information learned about the opposing party in the future. *Id.*

357. Interview, *supra* note 301, at 22.

358. Transcript, *supra* note 270, at 33, 49.

adequate representation is a prerequisite to the "critical role[] of private litigants" in checking abuses of power.[359] This imperative affirms Rule 5.6(b)'s broad mandate.

Though the details and lasting impact of the White House/Law Firm agreements continue to emerge, Rule 5.6(b)'s core functions unmistakably apply to the present moment. The agreements were entered under the very conditions animating the rule. A powerful party—here the President of the United States—seeks to prevent obstructive litigation—the "pro bono practices" of firms the President views as "undermin[ing]" his agenda.[360] To that end, the party works to secure agreements that will inhibit the independence of highly skilled and well-resourced lawyers and require a "remarkable change of course" in their litigation practices, or at least in their pro bono representation.[361] According to public reporting, the President has extended a simple offer to the targeted firms. To avoid the consequences of his executive orders and federal investigations,[362] they must dedicate millions of dollars in pro bono representation to clients and causes that meet their joint approval.[363] These terms seemingly aim to neutralize some of the largest and most powerful law firms, "damag[ing] the availability of robust legal representation for [those] clients and matters" the President opposes.[364]

Early evidence suggests the White House/Law Firm agreements are successfully eroding the public's "access to adequate representation."[365] Legal organizations that regularly depend on pro bono assistance to challenge the government report that firms are "pull[ing] back from pro bono work that is at odds with Trump's own views."[366] This includes practice areas like immigration, where "the negotiated deals have had a chilling effect."[367] At least seventeen firms, including at least one settling firm, have revised their websites to eliminate

359. ABA Comm. on Prof'l Ethics, Informal Op. 1039 (1968).

360. Exec. Order No. 14246, 90 FR 13997 (Mar. 25, 2025).

361. Exec. Order No. 14244, 90 Fed. Reg. 13685 (Mar. 21, 2025) (revoking Exec. Order No. 14237).

362. *See* Baxter & Tribe, *supra* note 127 ("The firms struck deals in tandem with Trump and the EEOC to avoid punitive executive orders and resolve a federal probe of their diversity hiring programs.").

363. Erwin Chemerinsky, David Faigman, & Nancy Gertner, *Big Law Has Won Three Cases. But Trump Is Ahead in the Long Game*, BLOOMBERG L. (June 4, 2025), https://news.bloomberglaw.com/us-law-week/big-law-has-won-three-cases-but-trump-is-ahead-in-the-long-game [https://perma.cc/FP6A-BMJP] ("Nine law firms—including Paul Weiss, Milbank, Simpson Thacher, and Skadden—have given in to Trump and pledged nearly $1 billion in free legal services to causes the White House supports.").

364. Letter from Dave Min, *supra* note 254 at 2.

365. Transcript, *supra* note 270, at 33.

366. Lucas, *supra* note 185; *see also* Spector et al., *supra* note 213 ("Fourteen civil rights groups said the law firms they count on to pursue legal challenges are hesitating to engage with them, keeping their representation secret or turning them down altogether in the wake of Trump's pressure . . . .").

367. Berman, *supra* note 223; *see also* Shayna Jacobs, Clara Ence Morse, & Mark Berman, *Nation's Biggest Law Firms Back Off From Challenging Trump Policies*, WASH. POST. (Oct. 26, 2025), https://www.washingtonpost.com/national-security/2025/10/26/smaller-law-firms-struggle-trump-administration-initiatives/ [https://perma.cc/5F4E-4HW6] (reporting that, based upon a review of court records and interviews, the largest law firms have been far less likely to challenge President Trump's policies, and that smaller firms are carrying more of the burden in high-stakes legal challenges).

references to pro bono matters disfavored by the Administration.[368] And lawsuits from large law firms challenging the President's administration have sharply declined.[369] Even when relatively-powerful parties endeavor to challenge the President in court, they face a new struggle to obtain representation.[370]

We recognize, of course, that law firms are entitled to make unilateral decisions about their pro bono legal services without running afoul of ethical requirements. Nothing in the *Model Rules* compels a lawyer to take on the representation of a client. And to be sure, some law firms may limit their pro bono matters to avoid political repercussions *independent* of any agreement with the White House. But to the extent the agreements between the White House and the settling firms contain provisions inhibiting the firms' independent authority over their "right to practice," including their discretion whether to accept or reject future clients and causes, those agreements contravene Rule 5.6(b).[371]

