

United States Senate

WASHINGTON, DC 20510

March 7, 2025

Mr. William R. Bay
President
The American Bar Association
1050 Connecticut Ave. N.W.
Suite 400
Washington, D.C. 20036

Dear Mr. Bay,

We write to express our disappointment with your recent statements on “the rule of law”¹ and “the legal profession.”² Both lead us to conclude the American Bar Association (ABA) is a biased and ideologically captured institution. We call on our Senate colleagues to disregard the ABA’s recommendations, as well as ratings of judicial nominees and pending legislation. We also call upon President Trump and the Department of Justice to remove the ABA from the judicial nomination process entirely.

The ABA made inflammatory claims about the Trump Administration without citing legal reasoning for these arguments. Our leaders are acting within their constitutional purview. When genuine questions arise about novel actions, they are open questions which must be settled by due process of law, not media statements. And yet, the ABA, without legal basis, has declared many of the Trump Administration’s actions illegal. We would remind the ABA that “[i]t is emphatically the province and duty of the judicial department to say what the law is.”³ Chief Justice John Marshall did not attribute this duty to an unelected professional organization.

The ABA claims it “stands committed to its mission of defending liberty and pursuing justice.”⁴ It does so by explicitly decrying the dismantling of USAID, though it provides no legal argument as to why such dismantling is illegal. The ABA further fails to disclose that the ABA has received millions of dollars in funding from USAID.⁵ It is questionable whether the ABA is committed to defending liberty or its own sources of funding.

The ABA claims: “We have consistently urged the administrations of both parties to adhere to the rule of law.” This is obviously false. The ABA is engaged in a one-sided pressure campaign. The Biden Administration launched an all-out war on the highest court in our land, threatening to pack

¹ *The ABA supports the rule of law*, A.B.A. (Feb. 10, 2025), <https://www.americanbar.org/news/abanews/aba-news-archives/2025/02/aba-supports-the-rule-of-law/>.

² *The ABA rejects efforts to undermine the courts and the legal profession*, A.B.A. (Mar. 3, 2025), <https://www.americanbar.org/news/abanews/aba-news-archives/2025/03/aba-rejects-efforts-to-undermine-courts-and-legal-profession/>.

³ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

⁴ *About Us*, A.B.A., https://www.americanbar.org/about_the_aba/.

⁵ *Recipient Profile: American Bar Association*, USASPENDING.GOV, <https://www.usaspending.gov/recipient/default0f-b731-752c-7110-465ba924bf2f-C/latest>.

the Court,⁶ unconstitutionally binding a coequal branch of government,⁷ and put a target on Justices' backs.⁸ The ABA was silent, opting, instead, to cover for the Biden administration by targeting single judge divisions.⁹

If the ABA actually cared about the rule of law, it would have published a statement when President Biden explicitly defied the Supreme Court of the United States, stating: “The Supreme Court tried to block me from relieving student debt. But they didn’t stop me. I’ve relieved student debt for over 5 million Americans. I’m going to keep going.”¹⁰ The ABA would have called out the Biden Administration’s mass illegal immigration policies that resulted in it lawlessly refusing to enforce Congress’ explicit demands of the Executive Branch in the Immigration and Nationality Act.¹¹ Most significantly, the ABA would have condemned the unprecedented lawfare campaign the Biden Administration waged against its top political opponent, President Trump.¹²

If the ABA “reject[ed] the notion that the government can punish lawyers who represent certain clients,”¹³ then it would have stood up for the scores of attorneys who found themselves on the wrong side of the Biden Administration’s lawfare campaign against President Trump and anyone who dared defend him and advance his legal arguments in court.

The ABA states, “Americans expect better.” But President Trump won both the electoral and popular votes.¹⁴ It seems Americans expect—and want—the Trump Administration. The ABA disrespects the 77 million Americans who happily voted for President Trump by branding “Americans” as only those individuals who align with the ABA’s views. The ABA does not speak for a majority of Americans. Elected officials, including President Trump, are the people’s representatives, and their actions speak for the citizens of this country.

⁶ See The Editors, *Biden’s Assault on the Legal System*, NAT’L REV. (July 18, 2024), <https://www.nationalreview.com/2024/07/bidens-assault-on-the-legal-system/> (“The aim of both of these proposals is to accomplish the goal of Court-packing by other means — change the composition of the current Court by changing the system to force current justices off the bench.”).

⁷ See Hans A. von Spakovsky & Thomas Jipping, *Biden’s Attempt To Control the Supreme Court Is Unconstitutional*, HERITAGE FOUND. (Aug. 1, 2024), <https://www.heritage.org/courts/commentary/bidens-attempt-control-the-supreme-court-unconstitutional>.

⁸ See Houston Keene, *Biden remains silent on attempted Kavanaugh assassination*, FOXNEWS.COM (June 16, 2022), <https://www.foxnews.com/politics/biden-remains-silent-attempted-kavanaugh-assassination>.

⁹ See Josh Blackman, *ABA House of Delegates Adopts Resolution Opposing Single-Judge Divisions (Updated)*, Reason Magazine (Aug. 10, 2023), <https://reason.com/volokh/2023/08/10/aba-house-of-delegates-adopts-resolution-opposing-single-judge-divisions/>.

¹⁰ Joe Biden (@JoeBiden), X (May 29, 2024, 8:04 PM), <https://x.com/JoeBiden/status/1795969437595500905>.

