



## **RENEWING OUR VOWS: THE LAWYER'S OATH AND OUR PLEDGE TO DEMOCRACY**

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## ABSTRACT

*For centuries, lawyers have sworn to an oath as a prerequisite to admission. The oath, barely evolved from their historical roots, represents the guiding commitment lawyers make to democratic principles of honesty, integrity, fairness, and the rule of law. This commitment is in exchange for the power and privilege of belonging to the legal profession. However, the ethical landscape for legal practitioners has evolved, particularly in response to the alarming events of the 2020 U.S. presidential election. These events revealed significant lapses in the judgment and conduct among some lawyers, exposing the need for a recommitment to the democratic principles embedded in the oath. This article critically examines the historical development of the lawyer's oath and argues for its modernization to better reflect the ethical challenges of contemporary legal practice. It highlights the need for the oath to include explicit commitments to democratic principles, the rejection of bias, and the reinforcement of ethical responsibility. The article further explores how these modernized principles can be integrated into legal education and professional conduct to help avoid future lapses. In advocating for these reforms, the article asserts that a renewed and modernized oath is essential for the legal profession to reclaim its role as a defender of justice and public trust.*

## INTRODUCTION

Every lawyer takes an oath upon admission to the legal profession. This oath, of ancient origin, requires that today's lawyers swear or affirm to conduct themselves in an ethical manner. The oldest lawyer oath in the country provides that:

Whoever is admitted as an attorney shall in open court take and subscribe the oaths to support the constitution of the United States and of the commonwealth; and the following oath of office shall be administered to and subscribed by him:

I (repeat the name) solemnly swear that I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any false, groundless or unlawful suit, nor give aid or consent to the same; I will delay no man for lucre or malice; but I will conduct myself in the office of an attorney within the courts according to the best of my knowledge and discretion, and with all good fidelity as well to the courts as my clients. So help me God.<sup>1</sup>

The lawyer's oath embodies the democratic principles of the rule of law and stands as a pledge for justice, equality, and due process in a democratic legal system. Indeed, lawyers are not merely participants in the legal process; they are architects of policy, interpreters of laws, and guardians of democratic institutions. Their power must be balanced by their obligations. It is within this framework, that the lawyer's oath finds profound significance and its modernization a critical step

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<sup>1</sup> MASS. GEN. LAWS ch. 221, § 38 (2022).

toward a professional recommitment to the principles embedded in the oath.

Reciting the lawyer's oath is more than a ceremony. It is a pledge that binds the legal profession to the highest standards of integrity, fairness, and a commitment to the rule of law. But recent history, specifically the lawyer led efforts to undermine the 2020 U.S. presidential election, has exposed serious concerns in the ethical foundations of the profession. Lawyers, who should be the bulwark against the anti-democratic movements, were instead seen at the forefront of efforts to distort the truth, manipulate the electoral process, and undermine public confidence in our democratic institutions. The consequences of these actions are not merely professional lapses—they are existential threats to the integrity of democracy.

This article considers the origin and evolution of the lawyer's oath to establish its significance in regulating lawyers as their role in the development of democratic institutions demonstrates the import of ethical conduct that obligates the lawyer to democratic ideals. It begins by exploring the historical roots of the oath in Section II, tracing its journey from ancient civilizations to its modern-day embodiment in legal practice. In this section, I rely heavily on the extensive historical exploration of the oath by Carol Rice Andrews, as well as the scholars that she cites.<sup>2</sup> The discussion reveals how the oath has long served as a moral compass, guiding lawyers in their dual roles as advocates and public servants.

In Section III, the article turns its focus to the contemporary landscape, examining the unique role that

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<sup>2</sup> Carol Rice Andrews, *Standards of Conduct for Lawyers: An 800-Year Evolution*, 57 SMU L. REV. 1385, 1386 (2004) [hereinafter *Andrews, Standards of Conduct*]; Carol Rice Andrews, *The Lawyer's Oath: Both Ancient and Modern*, 22 GEO. J. LEGAL ETHICS 3 (2009) [hereinafter *Andrews, Lawyer's Oath*]; Geoffrey C. Jr. Hazard, *Legal Ethics: Legal Rules and Professional Aspirations*, 30 CLEV. ST. L. REV. 571 (1981) [hereinafter *Hazard, Legal Ethics*]; Geoffrey C. Jr. Hazard, *The Future of Legal Ethics*, 100 YALE L.J. 1239 (1990) [hereinafter *Hazard, Future of Legal Ethics*]; JOSIAH HENRY BENTON, *THE LAWYER'S OATH AND OFFICE* (1909).

lawyers play in democracy today. Whether in the courtroom, the legislature, or the advisory boardroom, lawyers' decisions shape the legal and ethical standards that govern society. This section discusses the inherent challenges and ethical dilemmas that arise when a lawyer's duties conflict.

The ethical breaches during the 2020 election are the focus of Section IV.

Here, the article scrutinizes the actions of lawyers who crossed the line from advocacy to manipulation, highlighting cases where misinformation, fraudulent schemes, and incitement to violence were used as tools to subvert the democratic process.

In response, Section V offers a path forward, proposing a recommitment to the principles within the lawyer's oath. This section calls for modernizing the language of the lawyer's oath to reflect the values of today's diverse legal ethical concerns, and humbly offers a sample modification of the Massachusetts lawyers' oath. Section V further suggests various enhancements to formal legal education and continuing legal education, revisions to the ABA Model Rules of Professional Conduct, and improvements to disciplinary procedures.

By reexamining the intersection of legal ethics and democracy, this article argues for a renewed dedication to the principles of lawyer's oath as a vital safeguard for the integrity of the legal profession and, by extension, democracy itself. A recommitment to the principles inherent in the oath can enhance the public trusts in the legal system as a guardian of democracy. Modernizing the oath is an essential step to this professional recommitment.

## I. A BRIEF HISTORY OF THE OATH & ITS EVOLUTION IN U.S. LAW

The lawyer's oath embodies deeply rooted principles of ethical conduct. Its evolution in democratic legal system underscores the oath's significance in our modern legal landscape. As Professor Andrews' important historical

exploration of the oath reveals, its historical context demonstrates the importance of advocating for a recommitment to its underlying principles of ethical conduct.<sup>3</sup>

### *A. The Early Oaths*

Oath taking dates back to ancient civilizations.<sup>4</sup> Oaths were essential in confirming truthfulness and loyalty.<sup>5</sup> Indeed, ancient Greek and Roman societies integrated oaths in their legal systems, representing their significance in ensuring justice.<sup>6</sup> For example, in Greece, advocates swore oaths to their gods, sacred altars and relics.<sup>7</sup> And, Romans required oaths from witnesses, judges, and litigants, underscoring the integrity of the judicial process.<sup>8</sup> These oaths served a moral function—committing advocates to ethical conduct under the threat of divine reckoning.<sup>9</sup> The earliest recorded oaths can be found in

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<sup>3</sup> Andrews, *Standards of Conduct*, *supra* note 2; Andrews, *Lawyer's Oath*, *supra* note 2.

<sup>4</sup> Andrews *Lawyer's Oath*, *supra* note 2, at 7; *see also* JAMES ENDELL TYLER, *OATHS; THEIR ORIGIN, NATURE, AND HISTORY* (London, John W. Parker 1834); HELEN SILVING, *ESSAYS ON CRIMINAL PROCEDURE* 4 (1964); JOSEPH PLESCIA, *THE OATH AND PERJURY IN ANCIENT GREECE* (1970); Matthew A. Pauley, *I Do Solemnly Swear: The President's Constitutional Oath – What It Means, Why It Matters* (1999) (Ph.D. dissertation, Harvard University) (on file with University Microfilms International).

<sup>5</sup> *See* Andrews, *Standards of Conduct*, *supra* note 2, at 20; Jonathan Belcher, *Religion-Plus Speech: The Constitutionality of Juror Oaths and Affirmations Under the First Amendment*, 34 WM. & MARY L. REV. 287; Eugene R. Milhizer, *So Help Me Allah: An Historical and Prudential Analysis of Oaths as Applied to the Current Controversy of the Bible and Quran in Oath Practices in America*, 70 OHIO ST. L.J. 1 (2009).

<sup>6</sup> Frederick B. Jonassen, *"So Help Me?": Religious Expression and Artifacts in the Oath of Office and the Courtroom Oath*, 12 CARDOZO PUB. L. POL'Y & ETHICS J. 303, 312 (2013); Belcher, *supra* note 5, at 291; Andrews, *Lawyer's Oath*, *supra* note 2, at 8-9.

<sup>7</sup> Milhizer, *supra* note 5 at 8; Belcher, *supra* note 5, at 291.

<sup>8</sup> *See* BENTON, *supra* note 2, at 19; Milhizer, *supra* note 5, at 11-12.

<sup>9</sup> *E.g.*, Milhizer, *supra* note 5, at 4. *See also* Jonassen, *supra* note 6, at 312; Andrews, *Lawyer's Oath*, *supra* note 2, at 7; William R. Nifong, *Promises Past: Marcus Atilius Regulus and the Dialogue of Natural Law Notes*, 49 DUKE L.J. 1077, 1103-04 (2000).

the Old Testament, reflecting this profound connection between faith in a god and ethical conduct.<sup>10</sup> Professor Andrews rightfully suggests that by invoking supernatural oversight, early oath taking emphasized the importance of ethical conduct in a civilized society under the threat of lay punishment and heavenly retributions.<sup>11</sup>

These early oaths served as the first formal set of standards for legal advocates.<sup>12</sup> Interestingly, some of these early advocate oaths read strikingly similar to modern oaths. For example, in the Justinian era, advocates were required to swear to be “true and just” and “not prosecute a lawsuit...[that] is dishonest, utterly hopeless or composed of false allegations.”<sup>13</sup> This oath emphasizes the balance of a lawyer’s duties between client and justice.

The oath became more formalized within various legal systems in medieval Europe as litigation and courts modernized. For example, in 1221, Roman Emperor Frederic II, required advocates to renew annually that they will pursue their cause “with all good faith and truth, without any tergiversation, succor; nor will they allege anything against their sound conscience; nor will they undertake desperate causes . . . by misrepresentation . . .”<sup>14</sup> Like the Justinian oath, this oath imposed a duty to the judicial system as well as the client.

The evolution of European oaths continued to regulate advocate conduct to protect both the client and the law. In London, a 1234 ecclesiastical decree required advocates to swear an oath to “plead faithfully, not to delay justice . . . but to

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<sup>10</sup> See *Genesis* 21:23-24 (New International) (“Now swear to me here before God that you will not deal falsely with me or my children or my descendants . . . Abraham said, ‘I swear it.’”); Andrews, *Standards of Conduct*, *supra* note 2; Jonassen, *supra* note 7, at 309.

<sup>11</sup> Andrews, *Standards of Conduct*, *supra* note 2, at 1392-93; BENTON, *supra* note 2.

<sup>12</sup> BENTON, *supra* note 2, at 9-10; Andrews, *Lawyer’s Oath*, *supra* note 2, at 6-7.

<sup>13</sup> Andrews, *Lawyer’s Oath*, *supra* note 2, at 9.

<sup>14</sup> *Id.* at 10. See generally JAMES ENDELL TYLER, OATHS; THEIR ORIGIN, NATURE AND HISTORY (1834).



defend his client both according to law and reason.”<sup>15</sup> In France, advocates took oaths to maintain truthfulness, avoid delays, and serve the poor.<sup>16</sup> These oaths reflected the growing recognition of the lawyer's role as a public servant with obligations beyond just client services but to the greater public expectations of the legal profession.

### *B. The “Do no Falsehood” Oath*

Oaths continued as the primary regulatory tool of advocates in Europe.<sup>17</sup> The English “do no falsehood” oath, dating back to 1402, required attorneys to swear they would not engage in falsehoods or deceit in their practice.<sup>18</sup> The oath mandated that lawyers affirmatively report falsehoods to the court.<sup>19</sup> It also barred delays, limited the fees, and required a pledge of competence.<sup>20</sup> This oath laid the groundwork for modern legal oaths, establishing a foundational commitment to honesty and integrity.<sup>21</sup> Similarly, a lawyer's oath in Denmark and Norway from 1683 emphasized fairness in litigation,

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<sup>15</sup> Andrews, *Lawyer's Oath*, *supra* note 2, at 11; Nifong, *supra* note 9, at 1091.

<sup>16</sup> See Andrews, *Lawyer's Oath*, *supra* note 2, at 7; BENTON, *supra* note 2, at 12, 112-21.

<sup>17</sup> Andrews, *Lawyer's Oath*, *supra* note 2, at 25; Milhizer, *supra* note 5, at 19-27 (Oath-taking was not limited to medieval Europe. In ancient Africa, truth-telling was often pledged with animal sacrifice, blood-spilling, incantations, and swearing on nature or objects. Traditional Chinese oaths had similar themes like decapitating a chicken and writing sacred characters on paper and burning it to emphasize the truthfulness of their cause. In Aztec culture, witnesses invoked the Sun and Earth gods while touching a finger to the ground and then to their tongue to pledge their commitment to honesty).

<sup>18</sup> BENTON, *supra* note 2, at 59; Jonassen, *supra* note 6, at 313; Andrews, *Lawyer's Oath*, *supra* note 2, at 13; Leonard S. Goodman, *The Historic Role of the Oath of Admission*, 11 AM. J. LEGAL HIST. 404, 406-07 (1967).

<sup>19</sup> BENTON, *supra* note 2, at 43; *see also* Jonassen, *supra* note 6 at 347; Goodman, *supra* note 18 at 407.

<sup>20</sup> Jonassen, *supra* note 6; *see also* Goodman, *supra* note 18 at 406; Andrews, *Lawyer's Oath*, *supra* note 2 at 13.

<sup>21</sup> See BENTON, *supra* note 2, at 44-47. *See generally* Jonassen, *supra* note 6.

honesty, and the avoidance of frivolous delays.<sup>22</sup> Oaths ensured that advocates conducted themselves with a sense of duty and ethical responsibility.<sup>23</sup> These oaths were not merely ceremonial but integral practices emphasizing truthfulness and fair play in a judicial system.

### *C. American Colonies Adopt the Oath*

Unsurprisingly, the English and European legal systems significantly influence the development of American legal ethics.<sup>24</sup> Early American colonies adopted oaths influenced by English, French, and other European models.<sup>25</sup> The adoption of these models was driven by the need to establish an ethical legal system in the new colonies.<sup>26</sup> Similar to Europe at this time, early American colonial oaths served as the primary regulation of the legal profession.<sup>27</sup>

Like their European counterparts, oaths in the American colonies emphasized a lawyer's duties of honesty, competency, and the support of just causes. The most common adopted model was the English "do no falsehood" oath.<sup>28</sup> For example, the Massachusetts Bay Colony oath required lawyers to commit to integrity and faithfulness to justice.<sup>29</sup> In 1701, Massachusetts formally adopted a modified version of the "do no falsehood"

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<sup>22</sup> BENTON, *supra* note 2, at 24-25; Andrews, *Lawyer's Oath*, *supra* note 2, at 17.

<sup>23</sup> See Jonassen, *supra* note 6; BENTON, *supra* note 2, at 28; Goodman, *supra* note 18, at 409.

<sup>24</sup> See BENTON, *supra* note 2, at 9; Andrews, *Lawyer's Oath*, *supra* note 2, at 4; and Jonassen, *supra* note 6, at 323; and Goodman, *supra* note 18, at 406-07.

<sup>25</sup> BENTON, *supra* note 2; Andrews, *Lawyer's Oath*, *supra* note 2. See also Goodman, *supra* note 18, at 404-11.

