

Defending Democracy

The Year in Review: 2023



Introduction

The Urgent Need to Protect our Democracy

Last year we issued a comprehensive [report](#) detailing the accomplishments of our first four years. Since our founding, LDAD has continued to shine a spotlight on those who undermine democratic norms and principles. LDAD has, for example: called on lawyers to sign onto our [Democracy Commitment](#) and to stand up and speak out in support of democracy and the rule of law; filed ethics complaints against lawyers who ignored their oath to protect the Constitution and, instead, sought to overturn the results of a free and fair election; filed amicus briefs in important cases; called for and drafted ethics rules for the Supreme Court; shared our message in the press and opinion columns; spoken in classrooms and to professional audiences; and collaborated with other democracy organizations.

In our work, we have noticed a disturbing trend among far too many lawyers and legal organizations—reluctance. A reluctance to take a stand against words and actions that undermine core principles of democracy. Why? It boils down to one issue: fear that speaking out to protect the rule of law is political, and carries with it the risk of offending clients, donors, and other stakeholders.

It is why a central part of our message this year and entering 2024 is this: **protecting democracy is not a partisan issue. It is our shared responsibility as American citizens, and our shared duty as American lawyers.**

From Threats to Action

Justice Brandeis described the states as laboratories of democracy. This year, rhetorical threats to democracy have transformed into a policy agenda, in which states are becoming “laboratories of autocracy.” Florida, Texas, Iowa, Tennessee, and others have implemented laws and taken steps to undermine fundamental pillars of democracy, including ballot access, equal treatment of citizens, fact-based policymaking, and more.

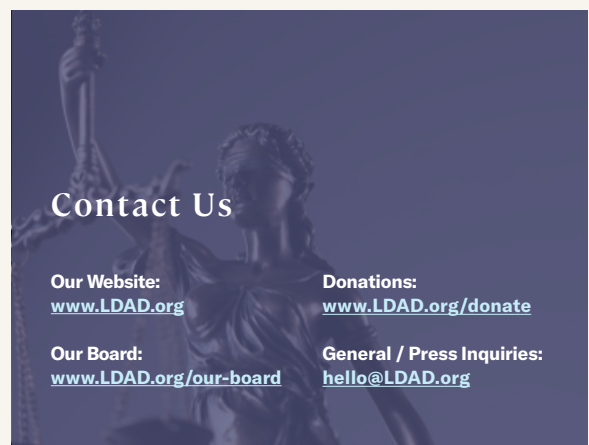
To shine a light on the growing threat of autocratic State governments, LDAD has developed the first comprehensive summary of these actions in five States. This is the first step of a continuing priority to reveal what is happening in other States throughout the country.

This authoritarian policy agenda is a concerted effort, with substantial financial backing, including at the national level. Just this Fall, a broad coalition of so-called “conservative” groups and leaders published Project 2025, a roadmap for how the next President can radically centralize executive authority, undermine the independence of the Department of Justice, and de-professionalize and politicize the federal bureaucracy.

This proposal is not a conservative agenda, but is rather an extremist proposal for undermining democracy at the State and national level. It does not focus on policy outcomes, but rather on centralizing decision-making in selected individuals, ultimately the President, and eliminating checks and balances that constrain those individuals to act. Lawyers, and all Americans who support our Constitution, should be alarmed.

The threats are real, but so is the resolve of those who believe in the rule of law. We work every day to galvanize and unify the legal profession to express and act on that resolve. **This is not about policy disagreements over taxes, or the border, or national defense, or government spending. This is about whether we will continue to live in a democratic republic, governed by the rule of law and not the law of the ruler, and whether or not government will be subject to the will of the people.**

LDAD is here to encourage all lawyers to know: you are not alone. There are more supporters of the Constitution, democracy, and the rule of law than there are those who would undermine them. Our duty as lawyers is to speak and to act. We must Keep the Faith.



Contact Us

Our Website: www.LDAD.org	Donations: www.LDAD.org/donate
Our Board: www.LDAD.org/our-board	General / Press Inquiries: hello@LDAD.org

Our Mission

LDAD and the Fight to Protect Democracy

LDAD's mission is to galvanize and organize lawyers and legal organizations to commit to – and stand up for – core principles of democracy. As lawyers we speak out against attacks on the rule of law and seek to educate the public about the rule of law, and the importance of protecting our constitutional republic.

