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NEWS AND DEVELOPMENTS

TAXATION OF PROFITS AND DIVIDENDS AND THE SPECIAL LEGAL REGIME OF LAW FIRMS: CONSTITUTIONAL INTERPRETATION OF LAW NO. 15.270/2025

This article analyzes the applicability of Law No. 15.270/2025 – which introduced a new taxation system on profits and dividends distributed to individuals – to law firms established under the Brazilian Bar Association Statute (Law No. 8.906/94).

Based on a systematic and teleological hermeneutics, the article argues that the new tax discipline cannot be automatically and unreservedly applied to law firms, given their special legal nature, the constitutional framework of legal practice as an essential function of Justice (art. 133 of the Brazilian Constitution), and the implicit functional institutional immunity derived therefrom. The conclusion advocates for a constitutional interpretation that excludes such entities from the subjective scope of the contested provision.

Keywords: Dividend taxation. Law No. 15.270/2025. Law firms. Essential function of Justice. Constitutional interpretation. Implicit institutional immunity. Tax typicality.

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1 INTRODUCTION

The enactment of Law No. 15.270/2025 introduces a new taxation regime on profits and dividends distributed to individuals, establishing a mandatory 10% (ten percent) withholding tax at source on amounts exceeding BRL 50,000.00 (fifty thousand Brazilian reais) per month per beneficiary, in addition to a minimum annual income tax mechanism applicable to high-income earners.

This article examines, objectively, whether such regulatory framework may be automatically and unreservedly applied to law firms duly organized under arts. 15 et seq. of Law No. 8.906/94 (the Brazilian Lawyers' Statute and the Brazilian Bar Association Act), or whether it must be subject to constitutional interpretation so as to exclude such entities from its subjective scope of application.

The matter is far from trivial. It stands at the intersection of tax law, constitutional law, and the theory of institutional guarantees, calling upon the interpreter to engage in systematic and teleological hermeneutics fully committed to the maximum effectiveness of constitutional values.

2 LEGAL PRACTICE AS AN ESSENTIAL FUNCTION OF JUSTICE (ART. 133 OF THE FEDERAL CONSTITUTION)

the exercise of the profession, within the limits of the law. The Brazilian Constitution does not treat legal practice as an ordinary economic activity. Rather, it qualifies it as an essential function of Justice, an integral part of the constitutional system of guarantees inherent to the Democratic Rule of Law.

Legal practice does not constitute a mere regulated profession. It is embedded in the system of checks and balances of the Democratic Rule of Law, serving as the structural prerequisite for effective adversarial proceedings, equality of arms, and jurisdictional effectiveness. It represents, in sum, a structural institutional guarantee – and not a mere corporate prerogative –, which elevates the debate from the realm of ordinary tax law to the domain of structural constitutional law.

2.1 ADI 1.127/DF

In the judgment of ADI 1.127/DF, the Brazilian Supreme Court (Supremo Tribunal Federal – STF) upheld the constitutionality of attorneys' prerogatives, affirming the institutional centrality of the legal profession to the effectiveness of judicial proceedings. The ruling, authored by Justice Marco Aurélio, expressly states:

"The attorney is indispensable to the administration of Justice. [...] Professional immunity is indispensable so that the attorney may properly and fully exercise his public function. [...] The constitutional function exercised by the attorney justifies the guarantee of arrest only in flagrante delicto and in the case of non-bailable offenses."

(STF – ADI 1.127/DF, Reporting Justice Marco Aurélio, Full Court, decided 17.05.2006)

The ruling established, with unequivocal clarity, that professional immunity constitutes an inalienable prerequisite for the proper and full exercise of the public function that the constitutional order assigns to the attorney. The Court further recognized that this constitutional function justifies the extension of differentiated guarantees that are ontologically incompatible with the legal treatment afforded to the exercise of ordinary economic activities.

These foundations apply directly to law firms – organizational instruments of that same constitutional function – which cannot be subjected, through

2.2 ADI 3.026/DF

In the judgment of ADI 3.026/DF, authored by Justice Eros Grau, the Supreme Court reaffirmed the institutional singularity of the Brazilian Bar Association (Ordem dos Advogados do Brasil – OAB). The ruling's headnote is categorical:

"The OAB is not an entity of the Indirect Public Administration of the Union. The Bar is an independent public service, a unique category among the legal persons existing in Brazilian law. [...] Since it does not constitute an entity of the Indirect Public Administration, the OAB is not subject to the Administration's control, nor is it tied to any of its branches. This non-affiliation is formally and materially necessary."

