

No. ____

In the Supreme Court of the United States

JOHN C. EASTMAN,

Petitioner,

v.

THE STATE BAR OF CALIFORNIA,

Respondent.

**On Petition for Writ of Certiorari to the Supreme
Court of California**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case concerns whether a State may disbar an attorney for legal advice, public commentary, and petitioning activity undertaken on behalf of a client in a politically charged constitutional dispute. The Review Department of the State Bar Court of California acknowledged that the statements for which Dr. John Eastman was charged involved core political speech and even conceded that “the applicable standard is one of strict scrutiny,” yet the Review Department then set that standard aside, declaring that, “[r]egardless, our focus remains on Eastman’s false statements and whether or not they violate the rules and statutes governing attorney conduct.” App.102a n.92. The Review Department likewise refused to require narrow tailoring, characterizing such scrutiny as “compartmentaliz[ing] Eastman’s conduct into isolated events.” App.19a. Instead, the Review Department affirmed global discipline across counts one through ten for statements it deemed professional misconduct, concluding that *some* of those statements were statements of fact and thus entitled to only reduced or no constitutional protection. These errors give rise to the questions presented:

1. Whether California’s disbarment of an attorney for legal advice, public commentary, and constitutional advocacy on matters of public concern is incompatible with the First Amendment.

2. Whether California's treatment of constitutional advocacy as a conspiracy to defraud the United States under 18 U.S.C. §371 improperly expands that criminal statute in a way that impermissibly burdens speech and petitioning activity protected by the First Amendment.

3. Whether, under this Court's decision in *In re Loney*, subject matter jurisdiction to initiate discipline for allegedly false statements in a *federal* court filing lies exclusively with the *federal* tribunal.

PARTIES TO THE PROCEEDING

Petitioner is John C. Eastman, a member of the bar of this Court.

Respondent is the State Bar of California.

RELATED PROCEEDINGS

State Bar Court of California, Hearing Department:

In the Matter of John Charles Eastman, State Bar No. 193726, No. SBC-23-O-30029 (March 27, 2024)

State Bar Court of California, Review Department:

In the Matter of John Charles Eastman, State Bar No. 193726, No. SBC-23-O-30029 (June 13, 2025)

Supreme Court of California:

In re John Charles Eastman on Discipline, No. S292011 (April 15, 2026)

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	iii
RELATED PROCEEDINGS	iii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	1
INTRODUCTION.....	2
STATEMENT OF THE CASE.....	7
REASONS FOR GRANTING THE PETITION. .	11
I. THE DECISION BELOW CONFLICTS WITH THIS COURT’S FIRST AMENDMENT JURISPRUDENCE.....	11
A. Attorneys Do Not Surrender First Amendment Protection When They Engage in Core Political and Constitutional Advocacy.....	13
B. The Tribunal Acknowledged Strict Scrutiny but Failed to Conduct the Required Constitutional Analysis.....	17
C. The First Amendment Does Not Permit a State to Label Disputed Constitutional Advocacy as Knowing Misrepresentation.	24

D. The Decision Below Threatens the Right to Petition and Constitutional Advocacy in Politically Sensitive Matters.	31
II. THE REVIEW DEPARTMENT’S INVOCATION OF SECTION 371 CONFIRMS THE DANGER OF USING EXPANSIVE LEGAL LABELS TO PUNISH PROTECTED ADVOCACY.	33
III. THIS COURT’S DECISION IN <i>IN RE LONEY</i> DENIES THE CALIFORNIA BAR JURISDICTION INDEPENDENTLY TO INITIATE BAR DISCIPLINE FOR FEDERAL COURT LITIGATION.	36
IV. THE CONSTITUTIONAL ERRORS INFECTED THE DISBARMENT SANCTION.	38
CONCLUSION	40
Appendix A Order of the Supreme Court of California (April 15, 2026)	1a
Appendix B Opinion in the State Bar Court of California—Review Department (June 13, 2025)	3a
Appendix C Opinion in the State Bar Court of California—Hearing Department (March 27, 2024)	133a

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Ashcroft v. ACLU</i> , 542 U.S. 656 (2004)	18
<i>Bates v. State Bar of Ariz.</i> , 433 U.S. 350 (1977)	15
<i>Borough of Duryea, Pa. v. Guarnieri</i> , 564 U.S. 379 (2011)	33
<i>Bose Corp. v. Consumers Union of U.S., Inc.</i> , 466 U.S. 485 (1984)	39
<i>Brandenburg v. Ohio</i> , 395 U.S. 444 (1969)	21
<i>Brown v. Entm't Merchs. Ass'n</i> , 564 U.S. 786 (2011)	21
<i>Chiles v. Salazar</i> , 607 U.S. 627 (2026)	13, 14, 19, 28, 36
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	20
<i>Eastern R. Presidents Conference v. Noerr Motor Freight, Inc.</i> , 365 U.S. 127 (1961)	33, 35
<i>Eaton v. Newport Bd. of Educ.</i> , 975 F.2d 292 (6th Cir. 1992)	32
<i>Ex parte Burr</i> , 22 U.S. 529 (1824)	16

<i>Ex parte Garland</i> , 71 U.S. 333 (1867)	16
<i>Ex parte Secombe</i> , 60 U.S. 9 (1857)	16
<i>Fischer v. United States</i> , 603 U.S. 480 (2024)	35
<i>Fulton v. City of Philadelphia</i> , 593 U.S. 522 (2021)	19
<i>Garrison v. Louisiana</i> , 379 U.S. 64 (1964)	27
<i>Gentile v. State Bar of Nevada</i> , 501 U.S. 1030 (1991)	15
<i>Gertz v. Robert Welch, Inc.</i> , 418 U.S. 323 (1974)	3, 24
<i>Gibson v. City of Alexandria</i> , 855 F. Supp. 133 (E.D. Va. 1994)	31
<i>Hammerschmidt v. United States</i> , 265 U.S. 182 (1924)	34, 35
<i>Hustler Magazine v. Falwell</i> , 485 U.S. 46 (1988)	21
<i>In re Griffiths</i> , 413 U.S. 717 (1973)	30
<i>In re IBP Confidential Business Docs. Litig.</i> , 755 F.2d 1300 (8th Cir. 1985)	32
<i>In re Loney</i> , 134 U.S. 372 (1890)	36, 37, 38
<i>McDonald v. Smith</i> , 472 U.S. 479 (1985)	31

<i>McDonnell v. United States</i> , 579 U.S. 550 (2016)	35
<i>Milkovich v. Lorain Journal Co.</i> , 497 U.S. 1 (1990)	24
<i>NAACP v. Button</i> , 371 U.S. 415 (1963)	14, 15, 22
<i>NAACP v. Claiborne Hardware Co.</i> , 458 U.S. 886 (1982)	22, 30, 39
<i>Nat’l Inst. of Family & Life Advocates v. Becerra</i> , 585 U.S. 755 (2018) (NIFLA)	13, 14
<i>National Socialist Party v. Skokie</i> , 432 U.S. 43 (1977)	21
<i>Oregon Natural Resources Council v. Mohla</i> , 944 F.2d 531 (9th Cir. 1991)	31-32
<i>Snyder v. Phelps</i> , 562 U.S. 443 (2011)	21
<i>State v. Pike</i> , 15 N.H. 83 (1844)	37
<i>Trump v. Kemp</i> , 511 F. Supp. 3d 1325 (N.D. Ga. 2021)	9
<i>United Mine Workers of America, District 12 v. Illinois State Bar Association</i> , 389 U.S. 217 (1967)	32, 33
<i>United States v. Hirsch</i> , 100 U.S. 33 (1879)	34
<i>United States v. Playboy Entertainment Group, Inc.</i> , 529 U.S. 803 (2000)	18, 21

<i>Walters v. Nat’l Ass’n of Radiation Survivors</i> , 473 U.S. 305 (1985)	2
<i>Webster v. Comm’n for Law. Discipline</i> , 704 S.W.3d 478 (Tex. 2024).....	4, 37
<i>Yates v. United States</i> , 574 U.S. 528 (2015)	35
STATUTES AND RULES	
18 U.S.C. §3231	36
18 U.S.C. §371	2, 6, 7, 33
28 U.S.C. §1257	1
A.B.A. Code of Professional Responsibility, EC 7- 1, DR 7-101(A)(1)	28
Act of March 2, 1867, ch. 169, §30 (14 Stat. 484), recodified at Rev. Stat. §5440 (1874)	34
Cal. Bus. & Prof. Code, §6068, subd. (a)	33
CAL. R. PROF. CONDUCT 3.1	28
CONSTITUTIONAL PROVISIONS	
U.S. CONST. amend. I	1
OTHER AUTHORITIES	
1 Annals of Cong. (1789)	31
Amnesty International, <i>Uganda: Authorities Must Investigate Unlawful Detention and Deportation of Kenyan Human Rights Lawyer</i> (June 23, 2026), https://www.amnestyusa.org/press- releases/uganda-	3

Avalon Zoppo, <i>Ethics Complaints Filed Against Florida AG Ashley Moody, Other Republican AGs that Backed Bid to Undo 2020 Election Results</i> , LAW.COM (last visited Aug. 31, 2026), https://www.law.com/nationallawjournal/2022/09/21/ethics-complaints-filed-against-republican-state-ags-that-backed-bid-to-undo-2020-election-results/	4
Bruce Ackerman & David Fontana, <i>Thomas Jefferson Counts Himself Into the Presidency</i> , 90 VA. L. REV. 551 (2004)	27
Edward B. Foley, <i>Preparing for A Disputed Presidential Election: An Exercise in Election Risk Assessment and Management</i> , 51 LOYOLA U. CHI. L.J. 309 (2019)	27
<i>Ethics Complaint Against Kurt Hilbert</i> , THE 65 PROJECT (Feb. 15, 2023), https://the65project.com/ethics-complaint-against-kurt-hilbert/	5
Gary S. Lawson & Jack M. Beermann, <i>Congressional Meddling in Presidential Elections: Still Unconstitutional After All These Years; A Comment on Professor Sunstein</i> , 103 BOSTON UNIVERSITY LAW REVIEW 1189 (2023)	26

- Jacob Scholl, *Is Utah A.G. Sean Reyes Chasing 'Frivolous' Lawsuits on Behalf of Donald Trump? A Legal Group Thinks So*, SALT LAKE TRIBUNE (Sept. 23, 2022), <https://www.sltrib.com/news/politics/2022/09/23/is-utah-ag-sean-reyes-chasing/>..... 4
- Katelynn Richardson, *Left-Wing Groups Weaponize Bar Complaints Against Trump Admin Attorneys*, Daily Caller News Foundation (Oct. 11, 2025), <https://dailycaller.com/2025/10/11/left-wing-groups-weaponize-bar-complaints-against-trump-admin-attorneys/>..... 3, 4
- Michael S. Ariens, *The Lawyer's Conscience: A History of American Lawyer Ethics* (2023) . 29, 30
- Nathan Colvin & Edward B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb*, 64 U. MIAMI L. REV. 475 (2010)..... 27
- Peleg W. Chandler, *Legal Morality*, MONTHLY LAW REPORTER 5 (Apr. 1843)..... 29
- STATE BAR OF GEORGIA, *Kurt Hilbert*, <https://www.gabar.org/member-directory/?id=066EC6A98F8C6EC3D27016009618FC99> 5
- Vasan Kesavan, *Is the Electoral Count Act Unconstitutional?*, 80 N.C. L. REV. 1653 (2002)..... 27

Victims of Communism Memorial Foundation, <i>VOC Signs Letter Calling Out CCP Crackdown Against Lawyers</i> (July 7, 2025), https://victimsofcommunism.org/chinese- government	2
W. Shakespeare, King Henry VI, pt. II	2
William Sullivan, <i>An Address to the Members of the Bar of Suffolk, Mass. at Their Stated Meeting of the First Tuesday of March, 1824</i> (Boston: North American Review, 1825)	29

OPINIONS BELOW

The order of the Supreme Court of California denying Eastman's petition for review is unpublished. App.1a-2a. The opinion of the Review Department of the State Bar Court of California is available at 2025 WL 4735186. App.3a-132a. The opinion of the Hearing Department of the State Bar Court of California is unpublished. App.133a-297a.

JURISDICTION

The decision of the Supreme Court of California denying Eastman's petition for review and thereby adopting as its own the opinion of the Review Department was issued on April 15, 2026. Justice Kagan on June 26, 2026, granted an extension of time to September 12, 2026, to file this petition. This Court has jurisdiction under 28 U.S.C. §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution provides in relevant part:

Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. amend. I.

18 U.S.C. §371 provides in relevant part:

If two or more persons conspire either to commit any offense against the United States,

or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. §371.

INTRODUCTION

Censorship at its most pernicious targets not merely disfavored ideas, but the persons who dare to voice them. And since attorneys are often essential advocates for disputed propositions, censoring their arguments is especially effective, and therefore especially dangerous. This Court’s review is crucial to halt the rising trend of politicized bar disciplinary proceedings.

“The first thing we do, let’s kill all the lawyers.” *Walters v. Nat’l Ass’n of Radiation Survivors*, 473 U.S. 305, 371 n.24 (1985) (Stevens, J., dissenting) (quoting W. Shakespeare, *King Henry VI*, pt. II, Act IV, scene 2, line 72). “As a careful reading of that text will reveal, Shakespeare insightfully realized that disposing of lawyers is a step in the direction of a totalitarian form of government.” *Id.* Indeed, at least one modern superpower has illustrated how targeting attorneys can be a weapon against any challenge to powerful vested interests. Victims of Communism Memorial Foundation, *VOC Signs Letter Calling Out CCP Crackdown Against Lawyers* (July 7, 2025), <https://victimsofcommunism.org/chinese-government-impunity-for-crackdown-on-lawyers-fuels-decade-of-repression/> (decrying the “709” crackdown). *See also*

Amnesty International, *Uganda: Authorities Must Investigate Unlawful Detention and Deportation of Kenyan Human Rights Lawyer* (June 23, 2026), <https://www.amnestyusa.org/press-releases/uganda-authorities-must-investigate-unlawful-detention-and-deportation-of-kenyan-human-rights-lawyer/>.

Those are decidedly *not* the models for the United States. Our constitutional system depends upon lawyers being free to advance disputed legal positions without fear that the State will later punish those attorneys for making disfavored arguments.

This case involves the politicized use of bar disciplinary proceedings. The decision below threatens the nation’s adversarial system of justice by chilling attorneys on the “wrong” side of hotly disputed political opinions from advocating for controversial clients or causes. “Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-40 (1974). The California Bar set this fundamental principle aside and punished Eastman for his ideas, treating disputed constitutional advocacy as professional dishonesty because State officials and disciplinary authorities disagreed with the legal theories he advanced.

Eastman is not alone. Many lawyers have been targeted by recent politicized bar disciplinary complaints, often initiated at the behest of partisan advocacy groups. Katelynn Richardson, *Left-Wing*

Groups Weaponize Bar Complaints Against Trump Admin Attorneys, Daily Caller News Foundation (Oct. 11, 2025), <https://dailycaller.com/2025/10/11/left-wing-groups-weaponize-bar-complaints-against-trump-admin-attorneys/>. For example, bar complaints were filed against both Eric Schmitt and Ashley Moody, former state attorneys general and now members of the Senate, for signing on to an amicus brief in *Texas v. Pennsylvania*. Avalon Zoppo, *Ethics Complaints Filed Against Florida AG Ashley Moody, Other Republican AGs that Backed Bid to Undo 2020 Election Results*, LAW.COM (last visited Aug. 31, 2026), <https://www.law.com/national-lawjournal/2022/09/21/ethics-complaints-filed-against-republican-state-ags-that-backed-bid-to-undo-2020-election-results/>.

This grotesque misuse of the bar disciplinary process cries out for this Court's review. Compounding the need for review are the markedly divergent outcomes reached by different jurisdictions for substantially similar advocacy. An attorney's freedom to advance legal propositions should not depend on the jurisdiction. California imposed professional extinction here, while Texas courts rejected similar disciplinary efforts. *Webster v. Comm'n for Law. Discipline*, 704 S.W.3d 478, 483 (Tex. 2024) (rejecting discipline for the same *Texas v. Pennsylvania* pleadings at issue in this matter); see also Jacob Scholl, *Is Utah A.G. Sean Reyes Chasing 'Frivolous' Lawsuits on Behalf of Donald Trump? A Legal Group Thinks So*, SALT LAKE TRIBUNE (Sept. 23, 2022), <https://www.sltrib.com/news/politics/2022/09/23/is-utah-ag-sean-reyes-chasing/> (discussing

decision of Utah Bar dismissing complaint arising out of same *Texas* case). Complaints were likewise filed against Georgia attorney Kurt Hilbert arising from his representation as lead counsel in the Georgia election litigation for which Eastman was disciplined, yet those proceedings did not succeed, and he remains in good standing. *Ethics Complaint Against Kurt Hilbert*, THE 65 PROJECT (Feb. 15, 2023), <https://the65project.com/ethics-complaint-against-kurt-hilbert/>; STATE BAR OF GEORGIA, *Kurt Hilbert*, <https://www.gabar.org/member-directory/?id=066EC6A98F8C6EC3D27016009618FC99>. The same advocacy thus ended one lawyer's career in California while drawing no discipline at all in Texas, Utah, or Georgia. This Court's review is needed to address the recurring question, of national importance, of the constitutional limits on state bars regulating attorneys' political and constitutional advocacy.

Here, the Review Department, ratified without opinion by the California Supreme Court, found Eastman culpable on 10 of 11 counts, for what it claimed were false statements made by Eastman during his representation of President Donald J. Trump. The Bar did not confine its charges to any properly identified discrete, objectively verifiable factual assertions; instead, it swept together public commentary outside any pending litigation, an internal brainstorming memorandum analyzing unsettled legal questions, and advocacy directed to the Vice President regarding the certification of the Electoral College vote. The latter also served as the basis for the Bar Court's holding that Eastman

conspired with the President to defraud the United States, in violation of 18 U.S.C. §371.

California disciplined Eastman for speech at the core of the First Amendment: legal advice, constitutional advocacy, public commentary, and petitioning directed to government officials on matters of extraordinary public concern. The Review Department acknowledged that this speech required strict scrutiny, but then failed to apply that standard, replacing the statement-by-statement constitutional analysis this Court's cases require with a deferential professional-discipline inquiry and an after-the-fact reasonableness judgment. That error let California collapse the essential distinction between provably false factual assertions and disputed legal opinions, treating contested constitutional advocacy as knowing dishonesty simply because State authorities disagreed with the views advanced.

Those errors matter beyond this case. If state bars may target a lawyer's license to practice because of the side he took on behalf of a client in a hotly debated matter, lawyers will be chilled from representing unpopular clients, testing unsettled constitutional questions, or urging government actors to act on disputed grievances. This Court should grant review and overturn the revocation of Eastman's bar license, reaffirming that while States may regulate genuine attorney misconduct, they may not use disciplinary authority to punish protected advocacy by relabeling it as professional misconduct.

STATEMENT OF THE CASE

California imposed professional discipline on Dr. John Eastman for speech and advocacy undertaken during his representation of President Donald J. Trump in connection with the 2020 presidential election. The challenged conduct included court filings, public commentary, internal brainstorming memoranda, and communications with the Vice President and his counsel.

The federal questions are all properly before this Court. The Hearing Department and Review Department considered and rejected Eastman's First Amendment objections. App.99a-106a, 231a-239a. The Review Department adopted 18 U.S.C. §371 as the federal-law predicate for Count One over Eastman's objections. App.96a. Eastman pressed his First Amendment and §371 objections in the Supreme Court of California, which denied review. App.1a-2a. The *Loney* objection goes to subject matter jurisdiction and thus cannot be waived (though Eastman did raise *Loney* before the Review Department, which nevertheless affirmed). See App.27a-41a.

In October 2021, a partisan advocacy group called States United Democracy Center filed a complaint with the State Bar of California against Eastman for statements and legal challenges he made during his representation of President Trump that it asserted were false. Neither the group nor any of its members had ever had an attorney-client relationship with Eastman or been adversaries in any of Eastman's litigation.

Another advocacy group, Lawyers Defending American Democracy, filed a similar complaint a few months later.

The California Bar then sent Eastman an extraordinarily broad demand letter in May 2022, requiring detailed information about every factual allegation, legal opinion, and assertion made in his court filings, in his public statements and writings, in his internal brainstorming memos, and in his conversations with the Vice President of the United States and his staff. Eastman responded extensively, providing what he believed fully answered the Bar's expressed concern that he lacked evidence or legal authority for his statements and legal positions. The Bar also sent a supplemental demand letter, to which Eastman also responded thoroughly.