We believe that Rule 5.6(b), read in light of its corrected legislative history, prohibits the White House/Law Firm agreements. To the extent, if any, that there is doubt 5.6(b) precludes the agreements, it is because the rule's modern text would benefit from clarifying amendments, and because the White House/Law Firm agreements' lack clear, written terms. Neither should prevent 5.6(b)'s application. The rule's text forbids "restriction[s] on [a] lawyer's right to practice [as] part of the settlement of a *client* controversy,"[372] and its comment similarly addresses agreements entered "on behalf of a *client*."[373] One might hesitate to say the White House/Law Firm agreements involve any "client controversy," notwithstanding a handful of statements from firm leaders contending they entered the agreements to protect their clients' interests. [374] But Rule 5.6(b)'s current text

368. Spector et al., *supra* note 214; ABA Complaint, *supra* note 119, at ¶ 180.

369. Spector et al., *supra* note 214 ("Court records show a sharp decline in major firms challenging government policies, according to a Reuters analysis of dockets in the legal database Westlaw, a unit of Thomson Reuters."). *But see* Abigail Adcox, Amanda O'Brien, & Christine Simmons, *In Trump's Battle With Big Law, Has Leverage Shifted?*, LAW.COM (Aug. 18, 2025), https://www.law.com/americanlawyer/2025/08/18/in-trumps-battle-with-big-law-has-leverage-shifted/ [https://perma.cc/5DQP-3WXV] (reporting that three of the settling law firms are engaged in at least some litigation seemingly inconsistent with the President's agenda, including defending the "sanctuary" policies of several New Jersey cities, representing a "historic Black church" against a Proud Boys chapter, and representing former Biden aides in an investigation "brought by congressional GOP members").

370. *See* ABA Complaint, *supra* note 119, at ¶ 202–05 (detailing the ABA's difficulty obtaining pro bono representation from its traditional firm partners).

371. *See* Ashley Wu, *What Has the Trump Administration Gotten From Law Firms and Universities?*, N.Y. TIMES (Sept. 5, 2025), https://www.nytimes.com/interactive/2025/09/06/us/trump-deals-law-firms-universities-concessions.html [https://perma.cc/NKP2-YRB2] (reporting that, in addition to pledging pro bono service to the White House, law firms have agreed to "government oversight").

372. MODEL RULES R. 5.6(b) (emphasis added).

373. MODEL RULES R. 5.6(b) cmt 2 (emphasis added).

374. *See, e.g.,* Lat, *supra* note 133 (asserting Paul Weiss entered its settlement with the Trump administration, "[f]irst and foremost, . . . guided by [its] obligation to protect [its] clients' interests"); Letter from William E. White and William J.F. Roll, III, Co-US General Counsels, Allen Overy Shearman Sterling US LLP, to Members of Congress (May 8, 2025), https://abovethelaw.com/2025/05/trumps-biglaw-bootlickers-letters-to-congress/2/ [https://perma.cc/4R2M-QX9Z] ("As an organization responsible for the interests and information

is susceptible to both narrow and broad readings, which are illustrated in Formal Opinion 394.[375]

The narrow reading understands Rule 5.6(b) as applicable *only* to settlements involving clients. Formal Opinion 394 did not explicitly adopt this reasoning but, in dicta, opined that the rule seemed "intended to apply in circumstances where the lawyer is 'settling a claim on behalf of a client.'"[376] Accordingly, the opinion noted, 5.6(b) would not prohibit practice-restrictive settlements in "disciplinary proceedings . . . where the lawyer himself is a party," and where settlement often involves "the lawyer's agreeing to suspension or disbarment."[377]

The broad reading, by contrast, construes 5.6(b)'s text "as merely descriptive rather than prescriptive: i.e., as referring to the circumstances where [a practice restriction], as a condition of settlement, is most likely to be proposed; rather than as limiting the kinds of settlements to which the [rule's] prohibition is applicable."[378] Formal Opinion 394 deployed this reasoning to parse the last phrase of 5.6(b), which—at the time—referenced settlements "between private parties," and to conclude the rule *also* prohibited similar settlements with the government.[379] Applied to the word "client," a broad reading would construe the term as merely identifying the most common scenario in which practice-restrictive settlements may arise—client controversies—rather than as limiting the rule's applicability to less common but equally harmful agreements.