These core principles are embodied in eight simple pillars. Each one ought to be seen as non-controversial – and non-partisan. Indeed, as a 501(c)(3) organization, LDAD takes no political positions and has a politically diverse base of supporters and leaders. More importantly, each one of these core principles are under assault by organized groups of policymakers and advocacy groups.

These core principles are:

1. The rule of law;
2. Institutional checks and balances;
3. The separation of powers;
4. The independence, integrity, and critical role of mainstream media;
5. The independence, integrity, competence, and non-partisanship of the judiciary;
6. Truthfulness of public officials;
7. The independence, integrity, competence and non-partisanship of federal criminal justice and intelligence agencies, including the Department of Justice and FBI; and
8. Civil discourse and fair treatment including respect for rights and the dignity of all individuals, regardless of race, ethnicity, national origin, religion, gender, disability, sexual orientation, or gender identity.

These principles are embodied in LDAD's first Open Letter to which so many lawyers have signed on. We continue to highlight these principles, and to take action to hold people accountable for violating them.

Taking Action

LDAD's approach is to be nimble and responsive to current events, while at the same time working to pursue systemically problematic threats, and to pursue actions by lawyers. In these efforts, we have pursued a broad range of activities, including:

Open Letters / Calls to Action on a variety of critical topics, signed by thousands of lawyers across the country and around the world;

Statements, prepared by LDAD's Board of Directors, where we speak out in response to actions that weaken our democratic institutions;

Ethics complaints against attorneys where available information reveals professional misconduct that can undermine our democracy and the rule of law;

Amicus briefs in federal and state court cases involving serious threats to democracy, the rule of law, and/or the criminal justice system;

Reports on emerging threats to democracy, including a compendium of anti-democracy actions in states across the country;

Updates, analyses, and requests for action, including regular newsletters to our thousands of supporters, as well as blogs on the LDAD website and LinkedIn postings;

AS FEATURED IN

The New York Times

LAW.COM



CNN politics

The Boston Globe

The Washington Post

The Guardian

Newsweek

Forbes

VANITY FAIR

Taking Action

Press releases and other outreach **in support of our statements, open letters/calls to action, amicus briefs, ethics complaints and other news;**

Collaborating with other organizations and prominent individuals **on matters of common interest;**

Op-Eds, letters, and other public statements in support of our mission **by Board members as well as our dynamic and insightful Dennis Aftergut, who serves in the role as Of Counsel to LDAD.**

Our work, including underlying documents, is easily accessible on www.LDAD.org.

Here are highlights of some of our key accomplishments over the past year.

Ethics Complaints

LDAD has prepared and filed ethics complaints with state bar disciplinary authorities that seek to hold accountable attorneys who, based on information in the public record, played an instrumental role in undermining democracy.

LDAD has taken great care to file these complaints with the support and help of renowned ethics practitioners, including in the states in which we file. Our focus is always to analyze the record and seek accountability where the record — legally and factually — supports the case that discipline is merited.

We are committed to the principle that the ethics and disciplinary process must never be politicized and we have sought to act in a deliberate and rigorous manner in preparing and filing each complaint.

All of the complaints LDAD has filed are available [here](#). Our 2023 complaints include:

Professional Responsibility Investigation of Stefan C. Passantino (filed with the DC Office of Disciplinary Counsel, Board of Professional Responsibility, March 6, 2023). LDAD, joined by prominent D.C. lawyers, filed a legal ethics complaint against Stefan C. Passantino.

Passantino was the lawyer who initially represented White House aide – and key witness – Cassidy Hutchinson before the Select Committee to Investigate the January 6 Attack on the United States Capitol.

Prior to his representation of Hutchinson, Passantino served as a member of former President Trump’s Office of White House Counsel, including as the President’s ethics advisor. The 18-page complaint meticulously sets forth the evidence against Passantino that demonstrates how he failed in his duty to represent his client, and instead protected the best interest of the former President. In doing so, Passantino interfered with the Committee’s efforts to unearth the facts behind the January 6 attack on the Capitol.