<sup>26</sup> See generally Jonassen, *supra* note 6; and Andrews, *Lawyer's Oath*, *supra* note 2.

<sup>27</sup> Andrews, *Lawyer's Oath*, *supra* note 2, at 19. See Goodman, *supra* note 18, at 406-07.

<sup>28</sup> See generally BENTON, *supra* note 2; Andrews, *Lawyer's Oath*, *supra* note 2, at 4; Goodman, *supra* note 18.

<sup>29</sup> Milhizer, *supra* note 5, at 27-28.

oath.<sup>30</sup> The adoption of the English oath tradition highlighted the social need for regulatory guidance in civic matters, like jury duty, witness testimony, holding public office, and, of course, serving as an advocate.<sup>31</sup>

Following the American Revolution, states began adopting their own versions of the lawyer's oath, with some incorporating a pledge to state and federal constitutions.<sup>32</sup> For example, in 1787, New York's oath required lawyers to "truly and honestly demean" themselves in their practice according to their knowledge and ability.<sup>33</sup> In 1799, New Jersey required lawyers to take an oath of allegiance to the state as well as an oath of honesty and faithfulness in practice.<sup>34</sup> Delaware and Pennsylvania also adopted modified "do no falsehood" oaths that include pledges of allegiance to constitutions.<sup>35</sup>

The Nineteenth century marked a significant period in the formalization of legal ethics and the lawyer's oath in the United States. Legal scholars and practitioners such as David Hoffman, Simon Greenleaf, and George Sharswood played pivotal roles in shaping the ethical framework for lawyers.<sup>36</sup> However, the evolution of the oath reflected a shift from a moralistic approach to one more closely aligned with the concept of zealous advocacy for clients.<sup>37</sup>

Published in 1817, David Hoffman's "A Course of Legal Study" first introduced a comprehensive set of ethical guidelines for American lawyers, emphasizing the importance

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<sup>30</sup> Andrews, *Lawyer's Oath*, *supra* note 2, at 20. *See also* Milhizer, *supra* note 5, at 28; Goodman, *supra* note 18, at 407.

<sup>31</sup> *See* Andrews, *Lawyer's Oath*, *supra* note 2, at 8-9, 11, 24-25, ; Herbert Pope, *The English Common Law In The United States*, 24 HARV. L. REV. 6 (1910).

<sup>32</sup> Andrews, *Lawyer's Oath*, *supra* note 2, at 22; Goodman, *supra* note 18, at 408. *See generally* Herbert, *supra* note 31.

<sup>33</sup> Andrews, *Standards of Conduct*, *supra* note 2 at 1416 n.179.

<sup>34</sup> *Id.* at 1417 n.186.

<sup>35</sup> *Id.* at 1416 nn.206, 209.

<sup>36</sup> Michael H. Hoeflich, *Legal Ethics in the Nineteenth Century: The Other Tradition Special Issue on Professional Responsibility: Essay*, 47 U. KAN. L. REV. 793, 794 (1998).

<sup>37</sup> *Id.* at 816.

of personal morality in legal practice.<sup>38</sup> Hoffman's "Resolutions in Regard to Professional Deportment" explicitly rejected frivolous defenses, promoted honesty in legal proceedings, and underscored the lawyer's duty to both the client and the broader justice system.<sup>39</sup> This early view was tied closely to the lawyer's oath, which Hoffman and his contemporaries saw as a binding commitment to justice and the public good.<sup>40</sup>

In his inaugural address at Harvard Law School in 1834, Simon Greenleaf emphasized this dual loyalty to a client and the public.<sup>41</sup> Greenleaf viewed the lawyers role in society as paramount because of the lawyer's unique access to the justice system and ability to assist in the prevention or reparation of wrongs.<sup>42</sup> Greenleaf argued that the lawyer's oath required lawyers to prioritize justice and the broader social good over blind alliance to their clients objectives.<sup>43</sup> Greenleaf's focus on the oath highlighted the notion that a lawyer's obligations were not simply to the client cause, but to the public good, with a duty to the legal system and democratic institutions.<sup>44</sup>

As the century progressed, George Sharswood introduced a more nuanced perspective, acknowledging the tension between a lawyer's moral beliefs and professional duties.<sup>45</sup> In his 1854 seminal work "An Essay on Professional Ethics," Sharswood further developed the concept of the lawyer's oath by articulating the potentially conflicting

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<sup>38</sup> See DAVID HOFFMAN, A COURSE OF LEGAL STUDY: ADDRESSED TO STUDENTS AND THE PROFESSION GENERALLY (London, John Miller, 2d ed. 1836); Hoeflich, *supra* note 36, at 797.

<sup>39</sup> See HOFFMAN, *supra* note 38, at 754; Hoeflich, *supra* note 36, at 795-96.

<sup>40</sup> HOFFMAN, *supra* note 38. See also Hoeflich, *supra* note 36, at 798-99.

<sup>41</sup> See Simon Greenleaf, *A Discourse Pronounced at the Inauguration of the Author as Royall Professor of Law in Harvard University*, in THE GLADSOME LIGHT OF JURISPRUDENCE: LEARNING THE LAW IN ENGLAND AND THE UNITED STATES IN THE 18<sup>TH</sup> AND 19<sup>TH</sup> CENTURIES 134 (Michael H. Hoeflich ed., 1988).

<sup>42</sup> See *id.* at 140.

<sup>43</sup> *Id.* at 151.

<sup>44</sup> See *id.* at 153.

<sup>45</sup> See GEORGE SHARSWOOD, AN ESSAY ON PROFESSIONAL ETHICS 102-03 (Philadelphia, T. & J.W. Johnson, 5th ed. 1884); Hoeflich, *supra* note 36, at 803-04.

responsibilities of lawyer between the obligations as advocates for their clients and as officers of the court.<sup>46</sup> While Sharswood maintained that lawyers owed fidelity to their clients, he also recognized that this obligation was tempered by their role as officers of the court, bound by their official oath.<sup>47</sup> Sharwood's approach represented a middle ground, allowing lawyers to represent clients zealously while still adhering to a moral framework that considered the public interest. Sharswood's ideas emphasized that lawyers should balance their duty to clients with their obligation to uphold justice and the integrity of the legal system.<sup>48</sup>

#### *D. The "Zealous Advocacy" Adjustment*

However, by the late Nineteenth century, the principles of zealous advocacy gained momentum while the notions of a societal obligation to fairness, ethical conduct and public service waned.<sup>49</sup> The emerging industrial economies demanded lawyers represent clients with all legal means, despite its ethical consequences.<sup>50</sup> This mis-aligned focus on client demands marked a significant departure from earlier ethical approaches. A lawyer's duty to the public gave way to client advocacy. This diversion reflected a broader transformation in legal ethics in the United States.

The lawyer's oath, once a lawyer's mandate of morality and public service, increasingly became a mere formality, second to client demands.<sup>51</sup> Principles of truthfulness and justice gave way to the rise of zealous advocacy and laid the groundwork for our modern legal ethics.<sup>52</sup> The shift from an

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<sup>46</sup> Hoeflich, *supra* note 36, at 803.

<sup>47</sup> *Id.* at 806.

<sup>48</sup> *See id.* at 805-06.

<sup>49</sup> *See* Hoeflich, *supra* note 36, at 816; Andrews, *Lawyer's Oath*, *supra* note 2, at 29.

<sup>50</sup> *See* Hoeflich, *supra* note 36, at 817.

<sup>51</sup> *See* Andrews, *Lawyer's Oath*, *supra* note 2, at 33, 39-41; Hoeflich, *supra* note 36, at 817.

<sup>52</sup> *See* Hoeflich, *supra* note 36, at 815.

oath to a set of guidelines reflected the growing complexity of legal practice and the need for more detailed ethical standards.<sup>53</sup> This transition was driven by the recognition that while the oath provided a broad moral framework, there was a need for specific rules to address the diverse ethical dilemmas faced by lawyers in their practice.<sup>54</sup>

### *E. Formalization and Codification of Legal Ethics*

In the late Nineteenth and early Twentieth century, the legal profession in the United States continued to evolve with increasing formalization of ethical standards and oaths.<sup>55</sup> The American Bar Association (ABA), founded in 1878, played a crucial role in standardizing legal ethics across the country.<sup>56</sup> The ABA's Canons of Professional Ethics, adopted in 1908, were among the first comprehensive set of ethical guidelines for lawyers, setting the stage for modern codes of conduct.<sup>57</sup>

As part of the Canons of Professional Ethics, the ABA also adopted a model oath in 1908.<sup>58</sup> In its final report the ABA committee explained that the oath served as a set of “clear and concise” set of binding duties, while the canons discussed the obligations of lawyers as they perform their specific professional role.<sup>59</sup> The ABA’s 1908 Model Oath stated:

DO SOLEMNLY SWEAR:

I will support the Constitution of the  
United States and the Constitution of  
the State of . . .;

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<sup>53</sup> See Andrews, *Lawyer’s Oath*, *supra* note 2, at 31, 54-55.

<sup>54</sup> See *id.* at 28.

<sup>55</sup> See Hoeflich, *supra* note 36, at 813; Andrews, *Lawyer’s Oath*, *supra* note 2, at 18-19.

<sup>56</sup> See Andrews, *Standards of Conduct*, *supra* note 2, at 1435.

<sup>57</sup> *Id.*

<sup>58</sup> Hoeflich, *supra* note 36; Andrews, *Standards of Conduct*, *supra* note 2, at 1835; *Final Report of the Committee on Code of Professional Ethics*, 31 ANNU. REP. A.B.A. 567, 584 (1908).

<sup>59</sup> *Final Report of the Committee on Code of Professional Ethics*, 31 ANNU. REP. A.B.A. 567, 570, 573, 584-85 (1908); see also Andrews, *Standards of Conduct*, *supra* note 2, at 1451-52.

I will maintain the respect due the  
Courts of Justice and judicial officers;  
I will not counsel or maintain any suit  
or proceeding which shall appear to  
me to be unjust, nor any defense  
except such as I believe to be honestly  
debatable under the law of the land;  
I will employ for the purpose of  
maintaining the causes confided to me  
such means only as are consistent with  
truth and honor, and will never seek to  
mislead the Judge or jury by any  
artifice or false statement of fact or  
law;  
I will maintain the confidence and  
preserve inviolate the secrets of my  
client, and will accept no  
compensation in connection with his  
business except from him or with his  
knowledge and approval;  
I will abstain from all offensive  
personality, and advance no fact  
prejudicial to the honor or reputation  
of a party or witness, unless required  
by the justice of the cause with which I  
am charged;  
I will never reject, from any  
consideration personal to myself, the  
cause of the defenseless or oppressed,  
or delay any man's cause for lucre or  
malice.  
SO HELP ME GOD.<sup>60</sup>

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<sup>60</sup> *Final Report of the Committee on Code of Professional Ethics*, 31 ANNU. REP. A.B.A. 567, 585 (1908). See also Susan D. Carle, *Lawyers' Duty to Do Justice: A New Look at the History of the 1908 Canons*, 24 L. & SOC. INQUIRY 1 (1999).

This oath combined elements from historical oaths and emphasized supporting the Constitution.<sup>61</sup> The oath's pledge included respect for the courts and upholding honesty in litigation.<sup>62</sup> The oath also included a "just cause" provision, allowing lawyers to refuse cases deemed unjust, requiring a lawyer balance the duty to client advocacy with broader ethical considerations.<sup>63</sup> The codification of the oath suggested a potential significant milestone in providing a framework for ethical conduct and reinforcing a lawyer's role as guardians of the justice system.

The ABA Model Rules of Professional Conduct, first adopted in 1983 and subsequently revised, incorporate many principles inherent in the lawyer's oath.<sup>64</sup> These rules emphasize core values such as competence, confidentiality, and loyalty, reflecting the enduring importance of the lawyer's oath in guiding ethical behavior.<sup>65</sup> The formulation of these rules was driven by the recognition that the oath alone was insufficient to address the complex ethical issues faced by modern lawyers, necessitating a more detailed and standardized set of guidelines.<sup>66</sup> The ABA's efforts to codify ethical standards were motivated by the need to address inconsistencies in the ethical practices of lawyers across different states.<sup>67</sup> The Model Rules provided a comprehensive framework that could be adopted by state bar associations, ensuring that all lawyers adhered to the same high

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<sup>61</sup> See generally Hoeflich, *supra* note 36. See also Andrews, *Standards of Conduct*, *supra* note 2, at 1425-26 n.278, 1438-39, 1442; Goodman, *supra* note 18.

<sup>62</sup> Hoeflich, *supra* note 36, at 812-13.

<sup>63</sup> *Id.* at 801, 805-06.

<sup>64</sup> Andrews, *Standards of Conduct*, *supra* note 2, at 1434-35; Martha F. Davis, *Human Rights and the Model Rules of Professional Conduct: Intersection and Integration*, 42 COLUM. HUM. RTS. L. REV. 157, 178-179 (2010); Eric C. Chaffee, *Death and Rebirth of Codes of Legal Ethics: How Neuroscientific Evidence of Intuition and Emotion in Moral Decision Making Should Impact the Regulation of the Practice of Law*, 28 GEO. J. LEGAL ETHICS 323, 332-33 (2015).

<sup>65</sup> Andrews, *Lawyer's Oath*, *supra* note 2, at 60. See also Hoeflich, *supra* note 36; Davis, *supra* note 64, at 176; Chaffee, *supra* note 64, at 365.

<sup>66</sup> Andrews, *Lawyer's Oath*, *supra* note 2, at 34; Chaffee, *supra* note 64, at 331-32.

<sup>67</sup> See Chaffee, *supra* note 64, at 333; Andrews, *Lawyer's Oath*, *supra* note 2, at 34; Jonassen, *supra* note 6.



standards of professional conduct.<sup>68</sup> Consequently, the adoption of the ABA rules across jurisdictions overshadowed the oath as a beacon for ethical conduct.

## II. LAWYER'S SPECIAL ROLE IN DEMOCRACY

In democratic societies, the rule of law serves as the bedrock upon which justice, equality, and the protection of individual rights are built.<sup>69</sup> Lawyers, as key players within a democratic legal system, occupy positions of significant power, privilege, and influence.<sup>70</sup> Their reach extends far beyond the courtroom. Lawyers serve in both government and non-government roles. In government roles, lawyers serve as legislators, judges, government attorneys, and advisors who shape public policy, interpret the law, and ultimately influence the trajectory of democratic governance.<sup>71</sup> Lawyers serving in non-government roles also hold significant power, privilege and influence in their client advocacy.<sup>72</sup> Lawyers, in any capacity, who lend their professional credibility to false claims about critical components of

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<sup>68</sup> See Chaffee, *supra* note 64, at 334; Andrews, *Lawyer's Oath*, *supra* note 2, at 43; Davis, *supra* note 64, at 165.

<sup>69</sup> Bruce A. Green, *The Lawyer's Role in a Contemporary Democracy*, Foreword, 77 FORDHAM L. REV. 1229, 1229-32 (2009); Rakesh K. Anand, *The Lawyer's Role in a Contemporary Democracy*, *Tensions Between Various Conceptions of the Lawyer's Role*, the Role of the Lawyer in American Democracy, 77 FORDHAM L. REV. 1611 (2009).