On January 26, 2023, the Bar's Office of Chief Trial Counsel (OCTC) nevertheless filed a Notice of Disciplinary Charges against Eastman, alleging eleven counts of "moral turpitude," failure to uphold the law and the Constitution, and other misconduct.

The charges swept together very different kinds of speech and advocacy. Counts 3 and 6 targeted Eastman's December 23, 2020, and January 3, 2021, brainstorming memoranda concerning alleged dual slates of electors, the Electoral Count Act, and the Vice President's asserted authority during the January 6 certification. Counts 2 and 4 targeted federal court filings for which no court imposed sanctions or even issued an order to show cause: his motion to intervene in this Court on President Trump's behalf in *Texas v. Pennsylvania*, No. 220155,

which adopted Texas’s allegations concerning election irregularities; and his verified complaint in *Trump v. Kemp*, 511 F. Supp. 3d 1325 (N.D. Ga. 2021), which incorporated allegations from a Georgia election challenge. Counts 5, 7, and 9 concerned public statements: Eastman’s January 2 appearance on Steve Bannon’s podcast; his January 6 remarks at the Ellipse rally; and his January 18 article in *The American Mind*. Counts 1, 8, and 10 concerned his communications with Vice President Pence and Pence’s counsel, including his effort to persuade Pence to delay the electoral vote count based on his legal interpretation of vice-presidential authority.

Count 11, the most inflammatory charge, alleged that Eastman’s January 6 remarks at the Ellipse rally contributed to provoking the crowd to assault and breach the Capitol. The Hearing Department dismissed that count, and the Review Department affirmed dismissal with prejudice, concluding that the California Bar had not proved that Eastman’s statements contributed to the Capitol breach or that culpability could be established through OCTC’s broader conspiracy theory. App.78a-82a.

Mediation proved fruitless, and after discovery and depositions of expert witnesses, the case proceeded to trial. Originally scheduled for two weeks, the trial eventually extended to 34 days spread over 10 weeks.

The Hearing Department of the Bar Court on March 27, 2024, found Eastman “culpable” on ten of the eleven counts from the Notice of Disciplinary Charges and recommended disbarment. App.5a-6a.

Eastman appealed to the California Bar Court Review Department on May 31, 2024; OCTC filed a cross-appeal on June 10, 2024. The Review Department held oral argument on March 19, 2025, and on June 13, 2025, affirmed the recommendation of disbarment. App.3a.

The Review Department's First Amendment analysis was central to its disposition. App.99a-106a. While nominally acknowledging that Eastman's charged statements involved core political speech and that strict scrutiny was the applicable standard, the Review Department did not require the State Bar to justify punishment of particular statements under that standard. *Id.* Indeed, the Review Department stated only that, "[t]o the extent that the correct analytical standard is relevant, we believe the applicable standard is one of strict scrutiny," while adding that, "[r]egardless, our focus remains on Eastman's false statements and whether or not they violate the rules and statutes governing attorney conduct." App.102a n.92 (emphasis added). That formulation subordinated the constitutional standard to the disciplinary rule inquiry. The Review Department then assessed Eastman's speech under an objective reasonableness framework, declined to separate the challenged statements by count, forum, audience, or theory, and treated the charged speech as part of a broader course of conduct rather than asking which particular statements were factual, provably false, unprotected, and sanctionable. On that basis, the Review Department affirmed the ten counts of culpability and recommended disbarment.

OCTC petitioned the Supreme Court of California on September 8, 2025. Eastman filed his own petition with the Supreme Court of California on September 29, 2025. That court summarily denied Eastman's petition, thereby ratifying the disbarment, on April 15, 2026, but made no reference to OCTC's petition. App.1a-2a.

REASONS FOR GRANTING THE PETITION

The decision below is both dangerous and wrong. Dangerous because it embraces the use of the bar disciplinary process as a politicized weapon. And wrong because, in so doing, the tribunal below mangled (1) the First Amendment, (2) the interpretation of a federal criminal statute, and (3) jurisdictional boundaries stemming from Article III, each of which is addressed *infra*. This Court should grant review.

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S FIRST AMENDMENT JURISPRUDENCE.

The First Amendment forbids what California has done. This case is not about one attorney or one State's disciplinary judgment. It is about whether lawyers across the Nation may be ejected from their profession for taking the "wrong" side of a public controversy. If California's decision stands, then every lawyer who represents an unpopular client, presses a contested theory, or petitions government officials in a politically charged matter will practice under the shadow of professional ruin. The unmistakable message: advocate for the disfavored side, and a state bar may recast your arguments as dishonesty, fraud, or moral turpitude. That threat

imperils the independence of the bar and chills zealous representation in the cases where it is needed most.

Each State regulates its own bar, yet the constitutional protections governing attorney speech and petitioning are matters of national law. Under California's rule, no lawyer can know *ex ante* where protected advocacy ends and misconduct begins. Clarifying that constitutional boundary is essential to preserve a uniform national rule that lets attorneys engage in vigorous advocacy without fear that protected speech will later be recast as professional misconduct.

The decision below violated four settled First Amendment principles. First, attorneys do not surrender constitutional protection when they speak, advise, and advocate on matters of public concern. Second, States may regulate fraud, deceit, and genuine professional misconduct, but they may not evade First Amendment scrutiny by relabeling protected advocacy as factual misrepresentation. Third, when a State punishes core political and constitutional speech, strict scrutiny requires the State to identify the particular speech at issue, justify punishment of that speech with a compelling interest, and prove that the sanction imposed is narrowly tailored. Fourth, the right to petition protects efforts to urge government officials to investigate, deliberate, and act on disputed grievances, including when those efforts are made through counsel in a politically sensitive matter. Contrary to these established First Amendment norms, the decision treated advocacy concerning legal opinions as professional misconduct;

paid lip service to strict scrutiny being the standard while substituting a reasonableness-based discipline inquiry; and relabeled constitutional arguments as knowing misrepresentations without the statement-by-statement analysis the First Amendment requires.

This Court’s review is required to remove the threat the decision below poses not just to the First Amendment but to the ability of attorneys fiercely to advocate for their clients without fear of politicized disbarment.

A. Attorneys Do Not Surrender First Amendment Protection When They Engage in Core Political and Constitutional Advocacy.

The First Amendment stands as a bulwark against attempts to stifle the freedom of speech in whatever guise those may arise. Regulation of so-called professional attorney speech therefore triggers free-speech review. As this Court recently made clear, “professional speech” is not a “separate category of speech” subject to “diminished constitutional protection,” *Chiles v. Salazar*, 607 U.S. 627, 647 (2026) (quoting *Nat’l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 767 (2018) (*NIFLA*)); “[t]he Constitution does not protect the right of some to speak freely; it protects the right of all,” *id.* at 646. This Court reaffirmed that content-based restrictions on the speech of licensed professionals trigger strict scrutiny and expressly rejected the argument that a State may evade that standard by recasting speech as professional conduct. *Id.* at 645-48.

“The First Amendment is no word game,” the Court held. *Id.* at 645. “[T]he rights it protects cannot be renamed away or their protections nullified by ‘mere labels.’” *Id.* (quoting *NAACP v. Button*, 371 U.S. 415, 429 (1963)). “[W]hat matters is not how a government describes its law or whether the law may regulate conduct in other circumstances. What matters is whether, in fact, the law regulates speech in the case at hand.” *Id.* at 645.

Likewise, in *NIFLA*, 585 U.S. 755, this Court made clear that content-based restrictions on the speech of professionals are not governed by different standards than those governing content-based restrictions generally. This Court “has applied strict scrutiny to content-based laws that regulate the noncommercial speech of lawyers.” *Id.* at 771. Fundamentally, a “State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights.” *Id.* at 769 (quoting *Button*, 371 U.S. at 439).

Attorneys are officers of the court and members of a regulated profession. They are not government-licensed mouthpieces for prevailing official views. When attorneys advise clients, challenge governmental authority, and advance constitutional arguments on matters of public concern, they engage in speech at the core of the First Amendment. A State may certainly punish fraud, deception, and genuine professional misconduct. But it may not avoid First Amendment scrutiny by recasting disputed constitutional advocacy as professional misconduct.

Chiles and *NIFLA* are but the most recent examples of this Court's close scrutiny of speech regulations of professionals that stretches back through *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991) (plurality opinion), to *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977), and *Button*, 371 U.S. 415.

In *Gentile*, this Court considered discipline imposed on a lawyer for public statements regarding a pending criminal prosecution. The Nevada Bar disciplined him under a rule prohibiting statements with a "substantial likelihood of materially prejudicing" a proceeding. 501 U.S. at 1033. This Court's analysis centered on the fundamental protection for Gentile's speech on political issues. Such "speech critical of the exercise of the State's power lies at the very center of the First Amendment." *Id.* at 1034 (citation omitted).

That same principle runs through this Court's legal advocacy cases. In *Button*, this Court addressed an attorney speech regulation, specifically, an ethical rule that prohibited "improper solicitation" in a manner defined to include the advocacy of nonprofit organizations. *Button*, 371 U.S. at 424-26. The Court observed that "abstract discussion is not the only species of communication which the Constitution protects; the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion." *Id.* at 429. And where legal advocacy is a means of vindicating constitutional rights, "association for litigation may be the most effective form of political association." *Id.* at 431. Lawyers frequently participate in public life not merely as hired technicians, but as advocates who

translate constitutional claims into legal arguments. When the State burdens that function, fundamental principles at the heart of the First Amendment are implicated.

In fact, long before this Court's modern First Amendment cases, this Court recognized that the power to admit and discipline lawyers is not unlimited. "[T]he profession of an attorney is of great importance to an individual, and the prosperity of his whole life may depend on its exercise. The right to exercise it ought not to be lightly or capriciously taken from him." *Ex parte Burr*, 22 U.S. 529, 530 (1824) (opinion of Marshall, C.J.). In *Ex parte Secombe*, the Court explained that disciplinary authority "is not an arbitrary and despotic" power to be used with "passion, prejudice, or personal hostility," but must be exercised with "sound and just judicial discretion" so that "the rights and independence of the bar" are protected. 60 U.S. 9, 13 (1857).

That principle guided the Court in *Ex parte Garland*, which invalidated a federal loyalty-oath requirement imposed on attorneys after the Civil War. 71 U.S. 333, 374 (1867). An attorney's right to practice "is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency." *Id.* at 379.

The speech for which Eastman was disciplined included legal advice and advocacy concerning constitutional structure, the Electoral Count Act, the role of the Vice President, and the legal significance of competing electoral submissions. Count 1 treated that advocacy as part of a conspiracy to obstruct the

January 6 Joint Session; Count 3 punished the December 23 memorandum's statement that seven States had transmitted dual slates of electors; Count 6 punished the January 3 memorandum's discussion of alleged election illegality, dual slates, and the Vice President's authority; Count 8 punished Eastman's January 6 email to Vice President Pence's counsel urging a recess so State legislatures could investigate; and Count 10 punished the same memoranda and communications as a sustained effort to persuade the Vice President to delay counting electoral votes. Those questions were not ordinary commercial communications or ministerial professional conduct. They were legal and constitutional opinions at the center of a national political controversy. Whether Eastman's answers and advice were persuasive or unpersuasive, wise or unwise, California could not place them outside the First Amendment simply by labelling them as professional misconduct.

B. The Tribunal Acknowledged Strict Scrutiny but Failed to Conduct the Required Constitutional Analysis.

The Review Department correctly recognized that Eastman's discipline implicated core First Amendment interests. Contrary to the Hearing Department's invocation of lesser First Amendment protection for professional speech, the Review Department acknowledged that "strict scrutiny is the applicable standard when examining core political speech and that Eastman's charged statements involved core political speech," and it claimed to have "applied the strict scrutiny standard to the facts of this case." App.102a, 104a. That concession should

have controlled the analysis that followed. Once the tribunal recognized that the State was imposing professional discipline for speech on matters of public concern, this Court's precedents mandated that the burden shift to California to justify that punishment, as to each individual communication at issue, under the most demanding First Amendment standard. The Review Department failed to impose that burden.

Invoking strict scrutiny is not the same thing as applying it. Under strict scrutiny, the government bears the burden of proving that its restriction is "narrowly tailored to promote a compelling Government interest." *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813, 816 (2000). Moreover, "the burden is on the Government to prove that the proposed alternatives will not be as effective[.]" *Ashcroft v. ACLU*, 542 U.S. 656, 665 (2004). The decision below did not require California to identify with precision the compelling interest served by punishing each statement at issue, prove that punishment was necessary to advance that interest, or explain why permanent disbarment was a narrowly tailored response. It instead treated the First Amendment as one interest to be balanced against the State's generalized disciplinary concerns.

The Review Department's own footnote confirms that strict scrutiny was not the actual standard applied by that body: "*To the extent* that the correct analytical standard is relevant, we believe the applicable standard is one of strict scrutiny. *Regardless*, our focus remains on Eastman's false statements and whether or not they violate the rules and statutes governing attorney conduct." App.102a

n.92 (emphasis added). But the correct constitutional standard is not relevant only “[t]o the extent” the tribunal chooses to consider it. Courts may not bypass First Amendment scrutiny by relabeling the inquiry or focusing on a regulatory objective divorced from the speech restriction itself. *Chiles*, 607 U.S. at 645. Once the tribunal acknowledged that Eastman’s charged statements involved core political speech, it could not set strict scrutiny aside and proceed directly to a disciplinary rule inquiry. The two modes of analysis are inherently different.

The First Amendment required the State to justify punishment of the particular speech at issue under the governing constitutional standard. The Review Department instead followed the kind of shortcut this Court rejected in *Chiles*: once protected speech is burdened, courts may not bypass First Amendment scrutiny by relabeling the inquiry or focusing on a regulatory objective divorced from the speech restriction itself. *Id.* “The First Amendment is no word game.” *Id.* Here too, the Review Department treated the constitutional inquiry as secondary, stating that its focus would remain on applying disciplinary rules rather than whether California *could* constitutionally impose discipline in the first place.

Strict scrutiny requires the State to prove that the challenged restriction advances interests of the highest order and is narrowly tailored to achieve those interests. *Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021). Those requirements are not satisfied by asking whether a lawyer’s conduct was “objectively reasonable” considering professional

norms any more than the First Amendment would be satisfied by asking if a journalist's or protester's utterances were "objectively reasonable." Strict scrutiny asks whether the government has justified punishment of *specific* protected speech; objective reasonableness asks whether the speaker's conduct satisfies a negligence standard.

The Review Department's own formulation confirms the analytical error. Instead of asking whether California had satisfied strict scrutiny, the tribunal stated that "in balancing an attorney's First Amendment rights outside of the courtroom with the public protection components of the attorney disciplinary process, the attorney's conduct is assessed under an objective, reasonableness standard." App.103a (citations omitted). A tribunal applying strict scrutiny does not describe its task as "balancing" speech rights against public protection and then assessing the attorney's conduct under an "objective, reasonableness standard." *See District of Columbia v. Heller*, 554 U.S. 570, 634-35 (2008) ("We would not apply an 'interest-balancing' approach to the prohibition of a peaceful neo-Nazi march through Skokie."). By substituting that deferential professional-discipline framework for strict scrutiny, the Review Department lowered the standard and shifted the practical burden from the State to the speaker: California did not have to justify punishment of protected speech; Eastman had to rebut negligence charges.

Under strict scrutiny analysis, "[t]he State must specifically identify an 'actual problem' in need of solving, and the curtailment of free speech must be

actually necessary to the solution[.]” *Brown v. Entm’t Merchs. Ass’n*, 564 U.S. 786, 799 (2011) (citing *Playboy*, 529 U.S. at 822-23). Had the Review Department applied strict scrutiny, it would have had to answer questions the decision never addresses: What specific compelling interest justified punishment of which specific speech? Why was discipline of that speech necessary? Why were ordinary adversarial mechanisms—judicial rejection of legal arguments, sanctions tied to particular misrepresentations, or discipline limited to any demonstrably false factual statements—inadequate? And why was disbarment, rather than a narrower sanction, not blatant overkill? The decision below contains no such analysis. It treated generalized concerns about public protection and the integrity of the profession as sufficient.

Rather than asking whether California had satisfied its First Amendment burden, the Review Department asked whether there was evidence “upon which a reasonable attorney would rely,” whether Eastman lacked a “reasonable factual or legal basis” for his statements, and whether his conduct was objectively “reasonable.” App.30a, 104a. But the First Amendment does not permit the government to punish speech that it deems “unreasonable.” Indeed, many of this Court’s landmark speech cases involved arguably “unreasonable” communications. *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988); *Snyder v. Phelps*, 562 U.S. 443 (2011); *Brandenburg v. Ohio*, 395 U.S. 444 (1969); *National Socialist Party v. Skokie*, 432 U.S. 43 (1977). The constitutional question is not whether the speech is reasonable, but

rather, first, whether the speech falls within an unprotected category and, if not, whether the government has satisfied strict scrutiny. The First Amendment has no exception for speech the government considers negligent or unreasonable.

Compounding the constitutional errors, the proceedings below failed to give the necessary attention to the individualized charges. The State Bar charged ten (originally eleven) counts, resting on different statements, contexts, audiences, and asserted rules of professional conduct. Strict scrutiny does not operate wholesale. Each count and each allegedly sanctionable statement must be examined separately to determine what speech was being punished, whether that speech was protected or unprotected, what compelling interest supposedly justified punishment of that particular speech, and why the sanction imposed was narrowly tailored to that specific interest. As this Court emphasized in *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916-17 (1982), “the presence of activity protected by the First Amendment imposes restraints on the grounds that may give rise to ... liability.” Thus, “[w]hen [the charged] conduct occurs in the context of constitutionally protected activity, ... ‘precision of regulation’ is demanded.” *Id.* at 916 (quoting *Button*, 371 U.S. at 438). Constitutional scrutiny must be specific enough to ensure that protected advocacy is not swept into punishment for unprotected misconduct.

In contrast, the Review Department explained that although the charged conduct arose in different settings and under different theories, it would “not

compartmentalize Eastman's conduct into isolated events" when evaluating the evidence and intent. App.19a. Strict scrutiny does not permit a tribunal to aggregate multiple statements, across multiple forums, over multiple months, and then uphold punishment based on an overall assessment of the Gestalt. By expressly declining to compartmentalize (i.e., review individually) the charged statements, the Review Department replaced precision of regulation with Impressionism.

Strict scrutiny also required the Review Department to explain why the most severe professional sanction available was necessary and narrowly tailored to the speech at issue. California did not merely correct a filing, reject an argument, issue a warning, or impose a sanction confined to a particular proceeding. It ejected Eastman from the profession. A tribunal applying strict scrutiny cannot leap from professional concern to professional extinction without explaining why substantially narrower alternatives would not suffice.¹

¹ The disbarment was constitutionally excessive because it was not narrowly tailored to any constitutionally permissible disciplinary interest. Even when misconduct is established (unlike here), strict scrutiny does not permit the State to choose the profession's ultimate penalty without first showing why lesser, targeted sanctions would not suffice.

C. The First Amendment Does Not Permit a State to Label Disputed Constitutional Advocacy as Knowing Misrepresentation.

California did not merely reject Eastman's constitutional arguments. It treated those arguments as evidence of intentional dishonesty. The First Amendment does not permit a State to convert disputed constitutional advocacy into professional misconduct merely because the State disagrees, even strongly, with the position advanced.

This Court has drawn a careful and well-trodden distinction between false statements of fact and statements of opinion. The First Amendment requires breathing space for erroneous or controversial advocacy, especially on matters of public moment. *Gertz*, 418 U.S. at 339-40. To ensure that public debate does not suffer, the First Amendment protects from liability any statement that “cannot reasonably be interpreted as stating actual facts[.]” *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990) (citations omitted). For there to be liability, a statement must be “sufficiently factual to be susceptible of being proved true or false” based “on a core of objective evidence.” *Id.* at 21. Indeed, “a statement of opinion relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection.” *Id.* at 20.