(STF – ADI 3.026/DF, Reporting Justice Eros Grau, Full Court, decided 08.06.2006)

Justice Cezar Peluso, in his concurring opinion, added that the public character attributed to the Bar's service has an eminently protective purpose aimed at securing its institutional independence:

"The public character of the service is recognized [...] less as a need to subject it to rules specific to the Public Administration [...] than as the fact that it cannot be subject to any interference in the performance of its functions, which bear the hallmark of independence."

(Concurring Opinion of Justice Cezar Peluso – ADI 3.026/DF)

This understanding prevents, as a matter of logical and legal consequence, the extension of prerogatives or regulatory impositions to law firms by mere analogy or expansive interpretation. If the OAB – and, by extension, the law firms that depend on it to exist and operate – cannot be equated with ordinary public administration entities for organizational regulation purposes, it equally cannot be so equated for tax purposes without an express and unequivocal statutory provision to that effect.

The consolidated jurisprudence of the Supreme Court demonstrates, in sum, that legal practice occupies a differentiated normative position within the Brazilian legal order, a position that is binding upon both the interpreter and the enforcer of the law.

Law firms are not ordinary business corporations. They are governed by special legislation – Law No. 8.906/94 – which restricts their scope exclusively to the provision of legal services, prohibits the commercialization of legal activity, establishes a specific liability regime, requires exclusive registration with the Brazilian Bar Association, and prohibits the adoption of typical corporate forms.

A law firm constitutes an organizational instrument of the essential function of Justice. It is not a business structure oriented toward profit in the commercial sense, but a professional organization aimed at providing a constitutionally qualified activity. This distinction is legally essential and cannot be disregarded by the interpreter, on pain of subverting the constitutional model of legal practice and hollowing out the guarantees inherent to it.

4 SYSTEMATIC AND TELEOLOGICAL INTERPRETATION OF LAW NO. 15.270/2025

Law No. 15.270/2025 is part of a tax reform aimed at taxing dividends in business structures, combating abusive tax planning, and aligning the domestic legal order with international standards for income taxation. The teleological purpose of the statute is to reach business structures that have historically distributed profits under the tax exemption regime in effect since 1996 – and not to cover professional entities organized under a special legal regime whose nature is radically different from what motivated the reform.

Not a single provision of Law No. 15.270/2025 makes express reference to law firms. In tax matters, the principle of strict legality applies, as set forth in art. 150, I, of the Federal Constitution. Normative interpretation cannot, therefore, expand the subjective scope of the statute to encompass entities not explicitly included by the legislature, on pain of direct violation of the constitutional text and the very foundations of the Rule of Law in fiscal matters.

5 CONSTITUTIONAL INTERPRETATION

The technique of constitutional interpretation, enshrined in the Supreme Court's jurisprudence, requires that, when faced with multiple possible interpretations of an infra-constitutional provision, the one that renders it compatible with the constitutional text be adopted, preserving the norm within

Applying this technique to the present case, it becomes clear that Law No. 15.270/2025 admits two possible readings: one of a restrictive nature, according to which the statute is directed exclusively at ordinary business corporations; and another of an expansive nature, which would reach professional organizations endowed with a special legal regime, such as law firms.

The expansive interpretation, however, generates a direct collision with art. 133 of the Federal Constitution, with the special legal regime governing legal practice, and with the institutional autonomy that characterizes the profession. In the face of this normative conflict, the restrictive interpretation is inexorably required – one that preserves the integrity of the constitutional model of legal practice and rules out the application of the new discipline to law firms.

6 PROHIBITION AGAINST EXPANSIVE INTERPRETATION IN TAX AND SANCTIONING MATTERS

The Supreme Court has consolidated jurisprudence to the effect that tax rules do not admit extensive interpretation to expand taxable events not provided for by statute, and that, in sanctioning matters, the principle of strict typicality demands interpretation rigorously confined to the normative text.

