April 6, 2026

Robert Hinchman
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530

Re: Campaign Legal Center, the Lambda Legal Defense and Education Fund, the National LGBTQ+ Bar Association, Q Law NJ, Inc., QLaw Foundation of Washington, the Stonewall Law Association of Greater Houston, the Tom Homann LGBTQ+ Law Association, and the Virginia LGBTQ+ Bar Association Comment Opposing NPRM – Review of State Bar Complaints and Allegations Against Department of Justice Attorneys (Docket No. OAG199)

Dear Mr. Hinchman,

Campaign Legal Center ("CLC"), the Lambda Legal Defense and Education Fund ("Lambda Legal"), the National LGBTQ+ Bar Association, Q Law NJ, Inc. ("Q Law NJ"), QLaw Foundation of Washington, the Stonewall Law Association of Greater Houston ("SLAGH"), the Tom Homann LGBTQ+ Law Association, and the Virginia LGBTQ+ Bar Association submit this

comment in opposition to the Department of Justice's (the "Department" or "DOJ") proposed rule regarding the review of state bar[1] complaints and allegations of misconduct against DOJ attorneys.

CLC is a nonpartisan, nonprofit organization working to enforce and reform our ethics laws at all levels of government to ensure that our democracy is trustworthy, accountable, and responsive. Consistent with that mission, CLC takes legal action to hold officeholders accountable and regularly engages with the public and civic leaders to ensure that potential conflicts of interest and their appearance are avoided, clear ethics guidelines are established and followed, and public confidence in government is well earned.

Lambda Legal is a national nonprofit organization working to achieve full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people, and everyone living with HIV through litigation, education, and public policy work. Consistent with that mission, Lambda Legal advocates for enforceable ethics rules that hold attorneys accountable if they are biased or prejudiced against someone based on their sexual orientation, gender identity, gender expression, or HIV status.

The National LGBTQ+ Bar Association is a nonprofit membership-based 501(c)(6) professional association and joins this comment on behalf of its members. The National LGBTQ+ Bar Association's more than 13,000 members and subscribers include lawyers, judges, legal academics, law students, and affiliated legal organizations supportive of lesbian, gay, bisexual, and transgender rights. The National LGBTQ+ Bar Association and its members work to promote equality for all people, regardless of sexual orientation or gender identity or expression, and fight discrimination against lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") people as legal advocates.

Q Law NJ is a New Jersey bar association established as a private membership organization to represent the interests of practicing attorneys, people in the legal field, law professors, and law students who desire to advance the conditions, interests, and aspirations of the LGBTQ+ community in all of its diversity throughout the state of New Jersey.

QLaw Foundation of Washington is a nonprofit organization that promotes the dignity and respect of 2SLGBTQIA+ Washingtonians within the legal system through advocacy, education, and legal assistance. Consistent with that mission, QLaw Foundation advocates for a legal system that is accessible, inclusive, and free from biases against 2SLGBTQIA+ people and collaborates with regional bar associations and attorneys to create a more equitable legal framework.

SLAGH is Houston's local LGBTQA+ bar association. SLAGH is a professional association of lesbian, gay, bisexual, transgender, queer, and ally attorneys, judges, paralegals, and law students providing a diverse and inclusive legal presence. Through actions such as this,

[1] Consistent with how this term is used in the Notice of Proposed Rulemaking, this comment uses "state bar" to refer to the bar disciplinary authorities of the states, the territories, and the District of Columbia.

SLAGH continues to be the leading organization of legal professionals providing a voice for the LGBTQA+ community in the greater Houston area.

The Tom Homann LGBTQ+ Law Association is dedicated to the advancement of lesbian, gay, bisexual, transgender, and queer issues throughout California and the nation, as well as the protection of LGBTQ+ communities.

The Virginia LGBTQ+ Bar Association is a coalition of lawyers, law students, and allied professionals who serve and affirm the rights and identities of LGBTQ+ individuals across the Commonwealth of Virginia. The mission of the Virginia LGBTQ+ Bar Association is to secure equality for the LGBTQ+ community and oppose discrimination based on sexual orientation, gender identity, or gender expression. The Virginia LGBTQ+ Bar Association provides legal education, resources, and information to the legal community and the public.

The Department's proposal overhauls the current process governing investigations into allegations of its own attorneys' misconduct. If adopted, the proposal would purport to grant the Department the "right of first review" for any misconduct allegations involving DOJ attorneys and impose a review structure where state bar disciplinary authorities must suspend their investigations indefinitely while waiting for the outcome of the Department's internal review.[2]

The proposed rule would cover current and former DOJ attorneys, shielding them from state-level accountability for past misconduct, even as they move into other roles in the public sector, private sector, or state or local government.[3] As justification for its proposal, the Department asserts both that it is codifying an *existing* review structure "abided by in practice" and that it is creating a *new* review structure to address a recent "unprecedented weaponization of the State bar complaint process."[4] Both cannot be true, which is one reason the proposal fails to comply with the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706.

The proposed changes would completely undermine the longstanding requirement for state oversight of DOJ attorneys that Congress established when it enacted the McDade Amendment in 1998. That statute—passed to address "the problems inherent in any system of self-policing and regulation"[5]—requires DOJ attorneys to follow state ethics laws and rules "to the same extent and in the same manner as other attorneys in that State."[6] It also instructs the Attorney General to promulgate Department rules to ensure compliance.[7] Here, the Attorney General has done the

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[2] Review of State Bar Complaints & Allegations Against Dep't of Justice Attorneys, 91 Fed. Reg. 10,780, 10,784 (Mar. 5, 2026) (to be codified at 28 C.F.R. pt. 77).

[3] *Id.* at 10,784-85.

[4] *Id.* at 10,782, 10,784.

[5] H.R. Rep. No. 101-986, at 35 (1990).

[6] 28 U.S.C. § 530B(a).

[7] *Id.* § 530B(b).

opposite by proposing a rule that would inhibit the application of state ethics rules to DOJ attorneys.

CLC, Lambda Legal, the National LGBTQ+ Bar Association, Q Law NJ, QLaw Foundation of Washington, SLAGH, the Tom Homann LGBTQ+ Law Association, and the Virginia LGBTQ+ Bar Association strongly oppose the proposed rule for seven reasons. First, the proposal plainly exceeds the Department's statutory authority and is an unreasonable interpretation of the McDade Amendment. Second, even if the Department had the authority contemplated in the Notice of Proposed Rulemaking ("NPRM"), the proposed changes are not supported by adequate reasoning or sufficient data. Third, given that the Administration has hollowed out the Department's internal processes for self-policing, the proposed rule would have the effect of shielding DOJ attorneys from accountability for misconduct while simultaneously forcing them to choose between abiding by the rules of the federal government (their employer) and the state bar (the body that licenses them). Fourth, the Department's proposed changes are ineffective for preventing, and will likely result in reduced enforcement related to, ethics violations. Fifth, the Department's proposal to give itself primary enforcement authority over attorney discipline will undermine traditional state authority over legal ethics and violate the foundational separation of powers and federalism. Sixth, the 30-day comment period for the rulemaking is too short to afford state bars and other affected entities a meaningful opportunity to comment. Seventh and finally, to the extent that the Department intends to or has used artificial intelligence for its proposal, it has not provided the opportunity to comment on its use.