Between these alternatives, a broad reading properly applies the true purpose of the rule for the same reasons articulated in Formal Opinion 394. There, the opinion recognized the "powerful considerations of policy" underlying 5.6(b), including its policy "favoring the public's unfettered choice of counsel."[380] If 5.6(b)'s drafters had intended to remove from the rule's reach a party as powerful as the government, the opinion reasoned, "they would clearly have said so."[381] So too here. 5.6(b) was designed to preserve access to counsel, which its drafters rightfully understood as critical to the rule of law. This reasoning drove their decision to craft 5.6(b)'s predecessor broadly and without exception in February 1970.[382] If the modern rule's drafters had intended to alter this judgment, they would have said so by, for example, drafting its text as applying "only" to client

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of thousands of employees and clients, the Firm determined that resolving the EEOC inquiry, including by entering into the Agreement, was the most prudent course.").

375. Formal Opinion 394 is discussed in greater detail *supra* Sections IV.A and IV.B.2.

376. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 394, at 2 (1995).

377. *Id.* Notably, however, the opinion nowhere held that Rule 5.6(b) permits such settlements *whenever* a lawyer herself is a party, or that the rule "exclusively" applies to settlements involving clients.

378. *Id.*

379. *Id.*

380. *Id.*

381. *Id.*

382. *See supra* Section IV.B.1.

controversies, or by stating this limitation explicitly in the comments attached to the rule.[383]

Adopting the broad reading of "client controversies," one must still ask whether, under 5.6(b), the vague terms of the White House/Law Firm agreements fairly constitute impermissible "restriction[s] on [a] lawyer's right to practice." As of the writing of this article, it is unclear whether the terms of these settlements were put to paper.[384] At least one settling firm has asserted "the complete terms of" its agreement consist only of "the four numbered paragraphs of the President's April 11, 2025 social media post."[385] Meanwhile, some news outlets claim to have obtained copies of other settlements, which they have not released but contend "spell out broad enforcement terms" that provide little detail.[386] Even so, among the details that have emerged from these agreements, provisions granting the President joint decisional-authority over law firms' provision of pro bono services, or restricting the provision of services to clients and causes that do not meet his approval, would constitute impermissible practice restrictions.

Importantly, ABA Formal Opinion 417 prohibits *indirect* as well as direct restrictions on a lawyer's right to practice. That is, the opinion found impermissible terms that "have the effect of limiting [a] lawyer's right to practice" and "restrict the access of the public to lawyers."[387] In other words, terms that "may materially limit" or "adversely affect" future representations.[388] The White House/Law Firm agreements seemingly cross that line. Though firm leaders now contend they retain "complete independence" over what clients and matters they accept or reject,[389] the available information on the settlements suggests a different understanding. Firms have agreed to revise their client selection and attorney

383. The history of amendments to modern rule 5.6(b) further supports this broad reading. As discussed *supra*, the phrase "client controversy" only entered the rule's text to *replace* the phrase "controversy between private parties," which was removed to clarify the rule's application to *government* as well as private settlements. ABA Ethics 2000 Commission, *Reporter's Explanation of Changes*, AM. B. ASSOC. (Aug. 2000), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/e2k_migated/10_85rem.pdf; *see also* Love, *supra* note 348, at 471 n.54. The phrase "client controversy" was not inserted as a limitation, then, but as an intended *expansion* in meaning, if anything. *Id.*

384. ABA Complaint, *supra* note 119, at ¶ 8. The congressional inquiries discussed *supra* Section II.E have failed to produce written evidence of the agreements' terms. The Knight First Amendment Institute of Columbia University has filed a Freedom of Information Act (FOIA) lawsuit against the U.S. government to obtain records related to the agreements. *See* David Thomas, *Columbia University Group Sues for Records of Trump's Law Firm Deals*, REUTERS (Oct. 23, 2025), https://www.reuters.com/legal/government/columbia-university-group-sues-records-trumps-law-firm-deals-2025-10-23/ [https://perma.cc/V4A7-8LRY]. In commencing the litigation, the Knight Institute stated, "Americans have a right to know the details of these agreements and what the government expects from the firms that decided to capitulate to the administration's unlawful coercion." *Id.*

385. Letter from William E. White and William J.F. Roll, III, Co-US General Counsels, Allen Overy Shearman Sterling US LLP, to Members of Congress, *supra* note 374.