The mandatory withholding established by Law No. 15.270/2025 has a hybrid nature, being simultaneously a tax measure and potentially a sanctioning one, given the serious administrative consequences arising from its non-compliance. This prohibition has express statutory support in arts. 108, §1º, and 111 of the Brazilian Tax Code (Código Tributário Nacional – CTN), which prohibit the use of analogy to impose taxes not provided for by statute and require the literal interpretation of rules governing taxpayer liability.

The classical doctrine of Brazilian tax law is consistent on this point. Paulo de Barros Carvalho^[1], when addressing closed typicality, notes that the tax incidence hypothesis does not admit subjective expansion through hermeneutics; Geraldo Ataliba^[2], in developing the theory of the tax incidence

legality, in its tax dimension, requires specificity and completeness of the incidence rule, prohibiting extensive integration.

Extensive or analogical interpretation to reach entities not expressly provided for in the statute is therefore inadmissible. The Brazilian Federal Revenue Service (Receita Federal do Brasil) cannot, through infra-statutory normative guidance or administrative interpretation, equate law firms with ordinary business corporations, on pain of violating tax legality, legal certainty, and the institutional autonomy of the legal profession – all values of constitutional standing.

7 THE ORGANIZATIONAL AUTONOMY OF THE LEGAL PROFESSION

The compensation structure of law firms is an integral part of the organizational core of the profession, the constitutionally guaranteed professional freedom, and the institutional model of legal practice as outlined by the Federal Constitution of 1988.

The automatic and unrestricted application of the new tax discipline may interfere with the internal organization of law firms, undermine the formation of technical reserves indispensable to the continuity of legal services, and affect the institutional sustainability of the legal profession as a whole.

The Constitution does not authorize an interpretation that indirectly weakens a function that it itself has qualified as essential to Justice, even when the invoked normative instrument is of a tax nature. Constitutional teleology demands that the interpreter exercise maximum caution in the face of rules that may, directly or indirectly, compromise the full exercise of legal practice.

8 THE IMPLICIT FUNCTIONAL INSTITUTIONAL IMMUNITY DERIVED FROM ART. 133 OF THE FEDERAL CONSTITUTION

Art. 133 of the Federal Constitution, by qualifying legal practice as an essential function of Justice, establishes not merely a corporate prerogative but a genuine institutional statute guaranteeing judicial proceedings. From this constitutional framework, it is necessary to recognize the existence of an implicit functional institutional immunity, which prevents the State from,

The recognition of implied immunities is not novel in the Supreme Court's jurisprudence. In the judgment of RE 601.720, the Court recognized that reciprocal immunity, although not exhaustively provided for all its incidence hypotheses, derives structurally from the federative principle – demonstrating that the Constitution can generate implicit protections from its structural values. The same reasoning applies, with even greater normative force, to legal practice: if art. 133 erects the advocacy function as an indissociable prerequisite of jurisdictional effectiveness, it would be logically contradictory to admit that the State could, through taxation, disorganize the structures through which that function is exercised.

This thesis finds support in the constitutional doctrine of Konrad Hesse^[4], for whom the principle of maximum effectiveness requires that constitutional norms be given the greatest possible normative force, and in the theory of institutional guarantees, according to which the legislature cannot, under the pretext of ordinary regulation, hollow out the essential core of constitutionally qualified institutions. In the elaboration of J.J. Gomes Canotilho^[5], the institutional guarantee operates as a negative limit on the legislature, preventing infra-constitutional discipline from dissolving the substance of the institution protected by the Constitution. Legal practice, under art. 133, is one of these institutions – and its organizational substance must be preserved against any normative framework that, directly or indirectly, threatens it.

9 THE MATERIALLY SANCTIONING LEGAL NATURE OF THE MANDATORY WITHHOLDING

The mandatory withholding obligation at source established by Law No. 15.270/2025 does not have an exclusively tax nature. From a material and functional perspective, it bears an autonomous sanctioning dimension, insofar as its non-compliance triggers automatic penalties of considerable severity, imposes onerous procedural obligations on law firms, and directly interferes with internal governance structures – such as the preparation of interim balance sheets, partners' meetings, and legally mandated profit allocation procedures within excessively tight deadlines.

5º, LIV, of the Federal Constitution), the principle of proportionality, strict legality in sanctioning matters, and the prohibition of analogy in *malam partem*, the latter recognized by the Supreme Court in HC 97.256. The Superior Court of Justice's jurisprudence is firm in holding that tax sanctions cannot assume a confiscatory character (REsp 1.325.709), and the Supreme Court, in RE 833.106, reaffirmed the requirements of due process of law in the domain of administrative sanctions.