James McHugh, a principal author of the complaint and a former Massachusetts Appeals Court judge, emphasized that “Passantino repeatedly directed Ms. Hutchinson to not be forthcoming to the January 6 Committee. He continually exploited the power imbalance in his representation of a young witness, who was gravely concerned about exposing herself to criminal liability for perjury, by reassuring her that she was doing the right thing and offering false hope that he would help find her a job. As a former ethics counsel, Attorney Passantino’s wrongdoing is particularly egregious.”

Supplemental Filing in the Matter of Rudolph W. Giuliani (filed with the Attorney Grievance Committee of the Supreme Court of the State of New York, August 15, 2023). LDAD submitted a Supplemental Filing to its 2021 ethics complaint against Rudolph Giuliani, who has since been suspended from the practice of law in New York and D.C. while the investigation as to whether he should be disbarred continues.

The Filing is based on admissions made by Mr. Giuliani in a defamation lawsuit brought against him by election workers in Georgia. In a stipulation filed before the United States District Court, Mr. Giuliani admitted to making false statements against the Plaintiffs. LDAD’s Supplemental Filing points out the substantial evidentiary significance of these admissions to the ongoing New York disciplinary proceedings against Mr. Giuliani.

Ethics Complaints

Ethics Complaints (cont'd.)

Supplemental Filing in the California and New York Professional Responsibility Investigations of Kenneth John Chesebro (original filing December 6, 2022; supplemental filings on August 28, 2023, September 6, 2023, and October 31, 2023). LDAD submitted a series of supplemental filings to its 2022 ethics complaint against Kenneth J. Chesebro in New York and California. The filings address three developments that further establish (and expand) Mr. Chesebro's ethical violations, including his indictments in Georgia and by the Department of Justice, and his at least reckless misrepresentation of Professor Laurence Tribe's scholarly work on Constitutional Law.

On October 31, following Chesebro's October 20 guilty plea in Georgia to conspiracy to file a false election certificate, LDAD filed additional supplemental filings calling on New York and California authorities to disbar him.

As LDAD explained, "the false submissions that Mr. Chesebro conspired to have filed involved a matter of vast[...] importance: the election of the President of the United States. His conduct literally affected every person in the United States. It is hard to imagine a more momentous falsification, or one more deserving of disbarment."



Letter to the State Bar of Texas (November 8, 2023). LDAD, in partnership with the States United Democracy Center, sent a letter to the State Bar of Texas urging the Office of Chief Disciplinary Counsel to seek the disbarment

of Sidney Powell through a compulsory discipline proceeding in light of her guilty plea in the Fulton County, Georgia election interference case. The letter was signed by more than a dozen bipartisan signatories, including prominent Texas legal experts, former Republican statewide and federal officials, and the Bush and Obama White House ethics advisors.

Model Code of Conduct for Supreme Court Justices

On March 9, 2023, LDAD, in partnership with the Project on Government Oversight (POGO), released a proposed model code of conduct for Supreme Court Justices. LDAD and POGO noted that with public trust of the U.S. Supreme Court at an historic low, the swift implementation of a formal code of conduct is necessary to restore the public's confidence in this critical institution.

In creating this draft, LDAD and POGO built on the existing code applicable to all other federal judges and added new language relating to: requirements for recusal arising out of the unique circumstances of service on the Supreme Court; the prohibition on participation in fundraising events; the placement of assets in a blind trust; and additional disclosures about financing of travel and perquisites.

LDAD's Executive Director and board member, Lauren Stiller Rikleen, said that: "the legitimacy of the Supreme Court depends on the impartial administration of justice. Establishing a binding code of conduct will help the Justices make decisions for recusing themselves in matters where their ability to be impartial is at risk, and will provide specific guidelines to avoid conduct that may otherwise be outside ethical bounds."

Amicus Briefs

LDAD submitted two amicus briefs in 2023, following the three LDAD filed in 2022. LDAD selects matters in which to draft and file amicus briefs in cases where LDAD's core principles are implicated. Our 2023 amicus briefs were filed in important lawyer disciplinary matters and can be viewed online [here](#).

Amicus Briefs

Amicus Briefs (cont'd.)