<sup>70</sup> Anand, *supra* note 69, at 1619-20; Green, *supra* note 69, at 1239-40; Alex Goldstein, *The Attorney's Duty to Democracy: Legal Ethics, Attorney Discipline, and the 2020 Election*, 35 GEO. J. LEGAL ETHICS 737, 744 (2022). See also DELIBERATIVE DEMOCRACY—ESSAYS ON REASON AND POLITICS (James Bohman & William Rehg eds., 1999); CASS SUNSTEIN, DEMOCRACY AND THE PROBLEM OF FREE SPEECH 18-20 (1993).

<sup>71</sup> See Katherine R. Kruse, *Professional Role and Professional Judgment: Theory and Practice in Legal Ethics*, 9 U. ST. THOMAS L.J. 250, 251, 153, 266-67 (2011).

<sup>72</sup> See Colin Marks & Nancy B. Rapoport, *The Lawyer's Role in a Contemporary Democracy*, *Promoting the Rule of Law, the Corporate Lawyer's Role in a Contemporary Democracy*, 77 FORDHAM L. REV. 1269 (2009); Green, *supra* note 69, at 1240.

our democratic institutions pose a significant risk to democracy, itself.<sup>73</sup>

Lawyers possess unparalleled access to the mechanisms of power within democratic societies.<sup>74</sup> As legislators, judges, and executive branch lawyers, they play a central role in shaping laws, policies, and societal norms.<sup>75</sup> As non-government lawyers, they influence democratic norms through their representative capacities. This access is a double-edged sword. While it enables lawyers to effectuate justice and uphold the rule of law, it also places them in positions where ethical lapses can have dire consequences for democracy.<sup>76</sup>

### *A. Government Lawyers*

Lawyers serving in legislative capacities are entrusted with the significant responsibility of safeguarding and promoting democracy through their lawmaking and policymaking roles. Their legal expertise, coupled with a deep understanding of constitutional principles, positions them uniquely to influence the creation of laws that uphold democratic ideals. These role place lawyers at the heart of governance, where they must ensure that the laws they create align with constitutional principles and democratic values.<sup>77</sup>

Lawyer-legislators play a critical role in ensuring that the laws they draft reinforce and protect the core values of

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<sup>73</sup> Andrew M. Perlman, *The Legal Ethics of Lying About American Democracy*, 22-2 SUFFOLK UNIV. L. SCH. LEGAL STUD. RSCH. PAPER SERIES 1 (2023).

<sup>74</sup> Green, *supra* note 69, at 1239; Goldstein, *supra* note 70, at 745-46, 748, 754, 756, 763

<sup>75</sup> See generally Deborah M. Hussey Freeland, *What Is a Lawyer - A Reconstruction of the Lawyer as an Officer of the Court*, 31 ST. LOUIS UNIV. PUB. L. REV. 425 (2012). See also Green, *supra* note 69, at 1238-41; Kruse, *supra* note 71, at 264-65.

<sup>76</sup> Goldstein, *supra* note 70, at 747-48, 753-54, 758.

<sup>77</sup> See *id.* at 739-41, 744; see also Green, *supra* note 69, at 1230, 1232-33; Mary L. Smith, *Lawyers Must Act Now to Save Our Democracy*, US NEWS & WORLD REP. (July 28, 2024), <http://www.usnews.com/opinion/articles/2024-07-28/lawyers-must-act-now-to-save-our-democracy>.

democracy.<sup>78</sup> This responsibility is heightened by their legal training, which equips them to foresee potential constitutional challenges and to design legislation that not only complies with the Constitution but also promotes broader democratic principles such as equality, transparency, and participation.<sup>79</sup> Their duty extends beyond merely ensuring legal compliance; they must also work to enhance democratic governance by crafting laws that empower citizens and protect individual rights.<sup>80</sup>

As policymakers, lawyers must navigate the complexities of modern governance, where laws must balance the needs of diverse constituencies while upholding the rule of law. This is particularly important in areas such as civil rights and electoral laws, where the potential for laws to either bolster or undermine democratic processes is significant.<sup>81</sup> The democratic duty of lawyer-legislators is to ensure that such laws enhance citizen participation and safeguard against disenfranchisement or discrimination.<sup>82</sup>

Lawyers in legislative roles must also balance their legal ethical obligations with their obligations to the electorate.<sup>83</sup> This requires a careful consideration of both legal principles and the democratic will of the people. Lawyer-legislators are not only public servants but also stewards of the public trust, responsible for ensuring that their legislative actions reflect the

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<sup>78</sup> Gary Lawson, *Delegation and Original Meaning*, 88 VA. L. REV. 327 (2002); Anand, *supra* note 69, at 1614.

<sup>79</sup> Lawson, *supra* note 78.

<sup>80</sup> *Id.* See also Anand, *supra* note 69, at 1620.

<sup>81</sup> Jessica Bulman-Pozen & Miriam Seifter, *State Constitutional Rights and Democratic Proportionality*, 123 COLUM. L. REV. 1855, 1860-61 (2023).

<sup>82</sup> *Id.* at 1877-78.

<sup>83</sup> Christopher F. Zurn, *Deliberative Democracy and Constitutional Review*, (2002), <https://papers.ssrn.com/abstract=2271598> (last visited Aug 10, 2024); Dale Bumpers, *The Congressional Oath of Office*, 24 U. ARK. LITTLE ROCK. L. REV. 803 (2001); Vic Snyder, *You've Taken an Oath to Support the Constitution, Now What - The Constitutional Requirement for a Congressional Oath of Office*, 23 U. ARK. LITTLE ROCK. L. REV. 897 (2000).

will of the people while adhering to constitutional norms.<sup>84</sup> This balance is essential to maintaining both the legitimacy of the legislative process and the public's faith in democratic institutions. The principle of democratic accountability requires that lawyer-legislators engage in meaningful deliberation and debate, ensuring that the laws they propose are thoroughly vetted and debated in public forums. This process is crucial for fostering transparency and ensuring that the legislative process remains open and responsive to the needs of all citizens.<sup>85</sup>

Beyond drafting laws, lawyers who influence policy must ensure that the policies they develop are aligned with democratic values. Whether working within government agencies, think tanks, or advocacy groups, lawyers have a duty to advocate for policies that enhance transparency, protect civil liberties, and promote equal access to justice.<sup>86</sup> Their legal expertise enables them to identify potential legal and constitutional challenges early in the policy-making process, ensuring that policies are both legally sound and democratically robust.<sup>87</sup> In this capacity, lawyer- policymakers must remain vigilant against the erosion of democratic norms. This includes resisting efforts to undermine the rule of law or to concentrate power in ways that threaten democratic governance. By upholding their duty to democracy, lawyers in these roles contribute to a legal and political framework that supports the flourishing of democratic principles and practices.

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<sup>84</sup> Zurn, *supra* note 83; J. Michael Luttig, *American Democracy in Peril* 121st Sibley Lecture, 58 GA. L. REV. 1 (2023). *See also* Kruse, *supra* note 71, at 263; Anand, *supra* note 69, at 1629.

<sup>85</sup> Ross L. Malone, *The American Lawyer's Role in Promoting the Rule of Law*, 43 MARQ. L. REV. 3 (1959); Scott L. Cummings, *Lawyers in Backsliding Democracy*, 112 CALIF. L. REV. 513, 605 (2024); Goldstein, *supra* note 70, at 745.

<sup>86</sup> Barry Daniel Malone, *The Burden of Our Privilege*, A.B.A., [https://www.americanbar.org/groups/young\\_lawyers/resources/tyl/practice-management/the-burden-of-our-privilege/](https://www.americanbar.org/groups/young_lawyers/resources/tyl/practice-management/the-burden-of-our-privilege/) (last visited Aug 10, 2024). *See generally* Bulman-Pozen, *supra* note 81; Cummings, *supra* note 85.

<sup>87</sup> Cummings, *supra* note 85. *See also* Malone, *supra* note 85; Goldstein, *supra* note 70 at 645.

Lawyer-judges also play a significant role in ensuring democratic integrity. Judicial power in a democracy is a cornerstone of maintaining the balance of power among the branches of government and ensuring the protection of constitutional rights. Judges wield significant authority, as their rulings not only resolve individual disputes but also set precedents that can shape the law for generations.<sup>88</sup> This power underscores the need for judges to exercise their authority with the utmost integrity, impartiality, and adherence to the rule of law.<sup>89</sup> It is important to note that this article does not address the current state of judicial ethics. Separate and apart from specific judicial ethical obligations (or the lack thereof) is an independent analysis that is deserving of its own analysis. Here, the focus remains on lawyer-judge obligations stemming not from independent judicial oaths but from the same lawyer oath taken by most judges.

The doctrine of judicial review grants judges the power to determine the constitutionality of legislative and executive actions, effectively serving as a check on the other branches of government.<sup>90</sup> As guardians of the Constitution, judges are tasked with ensuring that all laws and government actions align with the foundational principles of democracy.<sup>91</sup> However, the

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<sup>88</sup> Kruse, *supra* note 71; Goldstein, *supra* note 70. See also Annabelle Lever, *Democracy and Judicial Review: Are They Really Incompatible?*, 7 PERSPECTIVES ON POL. 805 (2009).

<sup>89</sup> See generally Fred C. Zacharias, *True Confessions About the Role of Lawyers in a Democracy Symposium: The Lawyer's Role in a Contemporary Democracy: Promoting Social Change and Political Values*, 77 FORDHAM L. REV. 1591 (2008); Kenneth M. Rosen, *Lessons on Lawyers, Democracy, and Professional Responsibility*, 19 GEO. J. LEGAL ETHICS 155, 190 (2006); Charles G. Geyh, *Judicial Independence, Judicial Accountability, and the Role of Constitutional Norms in Congressional Regulation of the Courts*, 78 IND. L. J. 153, 162 (2003).

<sup>90</sup> See *Marbury v. Madison*, 5 U.S. 137, 177 (1803); Geyh, *supra* note 89 at 161, 168.

<sup>91</sup> Viet D. Dinh, *Threats to Judicial Independence, Real and Imagined Conference: Fair and Independent Courts: A Conference on the State of the Judiciary*, 95 GEO. L.J. 929, 938 (2006). See also AKHIL REED AMAR, *AMERICA'S UNWRITTEN CONSTITUTION: THE PRECEDENTS AND PRINCIPLES WE LIVE BY* 29 (2012).

exercise of judicial review requires a delicate balance; judges must avoid the perception of overreach, where the judiciary might be seen as encroaching on the roles of the legislative and executive branches.<sup>92</sup>

The power of judicial interpretation also extends to the creation of common law, where judges set legal standards that will guide future cases.<sup>93</sup> This lawmaking function is critical in areas where statutory law is silent or ambiguous, allowing judges to fill gaps in the law through reasoned analysis and precedent.<sup>94</sup> However, this creative aspect of judicial power must be exercised with restraint, as judges are unelected officials, and excessive judicial activism can lead to accusations of undemocratic governance.<sup>95</sup>

Moreover, judicial decisions often reflect broader societal values, making the judiciary a powerful agent of social change.<sup>96</sup> Landmark rulings, such as those in *Brown v. Board of Education*, *Roe v. Wade*, *Citizens United v. FEC*, *Dobbs v. Jackson Women's Health Organization*, illustrate how judicial interpretations can have profound implications for civil rights and liberties.<sup>97</sup> These judicial opinions demonstrate the judiciary's role in shaping the moral and legal fabric of the nation, further highlighting the ethical responsibilities that accompany judicial power.

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<sup>92</sup> See Dinh, *supra* note 91 at 11; Stephen B. Burbank, *Judicial Independence, Judicial Accountability, and Interbranch Relations Conference: Fair and Independent Courts: A Conference on the State of the Judiciary*, 95 GEO. L.J. 909, 912-13 (2006).

<sup>93</sup> See BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS*, 20 (1921); Geyh, *supra* note 90.

<sup>94</sup> RICHARD A. POSNER, *HOW JUDGES THINK*, 85-86 (2008). See also Burbank, *supra* note 92 at 914.

<sup>95</sup> See ALEXANDER M. BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS*, 16 (1962). See generally Geyh, *supra* note 89.

<sup>96</sup> Owen M. Fiss, *The Forms of Justice Supreme Court 1978 Term*, 93 HARV. L. REV. 1, 2 (1979).

<sup>97</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954); *Roe v. Wade*, 410 U.S. 113, 153 (1973); *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010); *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). See also, Geyh, *supra* note 89.

Accordingly, judicial impartiality is not only a professional duty but also a constitutional mandate. The Due Process Clause of the Fifth and Fourteenth Amendments guarantees every litigant the right to a fair trial before an impartial judge.<sup>98</sup> The appearance of bias or the perception that a judge has a personal stake in the outcome of a case can undermine the integrity of the entire judicial system.<sup>99</sup> Consequently, judges must meticulously avoid conflicts of interest and any behavior that could compromise their neutrality. The ethical imperatives that guide judicial behavior are not only foundational to the individual judge's role but also crucial to maintaining the public's confidence in the legal system. The judiciary's power, while immense, must always be exercised with a profound sense of responsibility, grounded in ethical principles that safeguard the integrity of the democratic process.

Government lawyers also occupy a unique and powerful position within the legal system, as they are responsible not only for representing the government in legal matters but also for ensuring that the actions of government officials comply with the law. This dual role places them at the intersection of legal advocacy and public accountability, where their decisions can profoundly impact the interpretation and enforcement of laws.<sup>100</sup>

Government lawyers, including attorneys general and agency, are key players in the implementation of government policy.<sup>101</sup> They provide legal counsel to government officials, draft legislation, and represent the government in court.<sup>102</sup> Their work often involves complex legal issues that require a

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<sup>98</sup> *Tumey v. Ohio*, 273 U.S. 510, 523 (1927); Burbank, *supra* note 92.

<sup>99</sup> *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 883-84 (2009). *See also* Dinh, *supra* note 91.

<sup>100</sup> *See* W. Bradley Wendel, *Government Lawyers, Democracy, and the Rule of Law Symposium: The Lawyer's Role in a Contemporary Democracy: Promoting the Rule of Law*, 77 *FORDHAM L. REV.* 1333, 1337 (2008).

<sup>101</sup> *Id.*

<sup>102</sup> *See generally* Robert J. Reinstein, *The Limits of Executive Power*, 59 *AM. U. L. REV.* 259 (2009). *See also* Wendel, *supra* note 100.

deep understanding of both the law and the broader policy objectives of the government.<sup>103</sup> For instance, when advising on matters related to national security, environmental regulation, or civil rights, government lawyers must navigate the fine line between advancing the policy goals of the administration and ensuring that these policies do not violate constitutional principles.<sup>104</sup>

The influence of government lawyers extends beyond the courtroom. Their legal opinions and interpretations of the law can shape the direction of government policy and influence public perception of the legality and legitimacy of government actions.<sup>105</sup> This is particularly true in high-stakes situations where the legality of executive actions is in question. For example, during the Trump administration, government lawyers played a pivotal role in defending executive orders related to immigration, environmental deregulation, and national security, each of which sparked significant legal and public debate.<sup>106</sup>

The ethical responsibilities of government lawyers are paramount, given their role in upholding the rule of law while serving the interests of their government clients.<sup>107</sup> These lawyers must adhere to professional ethical standards that require them to act with integrity, honesty, and impartiality.<sup>108</sup> This can be particularly challenging in politically charged environments where there may be pressure to prioritize political loyalty over legal objectives.

One of the most significant ethical challenges for government lawyers is the duty to uphold the Constitution and the law, even when it conflicts with the directives of their clients.

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<sup>103</sup> See generally Andrew Kent et al., *Faithful Execution and Article II*, 132 HARV. L. REV. 2111 (2018).

<sup>104</sup> See *id.* at 2183-88.