These premises reinforce, in the domain of sanctioning legal theory, the prohibition against expansive interpretation reaching law firms, since expanding the passive pole of the withholding obligation without express statutory provision constitutes a direct violation of the principle of strict typicality and the constitutional regime of due process of law.

10 POTENTIAL VIOLATION OF THE ABILITY-TO-PAY PRINCIPLE AND COMPETITIVE NEUTRALITY

The indiscriminate application of the new tax discipline to law firms also raises a fundamental issue tied to the ability-to-pay principle (art. 145, §1º, of the Federal Constitution). The distribution of results in law firms is not structurally identical to the distribution of dividends in business corporations. Law firms do not operate under a purely commercial logic: the amounts distributed to partners correspond, to a large extent, to remuneration for the personal and non-transferable exercise of legal activity – activity that, by express statutory prohibition, cannot be organized in a corporate manner or transferred to third parties. Equating such distributions with corporate dividends for purposes of withholding at source implies disregarding the underlying economic reality of the professional organization of legal practice, in violation of the ability-to-pay principle in its material dimension.

There is, moreover, a concrete risk of a breach of competitive neutrality. The application of the new discipline to law firms – but not necessarily to other forms of organization for the provision of legal services or to hybrid business structures – may generate an unjustifiable systemic asymmetry, placing law firms at a structural disadvantage relative to other forms of organization of legal activity. Such a distortion, in addition to being economically irrational, is

11 FAVORABLE TREATMENT FOR MICRO AND SMALL ENTERPRISES – AUTONOMOUS SUBSIDIARY ARGUMENT

The Supreme Court recognizes that the favorable treatment for micro and small enterprises, established in arts. 170, IX, and 179 of the Federal Constitution and specified in Complementary Law No. 123/2006, carries binding normative density. It does not constitute a mere option granted to the ordinary legislature but a true constitutional mandate of mandatory compliance (ADI 4.033). This understanding was reiterated in ADI 1.643 and speaks directly to the situation of law firms enrolled in the Simples Nacional simplified tax regime.

Even if one were to argue – which is entirely rejected here – the general validity of applying Law No. 15.270/2025 to law firms, it would be necessary to recognize, as an autonomous subsidiary argument, the impossibility of its application to those enrolled in the Simples Nacional regime. This differentiated tax regime constitutes public policy of constitutional standing, the circumvention of which by ordinary legislation entails direct violation of art. 179 of the Federal Constitution. The application of the new discipline to such firms, without any transitional rules or adjustments to the simplified regime, imposes a disproportionate procedural burden on recognized simplified organizational structures, in manifest violation of the principle of reasonableness and the constitutionally mandated differential treatment they are owed.

12 THE RULING IN ADI 7.917 (PRELIMINARY INJUNCTION) AND ITS IMPLICATIONS FOR THE CONSTITUTIONAL INTERPRETATION OF LAW NO. 15.270/2025

The recent ruling issued by Justice Nunes Marques in the preliminary injunction proceedings of ADI 7.917, filed by the Federal Council of the Brazilian Bar Association, carries central hermeneutic relevance for the proper interpretation of Law No. 15.270/2025. Although the specific preliminary relief requested by the CFOAB was denied at that procedural stage, the ruling contains reasoning that significantly reinforces the need for a systematic and constitutionally oriented interpretation of the contested statute – particularly

12.1 The express recognition of constitutional limits on the power to tax

The Reporting Justice begins his reasoning by reaffirming that the principles of legal certainty, legitimate expectations, non-surprise, legality, and reasonableness constitute genuine postulates limiting the State's power to tax and, consequently, protecting taxpayers. This recognition reiterates the Supreme Court's consolidated jurisprudence, according to which the taxing power is not absolute and must be exercised in strict accordance with legal certainty (art. 1º of the Federal Constitution), substantive due process (art. 5º, LIV), ability to pay (art. 145, §1º), and favorable treatment for micro and small enterprises (arts. 170, IX, and 179 of the Federal Constitution). These constitutional vectors are fully applicable to the analysis of the new discipline's incidence on law firms, whose special legal regime must be preserved against any attempt at equating them with ordinary business corporations.