I. The proposed rule contradicts the plain language and intent of the McDade Amendment.

The NPRM claims that its proposed changes implement the McDade Amendment, 28 U.S.C. § 530B, but even a cursory look at the statute and its legislative history reveal the opposite.

The McDade Amendment sets forth the ethical obligations of federal attorneys. Subsection A of the statute mandates:

> An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, *to the same extent and in the same manner as other attorneys in that State*.[8]

The Department's proposed rule directly contradicts this plain text. Instead, the proposed rule grants the Department the right to review "in the first instance" any misconduct allegations against current or former DOJ attorneys.[9] When the Department decides to exercise this right, under the proposed rule, state bar disciplinary authorities must pause their investigation until the

[8] *Id.* § 530B(a) (emphasis added).

[9] 91 Fed. Reg. at 10,784.

Department concludes its review.[10] The proposal includes no timeframe for the Department's review, so state bar investigations could be paused indefinitely, losing access to key information and witnesses.[11] The proposal also only requires the Department to notify state bar authorities of the results of its investigation "as appropriate," which is not defined in the NPRM.[12] And only if the Department finds that an attorney violated an ethics rule may state bar authorities "have the option of beginning or resuming their investigations or disciplinary proceedings."[13]

The result is that, at best, DOJ attorneys may be subject to state bar investigations on an ambiguous and delayed timeline. At worst, DOJ attorneys may not be subject to state bar investigations at all. This is not, of course, the case for non-DOJ attorneys, violating the McDade Amendment's requirement of uniform regulation and process.

Additionally, the Department may apply different criteria for evaluating alleged misconduct or have a different interpretation of state ethics rules than state bar authorities, which is also contrary to the McDade Amendment's requirement that DOJ attorneys be subject to state rules *to the same extent and in the same manner* as other attorneys. The NPRM provides no method for ensuring the rules will be applied to DOJ attorneys in the same manner as other attorneys admitted or practicing in the same jurisdiction. The NPRM similarly provides no guarantee that the Department will vigorously enforce all state ethics rules, even those with which the Administration disagrees. And even if the NPRM provided these assurances, the Department could not guarantee that its attorneys would have the same outcomes because it will necessarily have different individuals than state bar authorities conducting the investigation. As discussed further in Section V below, this is especially problematic in states that have adopted anti-discrimination and anti-bias rules.

In addition to its plain text, the McDade Amendment's legislative history confirms that exempting DOJ attorneys from state bar rules is exactly what Congress sought to avoid. Congress enacted the McDade Amendment to prevent the Department's earlier attempts to exempt its attorneys from state ethics rules—the error that the proposed rule would repeat. Prior to enactment, the Department issued a series of legal memoranda asserting that its attorneys were not subject to state ethics rules governing when and how attorneys contact and subpoena witnesses.[14] Those

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[10] *Id*. at 10,781, 10,784.

[11] *Id.* at 10,781 ("[T]he Attorney General . . . will request that the relevant State bar disciplinary authorities suspend any investigative steps that require information or other participation from a Department attorney in response to the allegations pending completion of her review.").

[12] *Id.* at 10,781, 10,784.

[13] *Id.* at 10,784.

[14] William Glaberson, *Thornburgh Policy Leads to a Sharp Ethics Battle*, N.Y. TIMES (Mar. 1, 1991), https://www.nytimes.com/1991/03/01/news/thornburgh-policy-leads-to-a-sharp-ethics-battle.html.

memoranda construed DOJ attorneys' state ethics obligations as voluntary, drawing sharp criticism from the American Bar Association and federal courts.[15]

In 1994, the Department promulgated a rule consistent with its memoranda, creating a separate set of ethics rules applicable only to DOJ attorneys. The 1994 Rule—as well as general concerns about prosecutorial misconduct during that time—led to a series of House Committee hearings that highlighted "the problems inherent in any system of self-policing and regulation," including problems arising from the Department's attempted self-regulation through its memoranda and the rule.[16] To address concerns raised in these hearings, Congress passed the McDade Amendment to clarify that DOJ attorneys shall be subject to the same state ethics rules as other attorneys, rather than a separate federal process. The McDade Amendment—in conjunction with Congress's separate requirement that every DOJ attorney be duly licensed and authorized to practice in at least one state or the District of Columbia—reflects Congress's intent for "federal lawyers to be subject to regulation by the state bars of which they are members."[17]

The Department's own historical implementing regulations confirm the purpose and requirements of the McDade Amendment. In 1999, the Department enacted a new rule, codified at 28 C.F.R. § 77, to implement the McDade Amendment and provide guidance to attorneys concerning its requirements.[18] At that time, the Department stated clearly that the statute "requires Department attorneys to comply with state and local federal court rules of professional responsibility."[19] The Department also asserted that the statute "imposes on Department attorneys the same rules of professional responsibility that apply to non-Department attorneys."[20] Yet the Department's current proposed rule directly contradicts this prior regulation.

As justification, the NPRM relies on subsection B of the McDade Amendment, which requires the Attorney General to "make and amend rules of the Department of Justice to assure compliance with" the statute.[21] In 1999, the Department concluded that section 530B did "not

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[15] *See U.S. v. Lopez*, 765 F. Supp. 1433, 1449-50 (N.D. Cal. 1991), *vacated on other grounds*, 4 F.3d 1445 (9th Cir. 1993) ("[T]he suggestion that DOJ attorneys should be exempted from a longstanding and universally applied ethical norm is alarming," and to the extent that DOJ's guidance "purports to authorize DOJ attorneys to disregard an ethical rule which has been adopted by this court pursuant to its Local Rules, the Memorandum instructs federal prosecutors to violate federal law."); *Matter of Doe*, 801 F. Supp. 478, 487 (D.N.M. 1992) (noting "it is "'alarming' that the principal law enforcement officer of this country would issue a memorandum purporting to authorize unethical behavior" and holding that, because DOJ's policy "invites continuing unethical behavior, it must not be tolerated"); *U.S. v. Ferrara*, 847 F. Supp. 964, 969 (D.D.C. 1993), *aff'd*, 54 F.3d 825 (D.C. Cir. 1995) ("Congress . . . clearly contemplated compliance with state bar ethical standards by attorneys practicing in the Department of Justice.").

[16] H.R. Rep. No. 101-986, at 35.

[17] *Ferrara*, 847 F. Supp. at 969; *cf. U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 961 F. Supp. 1288, 1294 (E.D. Mo. 1997) ("[G]eneral statutes cited by the DOJ do not authorize it to issue regulations which exempt its attorneys from the requirements of state ethical rules.").

[18] *See* 28 C.F.R. § 77.1(a).

[19] *Id.* § 77.1(b).

[20] *Id.* § 77.1(c).