The Review Department acknowledged in a footnote that Eastman raised this issue, but rejected it simply by contending that *some* of his statements “would not fall within such an exception.” App.101a n.91. That response is woefully inadequate. The

Review Department based Eastman’s punishment, not on a single, isolated factual assertion, but rather on his statements collectively, across multiple settings and legal theories. If the State seeks to punish speech on the theory that it consists of knowing misrepresentations, it must identify the particular statements that are factual, provably false, and unprotected, and *only punish based on those statements*. It cannot satisfy that burden by saying that *some* statements would not qualify as opinion and then allowing those statements to carry the rest along with them. Because Eastman’s punishment rests on *all* of the charged speech, *see* App.119a (“Based upon the totality of the evidence and guided by the cases discussed, the unique facts of this case lead to the conclusion that disbarment is appropriate and necessary”), the Review Department needed to show that *each* statement supporting discipline was a statement of fact rather than legal opinion, rhetorical characterization, or advocacy protected by the First Amendment. Its failure to conduct statement-by-statement analysis was reversible error.²

² Two examples illustrate the Review Department’s failure to sufficiently analyze each statement individually under strict scrutiny. First, the tribunal treated Eastman’s reference to “suitcases” of ballots “hidden” at State Farm Arena as a false factual assertion because it *implied* the ballots were fraudulent, when Eastman’s complaint expressly disclaimed any such claim. When Eastman argued that the gravamen of the allegation concerned ballots illegally being processed *outside the presence of poll watchers*, the Review Department brushed aside the argument as a “red herring.” App.40a. Second, in Count 5, the Review Department acknowledged that OCTC was “not technically accurate” in attributing Eastman’s phrase “massive

More fundamentally, many of Eastman's statements cannot, by any characterization, be construed as falsifiable factual statements. Narrow tailoring must distinguish false statements of *fact* from contested *legal arguments and political advocacy*, as the latter may not constitutionally be punished, even when those arguments ultimately lose.³ Yet it is precisely those ideas for which Eastman was punished.

Glaring examples of this error are Counts 1, 3, 6, and 10 and the Review Department's treatment of Eastman's vice-presidential authority theory and dual-slate arguments—contested legal positions with

evidence" to "fraud," because Eastman's actual statement referred to "massive evidence that this election was at least conducted illegally." App.89a-90a. Though the tribunal expressly acknowledged that Eastman *did not make the statement* OCTC attributed to him, it nevertheless upheld culpability based on what it believed listeners would infer.

³As one constitutional scholar who disagrees with Eastman on some of the electoral count issues explained,

given the textual gaps in the Twelfth Amendment, the notion that Eastman's argument is so absurd that a lawyer should be disbarred for making it is itself so absurd that there is a better case for disbarring the lawyers bringing that charge than for disbarring Eastman. Lawyers make adventurous, and even dubious, arguments all the time—just as Congress enacts dubious statutes all the time[.]

Gary S. Lawson & Jack M. Beermann, *Congressional Meddling in Presidential Elections: Still Unconstitutional After All These Years; A Comment on Professor Sunstein*, 103 BOSTON UNIVERSITY LAW REVIEW 1189, 1196 n.37 (2023).

scholarly support⁴—as knowing misrepresentations of fact, a categorization that itself would have at least required resolving the underlying constitutional question Eastman was disciplined for supposedly getting wrong.

Eastman need not relitigate those arguments here; nor need this Court address their merit or lack thereof. The key point is that punishing an attorney for daring to make such arguments collapses the critical distinction between verifiable facts and contested legal arguments. “[E]ven when the utterance is false, the great principles of the Constitution which secure freedom of expression ... preclude attaching adverse consequences to any except the knowing or reckless falsehood.” *Garrison v. Louisiana*, 379 U.S. 64, 73 (1964). Legal advocacy on unsettled questions, especially those with scholarly support, cannot be retroactively deemed “knowingly false.”

The Review Department’s own opinion sharpens this contradiction. In the sanction section, it criticized Eastman for applying “little intellectual rigor” and accepting information that supported his conclusions rather than seeking out “true experts.” App.119a. But the Review Department’s *post hoc* disapproval of Dr.

⁴ For the scholarly sources Eastman relied upon, *see, e.g.*, Vasan Kesavan, *Is the Electoral Count Act Unconstitutional?*, 80 N.C. L. REV. 1653 (2002); Bruce Ackerman & David Fontana, *Thomas Jefferson Counts Himself Into the Presidency*, 90 VA. L. REV. 551 (2004); Nathan Colvin & Edward B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb*, 64 U. MIAMI L. REV. 475 (2010); Edward B. Foley, *Preparing for A Disputed Presidential Election: An Exercise in Election Risk Assessment and Management*, 51 LOYOLA U. CHI. L.J. 309 (2019).

Eastman's constitutional arguments does not transform legal advice into moral turpitude just because it departs from a preferred set of "experts." As *Chiles* explained: "A prevailing standard of care may reflect what most practitioners believe today, but it cannot mark the outer boundary of what they may say tomorrow." *Chiles*, 607 U.S. at 654. Indeed, a boundary that can be identified only in retrospect cannot guide the lawyer who must decide today what he may argue tomorrow.

This Court has never held that an attorney may be disciplined—let alone disbarred—for advancing a legal position that, if ultimately unsuccessful, was not frivolous at the time it was made. The legal system already has a framework for drawing the line the First Amendment requires. Rule 11 and its State equivalents, along with the general body of sanctions jurisprudence, exist precisely to distinguish frivolous arguments from non-frivolous losing arguments, which are an ordinary and necessary feature of adversarial advocacy. California's own ethical rules recognize that attorneys may—indeed must, if necessary, in furtherance of the duty to zealously represent their client—advance tenable factual and legal arguments on behalf of their clients even when those arguments are novel, controversial, or ultimately unsuccessful. CAL. R. PROF. CONDUCT 3.1; A.B.A. Code of Professional Responsibility, EC 7-1, DR 7-101(A)(1). That framework is calibrated to avoid chilling legitimate representation, particularly on novel or politically charged constitutional issues; the alternative would distort legal development by discouraging counsel from testing unsettled law or

challenging previously settled law. The vice-presidential authority question—whether the Vice President has any discretion under the Twelfth Amendment and the Electoral Count Act to resolve disputed slates—was and remains a contested legal issue. Treating advocacy as moral turpitude because the Review Department reached a negative assessment is wholly incompatible with the First Amendment. Adding to the chill, a standard applied only after the fact gives no lawyer notice, before he speaks, of where protected advocacy ends and sanctionable misconduct begins.

Historically, American lawyers have understood professional responsibility to require zealous presentation of the client’s lawful position, even when the position is unpopular. Peleg W. Chandler, a Boston lawyer and editor of the *Law Reporter*, wrote in 1843 that a lawyer was “bound fairly and fully to present to the court and jury whatever of law or fact there may be favorable to his client.” Michael S. Ariens, *The Lawyer’s Conscience: A History of American Lawyer Ethics* 60 (2023) (quoting Peleg W. Chandler, *Legal Morality*, MONTHLY LAW REPORTER 5, 12 (Apr. 1843)). That tradition is not limited to easy or popular cases. John Adams’s defense of the British soldiers charged in the Boston Massacre trials is well remembered: “it required no little independence, to appear in defence of the prisoners, when the popular sentiment was so highly adverse to his side of the case.” *Id.* at 17 (quoting William Sullivan, *An Address to the Members of the Bar of Suffolk, Mass. at Their Stated Meeting of the First Tuesday of March, 1824* (Boston: North American Review, 1825)).

This point is hardly novel: “The history of the legal profession is filled with accounts of lawyers who risked careers by asserting their independent status in opposition to popular and governmental attitudes[.]” *In re Griffiths*, 413 U.S. 717, 732-33 (1973) (Burger, C.J., dissenting). The lawyer’s duty to press a client’s position, especially against public or governmental hostility, is central to the independence of the bar. A State cannot square that tradition with a disciplinary regime that treats frowned-upon constitutional advocacy as proof of dishonesty.

The lawyers of the civil rights movement faced disbarment complaints for their willingness to defend their clients. *Ariens*, *supra*, at 187. This Court’s decision in *Button* “meant that some civil antidiscrimination lawsuits could be taken without fear of disbarment.” *Id.* If bar authorities may transform disputed constitutional advocacy into dishonesty whenever they disagree with the argument advanced, lawyers in high-stakes constitutional controversies will have powerful incentives to avoid novel, unpopular, or government-disfavored claims.

“[I]t is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality.” *Claiborne Hardware*, 458 U.S. at 924. The ability of any disciplinary panel to twist factual allegations in a complaint in order to render a finding of knowing misrepresentation opens the door to politicized enforcement. This case does not require this Court to decide whether any particular election-related assertion was meritorious. The issue is

antecedent: whether a State may impose career-ending discipline for a mixed body of legal advocacy, public commentary, and petitioning activity without first proving that the statements in question were unprotected, knowingly false statements of fact.

D. The Decision Below Threatens the Right to Petition and Constitutional Advocacy in Politically Sensitive Matters.

Requests made to government decision-makers are quintessentially the exercise of the right to petition. *See, e.g., McDonald v. Smith*, 472 U.S. 479, 482 (1985). The right to petition was designed so “that people ‘may communicate their will’ through direct petitions to the legislature and government officials.” *Id.* (quoting 1 Annals of Cong. 738 (1789)).

The Review Department’s effort to treat such importuning of government officials not as the exercise of the right to petition but as an exhibition of moral turpitude warranting disbarment is stunning in its ramifications. Any lawyer, whether on his own behalf or jointly on behalf of a client, who petitions a government decision-maker for redress of grievances arising out of disputed issues of fact and law could be disbarred if the Bar itself later disagreed with the attorney’s assertions of fact and law.

Indeed, courts elsewhere have held, in the civil context, that the “right to petition is so important to our system of government that the courts have shielded citizens from liability even when the position promoted was wrongful.” *Gibson v. City of Alexandria*, 855 F. Supp. 133, 135 (E.D. Va. 1994) (citation omitted); *Oregon Natural Resources Council v. Mohla*,

944 F.2d 531 (9th Cir. 1991) (wrongfully opposing commercial logging before regulatory body immune from suit); *In re IBP Confidential Business Docs. Litig.*, 755 F.2d 1300 (8th Cir. 1985) (allegedly libelous submission to congressional subcommittee protected); *Eaton v. Newport Bd. of Educ.*, 975 F.2d 292, 298 (6th Cir. 1992) (“A citizen’s right to petition is not limited to goals that are deemed worthy[.]”).

That problem is not abstract. Several of the counts rested directly on petitioning activity directed to government officials. Count 1 treated Eastman’s alleged agreement and efforts to persuade federal officials concerning the January 6 Joint Session as part of a conspiracy to obstruct a governmental function. Count 8 rested on Eastman’s January 6 email to counsel for the Vice President urging that the Joint Session be recessed so State legislatures could investigate asserted election illegality. Count 10 was parallel. Thus, the Bar did not merely discipline discrete private misstatements divorced from government petitioning. It punished the very act of urging legislators and the President of the Senate to investigate, deliberate, and act on disputed election-related grievances. That is petitioning activity at the core of the First Amendment, and the State could not transform it into moral turpitude without first applying exacting, count-specific constitutional scrutiny.

The Bar’s charges against Eastman, and the Review Department’s findings of culpability, thus implicate the right to petition the government for redress of grievances, one of “the most precious of the liberties safeguarded by the Bill of Rights.” *United*

Mine Workers of America, District 12 v. Illinois State Bar Association, 389 U.S. 217, 222 (1967). It is the right that “allows citizens to express their ... concerns to their government and their elected representatives.” *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 388 (2011). Indeed, “[t]he whole concept of representation depends upon the ability of the people to make their wishes known to their representatives.” *Eastern R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137 (1961). Treating the importuning of legislators to investigate and address illegality in the conduct of the election as though it were an offense warranting disbarment, as the Review Department did, strikes at the very heart of that precious constitutional right.

II. THE REVIEW DEPARTMENT’S INVOCATION OF SECTION 371 CONFIRMS THE DANGER OF USING EXPANSIVE LEGAL LABELS TO PUNISH PROTECTED ADVOCACY.

The Review Department’s interpretation of 18 U.S.C. §371 exacerbates the First Amendment problems and provides an additional basis for this Court’s intervention. The first charge against Eastman was a charge “of failing to support the Constitution and laws of the United States” under Cal. Bus. & Prof. Code, §6068, subd. (a). App.95a-96a. The sole predicate statute that the Review Department found Eastman to have violated was 18 U.S.C. §371, which makes it a felony “[i]f two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof[.]” *Id.* The Review Department’s First Amendment analysis rested on that §371 predicate,

invoking the principle that the First Amendment “does not protect speech that is employed as a tool in the commission of a crime.” App.104a. Thus, §371 supplied the federal-law predicate that allowed the tribunal to recast protected advocacy and petitioning as speech integral to criminal conduct.

Enacted in 1867, §371 was part of a broad amendment to the internal revenue laws, Act of March 2, 1867, ch. 169, §30 (14 Stat. 484), recodified at Rev. Stat. §5440 (1874). The only prosecutions brought under the “defraud” prong for the first four decades of the statute’s existence involved the common understanding of defraud, namely, schemes involving money, property, claims, or financial injury to the government. *See, e.g., United States v. Hirsch*, 100 U.S. 33, 35 (1879) (fraud mentioned in the statute “may be against the coin, or consist in cheating the government of its land or other property”).

In *Hammerschmidt v. United States*, 265 U.S. 182 (1924), the Court reinforced the limits to that statute. It reversed the convictions of the 13 defendants who had been convicted of

conspir[ing] to defraud the United States by impairing, obstructing, and defeating a lawful function of its government, to wit, that of registering for military service all male persons between the ages of twenty-one and thirty ... through the printing, publishing and circulating of handbills, dodgers, and other matter intended and designed to counsel, advise, and procure persons subject to the Selective Act to refuse to obey it.

Id. at 185. This Court held that “conspiracy to defraud the United States” cannot include “a mere open defiance of the governmental purpose to enforce a law by urging persons subject to it to disobey it.” *Id.* at 189. *Hammerschmidt* refused to let §371 reach handbills. But California has stretched §371 to reach a brainstorming memorandum. The charge that Eastman used “dishonest means” to impede government functions, therefore, even if it were true (it is not), fails to state a violation of §371.

Criminal laws are among the most powerful tools in the government’s arsenal, and this Court has accordingly emphasized the importance of interpreting laws in light of the First Amendment, refusing to read statutes in such a way as would cause them to reach common and constitutionally protected activity. *Noerr*, 365 U.S. at 138. As the Court explained, “The right of petition is one of the freedoms protected by the Bill of Rights, and we cannot, of course, lightly impute to Congress an intent to invade these freedoms.” *Id.*

The fundamental problem lies with the “broader legal implications of the Government’s boundless interpretation[.]” *McDonnell v. United States*, 579 U.S. 550, 581 (2016); *Yates v. United States*, 574 U.S. 528 (2015). This Court has already corrected overexpansive interpretations of a criminal statute that threatened constitutional rights in conjunction with the events of January 6, 2021. *Fischer v. United States*, 603 U.S. 480 (2024). It rejected the government’s interpretation that “would criminalize a broad swath of prosaic conduct, exposing activists and lobbyists alike to decades in prison.” *Id.* at 496.

California improperly embraced a broadened construction of §371 sufficient to recategorize legal and constitutional advocacy as “dishonest means.” Broad labels like “fraud,” “defraud,” “professional misconduct,” and “conduct not speech” cannot substitute for First Amendment analysis. *See Chiles*, 607 U.S. at 645-47. This Court in *Hammerschmidt* refused to tolerate such a broad interpretation; certiorari is warranted here to reject California’s even broader interpretation.

III. THIS COURT’S DECISION IN *IN RE LONEY* DENIES THE CALIFORNIA BAR JURISDICTION INDEPENDENTLY TO INITIATE BAR DISCIPLINE FOR FEDERAL COURT LITIGATION.

Eastman’s disbarment was based in part on statements made in federal courts, despite the absence of any sanctions or even a show cause order from those courts. Absent a referral or imposition of sanctions by the federal court, that was improper as a matter of subject matter jurisdiction. The state bar’s breaching of that jurisdictional limit supplies an additional reason for this Court to grant review.

Congress has conferred exclusive jurisdiction over federal offenses on the federal courts. 18 U.S.C. §3231. In *In re Loney*, 134 U.S. 372 (1890), this Court addressed a State court criminal proceeding against a witness who testified in a federal proceeding involving a contested election for a member of Congress. “[T]he power of punishing a witness for testifying falsely in a judicial proceeding belongs peculiarly to the government in whose tribunals that proceeding is had,” the Court held. *Id.* at 375. State

tribunals have “no jurisdiction” over such matters. *Id.* at 376. This Court emphasized that it was “essential ... that witnesses should be able to testify freely before them, unrestrained by legislation of the State, or by fear of punishment in the state courts,” without fear of prosecutions that might be “instigated by local passion or prejudice.” *Id.* at 375 (see cases cited therein, e.g., *State v. Pike*, 15 N.H. 83, 86-87 (1844)).

Under *Loney*, the Bar’s finding of culpability on Counts 2 and 4, the federal court filings, represents *state* imposition of sanctions for litigation in *federal* court without either sanction or referral by the federal court. *In re Loney* bars a State from independently determining that advocacy in a federal proceeding was sanctionable misconduct where the federal tribunal itself has made no such finding or referral. See *Webster*, 704 S.W.3d at 484 (doubting that “collateral use” of a disciplinary rule, “as opposed to direct review by the court to whom the statements are made—is a proper way to scrutinize the contents of initial pleadings of any attorney.”).

The Review Department never grappled with *Loney*. It treated Counts 2 and 4 as ordinary state-discipline charges even though both rested on alleged falsity in *federal* court filings and even though the federal tribunals imposed no sanction, made no referral, and did not even issue any show-cause order.

Loney applies with even greater force where the alleged falsehood appears not in testimony by a lay witness (as in *Loney*), but in *advocacy* by counsel in a federal judicial proceeding. Federal courts possess their own tools to police filings before them, including

Rule 11, inherent authority, contempt, referral for discipline, and reciprocal-discipline mechanisms. When the federal tribunal itself neither sanctioned Eastman nor referred the matter for discipline, California's independent decision to impose culpability for those same federal filings intruded on the federal court's exclusive jurisdiction to control its own proceedings. Under *Loney*, that determination belongs in the first instance to the federal tribunal whose proceedings are at issue.

Loney held that such punishment belongs "peculiarly" to the government whose tribunal heard the proceeding because State punishment would chill participation in federal proceedings and interfere with the federal tribunal's administration of justice. 134 U.S. at 375. Counts 2 and 4 therefore rest on an unconstitutional assertion of State authority over federal court advocacy. That defect independently supports review.

IV. THE CONSTITUTIONAL ERRORS INFECTED THE DISBARMENT SANCTION.

The charges against Eastman, as explained above, fail from start to finish. Even one constitutionally defective charge warrants review and reversal. This is not a case where a constitutional error was only partial and could be excised; instead, the error pervaded the entire opinion below. The Review Department addressed the free speech argument comprehensively: "We now address Eastman's contention that *his statements in counts one through ten*, found as misconduct by the hearing judge and affirmed by us, *are protected expressions of*

his rights under the First Amendment[.]” App.99a (emphasis added). The discipline was imposed based on the “totality of the evidence” across all ten counts, App.119a, and any constitutional infirmity therefore taints the overall sanction.

This Court does not simply defer to a lower tribunal’s characterization of speech or speculate whether the same sanction might have been imposed on different grounds. Rather, it conducts an “independent examination of the whole record” to ensure that judgment does not rest on protected expression. *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984) (citations omitted). And where protected activity is intertwined with allegedly unlawful conduct, “precision of regulation” is required so that liability is not imposed for protected advocacy. *Claiborne Hardware*, 458 U.S. at 916-17. That principle resolves this case. The Review Department recommended disbarment based on ten affirmed counts. If even one of those counts is constitutionally infirm, then the sanction was necessarily impermissible.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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Sept. 11, 2026

APPENDIX

APPENDIX TABLE OF CONTENTS

Appendix A	Order of the Supreme Court of California (April 15, 2026)	1a
Appendix B	Opinion in the State Bar Court of California—Review Department (June 13, 2025)	3a
Appendix C	Opinion in the State Bar Court of California—Hearing Department (March 27, 2024)	133a

APPENDIX A

SUPREME COURT OF CALIFORNIA

CASE NO. S292011

[Filed April 15, 2026]

In the Matter of

JOHN CHARLES EASTMAN,

On Discipline.

Petition for review denied; disbarred

The petitions for review are denied.

The court orders that John Charles Eastman (Respondent), State Bar Number 193726, is disbarred from the practice of law in California and that Respondent's name is stricken from the roll of attorneys.

Respondent must comply with California Rules of Court, rule 9.20, and perform the acts specified in (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date this order is filed. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [the operative date for identification of clients being represented in pending matters and others to be notified is the filing date of this order].) Failure to do so may result in denial of any future application for reinstatement. (Cal. Rules of Court, rule 9. 20(d).)