386. Baxter & Tribe, *supra* note 127.

387. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 417, at 2–3, 5 (2000).

388. *Id.*

389. Adcox, *supra* note 202.

hiring practices, in both paying and unpaid matters,[390] and to donate millions of dollars in pro bono service to "*mutually* agreed projects" in support of the administration's agenda.[391] Some have established "pro bono Committee[s]" that will ensure their "pro bono matters are consistent with the objectives of the [settlements]."[392] And at least one has agreed to revise its practice across all pro bono cases, changing its policy so that all pro bono work is done in the name of the firm, concentrating control over client selection.[393]

At bottom, whether or not these terms constitute direct practice restrictions, they pledge a redirection of free legal help towards causes the President supports—including tariffs, natural resource production, and law enforcement[394]—and away from politically disfavored clients that law firms would otherwise represent and have proudly promoted in the past. At least one settling law firm has already lent its support to the President's tariff policy, helping broker trade deals with Japan and South Korea.[395] As a White House spokesman said of the agreements, "Law firms that have for years propelled one-sided justice by providing pro bono resources to those causes that make our nation more dangerous and less free have started serving their nation."[396] This framing strongly suggests that settling law firms now have the government as a powerful partner in shaping the pro bono decisions they make, inhibiting their ability to represent clients opposing the administration's policies.[397] To the extent Rule 5.6(b) was created to ensure lawyers uphold the bar's duty to "make available legal services . . . to the public"[398] and to prevent third parties from compromising their independence, its application to the White House/Law Firm agreements is apparent. Neither the phrase "settlement of a client controversy" in the rule's text nor the vague terms of the agreements should inhibit its reach.

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390. Exec. Order No. 14244, 90 Fed. Reg. 13685 (Mar. 21, 2025) (revoking Exec. Order No. 14237).

391. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (March 20, 2025, 3:10 PM), https://truthsocial.com/@realDonaldTrump/posts/114197044617921519 [https://perma.cc/8SDP-FGLS] (emphasis added).

392. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Mar. 28, 2025, 1:57pm), https://truthsocial.com/@realDonaldTrump/posts/114241348699704594 [https://perma.cc/6ZF2-SDZX].

393. Adcox, *supra* note 196.

394. *Remarks: Donald Trump Attends a Cabinet Meeting at The White House*, ROLL CALL (Apr. 10, 2025), https://rollcall.com/factbase/trump/transcript/donald-trump-remarks-cabinet-meeting-april-10-2025/#267 [https://perma.cc/QB6P-S8LM] (Transcript); *Speech: Donald Trump Signs Executive Orders to Promote Coal Production*, ROLL CALL (Apr. 8, 2025), https://rollcall.com/factbase/trump/transcript/donald-trump-speech-energy-explorationexecutive-order-april-8-2025/#68 [https://perma.cc/5XYV-8MJA] (Transcript); Exec. Order No. 14288, 90 Fed. Reg. 18765 (Apr. 28, 2025).

395. Michael S. Schmidt & Maggie Haberman, *Law Firms that Settled with Trump are Asked to Help on Trade Deals*, N.Y. TIMES (Aug. 13, 2025), https://www.nytimes.com/2025/08/13/us/politics/trump-law-firms-trade-deals.html [https://perma.cc/DN9W-HZUC]. In letters addressed to the settling law firms, congressional leaders have since questioned whether this work violates the federal Antideficiency Act, 31 U.S.C. § 1342. *See* Schmidt & Haberman, *supra* note 217 ("While it certainly would not be surprising for the Trump administration to disregard the law regarding congressional appropriations, it would be quite troubling if Paul Weiss were a willing accomplice in such an endeavor.").

396. Schmidt & Haberman, *supra* note 397.

397. Polantz, *supra* note 152.

398. Transcript, *supra* note 270, at 33, 49 (emphasis added).

D. A REVISED MODEL RULE 5.6(B) TRUE TO ITS PURPOSE

The ABA has not recently updated Model Rule 5.6(b)'s brief text and comment despite the several leading guidance opinions that have interpreted the rule's scope and core functions—opinions which are bolstered by the legislative history discussed in this article. Without more guidance in the rule itself, it is easy to miscomprehend the rule's sweeping functions, which aim to safeguard lawyer independence, the public's access to qualified counsel, and the rule of law, especially when powerful third-parties seek to intrude.