[21] 28 U.S.C. § 530B(b).

change the enforcement authority of [OPR], state authorities, or the federal courts."[22] At the time, "the Department [also] offered no opinion as to whether the Attorney General could change this enforcement authority pursuant to her rulemaking authority under subsection (b)."[23] Now, however, the NPRM claims that this same language justifies a requirement that the Department "take appropriate action to prevent the bar disciplinary authorities from interfering with the Attorney General's review of the allegations."[24] The NPRM also argues that the McDade Amendment "permits the Attorney General to establish an enforcement mechanism for assuring that Department attorneys comply with State ethics rules."[25] But this argument—in addition to ignoring the plain text of subsection A and its related legislative history—disregards that the McDade Amendment is, in fact, *entirely silent on the Department's enforcement authority*. Instead, the statute explicitly directs that DOJ attorneys be subject to state bar disciplinary procedures.[26] "An agency can only wield power Congress confers."[27] Without clear statutory enforcement authority, courts no longer presume that "Congress intended for an agency to fill statutory gaps or interpret statutory ambiguities."[28] The Department thus has no basis for implementing its proposed changes.

In sum, the Department's proposal to exempt DOJ attorneys from being subject to state rules to the same extent and in the same manner as non-federal attorneys practicing in that state, and to create a new enforcement power to force state bars to pause their investigations, violates the McDade Amendment, as well as the APA. Both the plain text and legislative history of the McDade Amendment make clear that the proposal relies on an unreasonable reading of the statute that is directly contrary to Congress's intent.

II. The Department's proposed changes are not supported by adequate reasoning.

Even if the Department believes that it is authorized to issue the rule as proposed, the rule lacks adequate justification, further violating the APA. The Department relies on two internally incoherent reasons for issuing the NPRM. First, the Department asserts that the proposal is merely intended to formalize a process that exists in practice. Second, the Department cites "political activists" who have allegedly weaponized the state bar complaint process, forcing the Department to change the rule. Neither is accurate nor justifies the proposed changes.

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[22] Ethical Standards for Attorneys for the Government, 64 Fed. Reg. 19,273, 19,274 (Apr. 20, 1999) (to be codified at 28 C.F.R. pt. 77).

[23] 91 Fed. Reg. at 10,783; *see also* 64 Fed. Reg. at 19,274-75.

[24] 91 Fed. Reg. at 10,781.

[25] *Id.* at 10,783.

[26] *See* 28 U.S.C. § 530B(a) (ensuring DOJ attorneys are subject to state ethics rules "to the same extent and in the same manner" as non-DOJ attorneys).

[27] *Duffus v. MaineHealth*, 791 F. Supp. 3d 61, 77 (D. Me. 2025) (citing *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 357 (1986) (explaining "an agency literally has no power to act" absent congressional authorization)).

[28] *Id.* (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 404 (2024)).

Although the proposed rule claims to formalize current practice, the NPRM differs significantly from existing practice. Currently, DOJ attorneys subject to a state bar misconduct complaint must participate in the state process, including responding to any inquiries. If both the state bar and the Department wish to investigate the same attorney, the two investigations can proceed in parallel. But the NPRM now suggests that DOJ attorneys will no longer be permitted to speak with state bar investigators until the Department has concluded its review, placing these attorneys at risk for additional ethics violations for unresponsiveness.[29] The NPRM also claims—without any evidence—that most state bars "refrain from taking further action until OPR is able to complete the investigation so that the bar has a full account," "do not take additional action after referrals are made concerning current or former Department attorneys," and "view the Department's disciplinary actions as sufficient."[30] The NPRM similarly provides no evidence for its claims that DOJ referrals are "often the first information the State bar has received about the allegations," only sometimes receiving a separate complaint or learning of potential misconduct through significant media attention.[31] The NPRM likewise does not adequately explain how state bar disciplinary authorities will not be negatively impacted by having to pause their investigations, potentially indefinitely, while continuing to license attorneys who may have violated their state's ethics rules.[32] The current process maximizes opportunities for accountability and ensures that DOJ attorneys are held to the same state ethics standards as all other state-barred attorneys, just like Congress intended. Conversely, the Department's proposal would upend current practice and fundamentally impede state bars' ability to investigate DOJ attorney misconduct.

Directly contradicting the NPRM's claim that it merely formalizes an existing process, the Department next cites as justification—without any evidence—"weaponization" by "political activists" of the bar complaint process that allegedly prompted the Department to "restructure" the process.[33] The NPRM points to bar complaints against several top DOJ lawyers, but does not explain how these complaints were unjustified or how the state bar disciplinary process failed to avoid meritless disciplinary proceedings.[34] To the contrary, the NPRM suggests that many complaints go no further than the initial referral.[35] The NPRM also cites an overall increase in bar complaints, but does not cite any data or evidence to substantiate that purported increase.[36] Even

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[29] 91 Fed. Reg. at 10,784 (noting that the Department will direct personnel "not to provide any non-public information to any parallel state bar investigations or disciplinary proceedings," including interviews, until the completion of its review).

[30] *Id.* at 10,782.

[31] *Id.*

[32] *See id.* at 10,785.

[33] *Id.* at 10,782.

[34] *See id.*

[35] *Id.* ("Based on OPR's experience interacting with State bar disciplinary authorities over several decades, most State bars do not take additional action after referrals are made concerning current or former Department attorneys.").

[36] *See id.*

if complaints have risen, the NPRM does not explain how this increase correlates to abuse of the state bar complaint process, rather than legitimate and important state bar oversight.

Indeed, there are several other explanations for why there may have been an increase in state bar complaints against DOJ attorneys, including an increase in actual misconduct. Whistleblower reports suggest that DOJ attorneys have been encouraged to violate their ethical obligations—and punished when they refuse to do so.[37] Moreover, while the NPRM cites to Executive Order 14147, *Ending the Weaponization of the Federal Government*, that order relates to alleged *past* abuse of *federal* government processes.[38] It is not connected in any way to private individuals' and organizations' decisions to file state bar complaints against DOJ attorneys for alleged misconduct.

III. The Department has decimated its ability to police the conduct of its own attorneys at the very moment that misconduct is on the rise, proving the necessity of longstanding state bar disciplinary procedures.

The NPRM provides details about the Department's attorney discipline process to suggest that state bar disciplinary procedures are superfluous or redundant because the Department can capably self-police its own attorneys, precisely the outcome Congress rejected in the 1990s. In any event, the Attorney General has methodically destroyed the Department's internal guardrails designed to ensure and police ethical decision-making. The Attorney General has done so after threatening federal attorneys with termination if they fail to zealously advocate for the President's agenda[39] and at the exact moment that numerous federal attorneys face complaints before state bars related to misconduct in federal court. The Department's insistence on its ability to self-police is thus based on an inaccurate factual premise and fails to provide adequate support for the proposed rule.

The Department's attorney disciplinary process includes three components: the Office of Professional Responsibility ("OPR"), the Professional Misconduct Review Unit ("PMRU"), and

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[37] *See generally* GOV'T ACCOUNTABILITY PROJECT & GILBERT EMP'T LAW, P.C., PROTECTED WHISTLEBLOWER DISCLOSURE OF EREZ REUVENI REGARDING VIOLATION OF LAWS, RULES & REGULATIONS, ABUSE OF AUTHORITY, & SUBSTANTIAL & SPECIFIC DANGER TO HEALTH & SAFETY AT THE DEP'T OF JUSTICE (Jun. 24, 2025), https://www.judiciary.senate.gov/imo/media/doc/06-24-2025_-_Protected_Whistleblower_Disclosure_of_Erez_Reuveni_Redacted.pdf.