12.2 The recognition of the special vulnerability of small structures

The ruling is particularly incisive in examining the impact of the new system on micro and small enterprises. The Reporting Justice expressly notes:

"The imposition of such a tight deadline may affect small enterprises and those enrolled in the SIMPLES Nacional regime in an even more onerous manner. Such taxpayers, who are so important from a social and economic standpoint for the country, are characterized by simplified business structures, rarely possessing teams dedicated exclusively to legal and accounting matters. Thus, the requirement to comply with various internal measures, interim and final balance sheets, partners' meetings, and legally mandated deliberative procedures within such a short timeframe proves incompatible with the operational reality of such taxpayers, imposing a disproportionate procedural burden."

(ADI 7.917 MC/DF, Justice Nunes Marques, decided 26.12.2025)

The Supreme Court authoritatively reaffirms that favorable treatment for small enterprises does not constitute a mere option granted to the ordinary legislature but a genuine constitutional mandate of mandatory compliance,

Simples Nacional regime, which have simplified organizational structures and perform, above all, a constitutionally qualified function under art. 133 of the Federal Constitution.

12.3 The hermeneutic opening left by the denial of preliminary relief

The denial of the preliminary injunction in ADI 7.917 does not represent a final ruling on the constitutionality of Law No. 15.270/2025. The Reporting Justice himself notes that "the remaining merits issues raised in the direct actions, particularly regarding the legitimacy of the taxation inserted into the legal order by arts. 2º and 3º of Law No. 15.270/2025, prove to be controversial." He further records:

"A potential ruling on the unconstitutionality of the new profit and dividend distribution taxation model will, as a rule, entail the removal of the provision from the legal order with retroactive effect to the date of its publication. As a result, the tax assessments made under Law No. 15.270/2025 would be annulled, allowing for the restitution of any amounts already paid by taxpayers."

(ADI 7.917 MC/DF, Justice Nunes Marques, decided 26.12.2025)

There was, therefore, no definitive validation of the tax model established by the new statute, nor any dismissal of the constitutional arguments put forward by the Brazilian Bar Association. The merits remain entirely open, which preserves, in full, the possibility of constitutional interpretation in the final judgment.

12.4 The ruling as reinforcement of the prohibition against expansive interpretation

The ruling demonstrates concrete legal concern with the legal uncertainty generated by the new legislation. The Reporting Justice points out that the brevity of the statutory deadline "evidences the lack of reasonableness and proportionality of the norm, in its sense of substantive due process (Federal Constitution, art. 5º, LIV), as well as the violation of legal certainty, a postulate of the Rule of Law (Federal Constitution, art. 1º), more specifically in its dimension of predictability and legitimate expectations." He invokes, to this

adapt to regulatory changes in tax matters, and RE 566.621, in which the Full Court held that the retroactive or immediate application of new tax discipline, without transitional safeguards, violates the principle of legal certainty in its dimensions of protection of legitimate expectations and guarantee of access to Justice.

In tax and sanctioning matters, expansive interpretation unfavorable to the taxpayer is prohibited, strict legality is inviolably applicable, and the principle of closed typicality is mandatory. The Revenue Service cannot, through infra-statutory acts or administrative guidance, automatically equate law firms with ordinary business corporations when such equivalence implies disregarding the special legal regime established by the Federal Constitution and Law No. 8.906/94.

12.5 Reconciling the ruling with art. 133 of the Federal Constitution

The ruling in ADI 7.917 examined the contested statute from the perspective of micro and small enterprises in general, without yet addressing in depth the institutional dimension of legal practice as an essential function of Justice under art. 133 of the Federal Constitution. This point remains open for definitive examination in the merits judgment.

Legal practice, as outlined by the current constitutional order, is not an ordinary economic activity, does not constitute a mere business organization, and forms part of the constitutional justice system as an indissociable prerequisite of jurisdictional effectiveness. The automatic and indiscriminate application of the new discipline to law firms disregards their institutional nature, improperly places them on the same footing as ordinary business corporations, and undermines the constitutional model of legal practice in its entirety. The preliminary ruling does not obstruct this reading; on the contrary, by vigorously reaffirming the constitutional limits on the power to tax, it provides a solid principiological basis for the restrictive interpretation advanced in this article.