Respondent must pay monetary sanctions to the State Bar of California Client Security Fund in the

amount of \$5,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law.

Any monetary requirements imposed in this matter shall be considered satisfied or waived when authorized by applicable law or orders of any court.

APPENDIX B

**STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT**

CASE NO. SBC-23-O-30029

[Filed June 13, 2025]

In the Matter of

JOHN CHARLES EASTMAN,

State Bar No. 193726.

OPINION

In a democracy nothing can be more fundamental than the orderly transfer of power that occurs after a fair and unimpeded electoral process as established by law. In this disciplinary matter, we consider the appropriate discipline to recommend to the California Supreme Court when an attorney, who has sworn to uphold the laws and constitutions of the State of California and the United States, attempts to actively undermine the results of an election to the most powerful office in the United States with the goal of delaying or invalidating the lawful installation of his client's electoral opponent and thereby keep his client in office.

The Office of Chief Trial Counsel of the State Bar (OCTC) charged respondent John Charles Eastman with 11 counts of misconduct arising from his actions surrounding the representation of President Donald J. Trump (President Trump) and his campaign during

the 2020 presidential election. Following 34 days of trial, the hearing judge found Eastman culpable on 10 of the 11 counts. While finding that Eastman's actions were mitigated by "his many years of discipline-free practice, cooperation, and prior good character," the judge found his wrongdoing was "substantially aggravated by his multiple offenses, lack of candor[,] and indifference." She concluded Eastman's actions constituted "a fundamental breach of an attorney's core ethical duties," and that "his unwillingness to acknowledge any ethical lapses regarding his actions [demonstrated] . . . a significant risk that Eastman may engage in further unethical conduct, compounding the threat to the public." Based on the record established at trial, the judge recommended disbarment.

Eastman appeals the hearing judge's recommendation. He disputes all of the judge's culpability findings: that he failed to uphold the United States Constitution and laws of the United States by conspiring with others, including President Trump, to obstruct the electoral count on January 6, 2021, in violation of title 18 United States Code (U.S.C.) section 371 (count one); seeking to mislead the Supreme Court of the United States (U.S. Supreme Court) by filing a motion to intervene in a case brought by the State of Texas (count two); seeking to mislead a United States district court by the filing of a verified complaint (count four); and making multiple misrepresentations to former Vice-President Michael Pence (former Vice-President Pence), his counsel, and to the general public who watched, heard, or read Eastman's statements on a January 2, 2021 "Bannon's War Room" podcast, at the "Stop the Steal" rally on January 6, and in an article

he wrote that was published on January 18, “Setting the Record Straight,” (counts three and five through ten). Eastman also asserts free speech protections under the First Amendment to the United States Constitution (First Amendment) and claims due process violations premised on a combination of adverse pretrial rulings and the way in which the judge conducted the trial. Finally, Eastman disputes one aggravation finding made by the judge and argues the judge did not properly balance the aggravating and mitigating circumstances. Hence, if culpability is affirmed, he argues less discipline is warranted.

OCTC appeals the hearing judge’s decision on three grounds but supports the discipline recommendation of disbarment. First, for counts five and seven, OCTC seeks a clarification that Eastman’s misrepresentations were intentional, stating the judge described Eastman’s misrepresentations in various places of both counts as intentional, grossly negligent, and reckless. Second, OCTC seeks culpability for count eleven, which the judge dismissed based on the finding that no evidence existed in the record showing Eastman’s statements contributed to the assault and breach of the United States Capitol as alleged by OCTC. Finally, OCTC asserts that the judge should have assigned aggravation for significant harm.

Upon our independent review (Cal. Rules of Court, rule 9.12), we reject Eastman’s First Amendment defenses and his various due process claims. We find Eastman is culpable on all counts of misconduct, except count eleven. We further find Eastman’s conduct in counts five and seven was intentional. We affirm the hearing judge’s mitigation and aggravation findings, except we find less weight for Eastman’s

absence of a prior record of discipline. The record does not support aggravation for significant harm as argued by OCTC. Due to the serious nature and extent of Eastman's misconduct and the weight of aggravating circumstances in relation to mitigation, we recommend that Eastman be disbarred. Disbarment is necessary to protect the public, the courts, and the legal profession.¹

I. PROCEDURAL BACKGROUND

OCTC filed the Notice of Disciplinary Charges (NDC) on January 26, 2023. The NDC alleged 11 counts of misconduct relating to Eastman's representation of President Trump during and after the 2020 presidential election. Eastman was charged with one count of failing to support the Constitution and laws of the United States (Bus. & Prof. Code, § 6068, subd. (a));² two counts of seeking to mislead a court (§ 6068, subd. (d)); and eight counts of moral turpitude through misrepresentations or other acts of dishonesty or corruption (§ 6106). Eastman filed his response on February 15. The parties filed their joint pretrial statement on June 5 followed by a stipulation to undisputed facts on June 12. Additional stipulations regarding exhibits were filed on October 27 and December 1.

¹ Any arguments raised on review, but not specifically addressed in this opinion, have been considered and rejected. Additionally, any factual error not raised on review is waived by the parties. (Rules Proc. of State Bar, rule 5.152(C).) All further references to rules are to the Rules of Procedure of the State Bar of California unless otherwise noted.

² All further references to sections are to the Business and Professions Code unless otherwise noted.

A 34-day trial commenced on June 20, 2023.³ Approximately seven motions in limine were filed by the parties. Although the hearing judge issued numerous and significant pretrial and trial rulings, neither party sought interlocutory review of those rulings. The parties thereafter submitted closing briefs, and the judge issued a decision on March 27, 2024. OCTC and Eastman timely filed requests for review. Oral argument was held on March 19, 2025.

II. EASTMAN'S DUE PROCESS RIGHTS WERE NOT VIOLATED

Eastman raises three issues on review, claiming his due process rights were violated.⁴ We begin our discussion of his arguments by noting that, “[t]he fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’ [Citations.]” (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333.) “Due process” includes the right to be adequately notified of charges or proceedings, the right for an opportunity to be heard at those proceedings, and the right to have an impartial person or panel make the final decision in the proceedings. (*Goldberg v. Kelly* (1970) 397 U.S. 254, 267-268, 271.) In sum, Eastman’s due process entitlement in this disciplinary proceeding was to a “fair hearing.” (*In the Matter of Acuna* (Review Dept.

³ Trial occurred June 20-23 and 29-30; August 24-25; September 5-8, 12-15, and 26-29; October 3-4, 6, 17-20, 23-24, and 30; and November 2-3, 8, and 13.

⁴ While Eastman makes repeated references to “due process,” we presume he is specifically invoking language from the Fourteenth Amendment to the United States Constitution, which prohibits any state from depriving “any person of life, liberty, or property, without due process of law”

1996) 3 Cal. State Bar Ct. Rptr. 495, 501, citing *Rosenthal v. State Bar* (1987) 43 Cal.3d 612, 634.) Here, Eastman specifically contends that the trial proceeding lacked an impartial adjudicator; he was unable to compel testimony of out-of-state witnesses and refused an opportunity to substitute witnesses; and bias occurred in the conduct of the trial. After our review of the record and as detailed below, we conclude that Eastman indeed received a fair hearing and thus his due process violation claims lack merit.

A. Eastman's Trial Did Not Lack an Impartial Adjudicator

Eastman contends that his discipline matter involves “an intensely[]partisan dispute over a presidential election,” and “several indicia” demonstrate a “lack of impartiality.” Eastman claims OCTC’s decision to file charges against him was triggered by “an activist organization” and OCTC’s Chief Trial Counsel and prosecutors assigned to his case are all registered Democrats who should have been recused. He argues that, because his case is political and not “the run-of-the-mill disciplinary [case],” it should have been adjudicated by an electoral commission or similar committee with bipartisan membership. He further asserts that three of the five Hearing Department judges, including the hearing judge who presided over his case, are appointed by partisan elected officials and made political donations in support of former President Joseph R. Biden, Jr. (former President Biden) or the Democratic Congressional Campaign Committee. These concerns, according to his briefs, raise an unconstitutional potential for bias.

In essence, Eastman, who challenges how State Bar Court judges are appointed, seeks a different adjudication system for his matter.⁵ In his pursuit to make his disciplinary case political, Eastman ignores the salient fact that he was a licensed California attorney at the time of his misconduct. His license to practice is subject to the jurisdiction of the California Supreme Court, which Eastman does not dispute. Section 6079.1 provides that, of the five judges of the State Bar Court Hearing Department, two shall be appointed by the Supreme Court of California (California Supreme Court), one by the Governor, one by the Senate Committee on Rules, and one by the Speaker of the Assembly. The statute's constitutionality was upheld by the California Supreme Court a quarter of a century ago:

“[A]lthough this court’s inherent authority over attorney admission and discipline includes the power of this court to appoint the judges of the State Bar Court and to specify their qualifications, other appointment mechanisms specified by the Legislature are permissible so long as they are subject to sufficient judicially controlled protective measures to ensure that such appointments do not impair the court’s primary and ultimate authority over the attorney admission and discipline process. . . . [B]ecause of our continuing primary authority over the operations of the State Bar Court—including the appointment of that court’s

⁵ Several points raised by Eastman about the appointment process are based on facts outside of the record and Eastman failed to request judicial notice or file a request to augment the record. (Rule 5.156(B), (C).)

judges—and the numerous structural and procedural safeguards, described herein, that exist both within the attorney discipline system and within the State Bar Court appointment process established by this court, we conclude that the legislation here at issue, providing that some of the hearing judges shall be appointed by the executive and legislative branches . . . does not defeat or materially impair our authority over the practice of law, and thus does not violate the separation of powers provision.”

(*Obrien v. Jones* (2000) 23 Cal.4th 40, 44.) Thus, in this disciplinary matter, we find no due process violation has occurred from the appointment process of State Bar Court judges.⁶

Eastman next contends that the assigned hearing judge made political donations to Democratic candidates or causes, which Eastman states are his political opponents. As Eastman’s contention is premised on facts outside the trial record, and no request for judicial notice or to augment the record was sought, his contention fails and is rejected. Even if the facts as asserted were in the record, his claim would fail. Canon 5 of the California Code of Judicial Ethics states, “Judges . . . are entitled to entertain

⁶ Eastman argues that the current process for appointing hearing judges is “anathema to due process.” The State Bar Court is without jurisdiction to declare the appointment process unconstitutional. (Cal. Const., art. III, § 3.5.) However, in recommending a suspension or disbarment to the California Supreme Court, we may recommend that a rule or statute be declared unconstitutional if “applicable legal principles and precedents” call for such action. (*In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424, 433, fn. 11.) We decline to make such a recommendation.

their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, not engage in political activity that may create the appearance of political bias or impropriety.” Eastman infers that the judge’s campaign donations to a candidate must equate to the political activity of an organization who subsequently receives funds from the candidate, thus creating an appearance of bias or impropriety, but he offers no authority for this unreasonable interpretation of the canon. Eastman even recognizes canon 5(A)(3), which provides, in relevant part, that judges may make monetary contributions to a political party, organization, or candidate that do not exceed certain limits. Eastman makes no allegation that the judge failed to comply with the limits in canon 5(A)(3), only that the judge’s donations here “may create the appearance of political bias or impropriety,” but he states he does not argue that “judges should be required to relinquish their political party affiliations and not donate to campaigns.”

In the end, Eastman states his case is unique, calling it “the most politicized disbarment proceeding in California’s history,” but his belief is not evidence nor does it create an appearance of impropriety regarding the hearing judge. Because he identifies no evidence other than his subjective belief, we reject his claims of bias as speculative and conclusory. (*In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219, 226.)

Beyond his claims of judicial bias, Eastman also asserts that the Chief Trial Counsel and OCTC prosecutors involved in his disciplinary matter are biased because they are registered Democrats, including one who donated to former President

Biden’s 2020 campaign. Based on this information, Eastman contends that rule 2201(a)(2) requires the recusal of OCTC because OCTC’s participation “creates an appearance” of partiality and likely unfair treatment. Once again, Eastman’s arguments are based on facts outside of the record. Further, under the plain language of rule 2201(a)(2), the State Bar of California’s Board of Trustees has delegated to the Chief Trial Counsel the discretion to determine if OCTC can function “in an evenhanded manner” and otherwise provide “that an attorney will receive fair treatment.” No evidence exists in the record that the Chief Trial Counsel failed to properly exercise his discretion.

**B. Eastman’s Due Process Violation Claims
Regarding His Witnesses Fail**

Eastman makes two contentions regarding his proposed witnesses that he claims affected his due process rights. First, he was unable to compel testimony from out-of-state witnesses due to rule 5.62⁷ and section 1989 of the Code of Civil Procedure.⁸ Second, the hearing judge refused to allow him to

⁷ Rule 5.62 provides, “Any party may issue trial subpoenas under Business and Professions Code §§ 6049(c) and 6085 and Code of Civil Procedure § 1985. And any party may compel another party to testify or produce documents at trial by serving a notice to appear under Code of Civil Procedure § 1987.”

⁸ California Code of Civil Procedure section 1989 provides, “A witness, including a witness specified in subdivision (b) of Section 1987, is not obliged to attend as a witness before any court, judge, justice or any other officer, unless the witness is a resident within the state at the time of service.” California Code of Civil Procedure section 1987 details the process for service of the subpoena, including required fees and time to prepare for travel and attendance.

substitute new witnesses on behalf of designated witnesses in the pretrial conference statement who had withdrawn after learning they were potentially implicated in ongoing investigations by the United States Department of Justice (DOJ) and other investigative agencies.

A judge has broad discretion to admit or exclude evidence. (*In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 499.) The standard of review we apply to procedural rulings is abuse of discretion or error of law. (*In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454, 461.) An abuse of discretion occurs when a judge has “exceeded the bounds of reason, all of the circumstances before it being considered.” (*H. D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368.) Of particular importance here, Eastman must also show actual prejudice resulting from the ruling. (*In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695 [to prevail on claim of error for procedural ruling, abuse of discretion and actual prejudice resulting from ruling must be established]; *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241 [party must establish actual prejudice when asserting violation of due process].)

Eastman has failed to demonstrate any actual prejudice regarding either generalized contention. His arguments on appeal are brief and conclusory. Eastman did not explain how any witness that was beyond the reach of a subpoena or the late-disclosed replacement witnesses would have provided admissible and relevant evidence at his trial. On this basis, we reject his arguments as presented on appeal. (*Wells v. State Bar* (1978) 20 Cal.3d 708, 715 [“casual

claims of prejudice are insufficient to warrant relief”]; cf. *Jones v. State Bar* (1989) 49 Cal.3d 273, 288-289 [no due process violation when failure to call witnesses was based on attorney’s lack of due diligence].)

C. Eastman’s Generalized Claims of Bias in the Conduct of the Trial Also Fail

Eastman claims on review that the hearing judge exhibited bias during these proceedings in the following circumstances: (1) hostility towards Eastman or his witnesses resulting in prejudgment of the issues; (2) a clear pattern of arbitrary and selective admission or exclusion of evidence favoring OCTC or prejudicing Eastman, including the unjustified exclusion of U.S. Supreme Court briefs from state attorneys general and legislators and the disparate treatment in admission of post-January 2021 evidence; and (3) political partisanship as evidenced by the judge’s disparate treatment of witnesses based on political affiliation. In support of Eastman’s alleged claims, he cites to numerous examples in the record. Upon our review of the record, we find no support for his allegations of bias, which we detail, *post*.

Eastman’s general theme here is his belief that “blatant partisan bias” and “double standards” influenced the hearing judge’s rulings. As the U.S. Supreme Court has stated,

“[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion. [Citation.] . . . [T]hey . . . can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved. . . . Thus, judicial remarks during the course of a trial

that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.”

(*Liteky v. U.S.* (1994) 510 U.S. 540, 555.) Our rules state that “[t]he hearing judge has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.” (Rule 5.104(F); accord, *In the Matter of Farrell, supra*, 1 Cal. State Bar Ct. Rptr. 490, 499.) Further, a judge has the discretion to preclude irrelevant lines of questioning. (*In the Matter of Lucero* (Review Dept., Aug. 13, 2024, SBC-21-O-30658) 6 Cal. State Bar Ct. Rptr. __.) Eastman’s complaints of bias due to the judge’s active participation in the proceeding ignores the principle that, while a judge’s “questioning must be temperate, nonargumentative, and scrupulously fair,” a judge “has both the discretion and the duty to ask questions of witnesses, provided this is done in an effort to elicit material facts or to clarify confusing or unclear testimony. [Citations.]” (*People v. Cook* (2006) 39 Cal.4th 566, 597.)

We have reviewed the multiple citations Eastman has referenced from the record in his opening brief and his arguments to support his claims. Contrary to Eastman’s assertions that the hearing judge “routinely badgered and harassed” him, or otherwise mischaracterized or ignored his or the other witnesses’ testimonies, our review reveals the record is replete with instances of the judge requiring compliance with trial rules and procedures. For example, the record shows Eastman’s counsel required continuous reminders to ask non-leading

questions of Eastman’s own witnesses.⁹ Additionally, counsel tried on numerous occasions over the course of the trial to elicit expert testimony from his percipient witnesses, notwithstanding the fact that his attempts were well past the expert witness disclosure date. These witnesses included retired Wisconsin Supreme Court Justice Michael J. Gableman, Garland Favorito,¹⁰ John Droz, and Raymond M. Blehar.¹¹ Finally, Eastman’s counsel repeatedly attempted to admit exhibits that had previously been excluded without stating that a reconsideration of a prior ruling was sought or continued to question witnesses about an exhibit even when the judge had denied admission of the exhibit. That the judge may have at times expressed frustration with Eastman’s and his counsel’s actions

⁹ OCTC’s summary of approximately 90 instances of sustained objections or the judge’s directives to ask non-leading questions is consistent with our review of the record.

¹⁰ Favorito, discussed *post*, is a retired Georgia information technology professional whose educational background includes a certification in computer programming. Favorito testified that just prior to retirement he was a systems development methodology consultant and had worked with “Big Eight” accounting firms. Favorito volunteered for about two decades in Georgia elections as a poll worker and audit and recount monitor. He had never been a paid expert for election-related issues. He was a cofounder of VoterGA, a volunteer organization that proposes legislative changes to address what it perceives as “verifiability” and “auditability” issues, and he pursues election-related litigation.

¹¹ To work around State Bar Court procedure rules, Eastman argued the witnesses were “nonretained experts” and therefore allowed pursuant to Code of Civil Procedure section 2034.310, subdivision (b). In March 2023, Eastman identified roughly 600 witnesses in this category, which led the hearing judge to conclude the designation was not made in good faith.

and statements is understandable upon review of the complete record.

Further, Eastman's assertions that the hearing judge "prohibited [him] from presenting any evidence postdating January 2021," and "not a single one of the dozens of [his] post-January . . . 2021 exhibits" was admitted, while OCTC was permitted to admit such evidence, are not supported by the record. We note that in his reply brief, Eastman conceded the judge did admit some but not "much" of his 2021 evidence. Based upon our review of the record, we find Eastman's allegations of bias in the exclusion and admission of post-January 2021 evidence lack support in the record and, therefore, he has not established an abuse of discretion and resulting prejudice. (*In the Matter of Aulakh, supra*, 3 Cal. State Bar Ct. Rptr. at p. 695.)

Eastman also argues the hearing judge exhibited bias when she denied admission of U.S. Supreme Court amicus briefs and motions filed by state attorneys general and legislators in *State of Texas v. Commonwealth of Pennsylvania, et al.* (2020) 141 S.Ct. 1230 (*Texas v. Pennsylvania*), detailed *post*, but admitted OCTC exhibits consisting of opposition briefs filed by the defendant states in that action. First, Eastman does not specifically identify on review the briefs that should have been admitted or the relevance of each denied exhibit, and he has not sought in his appeal to admit any denied exhibit. Whether others adopted or repeated inaccurate and untrue information in their own court filings in *Texas v. Pennsylvania* is not probative of whether Eastman committed the charged misconduct. As for the judge admitting the briefs filed by the defendant states, at a minimum, we see no actual prejudice to Eastman by

the judge's admission of those briefs. On this issue and after review of the record, Eastman has not established an abuse of discretion or any resulting prejudice, let alone bias. (*In the Matter of Johnson, supra*, 3 Cal. State Bar Ct. Rptr. at p. 241.)