[38] *See* Exec. Order No. 14147, *Ending the Weaponization of the Federal Government*, 90 Fed. Reg. 8235 (Jan. 20, 2025), https://www.federalregister.gov/documents/2025/01/28/2025-01900/ending-the-weaponization-of-the-federal-government. Even if this order were relevant—which it is not—an executive order, standing alone, proves nothing. "It is black letter law that the President's power, if any, to issue an executive order must stem either from an act of Congress or from the Constitution itself." *League of United Latin Am. Citizens v. Exec. Off. of the Pres.*, Nos. 25-0946, 25-0952, 25-0955, 2026 WL 252420, at *32 (D.D.C. Jan. 30, 2026) (cleaned up).

[39] *See, e.g.*, Ryan Lucas & Scott Simon, *Trump's Justice Department demotes senior attorneys who oversaw Jan. 6 cases*, NPR (Mar. 1, 2025), https://www.npr.org/2025/03/01/nx-s1-5313836/trumps-justice-department-demotes-senior-attorneys-who-oversaw-jan-6-cases; Erica Orden, *Maurene Comey, daughter of James Comey and prosecutor of Jeffrey Epstein, is fired*, POLITICO (July 16, 2025), https://www.politico.com/news/2025/07/16/maurene-comey-fired-doj-00458921?homescreen=1.

the Office of the Inspector General ("OIG").[40] OPR "has jurisdiction to review allegations of misconduct made against Department attorneys that relate to the attorneys' exercise of their authority to investigate, litigate, or provide legal advice."[41] Only if OPR conducts a full investigation and finds that an attorney has engaged in misconduct will it refer the matter to the PMRU.[42] The PMRU reviews OPR's findings to determine if a preponderance of the evidence supports a finding that misconduct has occurred before deciding if discipline is appropriate.[43] For most matters, the PMRU is the Department's final decisionmaker, including whether to refer the attorney to the appropriate state bar.[44]

OIG, meanwhile, has jurisdiction over allegations involving waste, fraud, or abuse and allegations of any other misconduct that fall outside OPR's jurisdiction.[45] OIG refers its findings to the attorney's agency leadership for discipline and to the PMRU to determine if the conduct violates a professional conduct rule.[46] The PMRU can ask OPR to review OIG's findings, analyze the conduct, and provide a recommendation about whether to refer the attorney to the appropriate state bar.[47] If the PMRU concludes a rule has been violated, it authorizes OPR to notify the state bar.[48]

The NPRM asserts that these three components' review is sufficient to ensure adequate discipline of DOJ attorneys who have engaged in misconduct. But in the last two years, the Department has eviscerated its ability to police its own attorneys' conduct. Indeed, the Department has fired dozens of career civil servants responsible for providing ethics advice to DOJ attorneys and for preventing and investigating misconduct. In 2025 alone, the Attorney General removed the Director of OPR, fired the Director of the Departmental Ethics Office, and forced out the senior official responsible for supervising both of those directors.[49] The Department likewise has been

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[40] 91 Fed. Reg. at 10,781.

[41] *Id.* (citing 28 C.F.R. §§ 0.39, 0.39a(a)(1)).

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.* at 10,781-82.

[46] *Id.* at 10,782.

[47] *Id.*

[48] *Id.*

[49] *See* Rebecca Beitsch, *Schiff, Democrats demand rationale on Bondi firing of ethics attorney*, THE HILL (July 16, 2025), https://thehill.com/homenews/administration/5404767-justice-department-fires-career-ethics-official/; Scott MacFarlane & Melissa Quinn, *Bondi ousts top ethics official at the Justice Department*, CBS NEWS (July 15, 2025), https://www.cbsnews.com/news/justice-department-ethics-official-fired-joseph-tirrell/; Perry Stein et al., *Several top career officials ousted at Justice Department*, WASH. POST (Mar. 7, 2025), https://www.washingtonpost.com/national-security/2025/03/07/justice-department-trump-firings/; Sarah N. Lynch, *Senior Justice Department ethics official resigns over sidelining by Trump appointees, source says*, REUTERS (Feb. 19, 2025), https://www.reuters.com/legal/senior-justice-department-ethics-official-resigns-over-sidelining-by-trump-2025-02-19/.

without an Inspector General—the head of OIG—for roughly nine months.[50] During this time, OIG has reportedly ignored instances of misconduct, prompting a whistleblower to write to Congress urging it to address the "apparent collapse" of the office.[51] No replacements have been named for any of these positions.

At the same time, the Department has severely curtailed or eliminated offices and initiatives aimed at reducing attorney misconduct. The Trump Administration intends to drastically reduce Department oversight efforts, proposing in the fiscal 2026 budget reducing OIG personnel by 140 and admitting that "the scope and frequency of independent oversight will be significantly curtailed."[52] The Administration has also defunded the Council of the Inspectors General on Integrity and Efficiency—the umbrella entity that coordinates and overseas the federal inspector general community, including DOJ's OIG—by preventing it from using congressionally approved funding for the 2026 fiscal year.[53]

While DOJ has decimated its ability to police its attorneys' potential misconduct, the NPRM nonetheless argues that OPR, PMRU, and OIG are equipped to review, investigate, and address bar complaints in the first instance. That is simply not true. All available evidence about the lack of leadership, funding, and capacity within critical Department oversight components lays bare the Department's inability to properly oversee attorney ethics. This is particularly troublesome at a time when misconduct among DOJ attorneys is on the rise,[54] making independent oversight by state bars more critical.

IV. The proposed rule makes enforcement of rules governing DOJ attorney conduct both less likely and less effective.

The practical outcomes of the proposed rule are likely to contradict and undermine its stated purpose of "prioritiz[ing] enforcement of . . . regulations governing attorney conduct and discipline"[55] by creating a system with fewer internal and independent checks and interfering with state bar investigations that enforce different rules, via different investigative means, and with different forms of discipline. Accordingly, the NPRM is not supported by adequate reasoning.

First, the proposed rule allows DOJ unfettered discretion to conduct *no* investigation, prevent or impede state bar authorities' investigations, and decline to notify state bar authorities if

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[50] *See* Ben Penn, *Veteran DOJ Watchdog's Exit Spurs Fears of Lax Trump Oversight*, BLOOMBERG LAW (June 27, 2025), https://news.bloomberglaw.com/us-law-week/veteran-doj-watchdogs-exit-spurs-fears-of-lax-trump-oversight.

[51] Devlin Barrett, *Justice Dept. Watchdog Has Gone Silent, Lawyers for Whistle-Blower Say*, N.Y. TIMES (Mar. 30, 2026), https://www.nytimes.com/2026/03/30/us/politics/trump-administration-doj-watchdog-reuveni.html.