<sup>105</sup> See Reinstein, *supra* note 102.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*; Wendel, *supra* note 100 at 1335. See also Kent et al., *supra* note 103 at 2118.

<sup>108</sup> See Wendel, *supra* note 100 at 1335. See generally Reinstein, *supra* note 102.



This duty is codified in the Model Rules of Professional Conduct, which state that a lawyer representing a government agency must prioritize the public interest and the integrity of the legal system over the interests of individual government officials.<sup>109</sup> This means that government lawyers must be prepared to refuse to defend actions or policies that they believe are unconstitutional or unlawful, even at the risk of political or professional repercussions. The power wielded by government lawyers carries with it a significant ethical responsibility. As guardians of the rule of law within the government, they must navigate the complexities of legal advocacy while maintaining their commitment to constitutional principles and public trust.

### *B. Non-Government Lawyers*

Non-government lawyers also play a crucial role in upholding democratic institutions.<sup>110</sup> Non-government lawyers include (1) lawyers in private practice; (2) in-house lawyers representing institutions; and (3) lawyers in the non-profit sector, ranging from legal aid/legal services to public interest law reform advocacy.<sup>111</sup> These lawyers, whether in private practice or corporate settings, carry a broad responsibility to society that extends beyond their duties to individual clients.<sup>112</sup> Their actions and decisions can have far-reaching implications for the rule of law, public trust, and the integrity of democratic institutions.<sup>113</sup> Non-governmental lawyers do face unique ethical challenges, however, particularly when balancing their duty to zealously represent clients with their broader

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<sup>109</sup> See MODEL RULES OF PRO. CONDUCT r. 1.7, 1.9 & 1.11 (Am. Bar Ass’n 2024); Wendel, *supra* note 100.

<sup>110</sup> See Green, *supra* note 69.

<sup>111</sup> Rosen, *supra* note 89 at 168; Zacharias, *supra* note 89 at 1599. See also Irma S. Russell, *The Lawyer as Public Citizen: Meeting the Pro Bono Challenge Symposium on Innovations in Pro Bono Practice*, 72 UMKC L. REV. 439, 445 (2003); Wendel, *supra* note 100 at 11.

<sup>112</sup> Green, *supra* note 69 at 1236; Russell, *supra* note 111 at 444; Zacharias, *supra* note 89 at 1600.

<sup>113</sup> See Green, *supra* note 69; Malone, *supra* note 86.

responsibilities to the legal system and society.<sup>114</sup> While the duty to advocate for clients is fundamental, it must be balanced against a lawyer's ethical obligations to the court, the public, and the democratic system.<sup>115</sup>

This tension is especially pronounced in corporate law, where lawyers must navigate complex issues involving legal compliance, ethical business practices, and the societal impact of corporate actions. For instance, corporate lawyers advising businesses must ensure that their legal guidance not only advances the interests of their clients but also aligns with democratic values such as transparency, accountability, and social responsibility.<sup>116</sup> This ethical balancing act is critical in maintaining the integrity of both the legal profession and the democratic system.

Further, non-governmental lawyers are often at the forefront of defending democratic principles through litigation and advocacy. Public interest litigation, for example, has historically been a powerful tool for advancing democratic ideals and protecting individual rights.<sup>117</sup> Lawyers engaged in this type of work challenge unjust laws, defend civil liberties, and hold powerful entities accountable, thereby playing a pivotal role in societal progress.<sup>118</sup> For example, lawyers outside of government roles were instrumental in ensuring the integrity of the electoral process and protecting the democratic right to vote during the election challenges related to the 2020 U.S.

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<sup>114</sup> See Green, *supra* note 69; Freeland, *supra* note 76; Bruce A. Green & Russell G. Pearce, *Public Service Must Begin at Home: The Lawyer as Civics Teacher in Everyday Practice*, 50 WM. & MARY L. REV. 1207 (2008).

<sup>115</sup> See generally Rosen, *supra* note 89; see also Kruse, *supra* note 71 at 251.

<sup>116</sup> Green, *supra* note 69 at 1231. See generally Marks & Rapoport, *supra* note 72.

<sup>117</sup> Rosen, *supra* note 89 at 166-67; Joshua Ulan Galperin, *Legitimacy, Legality, Legacy, and the Life of Democracy*, 45 VT. L. REV. 563 (2020); Alfred S. Konefsky & Barry Sullivan, *In This, the Winter of Our Discontent: Legal Practice, Legal Education, and the Culture of Distrust*, 62 BUFF. L. REV. 659, 663 (2014).

<sup>118</sup> Rosen, *supra* note 89; Galperin, *supra* note 117.

election.<sup>119</sup> These efforts underscore the essential role that non-governmental lawyers play in upholding democracy.

Public trust in the legal system is foundational to a functioning democracy.<sup>120</sup> Lawyers, through their actions and behavior, significantly influence this trust.<sup>121</sup> Ethical lapses or misconduct by lawyers can erode public confidence in the justice system, undermining the very foundation of democratic governance.<sup>122</sup> Conversely, acts of integrity and justice by lawyers can reinforce public trust and the legitimacy of legal institutions.<sup>123</sup>

The behavior of lawyers, particularly in high-profile cases or those with public policy implications, can shape public attitudes toward the legal profession and the justice system. When lawyers act with integrity, transparency, and a commitment to justice, they help build confidence in the legal system, ensuring it is perceived as fair and impartial. Consequently, government and non-governmental lawyers occupy a pivotal role in democratic societies, wielding significant influence in shaping the legal system and public policy. This position comes with a corresponding responsibility to defend democratic ideals, uphold the rule of law, and maintain public trust. Upholding the highest standards of ethical conduct is essential for maintaining public trust and ensuring that the legal system functions effectively in a democratic society.

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<sup>119</sup> Green, *supra* note 69.

<sup>120</sup> See generally Rosen, *supra* note 89; Freeland, *supra* note 75. See also Cummings, *supra* note 86 at 537; Martin Bohmer, *The Lawyer's Role in a Contemporary Democracy, Promoting Access to Justice and Government Institutions, Equalizers and Translators: Lawyer's Ethics in a Constitutional Democracy*, 77 FORDHAM L. REV. 1363 (2009).

<sup>121</sup> Rosen, *supra* note 89 at 189.

<sup>122</sup> See Green, *supra* note 69.

<sup>123</sup> Ascanio Piomelli, *The Lawyer's Role in a Contemporary Democracy, Promoting Access to Justice and Government Institutions, The Challenge of Democratic Lawyering*, 77 FORDHAM L. REV. 1383, 1400 (2009). See generally Bohmer, *supra* note 120.

### III. CHALLENGES TO DEMOCRACY: A CASE STUDY OF THE 2020 U.S. ELECTION

The 2020 U.S. presidential election was marked by unprecedented efforts to subvert democracy. And, lawyers spearheaded a significant number of these efforts. These actions include (a) the propagation of false claims of voter fraud, (b) the orchestration of the fake electors plot, (c) the filing of baseless lawsuits, (d) the pressure campaign to “find votes,” (e) the involvement in the January 6th insurrection, and (f) voting not to certify the election. Each of these actions represented a deliberate attempt to overturn the will of the American electorate and posed a grave threat to the integrity of democratic institutions. While it is true that many of these lawyers are facing consequences, both criminally and professionally,<sup>124</sup> the conduct alone underscoring the critical need for a professional recommitment to the ethical obligations expected by the oath.

#### *A. Propagation of False Claims*

Concerted efforts, by lawyers, to undermine and delegitimize the results of a free and fair election underscores the critical need for a recommitment to the oath’s ethical guidance. These lawyers played pivotal roles in spreading misinformation and perpetuating the false narrative that the election was “rigged” or “stolen.”<sup>125</sup> This disinformation campaign was not confined to courtrooms. Instead, it extended into the public sphere, where these legal professionals used

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<sup>124</sup> Alison Durkee, *All Of Trump’s Lawyers Who Have Faced Consequences—As Jenna Ellis Takes Deal*, FORBES (Sep. 26, 2024).

<https://www.forbes.com/sites/alisondurkee/2024/08/06/kenneth-chesebro-charged-in-wisconsin-here-are-all-the-former-trump-lawyers-now-facing-legal-consequences/>.

<sup>125</sup> Cummings, *supra* note 85. See also William L. Wheeler, *When the Dust Has Settled: Fallout from the 2020 Presidential Election and S.B. 202 Placed Georgia’s Election Code in the Nation’s Crosshairs* Comments, 74 MERCER L. REV. 409, 411 (2022).

media appearances, public statements, and social media to sow doubt about the integrity of the electoral process.<sup>126</sup>

One of the central lawyers in this misinformation campaign was Rudy Giuliani, who served as Trump's personal attorney.<sup>127</sup> Giuliani repeatedly made unfounded claims of widespread voter fraud, asserting that the election had been stolen through illegal votes, manipulation of voting machines, and other fraudulent activities.<sup>128</sup> Despite the lack of evidence to support these claims, Giuliani continued to push this narrative in various media appearances and press conferences, thereby amplifying the misinformation to a broad audience.<sup>129</sup>

Sidney Powell, another attorney closely associated with the Trump campaign, was also instrumental in propagating the "rigged" election narrative.<sup>130</sup> Powell advanced a particularly outlandish theory that involved an international conspiracy to manipulate voting machines.<sup>131</sup> She claimed that this conspiracy involved foreign actors, including Venezuela and China, and that it was orchestrated to ensure Trump's defeat.<sup>132</sup> Powell's assertions were widely discredited, yet she persisted in making these claims in public forums, further spreading misinformation and undermining public confidence in the electoral process.<sup>133</sup>

The misinformation campaign was not limited to these two lawyers. Several other attorneys associated with Trump and his allies engaged in similar efforts to delegitimize the election results.<sup>134</sup> These lawyers often appeared on conservative media outlets, where they repeated the baseless allegations of voter fraud and a stolen election.<sup>135</sup> By doing so, they played a significant role in shaping the perceptions of

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<sup>126</sup> Luttig, *supra* note 84 at 3-4.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* See also Cummings, *supra* note 85 at 563.

<sup>130</sup> Cummings, *supra* note 85 at 576.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 562.

<sup>135</sup> *Id.*

millions of Americans, many of whom came to believe that the election had indeed been stolen despite all evidence to the contrary.<sup>136</sup>

One of the most concerning aspects of this misinformation campaign was its impact on public trust in the electoral process. Polls conducted in the months following the election revealed that a significant portion of the American public, particularly among Republican voters, believed that the election had been stolen from Trump.<sup>137</sup> This belief was directly attributable to the relentless efforts of lawyers and other Trump allies who continued to propagate these false claims, even in the face of overwhelming evidence that the election was free and fair.<sup>138</sup>

The spread of misinformation by these lawyers also had tangible consequences beyond merely shaping public opinion. It contributed to an atmosphere of mistrust and hostility that ultimately culminated in the January 6th insurrection at the U.S. Capitol.<sup>139</sup> Many of those who participated in the attack were motivated by the belief that the election had been stolen, a belief that was fueled by the disinformation campaign led by Trump's legal team and their allies.<sup>140</sup>

The actions of these lawyers in spreading false claims about the 2020 election represent a significant breach of their ethical obligations.<sup>141</sup> As officers of the court, lawyers have a duty to uphold the integrity of the legal system and the rule of law.<sup>142</sup> By engaging in a campaign of misinformation aimed at undermining the electoral process, these lawyers not only violated their ethical duties but also contributed to a broader erosion of trust in American democracy.<sup>143</sup>

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<sup>136</sup> Cummings, *supra* note 85 at 597.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 597-98.

<sup>139</sup> *Id.* at 595; Luttig, *supra* note 84 at 9.

<sup>140</sup> Smith, *supra* note 78.

<sup>141</sup> See Rosen, *supra* note 89 at 185.

<sup>142</sup> *Id.*; Cummings, *supra* note 85 at 528-529.

<sup>143</sup> Galperin, *supra* note 117; Rosen, *supra* note 89.

Furthermore, the continued propagation of these false claims has had a lasting impact on the political landscape in the United States. The narrative of a "rigged" election has become a central tenet of the political discourse among Trump supporters, leading to ongoing efforts to challenge and undermine future elections.<sup>144</sup> This persistent undermining of the electoral process poses a serious threat to the stability of American democracy and highlights the dangerous consequences of the misinformation spread by lawyers in the aftermath of the 2020 election. Such conduct demands that the profession reflect and recommit its founding principles embedded in the oath.

### *B. Fake Electors Scheme*

One of the most audacious and troubling aspects of the efforts to overturn the 2020 presidential election was the fake electors scheme. This plan involved creating and submitting false slates of electors in several key battleground states that had been won by Joe Biden.<sup>145</sup> The intent was to replace the legitimate electors who were bound to vote for Biden with Trump supporters, thereby creating a pretext for rejecting the official electoral votes and potentially throwing the election to Donald Trump.<sup>146</sup> Lawyers played a central role in orchestrating and legitimizing this scheme, which represented a direct attack on democratic processes.<sup>147</sup>

The fake electors scheme was conceived as part of a broader strategy to overturn the 2020 election results through both legal and extralegal means. The plan centered around the idea that if multiple states submitted competing slates of electors, Vice President Pence, who was presiding over the certification of the electoral votes on January 6, 2021, could

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<sup>144</sup> Cummings, *supra* note 85 at 593.

<sup>145</sup> SELECT COMM. TO INVESTIGATE THE JAN. 6 ATTACK ON THE U.S. CAPITOL, FINAL REPORT, H.R. REP. NO. 117-663, at 341 (2022); Cummings, *supra* note 85 at 582; Luttig, *supra* note 84.

<sup>146</sup> Cummings, *supra* note 85 at 582-584. *See also* Luttig, *supra* note 84 at 3-4.

<sup>147</sup> Cummings, *supra* note 85 at 514-515.

declare the election results invalid in those states.<sup>148</sup> If successful, the plan would have resulted either in Trump being declared the winner or, more likely, throw the decision to the House of Representatives, where Republicans controlled a majority of state delegations.<sup>149</sup>

The scheme required the cooperation of Republican officials in several battleground states, including Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin.<sup>150</sup> In each of these states, Trump's legal team and their allies pressured local Republican leaders to submit alternate slates of electors who would cast their votes for Trump, despite the fact that Biden had won the popular vote in those states.<sup>151</sup> These fake electors would then send their votes to Congress, where they would be presented as legitimate alongside the official slates.<sup>152</sup>

Lawyers were deeply involved in the planning and execution of the fake electors scheme. One of the key figures in this effort was John Eastman, a conservative legal scholar and attorney who advised Trump and his allies on how to use the fake electors to overturn the election.<sup>153</sup> Eastman drafted memos outlining the legal rationale for the scheme, arguing that the Vice President had the authority to reject the official electoral votes and recognize the fake electors instead.<sup>154</sup> These memos were widely circulated among Trump's legal team and served as the blueprint for the scheme.<sup>155</sup>

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<sup>148</sup> *Id.* at 582.

<sup>149</sup> *Id.*

<sup>150</sup> National Task Force on Rule of Law & Democracy, *Proposals for Reform*, BRENNAN CTR., (Oct. 18, 2018), <https://www.brennancenter.org/our-work/policy-solutions/proposals-reform-national-task-force-rule-law-democracy> [hereinafter *Proposals for Reform*]; Luttig, *supra* note 84; Cummings, *supra* note 85 at 582.

<sup>151</sup> Luttig, *supra* note 84; *Proposals for Reform*, *supra* note 149.

<sup>152</sup> Luttig, *supra* note 84.

<sup>153</sup> Cummings, *supra* note 85 at 543.