Eastman additionally claims that the judge showed political partisanship and bias because he was not allowed to ask an OCTC witness if he was a Democrat. In contrast, Eastman argues that OCTC was allowed to ask a witness if Georgia Secretary of State Brad Raffensperger was a Republican. We see this difference not due to bias but due to the relevance of the issue at trial. Specifically, Raffensperger's political affiliation was relevant to count six, detailed *post*, and its allegations of Eastman's misrepresentation in his January 3, 2021 memorandum that the election was stolen by a "strategic Democrat[ic] plan." The fact that Raffensperger, an elected *Republican* party official, upheld the election outcome in Georgia was contrary to Eastman's claim and, therefore, that official's political affiliation was relevant.

After a thorough review of the record, we see no legally cognizable bias as Eastman has argued. The hearing judge exercised appropriate trial and courtroom management. We reject his arguments on this issue entirely.

III. FACTS AND ANALYSES ESTABLISHING EASTMAN'S CULPABILITY¹²

A. Introduction

Eastman's actions between October 2020 and January 2021 regarding the 2020 presidential election were multifaceted; thus, conduct charged in various counts frequently overlaps. Hence, we have organized our discussion based on factually related charges. We, however, do not compartmentalize Eastman's conduct into isolated events when examining the record for evidence of his knowledge and intent. (*See U.S. v. Brown* (1978) 578 F.2d 1280, 1286 [trier of fact entitled to regard evidence as a whole and to consider all surrounding relevant circumstances in evaluating presence or absence of specific intent].)

The facts are based on the trial testimony, documentary evidence, stipulated facts, and the hearing judge's factual and credibility findings, which are entitled to great weight. (Rule 5.155(A); *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 638 [deference given to credibility findings absent specific showing that such findings were erroneous].) After independently examining the record and the weight of the evidence, we affirm the judge's factual and credibility findings as supported by the record. (*See Coppock v. State Bar* (1988) 44

¹² All affirmed culpability findings have been established by clear and convincing evidence. Clear and convincing evidence demonstrates a high probability that a fact is true. (*In re White* (2020) 9 Cal.5th 455, 467, citing *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1090; *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].)

Cal.3d 665, 676-677 [sufficiency of evidence].) Given the voluminous record, we have summarized the facts, but, where necessary for our analyses, we provide additional details. Therefore, we do not repeat the judge's description of the general electoral process, including the Electoral College, and the application of the Twelfth Amendment to the United States Constitution (Twelfth Amendment), and the Electoral Count Act (ECA),¹³ including the required January 6, 2021 joint session of the United States Congress (Joint Session).¹⁴

As a matter of initial background to our discussion of the individual counts, Eastman's attorney-client relationship with President Trump and the Trump campaign (Campaign) began approximately in September 2020, following President Trump's request for the formation of an "Election Integrity Working Group" to prepare for any post-election litigation. For the first few months that he worked with the Campaign, Eastman acted informally with no written agreement between him and President Trump or the Campaign. His early contributions included research into state election codes in anticipation of an election challenge.

¹³ Title 3, United States Code, chapter 1. The ECA was first enacted in 1887 and was most recently amended following the events of January 6, 2021.

¹⁴ To the extent either party referred to or relied on materials outside the trial record in making their arguments, we have not considered those materials as no request for judicial notice (rule 5.156(B)) or to augment the record (rule 5.156(C)) was made. Similarly, we have not considered any cited exhibit that was excluded at trial where review of a particular exhibit's exclusion had not been sought, nor have we considered withdrawn exhibits. (Rules 5.151.2, 5.156.)

Following the November 2020 election, Eastman's representation of President Trump and the Campaign was formalized in a December 5, 2020 engagement letter, received by Eastman the next day (engagement agreement). The scope of Eastman's representation included "federal litigation matters in relation to the 2020 presidential general election, including election matters related to the Electoral College."¹⁵ Eastman was paid for a portion of his work even though the engagement agreement stated Eastman volunteered his services. Nevertheless, Eastman testified that he did not recall keeping records regarding his time and did not remember whether he kept notes of the work he completed pursuant to the engagement agreement. Eastman did not recall taking notes about the consultation work he did on other election-related litigation in various states. As discussed *post*, Eastman maintained a spreadsheet to track election-related claims and litigation across the country, not just the matters in which he was personally involved. However, regarding the scope of vice-presidential power in the Joint Session electoral vote tally when acting as the President of the United States Senate, Eastman did not take notes or catalogue his research. He was unable to provide an estimate of how much time he spent on such research.

B. Eastman Attempted to Mislead Two Courts in December 2020 (§ 6068, subd. (d))

1. Eastman Files Intervention Motion in U.S. Supreme Court Case

¹⁵ Eastman testified that in the first week of December he was asked by President Trump in a phone call to consider representing him in a potential original action to be filed in the U.S. Supreme Court.

On December 7, 2020, the State of Texas filed in the U.S. Supreme Court a motion for leave to file a bill of complaint against its sister states Georgia, Michigan, Pennsylvania, and Wisconsin (collectively “defendant states”) in *Texas v. Pennsylvania*. The bill of complaint (Texas complaint) was included in the motion for leave. Eastman testified that he had some involvement in drafting the Texas complaint and read at least one draft before it was filed.

The Texas complaint, with attachments, exceeded 100 pages and requested, inter alia, that the U.S. Supreme Court declare the defendant states had unconstitutionally administered the 2020 presidential election and that any electoral college votes cast by the defendant states not be counted. Texas also requested injunctive relief to prevent the use of the 2020 election results to appoint presidential electors to the Electoral College or to certify those presidential electors. To support its prayer for relief, the Texas complaint alleged that “rampant lawlessness [arose] out of [the] Defendant States’ unconstitutional acts,” and described in detail the acts that occurred. It also alleged the “unconstitutional modification of statutory protections designed to ensure ballot integrity, [which] created a massive opportunity for fraud” in the defendant states. Texas also claimed, inter alia, that the defendant states violated the “Electors Clause” of the United States Constitution¹⁶ when the

¹⁶ Article II, section 1, clause 2 of the United States Constitution provides, “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.”

defendant states implemented non-legislative changes that nullified or ignored state election statutes governing the appointment of presidential electors in those states. More specifically, according to Texas, the defendant states used the pandemic as a “justification . . . [to usurp] their legislatures’ authority and unconstitutionally [revise] their state’s election statutes,” and changes were made by “executive fiat or friendly lawsuits thereby weakening ballot integrity.”¹⁷ Hence, the defendant states were inundated “with millions of ballots to be sent through the mails, or placed in drop boxes, with little or no chain of custody and, at the same time, [the defendant states] weakened the strongest security measures protecting the integrity of the vote—signature verification and witness requirements.” In sum, Texas asserted that significant grounds existed to question whether the presidential election outcomes in the defendant states were legitimate. Thus, Texas sought to extend the December 14, 2020 deadline for certification of presidential electors so investigations could take place in those states.

The U.S. Supreme Court quickly dismissed the Texas complaint for lack of standing on December 11,

¹⁷ As one example of the problems that existed in the Texas complaint, Texas alleged that Pennsylvania officials adopted “differential standards” in heavily Democratic counties to maximize a Democratic party advantage in order to benefit former President Biden. Texas cited to a November 18, 2020 case filed by the Campaign in the United States District Court for the Middle District of Pennsylvania to support this particular allegation. However, Texas failed to disclose that the action was dismissed without leave to amend days after it was filed. The United States Court of Appeals for the Third Circuit upheld the dismissal in short order, which was also not disclosed.

2020. In the few days between the filing and dismissal of the motion for leave, Eastman filed a motion to intervene to file a bill of complaint on behalf of President Trump (intervention motion).¹⁸ Eastman’s December 9 filing expressly adopted the Texas complaint’s allegations as its own.¹⁹ The intervention motion became moot with the U.S. Supreme Court’s dismissal of the motion for leave.

2. Eastman Files Action in Federal District Court

On December 31, 2020, Eastman and cocounsel Kurt Hilbert filed a verified complaint by President Trump in the United States District Court for the Northern District of Georgia (*Trump v. Kemp*, No. 1:20-CV-5310 (N.D. Ga.) (*Kemp* action)). The *Kemp* action expressly incorporated a previously filed action in Fulton County, Georgia, entitled *Trump v. Raffensperger* (*Raffensperger* action),²⁰ and its supporting documents, including the expert declarations of Bryan Geels, Matthew Braynard, and Mark Davis. The *Kemp* action included allegations

¹⁸ The pleading was entitled, in relevant part, “Motion of Donald J. Trump, President of the United States, to Intervene in his Personal Capacity as Candidate for Re-Election, Proposed Bill of Complaint in Intervention.”

¹⁹ Specifically, paragraph 8 of Eastman’s bill of complaint in the intervention motion states, “Plaintiff in Intervention . . . incorporates by [reference] the allegations of paragraphs 1-134 set out in the Bill of Complaint filed by the State of Texas.”

²⁰ The *Raffensperger* action, No. 2020CV343255, filed on December 4, 2020, was premised, in part, on an assertion that substantial doubt existed regarding the Georgia election results due to systemic misconduct, fraud, and other election irregularities. Eastman provided “a little bit” of legal advice on the *Raffensperger* action.

that Georgia election officials permitted numerous categories of unqualified individuals to vote, and that ballots “hidden” in “suitcases” at the State Farm Arena tabulation center in Atlanta, Georgia were counted outside the presence of observers in violation of state law. Eastman saw his role in the litigation as limited to constitutional issues. Eastman testified that he believed the responsibility for factual accuracy fell to his cocounsel, and Eastman deferred to Hilbert’s factual assessments.

Weeks before Eastman filed the *Kemp* action, the *Raffensperger* action expert declarations²¹ had been challenged by Georgia’s experts, including a submission by the Elections Director for the Georgia Secretary of State’s Office and a Massachusetts Institute of Technology professor with elections and research methodology expertise. Eastman believes he read all the defense expert declarations submitted in the *Raffensperger* action prior to filing the *Kemp* action, but Eastman saw these as falling within a

²¹ In general terms, Geels’s December 1, 2020 declaration asserted that over 66,000 voters were underage when they registered to vote. Geels was a certified public accountant, and his declaration did not disclose any experience in political science, statistics, or election administration. In Braynard’s declaration, he asserted that almost 5,000 absentee voters were no longer Georgia residents, another 15,700 voters “may have” left their residences as evidenced by a national change of address registry, and in excess of 1,000 absentee voters used a post office box as a registration address. Braynard held a bachelor’s degree in business administration and a Master of Fine Arts in writing. He had experience as a political consultant and with nonprofit voter registration organizations. In 2016, Braynard was a director of the Campaign’s data division. Davis purported to do an analysis of Georgia voter records and the National Change of Address Registry.

“typical” scenario of disputing experts—part and parcel of the adversarial process. Eastman further rationalized that enough “caveats” existed in the *Kemp* pleading and declarations to “make the statements all true.” In addition, Eastman testified that he had some questions about the Davis declaration and its omission of when Davis obtained database information, but Eastman went ahead and submitted it in support of the *Kemp* action thinking it could be cured or even withdrawn later.

Prior to Eastman filing the *Kemp* action, investigative personnel within the Georgia Secretary of State’s Office concluded their investigation regarding the allegation of ballots hidden in suitcases at the State Farm Arena. Following witness interviews and review of videotape footage, investigators concluded no suitcases of ballots had been hidden and ballots were not improperly counted. The investigation’s results were detailed in a declaration filed December 6, 2020, in a different federal case challenging the election. Eastman admitted to having seen the declaration but could not recall when. The State Farm Arena video covered a 24-hour period; however, Eastman watched only a 15- to 20-minute excerpt at the time he filed the *Kemp* action. Prior to his filing the *Kemp* action, Eastman knew Georgia officials had issued statements, and he read information provided by the Georgia Secretary of State’s Office regarding the State Farm Arena video.

Days before the *Kemp* action was filed, Eric Herschmann, an attorney in the Office of White House Counsel, told Eastman there were inaccuracies in the complaint filed in the *Raffensperger* action, including

“evidence proffered by the experts.”²² Subsequently, Eastman and Hilbert agreed to insert a footnote that, in essence, rendered President Trump’s required verification meaningless as it was a broad disclaimer of President Trump having any personal knowledge of the facts and figures contained in the complaint. The footnote concluded with “Plaintiff has not sworn to any facts under oath for which he does not have personal knowledge or belief,” notwithstanding his disclaimer that he had no personal knowledge. The *Kemp* action was voluntarily dismissed on January 7, 2021, following the settlement of the *Raffensperger* action.

3. Eastman’s Two Court Filings Violate Section 6068, subdivision (d) (Counts Two and Four)

The NDC charged violations of section 6068, subdivision (d), based on Eastman’s actions in his

²² Eastman testified at trial that Herschmann “raised a concern . . . that some of the numbers *may* have been inaccurate.” (Italics added.) In fact, Eastman was very clear in an exchange with the hearing judge that Herschmann told him that inaccuracies “may” have existed in the *Raffensperger* action allegations. However, a review of the email that Eastman wrote to his cocounsel Hilbert and another person on December 31, 2020, just before the *Kemp* action was filed, does not state “may” but makes clear that Eastman believed that inaccuracies existed, including “evidence proffered by the experts,” to the point that Eastman was concerned about possible criminal liability, and he and Hilbert drafted a verification footnote that President Trump signed to address those concerns, discussed *post*. Contrary to Eastman’s assertion that he did not share Herschmann’s view that the expert declarations contained inaccuracies, we conclude that Eastman’s trial testimony on this point is not credible given Eastman’s December email and his action in drafting President Trump’s verification footnote.

intervention motion (count two) and the *Kemp* action (count four). Section 6068, subdivision (d), imposes a duty upon attorneys to not seek to mislead a judge “by an artifice or false statement of fact or law.” (See *Bach v. State Bar* (1987) 43 Cal.3d 848, 855-856 [representations made in motion that attorney knew were false violated §§ 6068, subd. (d), 6106].) Section 6068, subdivision (d), can be violated by either making knowingly false statements or material omissions, and OCTC need not show that an attorney’s attempt at deception was successful in order to establish a willful violation. (*Davis v. State Bar* (1983) 33 Cal.3d 231, 239-240, citing *Pickering v. State Bar* (1944) 24 Cal.2d 141, 144-145 [presenting facts to a court “known to be false presumes an intent to secure a determination based upon” those facts and “is a clear violation of [§ 6068]”]; *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, 162-163 [attorney’s contention that failure to disclose material information is irrelevant when court should have known undisclosed information is “untenable” and supports violation of § 6068, subd. (d)].) Whether Eastman violated section 6068, subdivision (d), is dependent upon clear and convincing evidence of his intent to deceive. (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174-175.) A defense to a section 6068, subdivision (d), charge is an attorney’s good faith in making the charged false statement. (*Vickers v. State Bar* (1948) 32 Cal.2d 247, 253-254; *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 280.)

In our review of counts two and four, front of mind is the longstanding principle that “Honesty in dealing with the courts is of paramount importance, and misleading a judge is, regardless of motives, a serious

offense.” (*Paine v. State Bar* (1939) 14 Cal.2d 150, 154.) “Counsel should not forget that they are officers of the court, and while it is their duty to protect and defend the interests of their clients, the obligation is equally imperative to aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice.” (*Furlong v. White* (1921) 51 Cal.App.265, 271.) Eastman conceded at trial he had an obligation to verify the substance contained in his filings. Yet, his testimony attempted to minimize the scope of his duty when pressured by time constraints or when he deemed something in his pleadings to be “preliminary” or “setting the stage.”

a. Culpability Established in Count Two

In count two of the NDC, Eastman was charged with violating section 6068, subdivision (d), when his intervention motion filed with the U.S. Supreme Court adopted certain false and misleading statements contained in the Texas complaint, knowing the charged assertions were false. The hearing judge found no culpability for two of the four charged statements.²³ Hence, we turn to the two remaining allegations set forth in count two (paragraphs 36(a) and (b)) and find sufficient evidence of culpability in the record. Regarding the NDC’s paragraph 36(a), Eastman was charged with knowing the assertions in the Texas complaint, that there was “‘rampant lawlessness arising out of Defendant States’ unconstitutional acts,’” and that “[t]aken

²³ The hearing judge found Eastman was not culpable for the allegations set forth in count two, paragraphs 36(c) and (d). OCTC did not appeal and we affirm.

together, these flaws affect[ed] an outcome-determinative numbers of popular votes in a group of States that cast outcome-determinative numbers of electoral votes,” were false and misleading. OCTC alleged Eastman was aware “[t]here was no evidence upon which a reasonable attorney would rely of [sic] fraud in any state election in sufficient numbers that could have affected the outcome of the election.” Regarding paragraph 36(b), OCTC charged Eastman knew the Texas complaint’s assertions that statewide and local election officials in two Pennsylvania counties “violated Pennsylvania’s election code and adopted . . . differential standards favoring [Democratic] voters in [those two counties] with the intent to favor former Vice[-]President Biden,” were also false and misleading. Here too, OCTC alleged that Eastman knew no evidence existed in those counties upon which a reasonable attorney would rely to support such a claim.

As detailed by the hearing judge, Eastman knew the claims of “rampant lawlessness” in at least Georgia, Michigan, and Pennsylvania were false. Moreover, Eastman’s intervention motion repeatedly concealed material information. We highlight here a few examples of the evidence that most clearly support a culpability finding related to paragraph 36(a) of count two.

As a starting point, Eastman maintained a spreadsheet of election-related litigation, which he testified was utilized to track litigation across the country. Eastman ignored various statements regarding the election, such as former United States Attorney General William Barr’s December 1, 2020 conclusion that insufficient evidence existed of widespread outcome-determinative fraud. Eastman

also believed that statements from the Cybersecurity and Infrastructure Security Agency (CISA) about the integrity of the 2020 election were “laughable.”²⁴

Next, Eastman’s knowledge that no “rampant lawlessness” existed, which changed the outcome of the 2020 election, is illustrated by an email exchange about Georgia with Cleta Mitchell.²⁵ In their late November 2020 exchange, Eastman stated, in order to “trigger” post- election legislative action in Georgia, “a failure to conduct the election . . . in accord with the statutory requirements” would have to be shown. To make the “extraordinary” request palatable to the legislature, Eastman opined that “compelling evidence of fraud” would be needed. Eastman implicitly acknowledged that such evidence did not exist, because he concluded, “[I]t would be nice to have actually hard documented evidence of the fraud in the areas to which the analyses pointed.”²⁶ Thus, Eastman knew his intervention motion’s adoption from the Texas complaint about “rampant lawlessness” in Georgia was without evidentiary support.

²⁴ CISA is part of the United States Department of Homeland Security and is one of the entities tasked with protecting election infrastructure. Jonathan Marks, the Deputy Secretary for the Department of State for the Commonwealth of Pennsylvania testified that he considered CISA to be “credible” and one of the state’s “federal partners’ in ensuring that elections are secure and safe.”

²⁵ According to Eastman, Mitchell was an attorney tasked by President Trump in September 2020 to recruit people to handle potential election challenges and was also one of the people tasked to coordinate the Georgia litigation.

²⁶ Quoted material from the record may include spelling and grammatical errors from the original source.

Further, Eastman also knew that Georgia’s statutory election provisions had been followed lawfully. Before his email exchange with Mitchell, *Wood v. Raffensperger, et al.*, No. 1:20-CV-04651 (N.D. GA) (*Wood* case) was filed, which was a motion for a temporary restraining order (TRO) that included a challenge to a settlement agreement, into which the Georgia Secretary of State had entered months earlier in order to resolve litigation and set forth procedures to review absentee ballot signatures. Those procedures had been used in at least three elections prior to the November 2020 election with no challenges. The TRO had been denied by a federal district court judge²⁷ and the denial was affirmed on December 5, 2020, by the United States Court of Appeals for the Eleventh Circuit. In his December 9 intervention motion, Eastman challenged the same settlement agreement at issue in the *Wood* case and alleged the Georgia Secretary of State had “destructively revis[ed] signature and identity verification procedures,” and that the settlement agreement was an impermissible change to election law designed to benefit former President Biden. However, Eastman failed to disclose the dismissal of the *Wood* case and its reasoning, along with the denial of the appeal, to the U.S. Supreme Court in his intervention motion. Eastman’s assertion was baseless. We find his failure to disclose pertinent information presumes an intent to mislead the court.

²⁷ The federal district court judge denied Wood’s injunction request on multiple grounds. Relevant to our count two discussion, the judge found that the settlement agreement met constitutional requirements and that his evidentiary claims related to the settlement agreement were “not supported by evidence at this stage.”