12.6 Hermeneutic synthesis

constitutional limits on the State's power to tax; the emphasis on differentiated treatment for small structures as a constitutional mandate rather than a mere legislative option; and the absence of a definitive ruling on the constitutionality of the new taxation introduced by Law No. 15.270/2025. In light of this normative and jurisprudential framework, a systematic and constitutionally oriented reading is required, according to which the said statute cannot be interpreted expansively to reach law firms, on pain of violating art. 133 of the Federal Constitution, the special legal regime of the legal profession, the constitutional protection afforded to small enterprises, and the principles of legal certainty and legitimate expectations.

13 STRATEGIES FOR CONSTITUTIONAL REVIEW

The institutional thesis developed herein is susceptible to multiple avenues of constitutional review, which may be pursued by the Federal Council of the Brazilian Bar Association in a coordinated and strategically graduated manner.

In the domain of concentrated judicial review, the primary avenue is the direct action of unconstitutionality (*ação direta de inconstitucionalidade*) with a request for constitutional interpretation, pursuant to art. 28, sole paragraph, of Law No. 9.868/99, by which the Supreme Court would be requested to declare, without textual reduction, the unconstitutionality of any interpretation that subjects law firms to the mandatory withholding regime established by Law No. 15.270/2025. Alternatively, a declaration of partial unconstitutionality with textual reduction may be sought, or a request for temporal modulation of the decision's effects may be filed pursuant to art. 27 of the same statute, in order to preserve consolidated legal situations based on the legitimate expectation of exemption.

In the domain of diffuse constitutional review, the strategic filing of collective writs of *mandamus* on behalf of Bar-affiliated law firms before the federal regional courts is recommended, with the aim of suspending the enforceability of the withholding requirement pending the Supreme Court's final ruling. In any tax enforcement proceedings that may be initiated by the Revenue Service based on the new discipline, the constitutional question may be raised incidentally, enabling the formation of precedents in the domain of diffuse

regime before the Supreme Court.

Finally, in the domain of preventive administrative action, the Federal Council of the Brazilian Bar Association may issue binding interpretive guidance within its institutional competence, instructing law firms on the legal impossibility of automatic compliance with the new discipline and documenting, from the outset, the institutional resistance that will underpin any future request for preliminary relief based on the risk of irreversible institutional harm to the justice system.

14 CONCLUSION

In light of art. 133 of the Federal Constitution, the Brazilian Lawyers' Statute and the Brazilian Bar Association Act (Law No. 8.906/94), the consolidated jurisprudence of the Supreme Court in the judgments of ADIs 1.127, 3.026, and 7.917 and related precedents, the constitutional prohibition against expansive interpretation in tax and sanctioning matters, the principle of closed tax typicality enshrined in arts. 108, §1º, and 111 of the Brazilian Tax Code, and the technique of constitutional interpretation, the following conclusions are warranted.

Law No. 15.270/2025 cannot be automatically applied to law firms; a systematic and teleological interpretation is required that excludes such entities from the scope of the profit and dividend taxation established therein.

The Brazilian Federal Revenue Service cannot promote an expansive interpretation aimed at equating law firms with ordinary business corporations, particularly those enrolled in the Simples Nacional regime, whose differentiated legal regime derives directly from the essential character of legal practice to Justice and the Democratic Rule of Law.

The distribution of results in law firms is not structurally equivalent to the distribution of corporate dividends, which is why the application of the new discipline, without express statutory provision, violates the ability-to-pay principle and breaks the constitutionally required competitive neutrality.

taxation, undermining the organizational structures through which legal practice discharges its constitutional function as a guarantee of judicial proceedings.

The ruling in ADI 7.917, far from weakening the institutional position of the Brazilian Bar Association, reinforces the need for constitutional interpretation, particularly with respect to the prohibition against disproportionate treatment of small structures, the protection of taxpayers' legitimate expectations, and the material limits on the State's taxing power.

In this context, the Federal Council of the Brazilian Bar Association holds full institutional standing to issue binding interpretive guidance, to file a direct action of unconstitutionality with a request for constitutional interpretation, to bring collective writs of mandamus, and to pursue the other constitutional review strategies discussed in this article, thereby preserving the special legal regime of the legal profession as an inalienable prerequisite of the Democratic Rule of Law.

Brasília, Federal District, February 21, 2026.

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