These core values are absent from the current text of 5.6(b), which appears on its face to apply only to a limited class of prohibited agreements.[399] This stands in contrast to Rule 5.6(*a*), which governs restrictive covenants in attorney employment and related agreements.[400] The comment to 5.6(a) makes that rule's function plain, explaining the subject covenants would impermissibly "limit[] [lawyers'] professional autonomy" as well as "the freedom of clients to choose a lawyer."[401] A lawyer who reads this comment, and then the sparsely-worded comment to Rule 5.6(b), without also reading relevant guidance opinions and legislative history, is unlikely to conclude that 5.6(b) also serves this important purpose and is equally expansive in its reach.

Understood properly, Rule 5.6(b) serves a critical function when powerful interests intrude into lawyer independence. Lawyers who receive a settlement offer from an adversary may find that they are under immense pressure to limit their own future representation in exchange for benefits to a current client or some other form of consideration. Rule 5.6(b) was intended to depressurize this intrusion by prohibiting the lawyer from either offering or agreeing to such a settlement term. In this way, the conflict which a lawyer confronts is avoided, and the public's access to experienced counsel and to the courts is preserved.

As history has often revealed, this pressured intrusion into the practice of law takes on increased importance when the government is the intruder. The White House/Law Firm agreements demonstrate that, in cases of government coercion and intimidation, a refusal to "play ball" may come at a great cost. Targeted law firms were facing the loss of security clearances, an inability to represent clients with government contracts, and a refusal to hire their lawyers for government positions. In the words of Paul Weiss's chairman, the President's executive orders

399. *See* MODEL RULES R. 5.6(b) (1983) ("A lawyer shall not participate in offering or making . . . an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.") [HEREINAFTER 1983 MODEL RULES]; 1983 MODEL RULES 5.6(b) cmt. 2 ("Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.").

400. 1983 MODEL RULES R. 5.6(a) ("A lawyer shall not participate in offering or making . . . a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement . . . .").

401. 1983 MODEL RULES 5.6(a) cmt. 1.

"could easily have destroyed" the settling law firms.[402] Not only because the orders would cost them clients, but because they would also drive valuable employees to leave as competitors "aggressively recruit their attorneys."[403]

There is ample precedent for such dire consequences. As discussed *supra* in Section II.B, when the National Lawyers Guild resisted J. Edgar Hoover's attempt to intimidate the organization into submission during the Second Red Scare, roughly eighty percent of its members resigned.[404] Firm leaders facing government intimidation and eager to act quickly to minimize harm are unlikely to examine Rule 5.6(b)'s legislative history or interpretive decisions for ethical guidance. And even if they do, they will find a mix of authority, as this article is the first to correct misunderstandings of Rule 5.6(b) that date back almost fifty years. This muddy history is not the unmistakable ethical guardrail necessary to guide proper decision-making in the face of intense pressure or intimidation.

And yet, read alongside its "common law" history and interpretive ethics opinions, Rule 5.6(b) forbids lawyers from agreeing to sacrifice their professional independence—jeopardizing the public's access to counsel—to secure a reprieve in the face of government pressure. When powerful actors, public or private, seek to limit the availability of legal counsel to prevent the parties they harm from vindicating their rights in court, Rule 5.6(b) must stand as an immovable guardrail. With the integrity of the rule of law at stake, this meaning must be abundantly clear. Accordingly, we propose amendments to the rule and its comments aimed at ensuring ethical clarity that is rooted in 5.6(b)'s historical purposes.

We contend that an effective amendment to Rule 5.6(b) must incorporate the undisputed ABA Formal Ethics Opinions that have properly interpreted the rule. As discussed *supra* in Section III.B.2, these guidance opinions confirm several core principles—that Rule 5.6(b): (1) applies to agreements reached with the government as well as between private parties,[405] (2) prohibits settlement agreements with terms that "materially limit" future representations,[406] and (3) is descriptive rather than prescriptive—*i.e.*, the rule identifies the circumstances in which the prohibited agreements are most likely to occur without excluding from its reach less common, but equally harmful, agreements.[407] The text of an amended Rule 5.6(b) should make clear on its face that the rule's prohibition applies to agreements of any kind with adverse parties or entities, whether private or governmental, and that such agreements need not be part of the resolution of a client controversy. The comments to the rule should explicitly instruct that the independence of a lawyer is inviolate, and a lawyer's authority to select particular

402. Lat, *supra* note 133.
403. *Id.*
404. Lobel, *supra* note 55, at 209.
405. ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 394, at 3 (1995).
406. ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 417, at 3 (2000).
407. ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 394, at 3 (1995).

clients or causes may not be shared with the government when it acts adversely to the lawyer.