<sup>154</sup> *Id.* at 591.

<sup>155</sup> *See id.*



Eastman's legal theory was based on a distorted interpretation of the Constitution and the Electoral Count Act of 1887.<sup>156</sup> Eastman argued that because there was precedent for Congress to resolve disputes over electoral votes, the Vice President could unilaterally decide which slate of electors to recognize.<sup>157</sup> This interpretation was widely rejected by legal scholars and was ultimately dismissed by Pence, who refused to go along with the plan.<sup>158</sup> Nonetheless, Eastman and other lawyers continued to push this theory, using it to justify the submission of fake electors.<sup>159</sup>

Giuliani also played a crucial role in coordinating the efforts to submit the fake slates, working closely with Republican officials in the targeted states.<sup>160</sup> He pressured these officials to convene meetings of the state legislatures to formally approve the alternate electors, even though there was no legal basis for doing so.<sup>161</sup> Giuliani's efforts were part of a broader campaign to create chaos and confusion around the certification of the electoral votes, thereby providing a pretext for rejecting Biden's victory.<sup>162</sup>

The fake elector's scheme was executed with varying degrees of success across the targeted states. In some states, Republican officials were persuaded to sign certificates falsely claiming that they were the duly appointed electors of their state.<sup>163</sup> These certificates were then sent to Congress and the National Archives, where they were intended to be presented alongside the legitimate electoral votes on January 6, 2021.<sup>164</sup> In Michigan, for example, a group of Republican officials met in the

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<sup>156</sup> *Id.* at 584, 589.

<sup>157</sup> *Id.* at 543, 584, 589, 591.

<sup>158</sup> *Id.* at 584, 587.

<sup>159</sup> *Proposals for Reform*, *supra* note 149;

<sup>160</sup> *Proposals for Reform*, *supra* note 149; Cummings, *supra* note 85, at 591.

<sup>161</sup> *Proposals for Reform*, *supra* note 149.

<sup>162</sup> Cummings, *supra* note 85, at 562-64.

<sup>163</sup> Laura Brill, *Lawyers Must Act To Preserve Democracy This Election*, LAW360, (Sept. 17, 2020, 2:25 PM), <https://www.law360.com/articles/1311206/lawyers-must-act-to-preserve-democracy-this-election>.

<sup>164</sup> See Cummings, *supra* note 85, at 584

state capitol on December 14, 2020, the same day that the legitimate electors were meeting to cast their votes for Biden.<sup>165</sup> The group signed a certificate declaring themselves the “duly elected and qualified electors” of Michigan, even though Biden had won the state by over 150,000 votes.<sup>166</sup> Similar actions took place in other states, including Georgia and Pennsylvania, where alternate slates of electors were also assembled and their votes submitted to Congress.<sup>167</sup>

These actions were not just symbolic. The efforts were intended to create a genuine dispute over the election results that could be used to justify further legal challenges or even direct intervention by the Vice President or Congress.<sup>168</sup> The lawyers involved in this scheme were fully aware of its potential to disrupt the constitutional process and to undermine the peaceful transfer of power.<sup>169</sup> Their actions represented a profound breach of their ethical obligations as officers of the court and as defenders of the rule of law.

The fake electors scheme ultimately failed, largely due to the refusal of Vice President Pence and other key officials to go along with it.<sup>170</sup>

On January 6, 2021, as Congress met to certify the electoral votes, Pence rejected the efforts to recognize the fake electors and proceeded with the certification of the legitimate votes.<sup>171</sup> However, the scheme contributed to the broader effort to delegitimize the election and played a role in inciting the violent attack on the U.S. Capitol that followed.<sup>172</sup>

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<sup>165</sup> Laurence H. Tribe, *Anatomy of a Fraud: Kenneth Chesebro's Misrepresentation of My Scholarship in His Efforts to Overturn the 2020 Presidential Election*, JUST SECURITY (Aug. 8, 2023), <https://www.justsecurity.org/87498/kenneth-chesebro-misrepresentation-of-laurence-tribe-scholarship-in-his-efforts-to-overturn-the-2020-presidential-election/>.

<sup>166</sup> *Id.*; Cummings, *supra* note 86; *Proposals for Reform*, *supra* note 149.

<sup>167</sup> Tribe, *supra* note 165.

<sup>168</sup> Cummings, *supra* note 85 at 584.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 592-94, 606.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

The involvement of lawyers in the fake electors scheme has led to significant legal and ethical repercussions. Some of the lawyers involved, including John Eastman, have faced investigations and disciplinary actions for their roles in attempting to subvert the election.<sup>173</sup> The conduct of the lawyers involved in this scheme fall well below the ethical expectations of the profession. Through false and misleading information, these lawyers used their position of power and influence to manipulate the electoral process for the purpose of interrupting the peaceful transfer of power after a democratic election. Such conduct is violative of a lawyer's obligations to the democratic principles of honesty, fairness, and rule of law, demonstrating a need to recommit to the ethical guidance provided in the oath.

### *C. Litigation Efforts*

In the wake of the 2020 United States presidential election, a wave of lawsuits was launched across the country, all aiming to overturn the results of the election that had declared Joe Biden as the winner. Once again, lawyers spearheaded these baseless legal efforts.<sup>174</sup> Despite the lack of credible evidence, these lawsuits were aggressively pursued in numerous courts, reflecting a broader strategy to delegitimize the election and maintain Trump's hold on the presidency.<sup>175</sup>

One of the most prominent legal efforts was led by Sidney Powell, who infamously referred to her lawsuits as releasing the "Kraken."<sup>176</sup> Powell filed multiple lawsuits in key battleground states, including Georgia, Michigan, Wisconsin, and Arizona, alleging widespread voter fraud and conspiracy theories involving the voting machines.<sup>177</sup> Powell's lawsuits claimed that votes were switched from Trump to Biden through

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<sup>173</sup> *Id.* at 516 n.11.

<sup>174</sup> *See generally* Cummings, *supra* note 85.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* at 576.

<sup>177</sup> *Id.* at 576-77.

the manipulation of voting machines, and she further alleged that this was part of an international plot to rig the election.<sup>178</sup>

However, these lawsuits were based on unfounded claims and lacked credible evidence. Courts across the country dismissed Powell's cases, often in scathing terms, citing the absence of any substantive proof to support her allegations.<sup>179</sup> Judges criticized the lawsuits for being filled with speculative and implausible assertions, noting that they failed to meet even the basic standards of legal pleading.<sup>180</sup>

Despite these dismissals, Powell and her legal team continued to push these lawsuits, using them as a platform to propagate the false narrative that the election had been stolen.<sup>181</sup> This strategy was not just about winning in court; it was about sowing doubt and confusion among the public, with the ultimate goal of undermining confidence in the electoral process.<sup>182</sup>

These lawsuits were emblematic of the broader legal strategy to use the courts not necessarily to win, but to create a narrative of a flawed and illegitimate election.<sup>183</sup> By filing these lawsuits, the Trump lawyers sought to cast doubt on the validity of the election results and to keep the possibility of overturning the outcome alive, even as the courts consistently rejected their claims.<sup>184</sup>

One of the more brazen legal efforts came from the State of Texas, whose attorney general filed a lawsuit directly with the U.S. Supreme Court seeking to invalidate the election results in four battleground states: Georgia, Michigan, Pennsylvania, and Wisconsin.<sup>185</sup> The Texas lawsuit, backed by Trump's legal team

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<sup>178</sup> *Id.* at 576 n.331.

<sup>179</sup> See Cummings, *supra* note 85, at 577; Alexandra Just, *Trumping Unmeritorious Election Contests: The Need for Uniform Election Contest Laws in the Wake of 2020 Election Litigation Notes*, 62 U. LOUISVILLE L. REV. 167, 184 (2023).

<sup>180</sup> Just, *supra* note 179, at 184; Luttig, *supra* note 84.

<sup>181</sup> Cummings, *supra* note 85 at 588; Luttig, *supra* note 84.

<sup>182</sup> See Luttig, *supra* note 84, at 4.

<sup>183</sup> *Id.*; Rosen, *supra* note 89.

<sup>184</sup> Luttig, *supra* note 84.

<sup>185</sup> Just, *supra* note 179, at 181-82.

and supported by several Republican attorneys general and members of Congress, argued that these states had violated the Constitution by changing their election procedures in response to the COVID-19 pandemic.<sup>186</sup> The lawsuit claimed that these changes had led to widespread voter fraud and that the results in these states should be invalidated, thereby handing the election to Trump.<sup>187</sup> However, the U.S. Supreme Court swiftly rejected the lawsuit, stating that Texas lacked standing to challenge the election results in other states.<sup>188</sup> The Court's decision effectively ended one of the most significant and far-reaching legal efforts to overturn the 2020 election.<sup>189</sup> The Texas lawsuit highlighted the extreme lengths to which Trump's legal team and their allies were willing to go in their efforts to overturn the election. Despite the lack of any credible evidence to support their claims, they were prepared to engage in unprecedented legal action that, if successful, would have subverted the will of millions of voters across multiple states.<sup>190</sup>

The multiple lawsuits filed after the 2020 election raised significant ethical concerns within the legal profession. Lawyers are bound by ethical obligations to uphold the rule of law, to refrain from filing frivolous lawsuits, and to avoid engaging in conduct that undermines public confidence in the legal system. However, the post-election lawsuits filed by Trump's legal team and their allies violated these fundamental ethical principles. These lawsuits were widely seen as an abuse of the legal system, using the courts as a tool to pursue a political agenda rather than to seek justice.<sup>191</sup> By filing baseless lawsuits and making unsupported allegations of voter fraud, these lawyers violated the ethical obligations explicit in the Rules of Professional Conduct, as well as the guiding principles of the oath, suggesting the need for a recommitment to these ethical guidelines.

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<sup>186</sup> *Id.*; Luttig, *supra* note 84.

<sup>187</sup> *See* Just, *supra* note 179, at 194 n.171.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> Cummings, *supra* note 85.

<sup>191</sup> Luttig, *supra* note 84.

### *D. Pressure Campaign*

In addition to the multiple lawsuits, a fake electors scheme, and widespread misinformation campaign, another critical component of the efforts to subvert the 2020 election results was a targeted pressure campaign directed at state officials. Lawyers closely aligned with former President Donald Trump played a pivotal role in this campaign, attempting to coerce and intimidate state officials into overturning the certified election results in key battleground states.<sup>192</sup>

The pressure campaign on state officials was another concerted effort to reverse the outcome of the 2020 presidential election by influencing state legislatures, governors, secretaries of state, and election officials.<sup>193</sup> The central goal was to convince these officials to decertify the election results, declare the election invalid, or appoint alternate slates of electors who would cast their votes for Trump instead of Biden.<sup>194</sup> This campaign targeted states where Biden had won by narrow margins, including Georgia, Michigan, Pennsylvania, and Arizona.<sup>195</sup>

Lawyers played a crucial role in this campaign by providing legal arguments, drafting memos, and directly engaging with state officials.<sup>196</sup> They sought to exploit ambiguities in state election laws, as well as the heightened political tensions following the election, to achieve their objectives.<sup>197</sup> The pressure campaign was not limited to private conversations. It also included public statements, media

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<sup>192</sup> See Cummings, *supra* note 85 at 597.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> William Cummings et al., *Trump's Failed Efforts to Overturn the Election by the Numbers*, USA TODAY, (Jan. 6, 2021, 5:01 AM), <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

appearances, and coordinated efforts to mobilize Trump's supporters to apply additional pressure on state officials.<sup>198</sup>

One of the most prominent lawyers involved in the pressure campaign was again, Rudy Giuliani. Giuliani was at the forefront of efforts to persuade state legislators and election officials to overturn the election results.<sup>199</sup> In multiple public hearings organized by Republican lawmakers in states like Michigan, Pennsylvania, and Arizona, Giuliani presented baseless claims of voter fraud and urged lawmakers to take action to nullify the election's results.<sup>200</sup> These hearings, though unofficial and lacking any legal authority, were used as platforms to propagate the false narrative of a stolen election and to pressure state officials into compliance.<sup>201</sup>

Giuliani's strategy involved a mix of legal arguments and inflammatory rhetoric. He argued that state legislatures had the constitutional authority to override the popular vote and appoint electors directly, a claim that was widely discredited by constitutional scholars.<sup>202</sup> Despite the lack of legal merit, Giuliani persisted, using his position and influence to push state officials towards taking unprecedented and illegal actions.<sup>203</sup> Attorney John Eastman also played a key role in the pressure campaign. Eastman authored legal memos that were circulated among state officials, outlining the supposed constitutional and statutory grounds for decertifying the election results.<sup>204</sup> These memos argued that states could declare the election results invalid due to alleged irregularities and appoint new electors.<sup>205</sup> Like Giuliani, Eastman's arguments were based on a distorted interpretation of the law, but they were instrumental in providing a legal veneer to the pressure campaign.<sup>206</sup>

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<sup>198</sup> Just, *supra* note 179, at 168.

<sup>199</sup> *Id.*

<sup>200</sup> Luttig, *supra* note 84; Just, *supra* note 179.

<sup>201</sup> Just, *supra* note 179.

<sup>202</sup> *Id.*; Luttig, *supra* note 84.

<sup>203</sup> Just, *supra* note 179.

<sup>204</sup> Cummings, *supra* note 85, at 588-91.

<sup>205</sup> *Id.* at 607.

<sup>206</sup> Just, *supra* note 179.

One of the most infamous examples of the pressure campaign involved a phone call between Trump, his lawyers, and Georgia Secretary of State Brad Raffensperger.<sup>207</sup> During this call, Trump, with Giuliani's involvement, pressured Raffensperger to "find" enough votes to overturn Biden's victory in Georgia.<sup>208</sup> Giuliani played a crucial role in framing the conversation, repeatedly asserting that widespread voter fraud had occurred in Georgia and that Raffensperger had the authority to correct the alleged wrongdoing.<sup>209</sup> This call, which was later made public, exemplified the direct and coercive tactics employed by Trump's legal team to subvert the election results.<sup>210</sup>

This pressure campaign continued in other key states. In Michigan and Arizona, Giuliani and other lawyers pressured Republican members of the state legislature to decertify the election results and appoint an alternate slate of electors.<sup>211</sup> They held a series of meetings with state legislators, presenting them with dubious affidavits and testimonies alleging voter fraud.<sup>212</sup> Despite these efforts, Michigan and Arizona lawmakers refused to comply, citing the lack of credible evidence and their duty to uphold the certified election results.<sup>213</sup>

The involvement of lawyers in the pressure campaign raised serious legal and ethical concerns. The actions of Giuliani, Eastman, and other lawyers involved in the pressure campaign clearly violated democratic principles of rule of law, truthfulness, and integrity in the system. By attempting to coerce state officials into overturning the certified election results, these lawyers not only engaged in unethical conduct but also potentially violated state and federal laws.<sup>214</sup>

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<sup>207</sup> *Id.*; Luttig, *supra* note 84.

<sup>208</sup> Just, *supra* note 179, at 184 n.124.

<sup>209</sup> Luttig, *supra* note 84.

<sup>210</sup> See Cummings, *supra* note 85, at 584.

<sup>211</sup> See Just, *supra* note 179, at 183.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.* at 187.

<sup>214</sup> Luttig, *supra* note 84.



The pressure campaign also contributed to the broader erosion of trust in the democratic process.<sup>215</sup> This campaign undermined public faith in the integrity of the electoral process and set a dangerous precedent for future elections. These lawyers continued to misrepresent the facts, push false legal claims, and pressure state actors to violate election procedures for the purpose of changing the results of the election.