Commission for Lawyer Discipline v. Brent Edward Webster (Brief of Amici Curiae Texas Lawyers and Lawyers Defending American Democracy, No. 08-22-00217-CV, Tex. App. – El Paso (Eighth District)). In this brief, LDAD urged the court to uphold the principle that high-ranking lawyers in state government *are* subject to disciplinary rules, just like every other lawyer alleged to violate their ethical obligations.

In this case, Attorney General Kenneth Paxton's First Assistant, Brent Webster, argued that he was immune from discipline by the Texas Bar for alleged ethics violations. In a telling revelation of his authoritarian mindset, Paxton argued that the enforcement of standards of legal ethics was barred based on, among other things, sovereign immunity. LDAD argued that the Attorney General office's "broad discretion" to represent Texas does not mean it has "unlimited" discretion to do so, and certainly not in ways that implicate the ethical obligations of lawyers in that office.

On July 13, 2023, the El Paso Court of Appeals rejected Webster's defenses, including incorporating arguments in LDAD's amicus brief.



Warren Kenneth Paxton, Jr. v. Commission for Lawyer Discipline (Brief of Amici Curiae Texas Lawyers and Lawyers Defending American Democracy, No. 05-23-00128-CV, Tex. App. Dallas (Fifth District)). This May 17,

2023 LDAD *amicus* brief rebutted sovereign immunity and separation of powers defenses raised by Texas Attorney General Paxton in the Dallas Court of Appeals that are parallel to the defenses raised by First Assistant Webster in his El Paso Court of Appeals case described above.

Moore v. Harper, No. 21-1271, U.S. (Decided by the Supreme Court on June 27, 2023). This Supreme Court decision repudiated the "independent state legislature theory" that would have immunized partisan state legislatures from judicial review of legislation governing federal elections, even if the legislation violated a state's constitution; the opinion incorporated language LDAD had quoted in its 2022 *amicus* brief.



Open Letters / Calls to Action

A Call to Action Against Politicized Rewriting of History. On August 10, 2023, LDAD released a Call to Action against efforts in a number of states to rewrite history by changing educational curricula and other materials on slavery and Reconstruction. Many of these laws, most notably in Florida, require teaching "how slaves developed skills which, in some instances, could be applied for their personal benefit." The standards twist truth and revise history by excluding the reality of racism and violence against Blacks. These laws also include the banning of certain books from certain books from public schools and libraries that may include facts at odds with this false version of "history."

Open Letters

In the Call to Action – signed by supporters across the country – we re-affirmed principles of democracy, including:

1. Education and truthfulness are fundamental to our democracy;
2. The deliberate distortion of history undermines the central role of education in our society;
3. We must teach about the horrors and cruelties that have been inflicted on our citizenry to ensure they never happen again;
4. Book bans that diminish the lived experience of others trample the principle of human dignity;
5. Each of us has an obligation to speak out when the government misuses its power by rewriting history for political purposes.

Marching Towards Autocracy: How States Are Failing Democracy – and What We Can Do About It

Numerous states have been implementing laws that undermine core principles of democracy, including disregarding the will of the majority, ignoring principles of accountability and open government, and removing or undermining the fundamental rights of individuals.

With these developments happening quickly – and often with little public awareness – LDAD set out to identify, catalogue, analyze, and publicize these efforts in five

states: Arizona, Florida, Iowa, Tennessee, and Texas. Our report is the first installment of an ongoing project focusing on an increasing number of states.

Our [report](#), in the form of a compendium, identifies 8 key norms and principles which are core to the way in which our country develops an educated citizenry, promotes tolerance and justice in a complex and diverse society, and ensures compliance with state and federal constitutions and laws. These principles are:

- Ballot access;
- Fair treatment of all members of society;
- Respect for individual autonomy;
- Access to free, uniform, and high-quality education;
- Fact-based decision-making;
- Appropriate restraints on the exercise of state power;
- Support for and confidence in public and private institutions, businesses, and associations; and
- Government respect for systemic checks and balances.

Following these principles, the compendium details what happened in each state, and why it matters. The full report, *Marching Towards Autocracy: How States Are Failing Democracy – and What We Can Do About It* can be found on the LDAD website [here](#).

This is a foundational LDAD document and will be updated through the year. It offers a touchstone for future LDAD activities.