To accomplish these essential functions, we offer suggested rule modifications that adhere as closely as possible to the current language of the rule, while at the same time clarifying the rule's expansive reach and protective functions based upon our corrected legislative history and the leading guidance opinions. There is urgency to these revisions as a result of the President's actions against the organized bar and its most prestigious law firms. And history has taught us that government intrusions into the practice of law for political purposes are not limited to the current moment. Therefore, an updated Rule 5.6(b) will serve the profession and public long into the future.

With these goals in mind, we propose an amended rule that contains explicit language providing that the rule applies to both governmental and private parties and that it prohibits restrictions on the practice of law that include, but are not limited to, a lawyer's independent authority over client and case acceptance. Restrictions on the practice of law as part of any agreement to resolve a dispute are prohibited, whether or not the dispute is in litigation or involves a client controversy. The amendments to the rule and descriptive comments are intended to state unequivocally that lawyers may not offer or accept a restriction that materially limits future representation, safeguarding the profession's independence from third-party interference and preserving the public's access to qualified counsel. Of course, we recognize that there are necessary exceptions to this prohibition, but they are limited. They include terms governing the sale of a law practice and agreements reached in professional discipline proceedings.

Rule 5.6(b), at its core, protects an independent profession that is essential to preserving government under law. The language of the rule is largely unchanged from its original adoption in 1983, except for one amendment adopted in 2002. The time is right for the rule to be reexamined and amended to provide clear ethical guidance to lawyers as they navigate difficult waters against powerful interests. We urge the adoption of the following revisions:

> **Rule 5.6: Restrictions on Right to Practice**
>
> A lawyer shall not participate in offering or making:
>
> . . . .
>
> (b) an agreement with a private or governmental party in which a restriction on the lawyer's right to practice, including the lawyer's exercise of independent authority over client acceptance and case selection, is part of the resolution ~~settlement~~ of a dispute ~~client controversy~~.
>
> **Comment on Rule 5.6(b)**
>
> . . . .
>
> [2] Paragraph (b) prohibits a lawyer from agreeing with a private or governmental party, whether or not in litigation, not to undertake representations of

> other persons or cases in connection with the resolution of a dispute ~~settling a claim on behalf of a client~~. This prohibition applies to any provision that materially limits a lawyer's future representations, preserving the legal profession's independence from third-party interference and safeguarding the public's access to qualified counsel. As stated in the Preamble of these Rules, an independent profession is an important force in preserving government under law.
>
> [3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17, or to agreements relating to professional discipline administered by appropriate authorities.

CONCLUSION

The independence of the legal profession and the public's access to qualified counsel are fundamental to the rule of law. Model Rule 5.6(b) safeguards these principles as an essential ethical guardrail, prohibiting attorneys from offering or accepting settlement agreements that restrict their future right to practice. However, as this article reveals, the history and purpose of Rule 5.6(b) have been widely misunderstood, and the rule's language needs revision to fully inform lawyers of their ethical obligations, especially in disputes with government entities.

Historically, the government has threatened lawyer independence by penalizing those who represent unpopular clients or challenge official policies. President Trump's executive orders targeting major law firms exemplify these tactics. The orders have coerced law firms into entering agreements with the President that appear to compromise law firm independence and require mutual consent before providing pro bono legal assistance. Without clear guidance on the face of Rule 5.6(b), law firms entered these agreements under the mistaken belief they were ethically permissible as necessary to protect their own financial interests.

The ABA must revise Rule 5.6(b) to explicitly ban practice-restrictive agreements with adverse governmental as well as private actors, whether or not the agreements involve a "client controversy." Clearer guidance would prevent lawyers under duress from choosing personal financial interests over professional ethics and the public good, establishing a non-negotiable duty to reject adverse government control over client acceptance and case selection.