These actions are violative of the ethical obligations of lawyers and underscores the need for a recommitment to the high ethical standards the oath expects.

### *E. The January 6, 2021 Insurrection*

The January 6th, 2021 insurrection at the Capitol was a watershed moment in American history, as a violent mob sought to overturn the results of the 2020 presidential election by disrupting the certification of the Electoral College votes.<sup>216</sup> Among those who participated in or supported the insurrection were several individuals who were members of the legal profession.<sup>217</sup> These lawyers played various roles, from providing legal advice and justification for the actions of the rioters to directly participating in the events of that day.<sup>218</sup>

Before and during the events of January 6th, several lawyers were instrumental in providing the legal arguments that underpinned the attempts to overturn the 2020 election results.<sup>219</sup> These lawyers advanced theories that the Vice President could unilaterally reject the certified electoral votes from certain states or that state legislatures could appoint alternate slates of electors.<sup>220</sup> These arguments were central to the narrative that the election had been "stolen" and that

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<sup>215</sup> Just, *supra* note 179, at 186. *See generally* Cummings, *supra* note 85; Luttig, *supra* note 84.

<sup>216</sup> *See generally* Cummings, *supra* note 85.

<sup>217</sup> Luttig, *supra* note 84.

<sup>218</sup> *Id.*; Just, *supra* note 179.

<sup>219</sup> Just, *supra* note 179.

<sup>220</sup> *Id.*

extraordinary measures were justified to prevent Joe Biden from taking office.<sup>221</sup>

Once again, Attorney Eastman was one of the most influential figures in this regard. Eastman authored memos and gave public speeches in the days leading up to January 6th, arguing that Vice President Pence had the authority to reject the electoral votes from contested states.<sup>222</sup> Though Eastman's legal theories were legally flawed, they also served as a key justification for the actions of the mob that stormed the Capitol.<sup>223</sup> His arguments were cited by those who believed that the insurrection was necessary to "save" the country from a fraudulent election.<sup>224</sup>

Attorney Giuliani was also involved. On the day of the insurrection, Giuliani spoke at the rally that preceded the attack on the Capitol, where he called for "trial by combat" to resolve the election dispute.<sup>225</sup> This rhetoric, combined with his previous efforts to delegitimize the election results, helped incite the mob and contributed to the violence that ensued.<sup>226</sup>

In addition to those who provided legal justification for the insurrection, there were also lawyers who directly participated in the attack on the Capitol. One notable example is Paul Davis, a Texas attorney who was filmed outside the Capitol on January 6th, expressing his support for the rioters and making statements that aligned with the false narrative of a stolen election.<sup>227</sup> Davis, who was employed as an in-house counsel for a company at the time, was later fired from his

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<sup>221</sup> *Id.*

<sup>222</sup> Luttig, *supra* note 84.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*; Cummings, *supra* note 85, at 593-94.

<sup>225</sup> Rudy Giuliani, Speech at Donald Trump's "Save America" Rally (Jan. 6, 2021), <https://www.rev.com/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat>. *See also* Cummings, *supra* note 85, at 593 n.446.

<sup>226</sup> Cummings, *supra* note 85 at 593-94.

<sup>227</sup> Debra C. Weiss, *Lawyer Lost His Job, His Fiancée and His Friends After Presence Outside Capitol Riot*, A.B.A. JOURNAL., (Feb. 17, 2022, 11:07 AM), <https://www.abajournal.com/news/article/lawyer-lost-his-job-his-fiancee-and-his-friends-after-presence-outside-capitol-riot>.

position due to his involvement in the insurrection.<sup>228</sup> He has since faced legal and professional repercussions, including investigations by the State Bar of Texas.<sup>229</sup> William Calhoun, a Georgia attorney who openly boasted on social media about breaching the Capitol and participating in the violence.<sup>230</sup> Calhoun's actions, including his statements that he was part of an "armed revolution" to overturn the election, were emblematic of the extremism that motivated many of the rioters. He was later arrested, charged and convicted with several federal crimes.<sup>231</sup>

The involvement of lawyers in the January 6th insurrection raises serious legal and ethical concerns. The actions of the lawyers involved in the insurrection, whether through providing legal justification or directly participating in the violence, represent a stark violation of these ethical obligations.<sup>232</sup> The participation of lawyers in an insurrection that sought to overturn a democratic election highlights the dangers of politicizing the legal profession and using legal arguments to justify unlawful actions.<sup>233</sup> It also underscores the need for the legal community to reaffirm its commitment to the democratic principles embedded in the lawyers' oath.

#### *F. Voting "Nay" to Certify the Election*

Despite the attack on the Capitol, several lawyers spearheaded another effort to alter the outcome of the 2020 election. After a violent mob stormed the U.S. Capitol in an attempt to prevent the certification of the Electoral College

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<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> Debra C. Weiss, *Georgia Lawyer Who Bragged of Shutting Down "Stolen Election Shenanigans" is Found Guilty in Jan. 6 Case*, A.B.A. JOURNAL, (Mar. 21, 2023, 9:21 AM), <https://www.abajournal.com/news/article/georgia-lawyer-who-bragged-of-shutting-down-stolen-election-shenanigans-is-found-guilty-in-jan-6-case>.

<sup>231</sup> *Id.*

<sup>232</sup> See Cummings, *supra* note 85, at 599, 600.

<sup>233</sup> Just, *supra* note 179; Luttig, *supra* note 84.

results, Congress reconvened to complete the certification process.<sup>234</sup> Despite the unprecedented attack on the Capitol and the clear results of the election, a significant number of lawmakers, including several who were also attorneys, voted to reject the electoral votes from certain states that had been won by Joe Biden.<sup>235</sup>

These lawyer-legislators, who had been trained in the law and had taken oaths to uphold the Constitution, argued that the election results in certain states were tainted by fraud.<sup>236</sup> However, these claims were based on the same baseless allegations that had been repeatedly rejected by courts across the country.<sup>237</sup> Despite the lack of credible evidence, these legislators used their legal knowledge and positions of authority to lend legitimacy to the false narrative that the election had been stolen.<sup>238</sup> One prominent example of a lawyer-legislator who voted not to certify the election results was Senator Josh Hawley of Missouri.<sup>239</sup> A graduate of Yale Law School and a former clerk for Chief Justice John Roberts, Hawley had established himself as a legal scholar and a rising star within the Republican Party.<sup>240</sup> Despite his legal background, Hawley was the first senator to announce that he would object to the certification of the electoral votes, citing unfounded claims of voter fraud in Pennsylvania.<sup>241</sup> His decision to lead this objection, despite the lack of evidence, was widely criticized as a political maneuver that undermined the rule of law.<sup>242</sup>

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<sup>234</sup> Luttig, *supra* note 84.

<sup>235</sup> *Id.*; Susan S. Fortney, *Ethical Quagmires for Government Lawyers: Lessons for Legal Education After the Trump Administration: Lessons and Legacies for the Legal Profession*, 69 WASH. U.J.L. & POL'Y 17 (2022).

<sup>236</sup> Luttig, *supra* note 84.

<sup>237</sup> Cummings, *supra* note 85, at 582.

<sup>238</sup> *See id.* at 591.

<sup>239</sup> Just, *supra* note 179.

<sup>240</sup> *Id.*

<sup>241</sup> Press Release, Sen. Josh Hawley, Sen. Hawley Will Object During Electoral College Certification Process On Jan 6, (Dec. 30, 2020), <https://www.hawley.senate.gov/sen-hawley-will-object-during-electoral-college-certification-process-jan-6/>.

<sup>242</sup> Just, *supra* note 179.

Following his lead, another lawyer-legislator who played a key role in the objections was Senator Ted Cruz of Texas.<sup>243</sup> Cruz, a graduate of Harvard Law School and a former Solicitor General of Texas, also objected to the certification of the electoral votes from Arizona.<sup>244</sup> Cruz argued that the objections were necessary to address concerns about the integrity of the election, despite the fact that these concerns were based on debunked conspiracy theories.<sup>245</sup> Cruz's legal background and his role as a constitutional lawyer lent credibility to the objections, even as they were widely dismissed by legal experts and courts as meritless.

The decision by lawyer-legislators to vote against certifying the election results raised obvious and serious legal and ethical questions. As attorneys, these legislators were bound by professional and ethical obligations to uphold the law and to avoid conduct that undermines the legal system.<sup>246</sup> By voting to reject the certified election results based on unfounded claims, these lawyer-legislators violated these ethical obligations and contributed to the erosion of public trust in the electoral process. Their conduct contributed to the broader effort of undermining elections and the peaceful transfer of power by using their legal expertise and positions of authority to advance baseless objections.<sup>247</sup> By advancing baseless objections and lending credibility to unfounded claims of election fraud, these legislators undermined the rule of law

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<sup>243</sup> Karen Yourish et al., *The 147 Republicans Who Voted to Overturn Election Results*, N.Y. TIMES, <https://www.nytimes.com/interactive/2021/01/07/us/elections/electoral-college-biden-objectors.html> (last updated Jan. 7, 2021); Luttig, *supra* note 84.

<sup>244</sup> Yourish et al., *supra* note 243; Luttig, *supra* note 84.

<sup>245</sup> Press Release, Sen. Ted Cruz, Sen. Cruz: We Have an Obligation to the Constitution To Ensure That This Election Was Lawful (Jan. 03, 2021), <https://www.cruz.senate.gov/newsroom/press-releases/sen-cruz-we-have-an-obligation-to-the-constitution-to-ensure-that-this-election-was-lawful>.

<sup>246</sup> See generally Rosen, *supra* note 89.

<sup>247</sup> Luttig, *supra* note 84.

and contributed to the erosion of public trust in the democratic process.

All of the lawyer-led schemes to overturn the 2020 U.S. Presidential election were designed to undermine the electoral process, create public mistrust, and install, as president, the loser of the election - the antithesis of democracy. These actions have had far-reaching implications for public trust in the legal profession and the integrity of democratic institutions. The audacity to knowingly, or recklessly, advance false claims of fraud in multi-faceted schemes to overturn the will of the people, underscores the importance for the legal profession to recommit to ethical conduct that our oath expects.

## V. MODERNIZATION OF THE OATH AND OTHER PROPOSALS

The lapses identified in section IV underscoring the need for a renewed professional commitment to the oath's principles of honesty, integrity, fairness, and the rule of law. Indeed, the ABA Task Force for American Democracy recently published a report highlighting the alarming rise of misinformation, political violence, and polarization.<sup>248</sup> The report urged a renewed focus on ethical training and a reaffirmation of the lawyer's oath.<sup>249</sup> Below are recommendations for modernizing the lawyer's oath. In addition, I offer some additional proposals to reinforce the ethical foundations of the legal profession through reforms for law school education, continuing legal education (CLE), state disciplinary procedures. To be sure, none of these recommendations alone, or in cooperation with each other, will not deter or prevent a lawyer intent on violating their ethical obligations. However, these recommendations will serve to reemphasize the importance of ethical conduct given the critical role lawyers play in a democratic society.

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<sup>248</sup> ABA TASK FORCE FOR AMERICAN DEMOCRACY, ANALYSIS: OVERCOMING SERIOUS THREATS TO OUR DEMOCRACY (2024), <https://www.americanbar.org/content/dam/aba/administrative/news/2024/aba-democracy-task-force.pdf>.

<sup>249</sup> *Id.*

### *A. Modernizing the Lawyer's Oath*

While several states have recently updated the language of their oaths, many still contain problematic language.<sup>250</sup> Modernizing the lawyer's oath serves to reinvigorate the solemn obligations it represents - justice, fairness, and the rule of law. These commitments flow from a lawyer's unique position of privilege within a democratic society.<sup>251</sup> Serving as both advocates for individuals and gatekeepers of the legal system, lawyers are entrusted with the duty to uphold justice, protect the rights of their clients, and contribute to the public good.<sup>252</sup> Accordingly, the lawyer's oath must be more than just a ceremonial recitation; it should be a powerful reminder of the responsibilities that come with the privilege of practicing law. Modernizing the lawyer's oath by addressing outdated language, emphasizing democratic principles, and eliminating bias should reinforce the ethical principles inherent in the oath.

Moreover, by modernizing the oath to explicitly include commitments to democratic values and human rights, the legal profession can reinforce its aspirational guidance for fulfilling the lawyer's role in protecting democracy.

Unfortunately, many current lawyer's oaths contain language that is archaic, biased, and complex, which can obscure the significance of these commitments and alienate many lawyers.<sup>253</sup> Oddly, Kentucky requires applicants to the bar to promise that they have not and will not participate in a duel.<sup>254</sup> Traditional oaths, like the Massachusetts or Missouri oath, frequently include terms that are unfamiliar to modern practitioners, such as "lucre" and "artifice," which diminish the oath's impact and make it feel more like an antiquated formality

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<sup>250</sup> Lauren E. Bartlett, *Human Rights and Lawyer's Oaths*, 36 GEO. J. LEGAL ETHICS 411, 429, 432 (2023).

<sup>251</sup> Anand, *supra* note 69; Green, *supra* note 69; Luttig, *supra* note 84, at 16.

<sup>252</sup> Luttig, *supra* note 84, at 16; Green, *supra* note 69, at 1232; Rosen, *supra* note 89, at 55.

<sup>253</sup> See generally Bartlett, *supra* note 250.

<sup>254</sup> KY. CONST. § 228.

than a meaningful pledge.<sup>255</sup> Advocates for plain language argue that the oath should be revised to be more accessible, ensuring that every lawyer fully understands the ethical standards they are committing to.<sup>256</sup>

For example, instead of swearing to avoid pursuing claims for “lucre or malice,” a modern oath would eliminate these archaic terms and add more relevant and operative words like “fairness” and “honesty.”<sup>257</sup> Simplifying the language makes the oath a more powerful and clear declaration of ethical responsibility.<sup>258</sup>

Many oaths fail to explicitly reference a lawyer’s commitment to democratic principles.<sup>259</sup> For example, the Connecticut, Massachusetts, and New Hampshire oaths do not include a pledge to uphold the U.S. Constitution.<sup>260</sup> While the Massachusetts’ lawyer’s oath statute mentions the constitutions, absent in the actual oath is any such language.<sup>261</sup>

To reinvigorate democratic principles, it is essential that the oath reflect a lawyer’s responsibility to protect these principles.<sup>262</sup> The omission of such language undermines these critical obligations.<sup>263</sup> To address this gap, modern oaths should include language that explicitly commits lawyers to defending

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<sup>255</sup> Bartlett, *supra* note 250, at 422-24, 441. *See also* Stephen C. O’Neill, *The History of the Lawyer’s Oath*, 5 MASS. LEGAL HIST. 91 (1999).

<sup>256</sup> *See* Bartlett, *supra* note 250, at 426.

<sup>257</sup> *See id.*; Frances M. Moran, *An Oath for the Legal Profession*, 35 WOMEN LAW. J. 15 (1949).

<sup>258</sup> *See* Joseph Kimble, *Plain Language: Time for a Clearer, Plain Alternative to our Lawyer’s Oath?*, 98 MICH BAR J. 36 (May 2019); Bartlett, *supra* note 250, at 439.

<sup>259</sup> *See* Bartlett, *supra* note 250, at 439.

<sup>260</sup> Mary Elizabeth Basile, *Loyalty Testing for Attorneys: When Is It Necessary and Who Should Decide*, 30 CARDOZO L. REV. 1843, 1844 (2008); Bartlett, *supra* note 250, at 413; CONN. GEN. STAT. § 1-25 (2017); MASS. GEN. LAWS. ch. 221, § 38 (2022); N.H. REV. STAT. ANN. § 311:6 (2023).