Our Actions

The Democracy Commitment

Since the formation of our country, lawyers have had the responsibility to defend the underlying constitutional values and norms of political behavior on which our democracy depends. This responsibility is manifested by a lawyer's duty to take an oath to defend the Constitution, imbuing lawyers with a special role in society to protect the rule of law, the values of our democratic institutions, and our justice system.

LDAD created the Democracy Commitment to recruit lawyers throughout the country, including in law firms, corporate law departments, law schools, and bar associations at the national, state, regional, and local level, to use their voices and influence to protect our democratic institutions.

The Democracy Commitment provides lawyers with concrete steps – a blueprint for measures they can take to engage the profession and the larger community in a commitment to the adherence of fundamental principles about public discourse, the right to a free and fair election, and the right of all to be treated with dignity. More information about the Democracy Commitment can be found [here](#).

News, Statements, Op-Eds, Letters

In 2023, LDAD has been featured in many news articles in major publications including The Washington Post, The Boston Globe, The Washington Examiner, The Houston Chronicle, Bloomberg, NPR, the ABA Journal, Law360, Salon and others. Members of LDAD's leadership – particularly our Of Counsel, Dennis Aftergut, have collectively published numerous statements, opinion pieces, and Letters to the Editor.

Collaborations

LDAD is proud to work with other organizations that share the same concerns about threats to the rule of law and democracy in America. In collaboration, LDAD and partner

organizations leverage each other's capabilities and reach, and demonstrate that there are many lawyers – across the political spectrum – who are honorable, decent people of integrity, fighting to protect our democratic institutions.



Financing Our Work

LDAD is a 501(c)(3) organization, and all donations are tax deductible. As a very small organization, LDAD has limited resources, is disciplined about limiting its expenses, and relies primarily on the work of its dedicated volunteers.

We ask for your continued support of our efforts. Please send your tax-deductible donation via [this link](#).

Looking Ahead: 2024 and Beyond

Much work remains to be done to protect our democratic institutions and the rule of law. With authoritarian impulses transforming from political rhetoric to real-world policy initiatives, the urgency to act to preserve, protect, and defend our system of government is greater than ever.

Among our commitments for the future:

1. LDAD will continue to speak out and galvanize both the profession and the public, including mobilizing and engaging the legal profession to protect democracy and the rule of law, doing this work focused on our relentless approach:

Our Actions

Looking Ahead (cont'd.)

- a. Nimbly responding to events that fit within our core principles and fundamental values;
 - b. Continue to hold accountable lawyers who engage in ethical misconduct while violating their oath to protect the Constitution;
 - c. Develop special projects where we can leverage pro bono and other volunteer involvement to increase our influence and promote change;
 - d. Catalogue, highlight, and publicize ongoing State and national policy initiatives that undermine democracy, the rule of law, and fundamental principles of democracy;
 - e. Continue to call on and work with law firms, law school deans, and bar associations to speak out against these anti-democracy measures, and to take action.
2. LDAD will continue and expand our focus on protecting the independence, integrity, competence, and nonpartisanship of the judiciary. As part of

that focus, it is important to address the Supreme Court's decisions eroding personal liberties and civil rights. Initial – and insufficient – moves to implement an ethics code at the Supreme Court mean LDAD will continue to be at the forefront of advocating in all channels for ethics reform at the Court.

3. We will continue to call for independence, integrity, and the role of the mainstream media as a cornerstone of democracy. The press has been focused on the “horserace,” when what it really needs to be focused on is the stakes of the Presidential election and all other elections.
4. LDAD will lead in helping lawyers who care about democracy and the rule of law – across the political spectrum – to know that they are not alone. We will continue to build coalitions of lawyers who recognize that protecting the rule of law is not a partisan issue.
5. We will work to organize and galvanize younger Americans, on college campuses and in law schools, to stand up for core democracy principles.

We ask for your continued support of our efforts.

Please send your tax-deductible donation via [this link](#).

If you prefer to contribute by check, please make the check payable to *Lawyers Defending American Democracy* and mail it P.O. Box 1922 Framingham, MA 01701. Our federal tax ID number should you need it is 83-3497204.

We are always happy to hear from our supporters and friends. You may reach out to us at Hello@ldad.org.