[52] *See* Penn, *Veteran DOJ Watchdog's Exit Spurs Fears of Lax Trump Oversight*, *supra* note 50.

[53] Megan Mineiro, *Trump Administration Defunds Federal Watchdog Office*, N.Y. TIMES (Sept. 30, 2025), https://www.nytimes.com/2025/09/30/us/politics/trump-federal-watchdog-funding.html.

[54] *See infra* pp. 12-13.

[55] 91 Fed. Reg. at 10,782.

complaints exist but were not made to the state bar authority directly. The proposed rule reserves to the sole discretion of the Attorney General or their designee the decision of whether *any* reported misconduct by a current or former DOJ attorney will be investigated and, if substantiated, addressed.[56] That discretion exists regardless of whether a complaint is filed with DOJ or a state bar authority or whether a state bar authority opens an investigation without a complaint.[57] The proposed rule further grants the Department broad discretion to request that "[s]tate bar disciplinary authorities . . . suspend their investigations or disciplinary proceedings" and "direct Department personnel not to provide any non-public information to any parallel investigations or disciplinary proceedings until the completion of OPR's review."[58] Under the proposed rule, the Department may choose to decline to refer the results of its review of potential misconduct to state bar authorities, regardless of whether the Department has concluded that misconduct has occurred.[59] Because the proposed rule gives DOJ the power to open any internal investigation *as well as* impede or prevent any state bar investigation, the NPRM sets up a framework where DOJ attorneys' alleged misconduct could easily go uninvestigated or unaddressed. Such a system effectively removes any internal or independent check on attorney misconduct and contradicts the NPRM's stated purpose of prioritizing enforcement of regulations governing attorney conduct and discipline.

This is not a theoretical issue; there is ample evidence of DOJ attorney misconduct since the start of the Trump Administration. Examples include non-compliance with court orders; missing court filing and bond hearing deadlines; defying instructions not to transfer or remove individuals held for immigration-related reasons; providing late release from custody; defying post-release conditions of supervision; and producing incomplete evidence.[60] It also includes the Department's unreasonable interpretations of court orders, including preliminary injunctions;[61]

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[56] *See id*. at 10,784.

[57] *See id*. (reserving to DOJ the "right of first review" regardless of whether "allegations are made in a complaint filed by a third party or the bar disciplinary authorities open an investigation into the allegations without a complaint having been filed").

[58] *Id.*

[59] *See id.* at 10,781 ("[W]hen the PMRU concludes that a State rule of professional conduct is implicated by the Department attorney's conduct, it will authorize OPR to refer the matter to the appropriate bar disciplinary authorities. Under current practice, for most attorney professional misconduct matters, the PMRU is the final decisionmaker for the Department with respect to findings of misconduct by career Department attorneys, whether and what discipline to impose on the Department attorney, and whether to refer the Department attorney to the bar.").

[60] *See, e.g.*, *Robles v. Noem*, No. 0:26-cv-00107, ECF No. 10 at 2-3 (D. Minn. Feb. 26, 2026) (noting the court's concern of non-compliance by the government in numerous cases); *id*. at App. (enumerating at least 96 court orders violated by the government in 74 cases since January 1, 2026); *Kumar v. Soto*, No. 2:26-cv-00777, ECF No. 21 (D.N.J. Feb. 13, 2026) (describing and enumerating acknowledged violations of court orders by the Government between December 5, 2025, and February 13, 2026). This list is not exhaustive. *See* Ryan Goodman, Siven Watt, Audrey Balliette, Margaret Lin, Michael Pusic, & Jeremy Venook, *The "Presumption of Regularity" in Trump Administration Litigation (4th edition)*, Just Sec. (Mar. 19, 2026), https://www.justsecurity.org/120547/presumption-regularity-trump-administration-litigation/.

[61] *See, e.g.*, *Washington v. Trump*, No. 2:25-cv-00244, 2025 WL 835030, at *5 (W.D. Wash. Mar. 17, 2025) (noting that "[government] Defendants' unreasonable and self-serving interpretation of the Court's orders is certainly

fabrication of quotations and misstated holdings of cases in filed briefs;[62] government officials' submission of false sworn statements in court;[63] "highly misleading, if not intentionally false" statements "so disingenuous that the Court is left with little confidence that the [government] can be trusted to tell the truth about anything;"[64] offering pretextual justifications for government actions;[65] and misconstruing statements of fact.[66] Despite the mounting volume of evidence of recent DOJ attorney misconduct, the proposed rule provides fewer protections for courts and the public against such abuses.

Second, while the proposed rule appears to acknowledge, albeit inconsistently, that DOJ's and state bar authorities' investigative and disciplinary processes differ, it ignores the ramifications of such differences. The NPRM recognizes that DOJ lacks the power to compel testimony or production of documents under its internal system, whereas many state bar authorities are able to conduct more fulsome or effective investigations by employing these tools.[67] But the NPRM ignores entirely that the existing system, allowing for parallel and concurrent investigations by DOJ and state bars, provides the best opportunity for maximum enforcement of compliance with *all* ethics rules, both those of DOJ and the state bar to which the attorney belongs. Federal and state investigations—which are not congruent—serve to enforce different, equally important ethics rules[68] and should thus be allowed to occur simultaneously, without priority given to the Department's own, more constrained investigative process.

Moreover, even if the Department's own process to hold DOJ attorneys accountable for such misconduct were functional and robust—which it is not—the remedies available through federal disciplinary procedures are often far more limited than the remedies available as part of

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deserving of the above reprimands, as well as a warning that the Court may impose sanctions for any future violations of Rule 11, other Federal Rules, the Local Civil Rules, or its orders").

[62] *See, e.g.*, *Fivehouse v. U.S. Dep't of Defense*, No. 2:25-cv-00041, ECF No. 119 at 2-3 (E.D.N.C. Mar. 2, 2026) (issuing show cause order to government attorney regarding why he should not be sanctioned under Federal Rule of Civil Procedure 11 for submitting at least five filings containing "fabricated quotations" and "misstatements of case holdings," as well as for making "false or misleading statements" about those documents).

[63] *See, e.g.*, *D.N.N. v. Liggins*, No. 1:25-cv-01613, 2026 WL 632371, at *6 n.12 (D. Md. Mar. 6, 2026) (noting that a declaration by a government official contained "untrue" statements and that the sworn attestation submitted by the government was "false," leading to its withdrawal during a hearing).

[64] *See, e.g.*, *Nat'l Treasury Emps. Union v. Vought*, 774 F. Supp. 3d 1, 57 (D.D.C. 2025), *vacated and remanded on other grounds*, 149 F.4th 762 (D.C. Cir. 2025).

[65] *See, e.g.*, *Talbott. v. United States*, 775 F. Supp. 3d 283, 326 (D.D.C. 2025) (granting a preliminary injunction and observing that the military ban on transgender individuals "is soaked in animus and dripping with pretext. Its language is unabashedly demeaning, its policy stigmatizes transgender persons as inherently unfit, and its conclusions bear no relation to fact").

[66] *Id.*

[67] 91 Fed. Reg. at 10,785 (acknowledging that state bars can compel an attorney's cooperation with an investigation).