<sup>261</sup> MASS. GEN. LAWS. ch. 221, § 38 (2022).

<sup>262</sup> *See* Green, *supra* note 69, at 43-44; Luttig, *supra* note 84, at 16. *See generally*, Bartlett, *supra* note 250 (describing concerns about pledge to constitution).

<sup>263</sup> Travis Pickens, *The Meaning in a Lawyer’s Life*, 93 OKLA. BAR J., April 2022, at 6.



the rule of law, promoting justice, and safeguarding the rights of all individuals. For instance, a revised oath might include specific language related to the protection of federal and state constitutions.<sup>264</sup> This addition would reinforce the lawyer's role as a guardian of these essential values, ensuring that their practice aligns with the broader goals of justice and equality.<sup>265</sup>

Existing oaths also fail to confront language of bias, discrimination, and inequality within the legal profession.<sup>266</sup> Despite the legal profession's emphasis on fairness and justice, current oaths do not explicitly require lawyers to combat systemic biases or advocate for equality.<sup>267</sup> Indeed, many oaths contain problematic language. For example, the Maine, Massachusetts, and Rhode Island oaths all have exclusionary male-gender specific language, suggesting a male dominated profession.<sup>268</sup> Similarly, many states' oaths, including Florida, New York, Massachusetts and Texas, have religious language stemming from its Christian influences, potentially alienating non- Christians, non-religious, and others.<sup>269</sup> These issues can perpetuate inequalities and allow discriminatory practices to persist unchallenged. A modernized oath should eliminate the problematic language and include clear statements obligating lawyers to recognize and oppose bias in all its forms.<sup>270</sup> For example, the oath could require lawyers to oppose all forms of discrimination and commit toward a more just and equitable legal system.<sup>271</sup> By incorporating these commitments, the oath would reaffirm the lawyer's dedication to ethical practice and contribute to creating a more inclusive and fair legal profession.

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<sup>264</sup> Bartlett, *supra* note 250.

<sup>265</sup> Andrews, *Lawyer's Oath*, *supra* note 2, at 30, 59-62.

<sup>266</sup> Bartlett, *supra* note 250, at 430.

<sup>267</sup> Bartlett, *supra* note 250, at 419-420.

<sup>268</sup> ME. REV. STAT. ANN. tit. 4, § 806 (2023); MASS. GEN. LAWS ch. 221, § 38 (2022); R.I. SUP. CT. R. art. II, R. 8 (2023).

<sup>269</sup> In re Oath of Admission to the Fla. Bar, 73 So. 3d 149, 150 (Fla. 2011). N.Y. CONST. art. XIII, § 1; MASS. GEN. LAWS. ch. 221, § 38 (2022); TEX. CONST. art. XVI, § 1.

<sup>270</sup> See Bartlett, *supra* note 250, at 419-420; Andrews, *Lawyer's Oath*, *supra* note 2, at 52-53, 60-61.

<sup>271</sup> See Bartlett, *supra* note 250, at 442-43.

The Massachusetts' lawyer's oath is the oldest American oath—a prime example of an archaic, biased, and confusing oath—ripe for modernization.<sup>272</sup> Below, the Massachusetts' lawyer's oath is used as a template for potential modernization.

Currently, the full text of the Massachusetts statute enacting the lawyer's oath provides:

Whoever is admitted as an attorney shall in open court take and subscribe the oaths to support the constitution of the United States and of the commonwealth; and the following oath of office shall be administered to and subscribed by him:

I (repeat the name) solemnly swear that I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any false, groundless or unlawful suit, nor give aid or consent to the same; I will delay no man for lucre or malice; but I will conduct myself in the office of an attorney within the courts according to the best of my knowledge and discretion, and with all good fidelity as well to the courts as my clients. So help me God.<sup>273</sup>

A review of the oath's language exposes several critical concerns of archaic language, bias and poor writing. As the oldest oath in the country, it is not surprising that it contains outdated language like "lucre" instead of "profit" and "wittingly or willingly" rather than "knowingly or intentionally."<sup>274</sup> The oath also contains biased language that undermine the professions efforts at inclusivity. The use of gender specific

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<sup>272</sup> See Andrews, *Lawyer's Oath*, *supra* note 2, at 19-21; Belcher, *supra* note 5.

<sup>273</sup> MASS. GEN. LAWS ch. 221, § 38 (2024).

<sup>274</sup> *Id.*

terms like “him” and “man” in the oath is exclusionary and more inclusive language must be substituted. The oath also assumes a belief in a monotheistic deity. By swearing “So help me, God,” the oath excludes followers of other religions, the non-religious, and those that belong to a belief system that prohibits such conduct. A modern oath would eliminate gendered language and all religious references, thereby eliminating exclusionary language and replacing with more inclusive terminology.

Furthermore, the oath is poorly written for the modern context. First, the entire oath is written as a single run-on sentence, which makes it difficult to read and understand. The oath also repeats the prohibition of false claims. Oath-takers first “swears” to “do no falsehood” in the first segment of the sentence, and then, to not “promote or sue any false...suit” in the second section. Breaking the oath into shorter, more concise sentences would improve clarity and understanding.

Finally, the Massachusetts lawyer’s oath, as written, references three separate oaths. The first line of the oath statute seems to require that attorneys take the supporting oaths for both the United States and Commonwealth Constitutions. However, following that language, the statute provides the specific oath of attorney office. The separate treatment of these oaths suggests a disconnect between what is required and what is actually sworn to by newly minted lawyers. At best, the mere reference to the constitutions but failure to include in the actual oath demonstrates ambiguity and a lack of consistency in writing. At worst, the omission of constitutional commitments in the oath undermines the intent of the oath and the attorney’s duty to uphold the democratic principles contained in these constitutions.

To modernize the Massachusetts oath, it is critical to draft language that addresses the ethical demands of today’s legal practice.<sup>275</sup> This includes simplifying the language,

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<sup>275</sup> Luttig, *supra* note 84; James Podgers, *A New Look: ABA Plans First Comprehensive Review of Disciplinary Enforcement Rules in 20 Years*, A.B.A. JOURNAL (Nov. 1, 2012, 8:00 AM), [https://www.abajournal.com/magazine/article/a\\_new\\_look\\_aba\\_plans\\_first\\_comprehensive\\_review\\_of\\_disciplinary\\_enforcement](https://www.abajournal.com/magazine/article/a_new_look_aba_plans_first_comprehensive_review_of_disciplinary_enforcement).

eliminating bias language, as well as adding specific commitments to democratic principles. An effective modern oath will provide a simple statement connecting a lawyer's privilege to their obligations to client, the public, and the justice system in a democratic society.

Drawing from existing oath languages, including from several revised state oaths, and various human rights oath variations, can provide some guidance toward a more modern and impactful oath. For example, all but four state constitutions include a pledge to uphold the U.S. Constitution.<sup>276</sup> A few states have eliminated gender-specific language.<sup>277</sup> And still others include language related to the dignity, honesty and fairness.<sup>278</sup>

However, none of the current lawyer oaths explicitly mention human rights.<sup>279</sup> Fortunately, we can look to human rights organizations for guidance on language that supports and defends human rights. For example, the Universal Declaration of Human Rights (UDHR) provides guidance for explicit language for recognition of the inherent rights and freedoms, like equality under the law, dignity, non-discrimination, speech, religious and political participation and affiliation, personhood, access to justice, and so on.<sup>280</sup>

Applying these modifications, a more modern version of the Commonwealth of Massachusetts' oath could read:

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<sup>276</sup> See Basile, *supra* note 260, at 1861; Bartlett, *supra* note 250, at 413 n.7.

<sup>277</sup> E.g., Rule 6: Admission of Attorneys, TENN. ADMIN. OFF. OF THE CTS., <https://www.tncourts.gov/rules/supreme-court/6> (last visited Aug 22, 2024).

<sup>278</sup> *Id.* See generally Bartlett, *supra* note 250. See also Neb. Ct. R. § 3-128, *Swearing in of Applicants*, NEB. JUD. BRANCH, <https://supremecourt.nebraska.gov/supreme-court-rules/chapter-3-attorneys-and-practice-law/article-1-admission-rules-practice-law/%C2%A7-3-128-swearing-applicants> (last visited Aug 22, 2024).

<sup>279</sup> Bartlett, *supra* note 250, at 437.

<sup>280</sup> G.A. Res. 217 (III) A, *Universal Declaration of Human Rights*, at 71 (Dec. 10, 1948). See generally Risa E. Kaufman, *By Some Other Means: Considering the Executive's Role in Fostering Subnational Human Rights Compliance*, 33 CARDOZO L. REV. 1971 (2011); Davis, *supra* note 64.

I promise to support the Constitutions of the United States and the Commonwealth.

I will employ and defend the principles of fairness and the impartial administration of justice.

I commit to practice with honesty, integrity, and respect, and oppose all forms of discrimination and injustice.

Recognizing the profound responsibility that comes with the license's privileges, I will use my legal knowledge only to protect my clients and the justice system with the highest ethical standards.

This revised oath maintains the core commitments of the original while incorporating modern ethical considerations that are essential for today's legal practice. By explicitly addressing issues such as bias, human rights, and democratic values, the modernized oath provides a simple yet comprehensive ethical framework that aligns with the responsibilities of contemporary lawyers.

The proposed changes, including the use of plain language and the incorporation of commitments to democracy, human rights, and the elimination of bias, reflect the evolving responsibilities of lawyers in society source might be good here. The revised Massachusetts Lawyer's Oath serves as a template for these changes, demonstrating how traditional ethical commitments can be updated to meet contemporary challenges. By modernizing the oath, the legal profession can reinforce its commitment to justice, equality, and the rule of law, ensuring that lawyers continue to serve as guardians of these vital democratic principles.

## *A. Additional Proposals*

### 1. Law School Curriculum

Law schools play a critical role in the development of professional lawyers.

Accordingly, law schools are an appropriate place for considered reforms to integrate the principles inherent in the lawyer's oath source might be good here. Integrating these principles — honesty, integrity, fairness, and the rule of law — into Professional Responsibility (PR) courses would find faculty support if the MPRE assessed these ethical principles. Legal ethics involve not just adherence to the law but also embodying professional aspirations that guide lawyers in navigating moral complexities within the legal system.<sup>281</sup> The challenges exposed by recent events, particularly the attempts to undermine democratic processes during the 2020 presidential election, underscore the critical need to reinforce these principles from the outset of legal education.<sup>282</sup>

The MPRE should be revised to assess these broader foundational ethical principles. This would force PR courses to not merely focus on the Model Rules of Professional Conduct; these courses would then delve deeper into the historical and philosophical foundations of the legal profession's commitment to democracy and the rule of law. This approach would help students understand that their responsibilities as lawyers extend beyond client representation to include upholding the very structures that sustain democratic governance. Incorporating case studies and simulations that present students with real-world ethical dilemmas is essential for bridging the gap between theory and practice.<sup>283</sup> For instance, scenarios based on the legal challenges surrounding the 2020 election can be utilized to illustrate the importance of ethical

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<sup>281</sup> See Hazard, *supra* note 2, at 574.

<sup>282</sup> See Luttig, *supra* note 84, at 2-7.

<sup>283</sup> Hazard, *supra* note 2.

decision-making in preserving democratic integrity.<sup>284</sup> These exercises not only enhance students' critical thinking skills but also instill a deep appreciation for the lawyer's role in safeguarding the rule of law.

Moreover, PR courses could include specialized modules on constitutional ethics, emphasizing the lawyer's duty to uphold constitutional principles even when faced with conflicting pressures.<sup>285</sup> The intersection of legal rules and professional aspirations requires lawyers to navigate complex moral landscapes, where the preservation of democratic institutions often hangs in the balance.<sup>286</sup> Further, guest lectures and workshops featuring practitioners who have confronted significant ethical challenges in their careers can further enrich the learning experience.<sup>287</sup> These interactions provide students with firsthand insights into the real-world implications of ethical practice and the vital role that lawyers play in defending democratic values.

Embedding the principles of the lawyer's oath into PR courses is not just about teaching future lawyers to follow the rules but about cultivating an enduring commitment to the ethical foundations of the legal profession. By doing so, law schools can prepare students to meet the demands of a profession that is integral to the preservation of democracy and the rule of law.<sup>288</sup>

Law schools should also consider incorporating similar learning objectives in courses involving Professional Identity Formation (PIF). The concept of PIF in legal education has gained significant traction in recent years, particularly with the American Bar Association's (ABA) adoption of Standard

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<sup>284</sup> See generally Luttig, *supra* note 84.

<sup>285</sup> See *Rule of Law in an American Life: A long and Intentional Tradition*, A.B.A., [https://www.americanbar.org/groups/public\\_education/resources/rule-of-law/rule-of-law-in-american-life--a-long-and-intentional-tradition/](https://www.americanbar.org/groups/public_education/resources/rule-of-law/rule-of-law-in-american-life--a-long-and-intentional-tradition/) (last visited Aug 12, 2024).

<sup>286</sup> Hazard, *supra* note 2.

<sup>287</sup> Luttig, *supra* note 84.

<sup>288</sup> Hazard, *supra* note 2; See Luttig, *supra* note 84, at 16.

303(b)(3), which mandates that law schools provide substantial opportunities for students to develop their professional identities.<sup>289</sup> This shift in legal education recognizes that the process of becoming a lawyer involves more than just acquiring knowledge of the law; it also requires the internalization of the values and responsibilities that define the legal profession.<sup>290</sup>

At its core, PIF “focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society.”<sup>291</sup> This involves an intentional exploration of the values, guiding principles, and well-being practices that are foundational to successful legal practice.<sup>292</sup> Law schools play a crucial role in shaping these identities by helping students integrate these professional values with their personal values, ultimately fostering a healthy, integrated professional identity.<sup>293</sup>

One of the key challenges in PIF, however, is the concern that the values and obligations of the legal profession are not just taught, but be internalized by students.<sup>294</sup> As noted in the Carnegie Report, legal education constitutes a powerful moral apprenticeship that profoundly shapes students' values, perceptions, and interpretations of the legal world.<sup>295</sup> This underscores the importance of a deliberate and thoughtful approach to PIF, one that acknowledges the transformative impact of legal education on students' professional identities.<sup>296</sup> Through this deliberative process, law students get a better understanding of their personal role within the bounds of professional expectations.

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<sup>289</sup> Timothy W. Floyd, *Lawyers and Civil Discourse: Respect and Civility as a Matter of Professional Identity*, 76 BAYLOR L. REV. 90, 91-92 (2024).

<sup>290</sup> Kellye Y. Testy & Zachariah J. DeMeola, *Leading the Way: The Power of Professional Identity Formation for Lawyers*, 76 BAYLOR L. REV. 115, 147 (2024).

<sup>291</sup> Floyd, *supra* note 289.

<sup>292</sup> *Id.* at 92.

<sup>293</sup> See Testy & DeMeola, *supra* note 290, at 143-49.

<sup>294</sup> SHAILINI GEORGE, *THE LAW STUDENT'S GUIDE TO DOING WELL AND BEING WELL* (2021).

<sup>295</sup> Floyd, *supra* note 289, at 92.

<sup>296</sup> Testy & DeMeola, *supra* note 290, at 143-49.