(*Vickers v. State Bar*, *supra*, 32 Cal.2d at pp. 252-253, citing *Pickering v. State Bar*, *supra*, 24 Cal.2d at pp. 144-145.)

Turning to Michigan, Eastman stated at trial he was “vaguely aware” of election illegality claims in Michigan and two other states at the time, but “didn’t have the particulars.” Months before Eastman’s intervention motion was filed, a lower Michigan state court rejected claims that the Michigan Secretary of State did not have the authority to send absentee ballot applications to all registered voters. Eastman knew the ruling was affirmed by an appellate court on September 16, 2020.²⁸ Yet, his intervention motion claimed the Secretary of State “illegally flooded the state with absentee ballot applications mailed to every registered voter” in spite of strict state law limits. Weeks after the dismissal of the Texas complaint by the U.S. Supreme Court, Eastman was still looking for evidence of election law violations in Michigan. On January 2, 2021, Eastman emailed an attorney for information about election law violations to use at an upcoming presentation to legislators. Eastman asked if anything “went on in Michigan that fits the bill?” Given his evasive testimony, along with his January 2 email, we conclude that Eastman never possessed at any time reliable information about Michigan election law violations, and his adoption of the Texas complaint’s allegations regarding Michigan was also baseless.

Regarding events in the two Pennsylvania counties as alleged in paragraph 36(b), the Texas complaint referred to a second amended federal court

²⁸ Eastman also knew the Michigan Supreme Court ultimately denied review.

complaint filed in *Donald J. Trump for President, Inc., et al. v. Kathy Boockvar, et al.*, No. 4:20-CV-02078 (M.D. Pa., Nov. 18, 2020) (*Boockvar* case).²⁹ However, Eastman’s intervention motion failed to mention that the *Boockvar* case was dismissed on November 21, 2020, and the United States Court of Appeals for the Third Circuit affirmed the dismissal the next week.³⁰ Eastman’s omission is consistent with his earlier failure to disclose in the *Wood* case as discussed, *ante*. Eastman knew about the *Boockvar* case as it was listed on the first page of his election-related litigation spreadsheet. Again, we find his failure to disclose pertinent information presumes an intent to mislead the court. (*Vickers v. State Bar, supra*, 32 Cal.2d at pp. 252-253, citing *Pickering v. State Bar, supra*, 24 Cal.2d at pp. 144-145.)

Eastman also adopted the Texas complaint’s allegations that Pennsylvania “unilaterally abrogated” several signature verification statutes without its legislature’s ratification of these changes. This allegation was based on a settlement in another legal case,³¹ resulting in Boockvar’s September 11,

²⁹ At all relevant times, Kathy Boockvar was the Secretary of State of the Commonwealth of Pennsylvania.

³⁰ *Donald J. Trump for President, Inc. v. Boockvar* (M.D. Pa. 2020) 502 F.Supp.3d 899, *affd. sub nom. Donald J. Trump for President, Inc. v. Secretary Commonwealth of Pennsylvania, et al.* (3d Cir. 2020) 830 Fed.Appx. 377. This case involved the Campaign’s challenge to, *inter alia*, the counting of certain absentee ballots and claims that poll watchers were blocked. The Campaign only appealed the district court’s dismissal of the second amended complaint without leave to amend.

³¹ *League of Women Voters of Pennsylvania v. Boockvar*, No. 2:20-cv-03850-PBT, (E.D. Pa. Aug. 7, 2020).

2020 revised guidance regarding the handling of certain absentee ballots. Both Eastman’s intervention motion and the Texas complaint failed to advise the U.S. Supreme Court that the Pennsylvania Supreme Court had ruled in October 2020 that the challenged guidance was consistent with that state’s election laws.³² Eastman knew that the dismissal occurred as he had worked on the unsuccessful U.S. Supreme Court certiorari petition and the case was referenced on the first page of his litigation spreadsheet.³³ Eastman’s failure to include adverse rulings demonstrates a violation of section 6068, subdivision (d). (*In the Matter of Chesnut, supra*, 4 Cal. State Bar Ct. Rptr. at p. 174 [concealment of material fact is just as effective as false statement in misleading judge and violates § 6068, subd. (d)].)

Eastman argues that the dismissal of the *Boockvar* case for lack of standing and jurisdictional issues means no fact-based adverse ruling exists that can support a disciplinary charge. That argument misses the mark. A jurisdictional ruling does not abrogate an attorney’s duty to refrain from misleading a court. To find to the contrary would undermine the purpose of

³² *In re November 3, 2020 General Election* (2020) 662 Pa. 718, cert. den. *sub nom. Donald J. Trump for President, Inc. v. Degraffenreid* (2021) __ U.S. __ [141 S.Ct. 1451, 209 L.Ed.2d 172].

³³ Eastman offered his spreadsheet at trial as an exhibit and testified about the steps he took to track litigation across the country when he was working for the Campaign. On review, he asserts that because OCTC did not establish when he compiled the spreadsheet, the hearing judge was wrong to conclude that he knew the federal courts had rejected claims of irregularities when he filed his intervention motion. We do not find Eastman’s argument persuasive here, given the record and Eastman’s testimony that he tracked cases before creating the spreadsheet.

section 6068, subdivision (d).³⁴ Additionally, the Michigan and Pennsylvania supreme courts are the final authority on state law in their respective states. The U.S. Supreme Court generally does not review state law determinations unless federal issues are implicated. (*Kansas v. Marsh* (2006) 548 U.S. 163; *Huddleston v. Dwyer* (1944) 322 U.S. 232.) While the intervention motion raised federal constitutional issues, it challenged the same provisions that the Michigan and Pennsylvania supreme courts had already determined were not misapplied.

Eastman argues the NDC's failure to specifically allege that he omitted the *Boockvar* case's Pennsylvania Supreme Court decision precludes it from being used as a basis for culpability. This contention is without merit.³⁵ The NDC must provide

³⁴ Similarly, we reject Eastman's related argument that, because the U.S. Supreme Court made no ruling on the merits and it did not find the allegations were untrue, no culpability finding can be established here. Eastman did not have to be successful in deceiving the U.S. Supreme Court to be culpable for a willful violation of section 6068, subdivision (d). (*Davis v. State Bar*, *supra*, 33 Cal.3d at pp. 239-240.) The operative fact is what Eastman placed before the court, not the result.

³⁵ Eastman's related point that he included an internet address in his intervention motion, which identified "all of the election cases that had been brought addressing various challenges to the 2020 election," does not absolve him of responsibility to inform a court about the relevant subsequent history of any case that he cites to support his or the Texas complaint's allegations. We also reject Eastman's argument that he is not culpable because his failure to correct the Texas complaint's allegations only "left the impression" that no court had resolved" the *Boockvar* case and such an impression is analogous to an inference that must be resolved in his favor. Such an argument is contrary to well-established precedents cited above.

an attorney fair notice of the nature of the charges. (*In re Ruffalo* (1968) 390 U.S. 544, 551; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 929; see also § 6085 [attorneys “shall be given fair, adequate and reasonable notice” of disciplinary charges against them].) The salient issue is whether the attorney has a reasonable opportunity to prepare a defense. (Compare *Sullins v. State Bar* (1975) 15 Cal.3d 609, 618 [no “miscarriage of justice” where respondent had “sufficient notice to eliminate prejudicial surprise in the preparation of his defense”] with *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387, 397 [failure to charge violation of rule against conflicts of interest precluded argument that fee agreement provision created conflict of interest and thus violated rule].) Count two specifically identified that a violation of section 6068, subdivision (d), was charged for adopting certain Texas complaint allegations in Eastman’s intervention motion. The NDC, at paragraph 38(b), further alleged Eastman knew the Texas complaint’s claim, that Pennsylvania election officials violated their state’s election codes in order to leverage a historical Democratic party advantage with the intent to benefit former President Biden, was false and misleading as there “was no evidence upon which a reasonable attorney would rely” to support the claim.

Eastman had sufficient notice of the charge and his failure to disclose the Pennsylvania Supreme Court’s determination, that the challenged guidance was consistent with Pennsylvania state law, is simply evidence used to prove the allegation. Overall, we find the record establishes culpability for the allegation made in paragraph 38(b) of count two.

b. Culpability Established in Count Four

In count four, the NDC charged that Eastman sought to mislead a court by willfully making multiple knowingly false allegations in the *Kemp* action filed in federal district court in violation of section 6068, subdivision (d). These allegations included the incorporation of the *Raffensperger* action's accusations that Georgia engaged in fraudulent or unlawful actions involving several categories of unqualified persons who were allowed to vote and accepting votes cast by deceased voters. In addition, count four also quoted Eastman's allegation that Fulton County election officials "remove[d] suitcases of ballots from under a table where they had been hidden, and processed those ballots without open viewing in violation of [state law]." The hearing judge found the allegations to be false and made with actual knowledge that Eastman intended to deceive the federal district court. Upon our review of the record, sufficient evidence exists of Eastman's attempt to mislead the federal district court to support culpability for count four.

First, we find an attempt to mislead regarding the false allegations that Georgia engaged in fraudulent or unlawful actions involving several categories of unqualified persons who were allowed to vote and accepted votes cast by deceased voters. The *Kemp* action incorporated the *Raffensperger* complaint and its supporting expert declarations,³⁶ and the record

³⁶ We reject Eastman's argument that the hearing judge erred in her assessment of the expert declarations. Eastman argues at length that it was improper for the judge to perform a "gatekeeping" analysis pursuant to *Daubert v. Merrell Dow*

shows Eastman knew there were serious factual errors by the experts, and this issue was made known to him before the *Kemp* action was filed. Once Herschmann made Eastman aware of inaccuracies, the record shows that Eastman did nothing to rectify the problem, except to create a footnote that would render Georgia's complaint verification requirement useless in an attempt to avoid potential criminal responsibility. The December 31, 2020 email and the resulting footnote show that Eastman had actual knowledge that the *Kemp* action contained false information,³⁷ or, at the very least, he was willfully blind to the inaccuracies after Herschmann raised them.³⁸

Pharmaceuticals, Inc. (1993) 509 U.S. 579 as to those experts. The judge, as the trier of fact, was required to examine the evidence and decide whether the charged statements in the *Kemp* action violated section 6068, subdivision (d). Because the *Kemp* action incorporated the complaint and supporting documents filed in the *Raffensperger* action, the judge was required to examine it all. Hence, the judge had to resolve whether the allegations in count four were based on information upon which a reasonable attorney could rely. This is a factual finding and not *Daubert* "gatekeeping." We also reject Eastman's arguments that the judge failed to give "serious consideration" to Favorito's opinions, whose testimony was allowed only as a percipient witness.

³⁷ Given our finding, we reject Eastman's argument that "the allegations of outcome-determinative illegality/irregularity woven into the fabric of the complaint were, at the very least, tenable."

³⁸ Willful blindness is the legal equivalent to actual knowledge. (See *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427, 432-433 [willfully ignoring evidence of ineligibility in committing unauthorized practice of law supported culpability finding of intentional moral turpitude].) The doctrine of willful blindness requires two elements: (1) the

Next, we consider the *Kemp* action's allegations regarding the hidden suitcases of ballots that were improperly counted. Like the hearing judge, we also find this allegation to be false, and we note that, at trial, Eastman agreed with OCTC that "the ballots under the table" at the State Farm Arena "were not a surreptitiously hidden suitcase of ballots, but were actually regular absentee ballots in a regular processing container." Prior to the filing of the *Kemp* action, Eastman had seen a 15- to 20-minute portion of the full video at the State Farm Arena, and he was aware of the Georgia Secretary of State's statements regarding the video that did not support the allegation. Based on the video excerpt he did see and knowing the statements from the Georgia Secretary of State, we can only conclude that, at the very least, Eastman was willfully blind to the falsity in his assertion in the *Kemp* action that hidden suitcases of ballots were improperly counted at the State Farm Arena. Eastman attempts to dissuade us from finding culpability by arguing that the "gravamen" of the allegation was the "illegal counting of the ballots outside the presence of poll watchers." This point is a red herring. While the *Kemp* action did allege that ballots were counted without poll watchers present,

defendant must subjectively believe that there is a high probability that a fact exists; and (2) the defendant must take deliberate actions to avoid learning of that fact. (*Global-Tech Appliances, Inc. v. SEB S.A.* (2011) 563 U.S. 754 769.) Here, both elements are satisfied as noted, *ante*. Although Eastman argues we have not previously applied willful blindness to a section 6068, subdivision (d), charge, we find our prior application of the concept in establishing moral turpitude for intentional acts sufficiently analogous under the facts presented here.

the fact remains that the allegation was also comprised of false information about ballots.

Eastman raises multiple general defenses to count four, which we have reviewed, but none persuade us to reverse the hearing judge's culpability finding. We find Eastman's challenges are not supported by the record, and we focus our discussion on his two primary arguments. First, Eastman presents a "division of labor" defense. He claims his role was to address the constitutional issues and that he reasonably relied on his cocounsel Hilbert, who was responsible for the factual allegations. We find this defense unpersuasive under the facts of this case. (Cf. *Cole v. Patricia A. Meyer & Associates, APC* (2012) 206 Cal.App.4th 1095, 1100, 1117 [division of labor between counsel is no defense to malicious prosecution and defamation claims].) Next, Eastman asserts a "press of business" excuse—that the time constraints and numerous other legal tasks rendered him unable to verify the information in the *Kemp* action. Throughout the trial, Eastman consistently explained away his lack of due diligence because he was busy and at times "drinking from a fire hose," which is not an appropriate defense to a charge of misleading a court by knowingly presenting a false statement or concealing material information. (Cf. *Blair v. State Bar* (1989) 49 Cal.3d 762, 780 [press of business not a mitigating factor]; *Carter v. State Bar* (1988) 44 Cal.3d 1091, 1101.) In fact, Eastman's admissions made in support of his "press of business" and "division of labor" defenses actually support our findings of willful blindness.

We find the totality of the record contains clear and convincing evidence of Eastman's attempt to deceive the federal district court. The record supports culpability for count four.

**C. Moral Turpitude Established for Seven of
Eight Counts Due to Eastman’s Multiple
False and Misleading Assertions Related
to the 2020 Presidential Election (§ 6106)**

Counts three and five through eleven allege Eastman made various false and misleading assertions amounting to moral turpitude under section 6106. Like the hearing judge, we find Eastman culpable for all the alleged moral turpitude counts, except count eleven.

1. Applicable Law

Misconduct reflecting dishonesty, particularly when committed in the practice of law, is conduct involving moral turpitude. (*Read v. State Bar* (1991) 53 Cal.3d 394, 412.) A fundamental rule of attorney ethics is common honesty. (*Baker v. State Bar* (1989) 49 Cal.3d 804, 815.) Moral turpitude “includes creating a false impression by concealment as well as affirmative misrepresentations. [Citations.]” (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910.) Moral turpitude also includes knowingly making dishonest statements to clients. (*Fitzpatrick v. State Bar* (1970) 20 Cal.3d 73, 87-88.) Section 6106 is violated by an attorney’s material omissions or misrepresentations of material facts. (Cf. *Grove v. State Bar* (1965) 63 Cal.2d 312, 315 [§ 6068, subd. (d), violation involving concealment as well as affirmative misrepresentations with “no distinction . . . drawn among concealment, half-truth, and false statement of fact”].) A moral turpitude violation can be either intentional or grossly negligent. To discern between intentional or grossly negligent moral turpitude, we may examine intent, which can be established by direct or circumstantial evidence.

(*Zitny v. State Bar* (1966) 64 Cal.2d 787, 792.) Willful blindness can also provide evidence of specific intent. (*In the Matter of Carver*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 432-433.) We apply these principles to the counts detailed below.

2. Eastman’s December 23, 2020 and January 3, 2021 Memoranda (Counts Three and Six)

a. Facts

Eastman had a longstanding belief that Congress counts the electoral votes and is the sole entity to resolve any disputes, as illustrated by his testimony before the Florida Legislature in late November 2000.³⁹ This belief lasted at least until mid-October 2020, as reflected in an October 16, 2020 email exchange with Bruce Colbert, who had emailed Eastman a draft letter for both of their signatures and intended for President Trump. Colbert’s draft letter stated the United States Senate President decided “authoritatively what ‘certificates’ from the states to ‘open’ and what electoral votes are ‘counted,’ under the [Twelfth] Amendment and the Electoral Count Act of 1887, 3 U.S.C. [section] 15.”⁴⁰ On October 16, 2020, Eastman wrote the following in-line comment on the draft:

“I don’t agree with this. The [Twelfth] Amendment only says that the President of the Senate opens the ballots in the joint session and

³⁹ Eastman was introduced at that Florida legislative hearing as an expert in the Electoral College.

⁴⁰ The Twelfth Amendment, ratified in 1804, provides, in pertinent part: “The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted”

then, in the passive voice, that the votes shall then be counted. 3 [U.S.C. section] 12 says merely that he is the presiding officer, and then it spells out specific procedures, presumptions, and default rules for which slates will be counted. Nowhere does it suggest that the President of the Senate gets to make the determination on his own. [Section] 15 doesn't, either."

Moreover, Eastman also opined in his contemporaneous email reply that the draft letter relied too heavily on "getting injunctions from the Supreme Court, with requests that are not supported by statutory or constitutional text or on matters for which the Constitution gives the last word elsewhere."⁴¹

Eastman's position markedly changed following President Trump's election loss and his formal retention by President Trump and the Campaign. Eastman began to press the theory that the ECA was unconstitutional and former Vice-President Pence had the unilateral authority to resolve disputed electoral votes. Eastman testified he started his "extensive research" into the Twelfth Amendment and the ECA in October 2020. According to Eastman, his research into the ECA and vice-presidential authority included review of historical congressional records, constitutional convention materials, several law review articles, and some non-scholarly articles. However, at trial, Eastman could not recall the election years he reviewed during this October through December 2020 time frame. Eastman

⁴¹ Eastman testified at trial that, until mid-October 2020, he assumed that the ECA was constitutional.

conceded he may have simply relied on references made in law review articles about the historical records.⁴² Notably, Eastman kept no contemporaneous records of his research and he did not take research notes. Eastman was unable to recall the name of one of the two former students that assisted him in the research, and he could not provide any estimate of the amount of time he spent on his research. Eastman had no recollection of cataloging the information he reviewed, unlike his approach to tracking election litigation and election-related issues. Eastman testified, “I just don’t recall the timetable of when I looked at all that information.”⁴³

⁴² Eastman testified he relied upon multiple articles published prior to December 23, 2020: Vasan Kesavan, *Is the Electoral Count Act Unconstitutional* (2002) 80 N.C. L.Rev. 1653; Bruce Ackerman and David Fontana (2004) *Thomas Jefferson Counts Himself Into the Presidency* 90 Va. L.Rev. 551 (Ackerman article); Nathan Colvin and Edward B. Foley (2010) *The Twelfth Amendment: A Constitutional Ticking Time Bomb* 64 U. Miami L.Rev. 475; Edward B. Foley, *Preparing for A Disputed Presidential Election: An Exercise in Election Risk Assessment and Management* (2019) 51 Loyola Chi. L.J. 309; and a October 19, 2020 non-academic article written by University of California, Berkeley Professor John Yoo (who also testified as an expert on behalf of Eastman) and University of St. Thomas Professor Robert Delahunty, which was published in the online magazine “The American Mind,” entitled *What Happens If No One Wins* (Yoo/Delahunty article).

⁴³ In an attempt to explain the absence of any notes, Eastman asserts in his responsive brief that his October and November research was mere “scholarly curiosity” in the months prior to his December 2020 retention by President Trump and the Campaign. This is a direct contradiction of his trial testimony that he undertook—in his own words—“extensive research” starting in October 2020. It also conflicts with his argument that the October 2020 emails between Colbert and him and the Yoo/Delahunty article caused him to shift his position regarding

At trial, Eastman used his 2023 NDC answer, responses to OCTC investigative inquiries, and his trial testimony in an attempt to fill the void left by the absence of any contemporaneous notes about the materials he claims he reviewed in October through December 2020. This included Eastman’s review of the pre-Twelfth Amendment elections and their related counts. However, according to Yoo’s testimony, neither the 1796 nor the 1800 election and their related electoral counts provided historical precedent. Eastman also claimed he reviewed post-Twelfth Amendment and pre-ECA election counts of 1817, 1821, 1837, and 1857. Neither Yoo nor OCTC’s expert Matthew Seligman⁴⁴ found those first three elections probative as to whether a vice-president has

vice-presidential authority and the ECA. The hearing judge did not find Eastman’s claim credible that his opinion about the ECA or the Twelfth Amendment changed because of his email exchanges with Colbert and his review of the Yoo/Delahunt article. The judge determined Eastman’s new position seemed to correlate more closely with the time frame of his representation of President Trump and the Campaign. We give deference to the judge and affirm her credibility finding given Eastman’s failure to provide any documentation of his research into this issue and his changed argument that his research was because of curiosity. (*In the Matter of Bach, supra*, 1 Cal. State Bar Ct. Rptr. at p. 638 [deference given to credibility findings absent a specific showing that such findings were erroneous].)