[68] *See id.* at 10,784 (acknowledging that the Department has "considered that State bars have interests that are different from those protected by the Department").

state disciplinary actions.[69] Whereas the PMRU's sanctions, for example, "may include a reprimand, suspension, termination, counseling, or additional training,"[70] state discipline allows for those same remedies and many more, including variable forms of admonition, reprimand, and censure; probation and variable forms of suspension; restitution or fines; assessment of attorney's fees and/or administrative costs; practice limitations; receiverships; community service; and deferred discipline agreements or assistance referrals.[71] Those remedies not only promote ethical conduct but can serve other important functions, including public transparency and making victims whole. Accordingly, even if the Department could police its own attorneys—which, again, it cannot—the remedies available for it to address misconduct are significantly more limited than those available through state disciplinary proceedings.

Because the NPRM creates a new system where internal and independent state bar investigations are less likely to occur and effectively address alleged misconduct with different investigative tools and remedies, the proposed rule is not supported by adequate reasoning.

V. The proposed rule violates the foundational separation of powers between the federal government and the states, infringing on traditional state power to regulate attorneys' conduct.

The Tenth Amendment makes clear that all "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[72] The proposed rule violates this fundamental principle of federalism and division of powers between the federal government and the states, the latter of which retain broad authority to regulate "the practice of professions within their boundaries."[73] States' interest in regulating attorneys "is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the courts.'"[74] The proposed rule violates this core constitutional principle.

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[69] *See id.* at 10,784-85 (acknowledging that the "Department is limited to reprimanding, suspending, or terminating the employment of a Department attorney who has engaged in misconduct, whereas the bar disciplinary authorities may suspend or revoke an attorney's license to practice law").

[70] *Id.* at 10,781.

[71] *See, e.g.*, Ariz. Sup. Ct. R. 60(a); R. Regulating Fla. Bar 3-5.1, 3-5.2, 3-5.4; Ind. Admission & Discipline R. 23(3)(a)-(c); Mich. Ct. R. 9.106; Neb. Ct. R. § 3-304; Nev. Sup. Ct. R. 102; S.C. App. Ct. R. 413.7(b); Tex. R. of Disciplinary Proc. R. 1.06(FF); Utah Sup. Ct. R. of Professional Practice 1-581; D. Vt. Attorney Disciplinary R. 3(b); Wash. R. for Enf't of Lawyer Conduct 13.1; W. Va. R. Lawyer Disciplinary Proc. 3.15; Wis. Sup. Ct. R. 22.09, 22.10, 22.21, 22.24.

[72] U.S. CONST. amend. X.

[73] *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975) (citations omitted); *see also Middlesex Cnty. Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 434 (1982) ("The State . . . has an extremely important interest in maintaining and assuring the professional conduct of the attorneys it licenses," such that "[s]tates traditionally have exercised extensive control over the professional conduct of attorneys.").

[74] *Goldfarb*, 421 U.S. at 792 (citations omitted); *see also Middlesex Cnty. Ethics Comm'n*, 457 U.S. at 434.

As the Supreme Court stated, "[s]ince the founding of the Republic, the licensing and regulation of lawyers has been left *exclusively* to the States and the District of Columbia within their respective jurisdictions," including responsibility "for the discipline of lawyers."[75] Accordingly, even where certain conduct by lawyers is within the reach of federal law, there can be "no diminution of the authority of the State to regulate its professions."[76] The proposed rule contemplates exactly such an infringement on and diminution of state power, usurping the well-established authority of states to regulate the conduct of lawyers licensed and practicing within their borders.

The proposed rule violates state authority by permitting the Attorney General to bypass state disciplinary proceedings—and therefore state rules of professional conduct—for DOJ attorneys. Under the proposed rule, the Attorney General is given the "right to review the allegations in the first instance," but may choose whether to preempt a state bar disciplinary authority's investigation into a DOJ attorney.[77] This is particularly problematic given that most states have rules of professional conduct that contain additional or different provisions from DOJ's internal ethics rules. For example, 37 states and D.C. include an anti-bias or anti-discrimination provision in their rules of professional conduct that prohibit attorneys from engaging in harassment or discrimination on the basis of a variety of protected characteristics, such as race, national origin, disability, age, veteran status, and marital status, among others.[78] Nine of those states have provisions that explicitly prohibit bias or discrimination based on sexual orientation, gender

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[75] *Leis v. Flynt*, 439 U.S. 438, 442 (1979) (emphasis added); *see also Gallo v. U.S. Dist. Court for Dist. of Ariz.*, 349 F.3d 1169, 1180 (9th Cir. 2003) ("The states supply . . . the guidelines and machinery for the discipline of lawyers."); *Paciulan v. George*, 229 F.3d 1226, 1230 (9th Cir. 2000) ("No case has ever suggested that states are . . . barred from regulating admission to their respective bars. Rather, . . . states traditionally have enjoyed the sole discretion to determine qualifications for bar membership"); *Piper v. Supreme Court of N.H.*, 723 F.2d 110, 121 (1st Cir. 1983) ("[A] very special kind of deference is due a state's regulation of law practice by those within and without its borders."); *Matter of Doe*, 801 F. Supp. at 484 (explaining that federal courts "have consistently left in state hands" "the regulatory function of a disciplinary proceeding").

[76] *Goldfarb*, 421 U.S. at 792.

[77] 91 Fed. Reg. at 10,787.

[78] Alaska R. Prof'l Conduct R. 8.4 (f), (g); Ariz. R. Prof'l Conduct R. 8.4(d), Comment 3; Ark. R. Prof'l Conduct R. 8.4(d), Comment 3; Cal. R. Prof'l Conduct R. 8.4.1; Colo. R. Prof'l Conduct R. 8.4(g); Conn. R. Prof'l Conduct R. 8.4(7); Del. R. Prof'l Conduct R. 8.4(d), Comment 3; Fla. R. Prof'l Conduct 4-8.4(d); Idaho R. Prof'l Conduct R. 8.4(d), Comment 3; Ill. R. Prof'l Conduct R. 8.4(j); Ind. R. Prof'l Conduct R. 8.4(g); Iowa R. Prof'l Conduct R. 32:8.4(d), (g), Comment 3; Me. R. Prof'l Conduct R. 8.4(g); Md. R. Prof'l Conduct R 19-308.4(e); Mich. R. Prof'l Conduct R. 6.5; Minn. R. Prof'l Conduct R. 8.4(g); Mo. R. Prof'l Conduct R.4-8.4(g); Neb. R. Prof'l Conduct R. 3-508.4(d); N.H. R. Prof'l Conduct R. 8.4(g); N.J. R. Prof'l Conduct R. 8.4(g); N.M. R. Prof'l Conduct R.16-804(G); N.Y. R. Prof'l Conduct R. 8.4(g); N.C. R. Prof'l Conduct R. 8.4(d), Comment 5; N.D. R. Prof'l Conduct R. 8.4(f); Ohio R. Prof'l Conduct R. 8.4(g); Or. R. Prof'l Conduct R. 8.4(a)(7); Pa. R. Prof'l Conduct R. 8.4(g); R.I. R. Prof'l Conduct R. 8.4(d); S.C. R. Prof'l Conduct R. 8.4(e), Comment 3; Tenn. R. Prof'l Conduct R. 8.4(d), Comment 3; Tex. R. Prof'l Conduct R. 5.08 (a), (b); Utah Code of Jd. Admin R. 13-8.4(d), Comment 3; Vt. R. Prof'l Conduct R. 8.4(g); Wash. R. Prof'l Conduct R. 8.4(g), (h); W. Va. R. Prof'l Conduct R. 8.4(d), Comment 3; Wis. Sup. Ct. R. 20.8.4(i); Wyo. R. Prof'l Conduct R. 8.4(d), Comment 3; D.C. R. Prof'l Conduct R. 8.4(d), Comment 3.

identity, and gender expression.[79] Another seven states cover sexual orientation and gender identity,[80] while 18 states plus D.C. prohibit discrimination based on sexual orientation.[81] The Department's internal ethics rules, however, do not include anti-bias or anti-discrimination provisions.

