
LAWYERS DEFENDING AMERICAN DEMOCRACY

An Open Letter to AmLaw 200 Firms

Donald Trump's Executive Orders targeting more than a dozen of the nation's most prestigious law firms have brought the entire legal profession to a critical juncture.

Four of the elite firms targeted by these Executive Orders have sued the Trump Administration in separate actions, and all four have won temporary restraining orders against the President. The courts found that these firms were likely to prove that the President's actions are illegal, unconstitutional, and unenforceable. As one Judge explained: "The framers of our Constitution would see this as a shocking abuse of power." More than 800 other firms, including 17 of the prestigious firms that comprise the so-called "AmLaw 200," have joined Amicus briefs in their defense.

These 21 AmLaw 200 who have chosen to fight stand in contrast to the 9 firms that have negotiated "[agreements](#)" with the President, and the 170 firms who have taken no position at all.

Lawyers Defending American Democracy calls on the 170 undeclared AmLaw 200 firms to avoid the path of those now notorious nine. **We call on these 170 firms to convene – as a group – to create a unified response to the President's unconstitutional actions and threats to the rule of law and system of justice.**

If you are one of these firms, you understand that the threatened executive edicts are not legal or enforceable. Rather, they are a tactic designed to enlist you in *undermining* the rule of law. Any concession by your prestigious firms only helps the Administration intimidate the legal profession from challenging its actions.

We ask you to recognize that participating in the Administration's efforts to pick off individual firms and negotiate with them individually is futile, harmful, and unnecessary. The justice system requires that firms set aside their natural competition and coalesce as a profession at this critical moment.

Negotiation With The Administration Is Futile:

As lawyers, we believe that disputes can be settled on reasonable terms. However, there exist no reasonable terms for resolving this dispute.

The President's actions are retribution against law firms that have represented causes or clients that the Administration disfavors. There is no argument in law, fact, logic, or reason that will cause the White House to withdraw these demands, because the point is to force you to act as if these demands are valid. Agreeing to "negotiate" about how much the government can use your firm to advance its agenda is collaboration in the abuse of power.

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Indeed, the only “discussion” the Administration wants is on the terms of surrender. Individual negotiation is designed to isolate, intimidate, and extract concessions from you. The real objective: send a message to all law firms that even the wealthiest and most powerful law firms in America will not stand up to the President’s demands.

Any assertions by the nine firm leaders to justify their actions as a preservation of their firms’ values and an act of loyalty to their clients does not hold up to scrutiny. And neither does the peace and security they believe they have won. They turned their backs on their values, submitted to an unlawful abuse of power, and are now complicit in undermining the rule of law.

You have only one real choice: capitulate or fight.

Negotiations Are Harmful:

As lawyers, we owe a duty of loyalty to our clients, to the profession, and to upholding the law. Negotiations harm all three.

First, negotiating and capitulating undermines your credibility and integrity with your clients. It demonstrates that you tolerate unlawful actions and tactics directed at you. It shows that you are willing to negotiate on the other side’s terms. And it shows that you are willing to take actions that inflict harm on and undermine the profession whose fundamental values you swore an oath to uphold.

Second, as several ethics professors have stated, the President’s actions and threats may amount to extortion, and those who submit may be in violation of ethics rules. The agreements may also [constitute violation of anti-bribery laws](#) by offering something of value to a federal official in hopes of influencing an official act. Finally, failing to oppose these orders deprives the courts of the opportunity to fulfill their responsibility of checking constitutional and illegal violations.

Third, negotiations hurt the profession. The Administration’s strategy appears to be to isolate each firm and play them against one another. Firms understand the threat hanging over these negotiations: capitulate, or the President will use the unlimited resources available to him to destroy you. Don’t align with others, don’t fight back, just take the same deal your competitors have already taken, quickly.

These threats reveal the Administration’s own fear. They don’t want you in court where they will lose. They are afraid to find out what happens if you and other firms stand together as a profession. In short, as long as you are in that room negotiating, alone, you are negotiating on their terms. And more importantly, as long as you are in that room, you are not in court, where you belong.

Negotiation is Unnecessary

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All four courts that have heard these cases have held that the likelihood of these law firms succeeding on the merits is so great that they have taken the extraordinary step of issuing temporary restraining orders against the Government's enforcement. The administration cannot fight 191 of the top firms at the same time. If you band together and agree to support one another, the White House strategy will collapse.

The Long-Term Consequences of Capitulation Are Worse Than Any Short-Term Pain

If you enter into an agreement with the Administration, there may be temporary relief from the things you fear, but that relief will not last. None of the agreements executed so far guarantee any of these firms that they can live free from more shakedowns in the future.

In fact, the terms of the agreements are so vague that once you submit, you'll always be at risk of violating your "agreement." Your conflicts, pro bono, and hiring committees will live under a shadow of how the President interprets your "agreement," impacting the selection of clients you represent, lawyers you recruit, and the values that make your firm special.

Your firm will forever be redefined. Your rival firms will point to you as a portrait of cowardice and ask how any client could trust you after succumbing to powerful interests without a fight. You will forever be joined with a small group of the most privileged firms in this country who betrayed the principles that lawyers and clients must be free to choose one another; that all people appearing in our courts are entitled to the best advocacy their counsel can offer; and that the rule of law requires lawyers and their firms to stand up for it, even when it is not in their own personal or financial interest. Reputations take decades to build and only one fateful decision to destroy.

You know that this is the very advice you'd give a client who was in your situation. You would tell them that they should not capitulate to baseless legal claims. And you would assure them that the lawyers in your firm are prepared to endure hardship if necessary to provide them the best defense.

A Final Request

Despite our different backgrounds, party affiliations, firms, and life experiences, our oath as members of this profession binds us together. Lawyers swear an oath. We assume responsibility that goes beyond our firms' bottom line and our clients' outcomes. We are officers of the court, with shared responsibility for the justice system and the law itself.

We must fight because if lawyers don't stand up for the rule of law, who will? If we don't fight for the principles that we have devoted our professional lives to – and that make us a free society – those principles will be forever compromised.

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We respectfully ask that your firms join your colleagues in the elite firm ranks to meet, to develop a collective response, to implement a common strategy, and to create a shared resolve.

At another dangerous time in our nation's history, Abraham Lincoln stated: "a house divided cannot stand." It is time for the country's major law firms to unite the profession to stand together to preserve the independence of the legal profession, the Constitution and the rule of law.