⁴⁴ Seligman holds a doctorate in philosophy from New York University and a law degree from Stanford University. He clerked for a federal appeals court judge and has taught at Harvard University and Cardozo School of Law, including a class entitled “War Gaming 2020” that focused on disputed elections. At the time of the trial in this matter, Seligman was a Fellow with the Constitutional Law Center at Stanford. Since 2016, Seligman has done extensive research into the history of United States elections.

unilateral authority in the electoral count process, and the 1857 count dispute was resolved by the Congress. Eastman also examined the 1960 election where Hawaii issued three slates of electors, two official and one unofficial. The first official slate was for then Vice-President Richard M. Nixon and signed by the outgoing governor. Following a court-ordered recount resulting in then Senator John F. Kennedy's victory, a second official slate was signed by the new governor and sent to the United States Congress in advance of the January 6, 1961 joint session. Nixon, with no objections raised, sought and received unanimous consent to accept the second official slate. At trial, Yoo noted no legitimate, alternate slate of electors existed to proffer for the January 6, 2021 electoral count. Yoo believed former Vice-President Pence was on "unassailable grounds" in his determination he had no right to overturn the election. Finally, although Eastman mentioned he reviewed the 1787 constitutional convention records in a submission to OCTC, Eastman claimed for the first time at trial that those convention records contained the most important, supportive evidence of his positions and that he reviewed the materials in late 2020.

Eastman testified that he created two documents based on his research, which he prepared in furtherance of his representation of President Trump and the Campaign. Eastman claims he did not share either document with President Trump. The two documents are the only written record of Eastman's research. Neither document names a recipient, client, or author, but each had "privileged and confidential" at the top and were in an outline format. Both

documents were undated but had the same title: “January 6 scenario.”

The first document is two pages long. Eastman sent it to attorneys Boris Epshteyn and Kenneth Chesebro on December 23, 2020 (December 23 memo). Epshteyn worked with the Campaign. Eastman did not know whether Chesebro had a formal attorney-client relationship with President Trump or the Campaign, but he knew Chesebro volunteered on a President Trump-related Wisconsin legal team. Chesebro made initial edits to the December 23 memo.⁴⁵ Eastman also gave a copy of the December 23 memo to a person who was not part of the Campaign but asked Eastman for advice.⁴⁶

In its first line, Eastman’s December 23 memo stated that seven states “have transmitted dual slates of electors to the President of the Senate.” However, the governors of those seven states only submitted official elector slates for former President Biden as established by their respective “Certificates of Ascertainment.” Following that opening statement, Eastman quoted a provision of the ECA and opined, “This is the piece that we believe is unconstitutional.” He also stated, with a quick reference to John Adams’s

⁴⁵ Chesebro is also a licensed California attorney and has been suspended since February 2024 due to his Georgia felony conviction for violating Official Code of Georgia Annotated sections 16-4-8 and 16-10-20.1(b)(1) (conspiracy to commit filing false documents).

⁴⁶ Eastman also recalled that he also shared his thinking with several unnamed members of Congress around the same time. The December 23 memo eventually became public in October 2021, when it was in a book published by Bob Woodward and thereafter detailed in media outlets such as CNN and *The Washington Post*.

and Thomas Jefferson’s actions in their respective elections of 1796 and 1800, there was “very solid legal authority, and historical precedent, for the view that the [Vice-President] does the counting, including the resolution of disputed electoral votes . . . and all the Members of Congress can do is watch.” Then, he set forth six numbered paragraphs as to how former Vice-President Pence should proceed. Eastman concluded that the United States Constitution made the Vice-President the “ultimate arbiter,” and stated, “We should take all of our actions with that in mind.” Besides the ECA, the only source cited in Eastman’s December 23 memo was a link to a law review article by Laurence Tribe, a retired constitutional law professor from Harvard University.

Eastman’s January 3, 2021 memorandum (January 3 memo) is six pages long, single-spaced, and, according to Eastman, an evolution of the December 23 memo. Eastman shared the January 3 memo with Epshteyn, perhaps Chesebro, but not President Trump.⁴⁷ The memo had four sections: (1) examples of various election officials’ “misconduct” in Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin; (2) a quick analysis of the constitutional and statutory process of opening and counting electoral votes pursuant to the Twelfth Amendment and the ECA; (3) “War Gaming the Alternatives” with proposed strategy and courses of action for former Vice-President Pence to ultimately declare President Trump reelected; and (4) justification for taking Eastman’s recommended “bold” action. Eastman’s statements regarding the

⁴⁷ Once the December 23 memo became public in October 2021, Eastman publicly released his January 3 memo as well.

historical record were simply based upon his recollection of his research as he had no notes or other materials on which to rely.

Eastman characterized both memos as being internal brainstorming ideas without any recommendations. However, the ultimate beneficiary was Eastman's and Epshteyn's client: President Trump.

Underpinning the January 3 memo's demand for "bold" action was Eastman's assertion that election results were tainted in states where Biden had won by a relatively narrow margin. However, Eastman's push for action ignored information that belied his assertions of tainted elections, and he relied on individuals that had no background, training, or experience in election administration. For example, Eastman relied on Droz and his "Election Integrity Group," an ad hoc collection of individuals culled from subscribers to his online newsletter.⁴⁸ While several of Droz's volunteers had impressive careers, they were not election professionals.⁴⁹ Eastman did not ask if members of Droz's group had election-related experience, and he knew the group had not provided evidence that fraud occurred in the 2020 election.

In the January 3 memo, Eastman's references to "illegal conduct by election officials" in seven states, including Arizona, Nevada, and New Mexico, were not

⁴⁸ Droz created "Media Balance Newsletter" and highlighted stories not in "mainstream media."

⁴⁹ In fact, Droz did not think specialized knowledge was needed to analyze election statistics because "numbers are numbers." Three members of Droz's group who testified at trial were Droz, Blehar, and Stanley Young. Only Young, with a background in statistics, qualified as an expert witness at trial.

based on any personal knowledge. Approximately one week after the December 23 memo and two days before the January 3 memo, Eastman asked Epshteyn in an email whether any information about election law violations existed in these three states. Eastman conceded at trial that, as of January 2, 2021, he was only “vaguely aware, from news accounts and otherwise, that there were allegations of illegality” in Michigan, Arizona, and Nevada. In fact, Mitchell wrote to Eastman on January 2 requesting data to get to members of Congress “who are now clamoring for facts and data re[garding] illegal votes.” Mitchell stated they had “plenty of data” from Georgia but knew “nothing” regarding other states. Other than responding to her that “serious forensic investigations have been blocked at almost every turn,” Eastman provided her nothing because he had nothing to offer.

For example, Eastman did not reach out to state election officials in either New Mexico or Nevada for information or utilize publicly available information from various states. He did not consider statements from Pennsylvania and Michigan state election officials that confirmed election results and debunked disinformation circulating about the election because they were elected “partisan” Democratic officials, even though Republican election officials in Georgia who had similar conclusions were also deemed by Eastman to be untruthful. Multiple detailed state court findings in Nevada, Arizona, Wisconsin, and Michigan regarding claims of election malfeasance were issued that predated both the December 23 and the January 3 memos, in which those courts concluded that election irregularity allegations were meritless.

Beyond events and litigation occurring at the state level, Eastman ignored as “implausible” and

“laughable” the November 12, 2020 statement from CISA that there was “no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.” Similarly, Eastman gave no accord to a November 16, 2020 open letter signed by approximately 60 top election security and computer scientists that opined, “To our collective knowledge, no credible evidence has been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise.” Moreover, the open letter noted there were “alarming assertions being made that the 2020 election was ‘rigged’ by exploiting technical vulnerabilities. However, in every case of which we are aware, these claims either have been unsubstantiated or are technically incoherent.” Barr, the United States Attorney General at that time by appointment of President Trump, issued a December 1, 2020 statement proclaiming that “we have not seen fraud on a scale that could have effected a different outcome in the election.” However, this did not persuade Eastman as he believed the DOJ, headed by Barr at the time, did not conduct a sufficient investigation.

Throughout the trial, Eastman attempted to rationalize why the universe of conclusions from numerous election and law enforcement officials in both political parties were of no import. We do not find his attempts persuasive upon review of the detailed record submitted to us.

**b. False and Misleading Statements in
the December 23 Memo (Count
Three)**

Count three alleged Eastman’s opening sentence in his December 23 memo, that seven states “have

transmitted dual slates of electors to the President of the Senate,” was intentionally false and misleading, and made with the intent to provide legal advice to President Trump and former Vice-President Pence. The hearing judge found Eastman culpable as charged. More specifically, the judge determined “Eastman used the false assertion concerning dual slates of electors to provide an alternative strategy for Vice[-]President Pence to declare President Trump as the winner of the 2020 presidential election. The two-page memo was designed to provide legal support and convince Vice[-]President Pence to carry out that strategy.”

On review, Eastman argues (1) OCTC does not have the authority to seek discipline for statements made in an internal “brainstorming” memo that was not shared with President Trump, (2) the December 23 memo was only a rough draft, and (3) no case law exists with analogous facts to support a culpability finding. Eastman further contends the charged statement was not false.⁵⁰

The record demonstrates sufficient evidence that the charged statement in the December 23 memo was indeed false. First, Eastman understood the “alternate electors” he and others worked to gather for President Trump were not authorized by any state government. Eastman stated as much in an editorial comment to Colbert’s draft letter to President Trump with direct references to the Twelfth Amendment and

⁵⁰ In his September 2022 response to an OCTC investigative letter, Eastman described the advice he gave former Vice-President Pence, which he testified at trial that he used that word “loosely” and may have been technically inaccurate in his response because he had to provide OCTC “a lot of information.”

the ECA, and he held that view on December 19, 2020.⁵¹ Second, Eastman knew the governors of the seven states (Arizona, Georgia, Michigan, Pennsylvania, Nevada, New Mexico, and Wisconsin) had each sent only one slate of duly appointed electors. No other branch of a state's government, such as a state legislature, sent an opposing slate. As Eastman's own expert Yoo testified, "[A] court has to find something, or the legislature and the governor have to send in two electoral votes." The implication of Yoo's statement is clear: a dispute cannot be fabricated, which Eastman and others attempted to do.

Eastman's assertion on review that the December 23 memo was an internal memo or rough draft is not consistent with the facts. Eastman provided the December 23 memo to at least one other person outside the Campaign. To the extent Eastman argues the December 23 memo was not providing legal advice, the text of the document reveals otherwise: "this is the piece that *we* believe is unconstitutional"; "here's the scenario *we* propose"; and "*we* should not allow the Electoral Count Act constraint on debate to control." (*Italics added.*) These statements show (1) the memo gave legal advice about potential next steps in President Trump's pursuit of an electoral victory and (2) the memo was within the scope of the engagement agreement.

Based on the facts of this case and the broad expanse of section 6106, we find OCTC within its authority to charge any dishonesty relating to the

⁵¹ Eastman's opinion on this point did not change. In an email to Valerie Moon, on January 10, 2021, Eastman told her that the alternate electors "had no authority."

December 23 memo. Section 6106 plainly covers “*any act* involving moral turpitude, dishonesty or corruption,” (italics added) and the conduct need not occur while acting as an attorney. A basic principle of statutory construction is to give every word meaning (*Klein v. United States of America* (2010) 50 Cal.4th 68, 80), and we give the words “any act” their ordinary meaning. Eastman’s engagement letter included “election matters related to the Electoral College.” We also find Eastman’s arguments unpersuasive that the hearing judge used case law that was not factually similar, and no case law exists with analogous facts to support a section 6106 culpability finding. A section 6106 violation is not limited to fact patterns detailed in prior decisions. Our culpability determination is based upon the plain language of section 6106 and case law guidance on how to analyze whether particular conduct falls within the broad scope of section 6106. Section 6106 violations include misconduct that reflects dishonesty. (*Read v. State Bar, supra*, 53 Cal.3d at p. 412; *In the Matter of Wells, supra*, 4 Cal. State Bar Ct. Rptr. at p. 910.) That is precisely the approach the hearing judge took when she analyzed whether the charged conduct amounted to moral turpitude and cited to cases such as *In the Matter of Chesnut, supra*, 4 Cal. State Bar Ct. Rptr. 166; *Grove v. State Bar, supra*, 63 Cal.2d 312; and *Zitny v. State Bar, supra*, 64 Cal.2d 787. The record supports culpability for this count.

**c. False and Misleading Statements in
the January 3 Memo (Count Six)**

Count six charged that the following four assertions in Eastman’s January 3 memo were false and misleading: (1) “outright fraud” occurred through

“electronic manipulation of voting tabulation machines”; (2) seven states had submitted dual slates of electors because the President Trump electors in seven states met, “cast their electoral votes for [President] Trump, and transmitted those votes to [former Vice-President] Pence”; (3) Michigan mailed absentee ballots to all registered voters without the statutorily required absentee ballot application; and (4) the 2020 presidential election “was [s]tolen by a strategic Democrat[ic] plan to systematically flout existing election laws for partisan advantage.” The hearing judge found Eastman culpable on the first three statements.⁵² The judge did not consider “Eastman’s beliefs to be sincere, honest, or credible,” regarding the three statements. The judge stated that Eastman “knowingly ignored any evidence contradicting the notion of voting machine manipulation; was aware that the Michigan Secretary of State had not distributed [absentee] ballots to all registered voters; and, as a constitutional scholar, understood that no conflicting dual slates of electors had been transmitted.”⁵³ She also rejected the

⁵² OCTC does not challenge the hearing judge’s finding of no culpability for the fourth charged misrepresentation that the election was “stolen.” We affirm.

⁵³ We find it difficult to accept that Eastman, as a constitutional scholar, did not keep records and was unorganized in documenting his research on this important matter. We are further troubled that at trial, Eastman frequently had only vague recollections about important points that cut against his theory of the case, yet he clearly remembered other facts helpful to him. This strains Eastman’s credibility and leads to the conclusion Eastman is intellectually disingenuous when it suits his purposes. We discuss the issue of candor in our aggravation discussion, *post*. (*In the Matter of Dahlz* (Review Dept. 2001) 4

argument that Eastman was simply providing President Trump with vigorous representation as he crossed the line into unethical deception. As with count three, we reject Eastman's arguments on review that the charged statements in the January 3 memo were not material because it was an internal document and was not distributed directly to President Trump. It was a document prepared pursuant to the terms of Eastman's engagement agreement with President Trump and the Campaign. It outlined a course of action to be taken. Consistent with our holding regarding the December 23 memo, we find the misrepresentations made in the January 3 memo are also subject to discipline as acts of moral turpitude. We agree with the hearing judge that sufficient evidence exists to support culpability.

Turning to the individual allegations, we reject Eastman's argument that the selected quotes used in paragraph 54(a) of the NDC's count six altered the context of his full sentence.⁵⁴ The allegation removed the parenthetical in the charged statement. Under the header "Illegal conduct of election officials," Eastman's January 3 memo stated, "Quite apart from outright fraud (both traditional ballot stuffing, and electronic manipulation of voting tabulation machines), important state election laws were altered or dispensed with altogether in key swing states and/or cities and counties." Eastman argues the first portion of the sentence plus the parenthetical is an

Cal. State Bar Ct. Rptr. 269, 282) [analytical differences regarding believability (credibility) and falsity (candor)].)

⁵⁴ Paragraph 54(a) alleged the memo asserted, "[t]here had been 'outright fraud' through 'electronic manipulation of voting tabulation machines.'"

“aside” and not the main point of the sentence. Eastman asserts the primary point was that state election laws were violated. The NDC did not mischaracterize the charged statement in the January 3 memo. Eastman’s single sentence makes two independent claims. The first clause claimed outright fraud, including fraud by electronic manipulation of votes. The second clause of the sentence focused on violations of election laws in certain states.⁵⁵

We also reject Eastman’s arguments that items such as the December 2020 report authored by Peter Navarro⁵⁶ and unnamed “statistical experts” provide

⁵⁵ In addition, Eastman further argues that there can be no culpability finding for this count because his claim of fraud through vote tabulation manipulation by machines “was not provably false at the time,” citing *Standing Committee v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1438-1440. To the extent Eastman argues the charged sentence was “rhetorical hyperbole” and therefore entitled to First Amendment protection, the argument is not well founded. We consider Eastman’s First Amendment defenses, *post*. Rhetorical hyperbole provides protection for statements that cannot “reasonably [be] interpreted as stating actual facts . . . [Citation.]” (*Milkovich v. Lorain Journal Co.* (1990) 497 U.S. 1, 20.) Here, Eastman’s assertion of “quite apart from outright fraud (both traditional ballot stuffing, and electronic manipulation of voting tabulation machines)” is reasonably interpreted as a factual statement and is not afforded constitutional protection. Moreover, false statements that are either intentionally false or made with reckless disregard for the truth are not protected speech and may be the basis of attorney discipline. (*Ramirez v. State Bar* (1980) 28 Cal.3d 402, 411.)

⁵⁶ We have reviewed the report by Navarro that Eastman had admitted into the record. Unlike Eastman’s memo, Navarro’s report describes “claim[s] that the election may well have been stolen from President . . . Trump,” and uses other similar

support for the charged statement about electronic vote manipulation specifically and voter fraud generally. Initially, Eastman was not able to recall whether Navarro's report was published before January 2, 2021. The report was later eventually admitted for the limited purpose of establishing Eastman possessed or reviewed it prior to January 18, 2021. As to reliance on "statistical experts," Eastman only called one such expert at trial: Stanley Young. However, Young was only qualified as a general expert in statistics, not in statistics relating to elections. Moreover, Young's trial conclusions regarding his statistical views were effectively rebutted by OCTC's expert witness, Justin Grimmer, Ph.D.⁵⁷ To the extent Eastman relied on an Antrim County, Michigan report authored by Russell Ramsland, Eastman himself thought some of Ramsland's analysis regarding electronic vote flipping to be "over the top." As detailed in our discussion of count seven, *post*, Eastman had no real information about Ramsland's background, training, or experience, and only learned at some point later that Ramsland had once given advice to a Texas governmental entity regarding the purchase of voting

language, as opposed to Eastman's assertion that "outright fraud" was an established fact.

⁵⁷ Grimmer is a tenured political science professor at Stanford University and a Senior Fellow at The Hoover Institution, a public policy thinktank. Grimmer's background, training, and experience included statistics and political methodology. He authored and/or peer reviewed scholarly works in the areas of statistical theory and methods, election administration, congressional elections, and voter fraud claims.

machines years before.⁵⁸ Eastman failed to consider the public information released by the Michigan Secretary of State on the very issue of false claims regarding the election in Antrim County. As was consistently displayed at trial and as we have discussed *ante*, Eastman simply dismissed other credible sources of information when it conflicted with his view. This purposeful lack of intellectual rigor by a constitutional scholar and former law school dean is circumstantial evidence of intentional conduct through willful blindness. (*Zitny v. State Bar, supra*, 64 Cal.2d at p. 792.)

Next, as alleged in paragraph 54(b) of count six, Eastman’s January 3 memo concluded “there are thus dual slates of electors from [seven] states.” Eastman prefaced that conclusion by stating, “Because of these illegal actions by state and local election officials (and, in some cases, judicial officials), the Trump electors in the above 6 states (plus in New Mexico) met on December 14, cast their electoral votes, and transmitted those votes to the President of the Senate (Vice-President Pence).” First, as stated previously, seven states did not submit official dual slates of electors. As Eastman well knew, each of the seven states submitted one official slate. While groups supporting President Trump formed in those seven states and “voted,” they were not “electors” as the term is used in the ECA. Sufficient evidence clearly

⁵⁸ Eastman further agreed with Alex Halderman, an election security expert who critiqued Ramsland’s work in the Antrim County, Michigan litigation in that some of Ramsland’s claims were unsubstantiated. Eastman was not aware that in 2023, a federal appellate court upheld sanctions imposed in 2021 on attorneys for using Ramsland’s assertions that Dominion machines manipulated votes.

exists that Eastman knew before he wrote the January 3 memo that these groups were of no import without the imprimatur of a state's governor or legislature.