¹¹ Lora Ries, *Supreme Court Is Latest To Strike Down Biden’s Immigration Policies*, HERITAGE FOUND. (Aug. 27, 2021), <https://www.heritage.org/courts/commentary/supreme-court-latest-strike-down-bidens-immigration-policies>.

¹² See Forbes Breaking News, ‘Worst Case of Lawfare We’ve Ever Seen’: Eric Schmitt Takes Aim at Biden DOJ at Pam Bondi Hearing, YOUTUBE (Jan. 15, 2025), <https://www.youtube.com/watch?v=9MtM8EowEeU>.

¹³ *The ABA rejects efforts to undermine the courts and the legal profession*, A.B.A. (Mar. 3, 2025), <https://www.americanbar.org/news/abanews/aba-news-archives/2025/03/aba-rejects-efforts-to-undermine-courts-and-legal-profession/>.

¹⁴ CNN, ELECTION 2024: PRESIDENTIAL RESULTS, <https://www.cnn.com/election/2024/results/president?election-data-id=2024-PG&election-painting-mode=projection-with-lead&filter-key-races=false&filter-flipped=false&filter-remaining=false>.

Beyond these letters, the ABA has embraced divisive, cultural Marxist DEI and woke initiatives: mandating DEI training at law schools,¹⁵ opposing anti-woke legislation,¹⁶ arguing that men should be allowed to use women's bathrooms,¹⁷ and pushing racial quotas in the clerkship hiring process.¹⁸ Beyond this, the ABA as an organization has filed amicus briefs supporting leftist policy outcomes in seemingly every major Supreme Court case of this century.¹⁹

We laud Federal Trade Commission Chairman Andrew Ferguson's prohibition of political appointees at the FTC from holding leadership roles in the ABA, participating in ABA events, or renewing their ABA memberships. We hope more administrative bodies follow suit.

For over 70 years, the ABA has played a role in rating judicial nominees, evaluating candidates as "Qualified or Not Qualified." That process has fallen susceptible to political, leftist bias as well.²⁰ As we saw during the Biden Administration, the ABA's ratings were little more than political endorsements for the most radical, left wing partisans. The ABA endorsed patently unqualified judicial nominees as "Qualified" or "Well Qualified" time and time again—including nominees that were so partisan that even the Democrat majority in the Senate could not confirm them.

Unfortunately, the ABA has shown itself to be an ideologically captured, leftist institution, as many warned in the first Trump Administration.²¹ It is a failed institution that is incapable of impartially rating nominees and making legislative recommendations. As such, we will not consider any ABA recommendations on pending legislation or nominees, and we call upon our colleagues to do the same.

Sincerely,

¹⁵ See W. Dyer Halpern, *How DEI is coming for lawyers*, N.Y. POST (June 30, 2024), <https://nypost.com/2024/06/30/opinion/dei-is-coming-for-lawyers/>. It should be noted that this requirement was "temporarily halted." See Chris Williams, *ABA Suspends DEI Accreditation Requirements For Law Schools*, ABOVEHELAW.COM (Feb. 24, 2025), <https://abovethelaw.com/2025/02/aba-suspends-dei-accreditation-requirements-for-law-schools/>.

¹⁶ See *ABA House votes opposition to state restrictions on teaching race, gender among new policies*, A.B.A. (Feb. 5, 2024), <https://www.americanbar.org/news/abanews/aba-news-archives/2024/02/midyear-meeting-hod-actions>.

¹⁷ See Brief for American Bar Association as Amicus Curiae Supporting Respondents, Gloucester Cnty. School Board v. G. G., 2017 WL 894897, *cert. denied* (2017).

¹⁸ See e.g., Karen Sloan, *ABA strikes 'minority' and 'of color' from clerkship criteria amid lawsuit threat*, REUTERS (Oct. 8, 2024), <https://www.reuters.com/legal/government/aba-strikes-minority-of-color-clerkship-criteria-amid-lawsuit-threat-2024-10-08/>.

¹⁹ See e.g., See Brief for American Bar Association as Amicus Curiae Supporting Respondents, *Dobbs v. Jackson Whole Women's Health Organization*, 2021 WL 4441203 (2021).

²⁰ See Michael A. Fragoso, *Trump Must Shut Out the American Bar Association*, CITY. J. (Mar. 3, 2025), <https://www.city-journal.org/article/trump-american-bar-association-judicial-nominating-process>.

²¹ See Debra Cassens Weiss, *GOP senators clash over ABA during hearing for judicial nominee rated 'not qualified'*, A.B.A. J. (Sept. 26, 2019, 4:00 PM), <https://www.abajournal.com/news/article/gop-senators-criticize-aba-ratings-during-hearing-for-nominee-rated-not-qualified>.



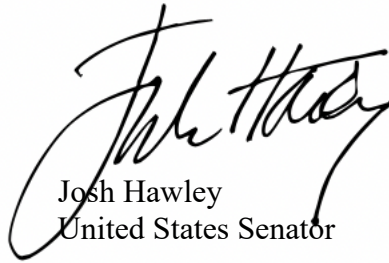
Eric S. Schmitt
United States Senator



Michael S. Lee
United States Senator



Ted Cruz
United States Senator



Josh Hawley
United States Senator



Marsha Blackburn
United States Senator



Bernie Moreno
United States Senator