States adopted these provisions to address the bias and discrimination people experience when using or interacting with the legal system, but the Administration's hostility to diversity, equity, and inclusion ("DEI")[82] and attacks on LGBTQ+ people are reason to believe that the Department may not enforce rules that address discrimination or bias based on sexual orientation, gender identity, gender expression, race, national origin, or other protected classes, as well as protections for those whose identities include multiple protected classes.

Such concerns are well placed. The Trump Administration has issued several Executive Orders targeting the LGBTQ+ community, particularly transgender people, beginning on Inauguration Day in 2025. The first purports to establish that there are only two sexes that are not "changeable."[83] Other executive orders attempt to ban gender affirming medical care for transgender youth under 19 years old,[84] transgender people from serving in the military,[85] and transgender women and girls from participating in sports consistent with their gender identity.[86] The U.S. Equal Employment Opportunity Commission ("EEOC") has also removed mention of

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[79] Cal. R. Prof'l Conduct R. 8.4.1; Colo. R. Prof'l Conduct R. 8.4(g); Conn. R. Prof'l Conduct R. 8.4(7); Ill. R. Prof'l Conduct R. 8.4(j); N.J. R. Prof'l Conduct R. 8.4(g); N.Y. R. Prof'l Conduct R. 8.4(g); Or. R. Prof'l Conduct R. 8.4(a)(7); Pa. R. Prof'l Conduct R. 8.4(g); Wash. R. Prof'l Conduct R. 8.4(g), (h).

[80] Alaska R. Prof'l Conduct R. 8.4(f), (g); Ariz. R. Prof'l Conduct R. 8.4(d), Comment 3; Me. R. Prof'l Conduct R. 8.4(g); Mo. R. Prof'l Conduct R. 4-8.4(g); N.H. R. Prof'l Conduct R. 8.4(g); N.M. R. Prof'l Conduct R. 16-804(G); Vt. R. Prof'l Conduct R. 8.4(g).

[81] Del. R. Prof'l Conduct R. 8.4(d), Comment 3; Fla. R. Prof'l Conduct R. 4-8.4(d); Idaho R. Prof'l Conduct R. 8.4(d), Comment 3; Ind. R. Prof'l Conduct R. 8.4(g); Iowa R. Prof'l Conduct R. 32:8.4(d), (g), Comment 3; Md. R. Prof'l Conduct R. 19-308.4(e); Minn. R. Prof'l Conduct R. 8.4(g); Neb. R. Prof'l Conduct R. 3-508.4(d); N.D. R. Prof'l Conduct R. 8.4(f); Ohio R. Prof'l Conduct R. 8.4(g); R.I. R. Prof'l Conduct R. 8.4(d); S.C. R. Prof'l Conduct R. 8.4(e), Comment 3; Tenn. R. Prof'l Conduct R. 8.4(d), Comment 3; Tex. R. Prof'l Conduct R. 5.08(a), (b); Utah Code of Jd. Admin. R. 3-8.4(d), Comment 3; W. Va. R. Prof'l Conduct R. 8.4(d), Comment 3; Wis. Sup. Ct. R. 20:8.4(i); Wyo. R. Prof'l Conduct R. 8.4(d), Comment 3; D.C. R. Prof'l Conduct R. 8.4(d), Comment 3.

[82] Exec. Order No. 14173, *Ending Illegal Discrimination & Restoring Merit-Based Opportunity*, 90 Fed. Reg. 8633 (Jan. 21, 2025), https://www.federalregister.gov/documents/2025/01/31/2025-02097/ending-illegal-discrimination-and-restoring-merit-based-opportunity.

[83] Exec. Order No. 14168, *Defending Women From Gender Ideology Extremism & Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8615 (Jan. 20, 2025), https://www.federalregister.gov/documents/2025/01/30/2025-02090/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal.

[84] Exec. Order No. 14187, *Protecting Children From Chemical & Surgical Mutilation*, 90 Fed. Reg. 8771 (Jan. 28, 2025), https://www.federalregister.gov/documents/2025/02/03/2025-02194/protecting-children-from-chemical-and-surgical-mutilation.

[85] Exec. Order No. 14183, *Prioritizing Military Excellence & Readiness*, 90 Fed. Reg. 8757 (Jan. 27, 2025), https://www.federalregister.gov/documents/2025/02/03/2025-02178/prioritizing-military-excellence-and-readiness.

[86] Exec. Order No. 14201, *Keeping Men Out of Women's Sports*, 90 Fed. Reg. 9279 (Feb. 5, 2025), https://www.federalregister.gov/documents/2025/02/11/2025-02513/keeping-men-out-of-womens-sports.

transgender and nonbinary people from their website and declared it a priority to "defend the biological and binary reality of sex and related rights."[87] A DOJ memorandum further argues that it is unlawful for transgender women and girls to access restrooms and play sports consistent with their gender identity.[88] At the same time, the Department's Civil Rights Division has lost hundreds of staff since the beginning of the Trump Administration following its change in enforcement priorities.[89] These—and many similar and related actions—make plain that protecting the LGBTQ+ community from discrimination is no longer a priority of the Department. States, however, have chosen to extend such protections, including through their ethics rules.

Bias and discrimination against LGBTQ+ people in the legal system is a pervasive problem. LGBTQ+ people report a range of negative experiences when accessing the courts, such as harmful comments about sexual orientation or gender identity or being outed in court in a nonconsensual manner.[90] A large national study found that 13 percent of transgender respondents who visited courthouses over the previous year experienced discrimination or harassment by court staff.[91] In another survey, 22.2 percent of LGBTQ+ survey respondents and respondents living with HIV reported hearing negative comments about sexual orientation, gender identity, or HIV status coming from a legal system employee.[92]

A state's interest in regulating attorneys encompasses enforcing its own ethics rules, including anti-discrimination and anti-bias rules. The Department's proposed rule, however, creates a system where it can decide to "review" misconduct allegations against a DOJ attorney for an indeterminate or, indeed, entirely indefinite amount of time. Such unbounded discretion could allow the Department to shield DOJ attorneys from facing misconduct allegations based on bias or discrimination against LGBTQ+ people or other protected classes, in direct contravention of state laws and rules specifically providing those protections. The Department does not have this power, nor can the proposed rule provide it.

