



# KEEP OUR REPUBLIC

## **DOJ's Proposal to Regulate State Bar Complaints Against DOJ Attorneys is Flawed**

“The 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.” The Supreme Court has held repeatedly that these simple words of the Tenth Amendment prevent the federal government from imposing laws or regulations on the states in areas not within its Constitutional authority.

From the time of our Founding, one of those areas has been regulation of the legal profession. Each state has its own laws, rules, and administrative bodies governing the licensing, conduct and professional discipline of lawyers. While lawyers admitted to practice by the states may appear before federal courts and agencies, and while those courts and agencies may have their own additional requirements, a lawyer seeking to practice before a federal body first must be licensed by and in good standing with a state.

The United States Department of Justice (DOJ) recently announced that it would seek adoption of a regulation preventing any state disciplinary body from taking action against a DOJ lawyer until the DOJ conducts its own internal review. See 91 Fed. Reg. 10780. The announcement was made in the context of an increasing number of complaints initiated by judges against DOJ lawyers involving serious alleged ethical violations such as non-compliance with court orders, knowing misrepresentations during court proceedings, and unprofessional language in court filings.

Because the proposed regulation would intrude directly on the power of the states to oversee the conduct of the lawyers they license, there is a serious question as to its constitutionality. And although judges still could sanction lawyers directly for misconduct, it would affect other important remedies available to judges—such as referral to the appropriate state disciplinary agency—to ensure that the lawyers who appear before them act in accordance with professional standards. As retired federal judges appointed by Presidents of both parties and as members of [Keep Our Republic's Article III Coalition](#), we write to defend both the basic principle of the Tenth Amendment and the ability of our former colleagues to do their jobs without political interference.