A successful PIF program requires law schools to be intentional in their educational practices, ensuring that students are not only aware of the ethical obligations of lawyers but also committed to understanding how these obligations impact their professional lives.<sup>297</sup> This involves creating opportunities for students to engage with the core values of the legal profession—such as honesty, integrity, fairness, and the rule of law—in a way that resonates with their personal experiences and aspirations.<sup>298</sup>

In practical terms, this means incorporating PIF into the curriculum in a way that goes beyond traditional classroom instruction. Experiential learning opportunities, such as clinics and externships, are particularly effective in helping students internalize professional values by providing real-world contexts in which to apply them.<sup>299</sup> These experiences allow students to develop an understanding of the profession's expectation that lawyers balance the interests of client and their obligations to democratic principles.<sup>300</sup>

Professional Identity Formation is a critical component of legal education, one that requires deliberate effort and thoughtful integration into the curriculum. By focusing on the development of a professional identity that is grounded in the core values of the legal profession, law schools can prepare students to not only excel in their legal careers but also to fulfill their roles as ethical leaders in a democratic society.

The development of a lawyer's professional identity should not be confined to the traditional curriculum of doctrinal courses and clinical experiences. To cultivate a well-rounded

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<sup>297</sup> See Floyd, *supra* note 290, at 92.

<sup>298</sup> *Id.* at 134-35. See also Patrick Emery Longan, Daisy Hurst Floyd & Timothy W. Floyd, *A Virtue Ethics Approach to Professional Identity: Lessons for the First Year and beyond Symposium: Professional Identity Formation and Its Pedagogy*, 89 UMKC L. REV. 645, 660 (2020); Muriel J. Bebeau, *Promoting Ethical Development and Professionalism: Insights from Educational Research in the Professions The Formation of an Ethical Professional Identity in the Peer-Review Professions*, 5 U. ST. THOMAS L.J. 366, 390-91 (2008).

<sup>299</sup> Testy & DeMeola, *supra* note 291 at 134-35.

<sup>300</sup> Floyd, *supra* note 290.

understanding of the legal profession's role in a democratic society, law schools should offer additional learning opportunities that emphasize the civic obligations of lawyers. These can take the form of specialized courses, seminars, workshops, and speaker series that focus on the intersection of law, democracy, and civic engagement.

Civic-related law courses can also help prepare students to fulfill their roles as public citizens, a concept enshrined in the Preamble to the ABA Model Rules of Professional Conduct.<sup>301</sup> Civic-related courses can equip students with the knowledge and skills they need to navigate these challenges and to advocate for justice and the rule of law in their professional lives.<sup>302</sup> These courses can cover a wide range of topics, including the lawyer's role in democratic institutions, the importance of the rule of law, and the ethical obligations lawyers have to society at large.<sup>303</sup> By exposing students to these broader themes, law schools can help them develop a deeper understanding of how their work as lawyers can contribute to the preservation and enhancement of democratic institutions.

In addition to formal courses, law schools should create opportunities for students to engage with these topics through seminars, workshops, and speaker series. These formats allow for more interactive and in-depth exploration of civic-related issues, fostering a space where students can discuss and reflect on the challenges facing the legal profession and society. For example, workshops on constitutional law and democracy, or speaker series featuring prominent legal scholars and practitioners, can provide students with valuable insights into the complexities of legal practice in a democratic society.<sup>304</sup>

These opportunities can be particularly effective in helping students understand the importance of civic obligations and public service as integral components of their professional

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<sup>301</sup> *Id.* at 94-95.

<sup>302</sup> Luttig, *supra* note 84.

<sup>303</sup> See Testy & DeMeola, *supra* note 290.

<sup>304</sup> See Floyd, *supra* note 289, at 104.

identity. The values of respect, empathy, and commitment to the truth are core to the legal profession and are essential for maintaining a healthy democracy.<sup>305</sup> By integrating these values into civic-related courses and extracurricular opportunities, law schools can encourage students to see their legal careers not just as a means of personal advancement but as a way to contribute to the greater good.<sup>306</sup>

## 2. Continuing Legal Education

The legal profession's commitment to maintaining high ethical standards and upholding the rule of law requires ongoing education beyond the initial stages of a lawyer's career. Continuing Legal Education (CLE) programs serve a critical role in ensuring that lawyers remain knowledgeable about evolving legal standards, ethical obligations, and professional responsibilities.<sup>307</sup> Democracy themed CLE programs would continually reinforce the profession's obligation to these principles.

CLE programs are particularly crucial in the realm of legal ethical training. Lawyers must continually maintain their competence with regards to professional responsibility.<sup>308</sup> Without continuous education, the evolving nature of ethical considerations could lead to lapses in ethical judgment, resulting in malpractice or disciplinary action.<sup>309</sup> Indeed, CLE is integral to ensuring that lawyers are not only competent in their legal knowledge but also in their ethical obligations.<sup>310</sup>

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<sup>305</sup> *Id.* at 90.

<sup>306</sup> See Testy & DeMeola, *supra* note 290.

<sup>307</sup> Randall T. Shepard, *Celebrating Twenty Years of Continuing Legal Education: The Art and Science of Educating Attorneys: The Scope of the Issue: Defining Continuing Legal Education: The "L" in "CLE" Stands for "Legal"*, 40 VAL. U. L. REV. 311, 323-24 (2006).

<sup>308</sup> Marcia L. Proctor, *Legal Education: Continuing Education in Professional Responsibility*, 77 MICH. B. J. 678, 678 (1998).

<sup>309</sup> *Id.*

<sup>310</sup> See Shepard, *supra* note 307, at 324.

To be sure, CLE programs devoted to professional ethics do exist. For example, the ABA provides members hundreds of CLE courses focused solely on ethics.<sup>311</sup> Many states, including Massachusetts, also provide CLE on ethical issues.<sup>312</sup> Notwithstanding these continuing educational opportunities, CLE programs designed specifically to address the issues defined by the recent lapses related to the 2020 U.S. election would emphasize a practicing attorney's continued obligations to these ethical considerations and expectations.

CLE programs can provide a critical link between the structured environment of law school and the ad hoc, often uneven, environment of practice. While law school offers a broad overview of professional responsibility, CLE allows for more focused and contextual teaching, concentrating on the ethical issues that arise within specific areas of legal practice.<sup>313</sup> This contextual approach ensures that lawyers can apply their ethical knowledge directly to their practice, making CLE an indispensable tool for ethical competence. This ongoing education helps lawyers avoid the pitfalls of outdated knowledge and reinforces their commitment to ethical practice.<sup>314</sup> By ensuring that lawyers continue to engage with their ethical obligations, the profession can help practicing lawyers recommit to the ethical obligations they promised at the beginning of their careers.

### 3. Rule and Discipline Reforms

To address the ethical lapses, it is also important to consider revisions and enhancements to the ABA Model Rules of Professional Conduct (ABA Rules) and the corresponding disciplinary procedures. Disciplining a lawyer for ethical

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<sup>311</sup> *Free CLE Member Benefit Library*, A.B.A., <https://www.americanbar.org/cle-marketplace/cle-library/search/> (last visited Aug 22, 2024).

<sup>312</sup> *About MBA CLE*, MASSBAR ASS'N, <https://massbar.org/education> (last visited Aug 22, 2024).

<sup>313</sup> Shepard, *supra* note 307; Proctor, *supra* note 308.

<sup>314</sup> Shepard, *supra* note 307, at 317-18.

conduct often hinges upon whether the lawyer was acting within their representative role.<sup>315</sup> There is no real debate that lawyers in representative roles should be disciplined for unlawful and unethical conduct.<sup>316</sup>

However, disciplining lawyers for conduct in a nonrepresentative role raises serious constitutional and political concerns.<sup>317</sup> In his chapter on disciplining lawyers related to the 2020 presidential election subversion efforts, Dean Perlman explains that the disciplining lawyers for conduct outside of their representative capacity is more limited.<sup>318</sup> This is true mostly because the rules do not address a lawyer's conduct outside of their professional roles.<sup>319</sup> Dean Perlman notes two important exceptions: (1) conduct so egregious to question fitness or character to practice and (2) conduct involving dishonesty, fraud, deceit or misrepresentation.<sup>320</sup>

It is the significance of these two exceptions that speaks to the principles embedded in the oath. These two exceptions are precisely where the oath can provide support for the enforcement of these principles outside a lawyer's representative role. Conduct by a lawyer that undermines democratic institutions is unethical, regardless of whether the conduct was within a representative capacity, or not. The following proposed changes aim to reinforce the legal profession's commitment to the democratic principles inherent in the lawyer's oath, emphasizing deterrence over punishment. A careful application of these exceptions can help reinforce the importance of ethical conduct whether acting in representative capacity or not. Furthermore, simple revisions to the Rules can also capture some conduct of lawyers in non-representative roles.

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<sup>315</sup> Perlman, *supra* note 73, at 2.

<sup>316</sup> *Id.* at 3; Luttig, *supra* note 84.

<sup>317</sup> See Perlman, *supra* note 73, at 1, 8.

<sup>318</sup> *Id.* at 10.

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

a. Expanding Rule 8.3: Mandatory Reporting of Misconduct

One area for potential enhancement is Rule 8.3, which currently requires lawyers to report serious professional misconduct by their peers.<sup>321</sup> Broadening this rule to mandate reporting of misconduct that threatens democratic processes, such as attempts to undermine election integrity could prove effective.<sup>322</sup> The adoption of a similar rule by the California Supreme Court, which compels attorneys to report any criminal acts or conduct involving fraud or dishonesty, serves as a precedent for this type of expansion.<sup>323</sup> Enhancing Rule 8.3 to reflect the profession's duty to protect democratic principles could serve promote the principles inherent in the lawyer's oath.<sup>324</sup> Such a revision would underscore the legal profession's role as a guardian of democracy, ensuring that unethical actions related to democratic institutions are reported and addressed.

b. Revising Rule 8.4: Conduct Prejudicial to the Administration of Justice

Another key consideration is revising Rule 8.4, which addresses conduct prejudicial to the administration of justice. Specifically, the rule could be amended to explicitly include actions that undermine democratic institutions, thereby providing clearer grounds for disciplinary action against

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<sup>321</sup> MODEL RULES OF PRO. CONDUCT r. 8.3 (Am. Bar Ass'n. 2024).

<sup>322</sup> See Rosen, *supra* note 89; Merrill Balassone, *California Supreme Court Approves New Rule Compelling Attorneys to Report Misconduct by Other Attorneys*, JUD. BRANCH OF CAL., <https://supreme.courts.ca.gov/news-and-events/california-supreme-court-approves-new-rule-compelling-attorneys-report-misconduct> (last visited Aug. 11, 2024).

<sup>323</sup> Balassone, *supra* note 322.

<sup>324</sup> See Luttig, *supra* note 84, at 15; Rosen, *supra* note 89, at 158.

lawyers involved in activities like election subversion.<sup>325</sup> The complex ethical challenges faced by government lawyers suggests that existing rules may be inadequate for addressing these challenges, further supporting the need for such a revision.<sup>326</sup> By expanding Rule 8.4 to cover conduct that threatens democracy, the legal profession would reaffirm its commitment to safeguarding the institutions that are vital to democracy.

### c. Improving the Disciplinary Process

In addition to rule enhancements, improvements to the disciplinary process itself are essential to ensure that unethical conduct is addressed promptly and effectively. These improvements should focus on increasing the efficiency, transparency, and deterrent effect of disciplinary proceedings.<sup>327</sup>

The current disciplinary processes are too slow and lenient, which can erode public trust in the justice system.<sup>328</sup> To address this, the ABA should consider implementing reforms that streamline the process, particularly in cases involving significant ethical violations like those related to the 2020 election. A more efficient process would not only ensure timely accountability but also serve as a stronger deterrent against future misconduct. Indeed, a more effective disciplinary process could play a crucial role in preserving the rule of law.<sup>329</sup>

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<sup>325</sup> See Podgers, *supra* note 275. See generally Luttig, *supra* note 84.

<sup>326</sup> Susan Saab Fortney, *Ethical Quagmires for Government Lawyers: Lessons for Legal Education*, 69 WASH. U. J.L. & Pol'y 17 (2022).

<sup>327</sup> Neil J. Wertlieb, *Ethics Spotlight: The Attorney Disciplinary System*, CAL. LAWYERS ASS'N (July 1, 2021), <https://calawyers.org/california-lawyers-association/ethics-spotlight-the-attorney-disciplinary-system/>; Podgers, *supra* note 275.

<sup>328</sup> Podgers, *supra* note 275; Wertlieb, *supra* note 327.

<sup>329</sup> Luttig, *supra* note 84.

Transparency in disciplinary proceedings also is crucial for maintaining public confidence in the legal profession. Consideration should be given to mandating that disciplinary actions, especially those involving significant ethical violations, be made public whenever possible.<sup>330</sup> Publicizing sanctions could reinforce the profession's commitment to ethical behavior and serve as a powerful deterrent to future misconduct.<sup>331</sup> Moreover, increased transparency in the disciplinary process would help restore public trust in the legal system, particularly in cases where lawyers' actions have had a direct impact on democratic processes.<sup>332</sup>

To ensure that cases involving election-related misconduct are handled with the necessary expertise and seriousness, the establishment of specialized oversight bodies should be considered. These bodies would focus exclusively on cases that involve attempts to undermine democratic processes, ensuring that such cases receive the attention and resources they warrant.<sup>333</sup> Specialized oversight could improve the consistency and rigor of disciplinary actions in these cases, reinforcing the legal profession's role in protecting the integrity of democratic institutions.

The proposed revisions and enhancements to the ABA Model Rules of Professional Conduct and state disciplinary procedures are some steps toward reinforcing the legal profession's commitment to the democratic ideals enshrined in the lawyer's oath. By expanding reporting obligations, revising existing rules to address democratic integrity, and improving the disciplinary process through increased efficiency, transparency, and specialized oversight, the legal profession

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<sup>330</sup> Wertlieb, *supra* note 327; Podgers, *supra* note 275; Goldstein, *supra* note 70, at 769.

<sup>331</sup> Perlman, *supra* note 73; Fortney, *supra* note 235.

<sup>332</sup> See Luttig, *supra* note 84.

<sup>333</sup> Angela J. Davis, *The Legal Profession's Failure to Discipline Unethical Prosecutors*, 36 HOFSTRA L. REV. 275 (2007); Luttig, *supra* note 84; Fortney, *supra* note 235.



can better deter unethical behavior and uphold the values that are fundamental to a functioning democracy.

## CONCLUSION

The lawyer's oath is not just a relic of tradition. It is a pledge that embodies the core values of a legal profession in a democratic society — honesty, integrity, and a steadfast commitment to the rule of law. As we have seen, this oath has evolved over centuries, reflecting the moral and ethical standards that society expects from its legal practitioners. Yet, the events of recent years, particularly those surrounding the 2020 presidential election, exposed critical weaknesses in how these standards are upheld. Lawyers, who should be the guardians of democratic integrity, have instead, in some cases, become the very instruments of its erosion.

The proposals outlined herein are not a cure-all, but offer a roadmap for a recommitment to the principles inherent in the lawyer's oath. By modernizing the language of the oath, integrating the principles of the lawyer's oath more deeply into legal education, revising the ABA Model Rules of Professional Conduct, and enhancing disciplinary procedures, the legal profession can renew its dedication to democracy. These measures expressly recommend a recommitment to democratic principles as a vital professional obligation.

In conclusion, the lawyer's oath is more than just the words — it is a covenant with a democratic society, a promise that lawyers will uphold the highest ethical standards in the service of justice. In a time when the very fabric of democracy is under strain, the legal profession must look inward, recommit to these values, and ensure that the oath remains a powerful and relevant guide for all who enter the profession. By doing so, the profession reinforces its role as a bulwark of democracy.