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[87] Press Release, U.S. Equal Emp't Opportunity Comm'n, *Removing Gender Ideology & Restoring the EEOC's Role of Protecting Women in the Workplace* (Jan. 28, 2025), https://www.eeoc.gov/newsroom/removing-gender-ideology-and-restoring-eeocs-role-protecting-women-workplace.

[88] Memorandum from the U.S. Attorney Gen., *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination* (July 29, 2025), https://www.justice.gov/ag/media/1409486/dl?inline=&utm_medium=email&utm_source=govdelivery.

[89] Debra Cassens Weiss, *DOJ's Civil Rights Division has lost hundreds of employees in 'mass exodus,'* ABA JOURNAL (July 28, 2025), https://www.abajournal.com/news/article/dojs-civil-rights-division-loses-hundreds-of-employees-in-mass-exodus.

[90] Somjen Frazer, Richard Saenz, Andrew Aleman, & Laura Laderman, *Protected and Served? 2022 Community Survey of LGBTQ+ People and People Living with HIV's Experiences with the Criminal Legal System* 37-38 (Lamba Legal & Black and Pink Nat'l, 2023), https://www.protectedandserved.org/2022-report-full-report.

[91] Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet, & Ma'ayan Anafi, *The Report of the 2015 U.S. Transgender Survey* 16 (Nat'l Ctr. for Transgender Equality, 2016), https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf.

[92] *See* Frazer et al., *supra* note 90 at 37.

Beyond violating fundamental federalism principles, the proposed rule is ripe for retaliatory abuse. Former DOJ attorneys who represent clients to whom DOJ objects, work on issues that the Department considers unfavorable, or make statements with which DOJ disagrees could be targeted by the Department for misconduct investigations without any independent evaluation of such allegations by state bar disciplinary authorities.

VI. The 30-day comment period is too short and does not permit a meaningful opportunity to comment.

The NPRM fails to explain why the Department provided only a 30-day comment period for a rulemaking that significantly impedes state bar authorities' ability to investigate and address misconduct by DOJ attorneys, nor is there any apparent reason for such a rushed process. The short 30-day comment period does not permit all interested parties an opportunity to meaningfully comment on the proposed regulations. Most importantly, this short timeframe makes it nearly impossible for state bars—the entities most directly affected by the proposed rule—to comment, given their own, often time-consuming internal review processes for approval. The Department should not finalize this proposal without providing sufficient time to receive feedback, especially from state bars.

VII. If the Department plans to rely upon artificial intelligence, it must disclose that use for additional public comment.

The NPRM does not disclose whether the Department relied on artificial intelligence[93] ("AI") to draft the proposed regulation or if it plans to use artificial intelligence to review public comments submitted in response to its proposal. Consistent with Executive Order 13960, *Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government*, however, several federal agencies have indicated their intention to use AI to draft regulations or review comments, as well as for other administrative tasks.[94] In January 2026, the Department published a 2025 AI Use Case Inventory, which it describes as a "repository of DOJ's AI uses . . . in all stages of development."[95] The inventory includes "Public Comment Analysis" as a use that has already been "deployed" to "support timely responses following public comments submissions, especially for regulatory missions," by "processing . . . duplicate and similar comments, while helping

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[93] *See* Pub. L. No. 115-232, § 238(g), 132 Stat. 1636, 1697-98 (2018) (defining artificial intelligence).

[94] Jesse Coburn, *Government by AI? Trump Administration Plans to Write Regulations Using Artificial Intelligence*, PROPUBLICA (Jan. 26, 2026), https://www.propublica.org/article/trump-artificial-intelligence-google-gemini-transportation-regulations; Press Release, Pub. Emps. for Envtl. Responsibility, *PEER Opens Investigation into EPA's Use of Artificial Intelligence* (Mar. 5, 2026), https://peer.org/peer-opens-investigation-into-epas-use-of-artificial-intelligence/; Hannah Natanson, Jeff Stein, Dan Diamond, & Rachel Siegel, *DOGE builds AI tool to cut 50 percent of federal regulations*, WASH. POST (July 26, 2025), https://www.washingtonpost.com/business/2025/07/26/doge-ai-tool-cut-regulations-trump/.

[95] U.S. Dep't of Just., *AI Inventory*, https://www.justice.gov/ai/ai-inventory (last visited Apr. 3, 2026).

categorize, cite, and map public comments."[96] However, neither the inventory nor its related overview explain how the model will identify "duplicate and similar comments" or what level of human review will oversee the model's analysis.[97]

The APA requires agencies that use computer models to "explain the assumptions and methodology used in preparing th[os]e model[s]."[98] The APA also requires agencies to provide the public with notice of, and the opportunity to comment on, its use of models and data in proposed regulations.[99] Despite evidence that the Department may be integrating AI models into the rulemaking process, the NPRM does not disclose where the Department plans to use AI here. We request that the Department disclose information related to any use of AI as part of this rulemaking—including to review, analyze, and respond to submitted comments—as well as provide an additional opportunity for public comment on that use.

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For all the reasons stated above, CLC, Lambda Legal, the National LGBTQ+ Bar Association, Q Law NJ, QLaw Foundation of Washington, SLAGH, the Tom Homann LGBTQ+ Law Association, and the Virginia LGBTQ+ Bar Association demand that the Department abandon this ill-conceived rule. Its unlawful and poorly explained proposal will fundamentally weaken state bars' ability to investigate allegations of DOJ attorney misconduct. Considering the identified failures, we ask the Department not to finalize this proposed rule.

Thank you for your attention to these important issues regarding DOJ attorneys' compliance with state bar ethics rules. For more information, please contact CLC's Counsel, Alexis Grady, at agrady@campaignlegalcener.org, or Lambda Legal's Counsel, Jillian Moo-Young, at jmoo-young@lambdalegal.org.

Sincerely,

Campaign Legal Center
Lambda Legal Defense & Education Fund
National LGBTQ+ Bar Association
Q Law NJ, Inc.
QLaw Foundation of Washington

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[96] U.S. Dep't of Just., *2025 DOJ AI Use Case Inventory Overview*, https://www.justice.gov/media/1426076/dl?inline (last visited Apr. 3, 2026).

[97] *Id*.

[98] *Owner-Operator Indep. Drivers Ass'n v. Fed. Motor Carrier Safety Admin*., 494 F.3d 188, 204 (D.C. Cir. 2007) (quoting *U.S. Air Tour Ass'n v. FAA*, 298 F.3d 997, 1008 (D.C. Cir. 2002) (citation omitted)) (internal quotation marks omitted).

[99] *See Am. Radio Relay League v. FCC*, 524 F.3d 227, 236 (D.C. Cir. 2008); *Air Transp. Ass'n v. FAA*, 169 F.3d 1, 7-8 (D.C. Cir. 1999).

Stonewall Law Association of Greater Houston
Tom Homann LGBTQ+ Law Association
Virginia LGBTQ+ Bar Association