Finally, as to the charge in paragraph 54(c) of count six, the record supports a finding that Eastman committed intentional moral turpitude. We reject Eastman's assertion that he made a simple mistake when claiming Michigan mailed absentee ballots to all registered voters in violation of Michigan law. Michigan, in accordance with applicable law, mailed absentee ballot applications. Even though Eastman conceded early that he erred using the word "ballot" instead of "applications," the mailing of absentee applications was not a violation of Michigan law either. Yet, Eastman still persisted in his answer to the NDC that Michigan election law did not permit the widespread mailing of absentee ballot applications. Eastman also challenges the hearing judge's materiality finding as to the Michigan statement.⁵⁹ Eastman argues it was not material because only Epshteyn received the January 3 memo.⁶⁰ This ignores the fact that the January 3 memo (like the December 23 memo) was prepared in furtherance of Eastman's representation of President

⁵⁹ The hearing judge's decision states, "The misrepresentations about the manipulation of voting machines and Michigan absentee ballots were significant and material. Eastman used them to bolster the argument for Vice-President Pence to reject electoral votes and/or delay or adjourn the Joint Session of Congress."

⁶⁰ However, at trial, Eastman could not recall whether Chesebro also received the January 3 memo. He had given the December 23 memo to Chesebro. Hence, it is possible Epshteyn was not the only recipient.

Trump and for the purpose of helping forge a path to persuade former Vice-President Pence to delay the count or reject electors on January 6. The false Michigan statement was one of Eastman's points that supported his recommended action.

3. Eastman's Meetings and Communications with Former Vice-President Pence and Staff Prior to the January 6, 2021 Joint Session

On January 4, 2021, President Trump called an Oval Office meeting attended by Eastman and former Vice-President Pence, along with Pence's Chief of Staff Marc Short and counsel Greg Jacob. The purpose of the meeting was to talk about former Vice-President Pence's role on January 6.

Eastman's attendance at this meeting was within the scope of his representation of President Trump. Eastman stated his legal opinions to the group over the course of the meeting. Eastman recounted that, during the Oval Office meeting, President Trump asked him if former Vice-President Pence could "simply reject electors if [the former Vice-President] had information that they were not legally certified."⁶¹ Eastman testified that he responded to the President's question, saying "It's more nuanced than that," and explained, with only one set of certified electors, it was, in his opinion, an open question whether the former Vice-President had such power. Eastman ultimately opined that the former Vice-President "had unilateral authority to determine the validity of the electoral vote certificates." However, Eastman stated that even if the former Vice-President had that power,

⁶¹ We refer to this as the "reject electors theory."

it would be “foolish” to go that route as no state legislature had provided an alternative certified slate of electors. Eastman believed that the more prudent option was for the former Vice-President to delay the electoral count for 10 days, rather than to reject certain electoral votes, and he advocated for a delay.⁶² According to Jacob, the former Vice-President always viewed his role in the electoral count as a ministerial one. The meeting ended with President Trump requesting, and the former Vice-President agreeing, that the former Vice-President’s staff would meet with Eastman the next day to discuss the issue further. Following the Oval Office meeting, Jacob drafted a memorandum for the former Vice-President summarizing the meeting’s points, including that Eastman “acknowledges that his proposal violates several provisions of statutory law,” and sent it the following day.

Eastman met with Jacob and Short around 11:00 a.m. on January 5, 2021. A few hours before that meeting, President Trump tweeted: “The Vice-President has the power to reject fraudulently chosen electors.” Upon his arrival at Short’s office, and much to Jacob’s surprise, Eastman again pressed the reject electors theory.⁶³ Jacob understood from Eastman that at least five states (Arizona, Georgia, Wisconsin, Michigan, and Pennsylvania) were involved in the

⁶² Also referred to at trial as a “delay option,” we refer to this as the “delay theory.”

⁶³ The record supports the hearing judge’s determination that Jacob’s testimony was more credible than Eastman’s as to whether Eastman again pressed the reject electors theory during their January 5, 2021 meeting. (*In the Matter of Bach*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 638.) Eastman does not directly challenge this finding on review.

pursuit of this theory. In the two-hour meeting, Eastman and Jacob discussed former Vice-President Pence's unilateral authority to reject electoral votes, the texts of the Twelfth Amendment and the ECA, along with the electoral counts of 1797, 1801, and 1961. Jacob testified that, during the course of their "robust" exchange, he understood Eastman conceded the discussed elections were not "examples of vice presidents rejecting electoral vote certificates, or claiming that they had any authority to do so, or claiming that they had any authority to make any kind of substantive decision about electoral vote certificates." Eastman opined that if the former Vice-President rejected the electors, the U.S. Supreme Court would likely not take the case pursuant to the political question doctrine, but if it did, the vote would be nine to zero against a rejection of the official electors. Eventually, the conversation turned to Eastman's delay theory. However, no state legislatures had requested a delay; only a few individual legislators had done so.

After their January 5, 2021 meeting ended, Eastman and Jacob spoke on the telephone twice that day. One of those calls included President Trump and another attorney. In the call with President Trump, Jacob recalled the President's team acknowledged the reject electors theory that Eastman pushed in the meeting earlier in the day was a nonstarter. The group circled back to the delay theory. According to Jacob, former Vice-President Pence was not swayed. Moreover, the delay theory was pragmatically flawed. As noted in Jacob's post-January 4 meeting memorandum, Eastman acknowledged that "no Republican-controlled legislative majority in any disputed state has expressed an intention to designate

an alternate slate of electors.” Then, late in the evening of January 5, Eastman sent an email with an attached letter to Jacob proclaiming a “major new development.” According to Eastman, the Pennsylvania Legislature would “vote to recertify its electors if former Vice[-]President Pence implements the plan we discussed.” However, Eastman eventually conceded at trial that no majority of state legislators in any Republican-controlled legislature communicated a desire to send an alternate slate of electors.

About half an hour after Eastman sent this email to Jacob, Eastman had a four-minute call with President Trump.⁶⁴ Minutes after this call concluded, President Trump tweeted, “If Vice President @Mike_Pence comes through for us, we will win the Presidency. Many States want to decertify the mistake they made in certifying incorrect & even fraudulent numbers in a process NOT approved by their State Legislatures (which it must be). Mike can send it back!” Eastman testified President Trump’s tweet was consistent with his advice.

4. Eastman’s January 6, 2021 Email to Jacob Contained False and Misleading Statements (Count Eight)

a. Facts

Eastman and Jacob exchanged emails throughout the day on January 6, 2021. Close to 11:00 a.m., Jacob sent a short reply to Eastman’s “major new development” email from the night before. Jacob challenged the constitutionality of Eastman’s plan in

⁶⁴ Eastman has no recollection of the call reflected on the White House call log.

light of the ECA's provisions.⁶⁵ By 1:00 p.m., the Joint Session had started in the House of Representatives, but the Senate had withdrawn, as required by the ECA, for each house to consider objections raised regarding Arizona's electoral votes. Eastman emailed Jacob at approximately 1:30 p.m., following his remarks at the "Stop the Steal" rally and less than an hour before the Capitol was breached.⁶⁶ At this point in time, President Trump had concluded his remarks at the Ellipse, a park near the White House, and crowds had begun their march from the rally to the Capitol. From the safety of a nearby hotel, Eastman emailed Jacob, called Jacob's earlier reply "small-minded" in light of the United States Constitution "being shredded," and implied that any "statutory requirement" impeding former Vice-President Pence from acting as Eastman advocated should be "ignored."

Jacob crafted a detailed, three-paragraph response to Eastman's email before the sounds of the Capitol attack reverberated near him as rioters began to make their way into the building. Jacob, while hiding from the rioters, sent his response to Eastman at 2:14 p.m., adding a final statement, "we are now under siege." Jacob blamed Eastman's actions as the cause of the

⁶⁵ Several emails note Mountain Standard Time, MST, and are adjusted here to reflect Eastern Standard Time.

⁶⁶ By this time, former Vice-President Pence had issued what became known as his "Dear Colleague" letter. In the letter, he explained his position regarding the scope of his authority before he gavelled the Joint Session into order. The former Vice-President stated, "It is my considered judgment that my oath to support and defend the Constitution constrains me from claiming unilateral authority to determine which electoral votes should be counted and which should not."

attack. He reminded Eastman that the ECA provisions, followed for more than a century, were not irrelevant and “cannot be set aside except when in direct conflict with the Constitution,” and that “there is no reasonable argument that the Constitution directs or empowers the Vice[-]President to set [aside] a procedure followed for 130 years before it has even been resorted to.” Jacob then remarked that Eastman’s scheme was “a results[-]oriented position that you would never support if attempted by the opposition, and essentially entirely made up.” Immediately thereafter, Jacob was escorted to different building locations for safety.

Seemingly unmoved by the violence happening at and around the Capitol, Eastman responded to Jacob at 2:25 p.m.:

“You think you can’t adjourn the session because the ECA says no adjournment, while the *compelling evidence that the election was stolen continues to build and is already overwhelming*. The ‘siege’ is because YOU and your boss did not do what was necessary to allow this to be aired in a public way so the American people can see for themselves what happened.”

(Italics added.) Minutes before Eastman’s email, President Trump tweeted:

“Mike Pence didn’t have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!”

The email communication between Eastman and Jacob resumed in the early evening hours of January 6. Eastman complained to Jacob that former Vice-President Pence only mentioned the reject electors theory in his “Dear Colleague” letter when the delay theory was also presented to the former Vice-President. Eastman stated he remained firm that the delay option was “the most prudent course as it would have allowed for the opportunity for this thing to be heard out, but also had a fair chance of being approved (or at least not enjoined) by the Courts.” About 30 minutes later, Jacob responded and acknowledged that the delay approach was more “modest . . . [b]ut the legal theory is not.” Jacob also asked Eastman if he had told President Trump that “in your professional judgment, the Vice President DOES NOT have the power to decide things unilaterally?” Eastman quickly replied, “He’s been so advised, as you know because you were on the phone when I did it. [. . .] But you know him – once he gets something in his head, it is hard to get him to change course.”

Eastman then emailed Jacob again at 11:44 p.m., after the electoral count had resumed. Eastman pointedly remarked that the ECA had been violated, with former Vice-President Pence’s approval, when objections to counting Arizona’s electoral votes exceeded the allotted time under title 3 U.S.C. section 17.⁶⁷ Eastman concluded:

⁶⁷ According to title 3 U.S.C. section 17, when both houses of Congress separate to decide upon an objection to the counting of any electoral vote or votes from any state, any senator or representative may speak to such objection for five minutes, and not more than once. After such debate has lasted two hours, the presiding officer of each house shall put the objection up for a vote without further debate.

“So now that the precedent has been set that the Electoral Count Act is not quite so sacrosanct as was previously claimed. *I implore you to consider* one more relatively *minor violation* and adjourn for 10 days to allow the legislatures to finish their investigations, as well as to allow a full forensic audit of the *massive amount of illegal activity that has occurred here*. If none of that moves the needle, at least a good portion of the 75 million people who supported President Trump will have seen a process that allowed the illegality to be aired.”
(Italics added.)

b. Culpability

Count eight charged, as false and misleading, Eastman’s January 6, 2021 email statement to Jacob made at 2:25 p.m., discussed *ante*. The NDC further alleged the statement was made with the intent to pressure former Vice-President Pence to adjourn the Joint Session and Eastman knew his claim of “compelling evidence that the election was stolen continues to build and is already overwhelming” was false.

The hearing judge found Eastman culpable for this count as there was no outcome-determinative fraud in the 2020 presidential election and Eastman was aware or should have known that no affirmative proof of outcome-determinative fraud existed. The judge also noted this conduct, to influence former Vice-President Pence, was not duplicative of count two (misleading a judge in the intervention motion in violation of section 6068, subdivision (d), discussed *ante*) and count five (misstatements on Bannon’s War Room in violation of section 6106, discussed *post*) as

those two counts addressed misrepresentations to different individuals, in different situations, and at different times.⁶⁸

Eastman argues on review that the claims made in his email to Jacob had sufficient evidence to support his statement to Jacob. As with several other counts, Eastman asserts the record shows evidence of “outcome-determinative illegalities,” which we have rejected previously and reject here as well. Eastman clearly made a misrepresentation to Jacob in his email when he stated, “compelling evidence that the election was stolen continues to build and is already overwhelming.” While, in a few local instances, issues arose in the counting of ballots, no evidence existed that outcome-determinative illegalities occurred in a manner that would have had an effect in any state. We also reject, again, Eastman’s assertion that historical authority supported his theory that a vice-president has the “authority to recess, delay, or adjourn the electoral count.” Nor were there sufficient scholarly works to support Eastman’s vice-presidential authority claim.⁶⁹ Eastman also knew that, without another certified slate of electoral votes from a state, former Vice-President Pence did not have

⁶⁸ The hearing judge also found Eastman had no First Amendment protection for charged statements, which we affirm in Section IV, *post*.

⁶⁹ We note Eastman was unable to recall the articles he read in the months of October through December 2020. He could not remember, at the time of the January 3 memo, any historical records he reviewed or if he took the Ackerman article’s discussion of historical records at face value. When pressed at trial, Eastman could not articulate several salient points in one of the articles on which he relied.

the authority to refuse to count a state's electoral votes. We reject his arguments in their entirety.

The record supports the conclusion that Eastman's charged communication with Jacob was not true and made with the intent to have Jacob convince former Vice-President Pence to adjourn or delay the Joint Session. (*In the Matter of Wells, supra*, 4 Cal. State Bar Ct. Rptr. at p. 910 [moral turpitude for creating false impressions due to affirmative misrepresentations or concealment].) Eastman is culpable as charged in count eight.

**5. Eastman's Statements at the Ellipse's
"Stop the Steal" Rally (Counts Seven
and Eleven)**

a. Facts

Eastman spent the night of January 5, 2021, before the Joint Session, mingling with Rudolph Giuliani and others at a Washington, D.C., hotel reception where organizers of the "Stop the Steal" rally had congregated. That evening was also when Georgia held runoff elections for its two United States Senate seats. That evening, Eastman met Russell Ramsland and Joe Oltmann for the first time. Eastman's conversation with Ramsland and Oltmann worked its way into his Ellipse remarks the following day, on which count seven is based.

Eastman had no recollection of Oltmann's educational or professional background or experience. Eastman believed Oltmann ran a "data company" but had no recollection how or when he learned that piece of information. Eastman had slightly more information about Ramsland before their first encounter at the hotel reception. Eastman had a generalized understanding that Ramsland, years

before, had once advised a Texas governmental entity on the type of voting machines to purchase or avoid. Eastman testified in broad terms that he knew that Ramsland played a role in challenging the Antrim County, Michigan vote returns and that Ramsland had submitted “expert declarations in other cases.” Eastman did not research either Oltmann’s or Ramsland’s backgrounds, training, or experience before he spoke at the Ellipse the following day. During Eastman’s conversation with them, he discussed their belief that vulnerabilities existed in Dominion voting machines. Oltmann shared with Eastman a one-page chart that purported to show the vulnerabilities. Oltmann primarily provided Eastman with the details of their theory that “phantom ballots” (i.e., copied or replicated ballot images) and “fake ballots” (i.e., pre-loaded ballots not cast by an actual voter) were held in suspense folders stored within the machines’ operating system, and that these fake and phantom ballots could be accessed via the internet by someone attempting to interfere in the election.

Following Oltmann’s and Ramsland’s claims about fake and phantom ballots in Dominion tabulators along with the one-page chart, they made two predictions about the Georgia runoff elections that evening. At trial, Eastman explained the first prediction was “the percentage of ballots would remain constant while additional ballots kept getting reported.” The second predication was that the reporting of the counting would stop because bad actors were “drawing ballots in from the suspense folders,” and needed time to “tag voters in the voter rolls who had not voted, so that if there was an audit after the fact, the number of ballots would match.”

Georgia used Dominion machines for the 2020 presidential election cycle and the 2021 run-off election. Eastman believed he saw the two predictions play out in both of the Georgia Senate runoff elections that night because media reports stopped reporting once the total ballots cast had reached about 95 percent, and that number did not change as additional ballots were reported as being received. However, Eastman did not calculate the total votes cast and did not know the reports of total votes cast that evening were only estimates.⁷⁰ Eastman was quick to embrace the pair's predictions, yet Grimmer in his expert testimony stated these predictions were not "logically coherent." Furthermore, Grimmer testified that once the media's reporting of votes enters into the 90th percentile, not a lot of change occurs in the percentage figure itself even though ballot counting continues. Moreover, he stated election night reporting typically does not broadcast vote returns in precise and incremental terms and are instead only estimates.

On the morning of January 6, 2021, Eastman and Giuliani traveled together from their hotel to the televised "Stop the Steal" rally at the Ellipse. Eastman had little recall of the earlier part of the day, but did remember he was asked that morning to speak, and he pulled his thoughts together while en route to the rally. Eastman decided he wanted to speak about the predictions that Ramsland and

⁷⁰ Blehar, one of Eastman's witnesses and part of the Droz group, had noticed the election night vote total change and believed that change was likely attributed to underestimating voter turnout. He did not believe, nor did he tell Eastman he believed, election results were manipulated by matching registered voters, who did not vote in the election, to ballots in a suspense folder.

Oltmann said to him. Eastman, introduced by Giuliani, spoke at around 10:45 a.m. to a crowd he estimated to be between a quarter to a half a million people.

In his remarks, Eastman told the crowd about matters pending before the U.S. Supreme Court that detail “chapter and verse, the number of times state election officials ignored or violated the state law” in order to elect former President Biden. Eastman declared that “traditional fraud” happened and that “we know that dead people voted.”⁷¹ He then went on to tell the crowd that voting machines were an actor in his fraud claims:

“And, let me, as simply as I can, explain it. You know the old way was to have a bunch of ballots sitting in a box under the floor, and when you needed more, you pulled them out in the dark of night. They put those ballots *in a secret folder* in the machines. Sitting there waiting until they know how many they need. And then, the machine, after the close of polls, we now know [who’s] voted and we know who hasn’t. And, I can now, in that machine, *match those unvoted ballots with an unvoted voter and put them together in the machine.*

And, how do we know that happened last night in real time? You saw when it got to 99% of the vote total, and then it stopped. The percentage stopped, but the votes didn’t stop. What happened, and you don’t see this on Fox or any of the other stations, but the data shows that

⁷¹ Eastman believed there were ballots cast on behalf of deceased voters in Georgia, Nevada, and perhaps Michigan.

the denominator, how many ballots remain to be counted. How else do you figure out the percentage that you have? How many remain to be counted? That number started moving up. *That means they were unloading the ballots from that secret folder, matching them to the unvoted voter, and voila. We have enough votes to barely get over the finish line.*"

(Italics added.) Eastman then turned his focus to former Vice-President Pence and said to the crowd, "all we are demanding of Vice President Pence is this afternoon at 1:00 [p.m.], he let the legislators of the state look into this so we get to the bottom of it, and the American people know whether we have control of the direction of our government or not." Eastman concluded that anyone not willing to "stand up" did not "deserve to be in office."

b. Culpability Established for Count Seven

Count seven charged Eastman with making false and misleading statements at the Ellipse's "Stop the Steal" rally about Dominion electronic voting machines fraudulently manipulating the election results for both the 2020 presidential election and the January 5, 2021 Georgia runoff elections. The NDC quoted from Eastman's remarks to the large crowd where he repeated the claim:

"‘They’ put ballots ‘in a secret folder in the machines, sitting there waiting until they know how many they need,’ and that after the polls closed, ‘unvoted ballots’ were matched with ‘an unvoted voter’ to fraudulently change the election totals in favor of [former President Joseph] Biden and the Democratic candidates

in the Georgia runoff election. [Eastman] further stated that [an] analysis of the vote percentages showed that ‘they were unloading the ballots from that secret folder, [and] matching them to the unvoted voter and voila we have enough votes to barely get over the finish line.’”

Eastman testified that these concepts came from his hotel conversations with Ramsland and Oltmann the night before.

The hearing judge determined Eastman was grossly negligent in his violation of section 6106 because he made reckless statements of voting machine manipulation, and he ignored information that would show his statements were false. On review, OCTC seeks a clear culpability finding that Eastman’s misconduct was intentional. Eastman seeks reversal of the hearing judge’s culpability finding, arguing insufficient evidence was produced at trial and challenges the hearing judge’s factual determinations.⁷²

We affirm the culpability finding for this count and further find Eastman’s comments at the Ellipse were intentional. Even accepting Eastman’s claim that his presence at the “Stop the Steal” rally was not planned, he had sufficient time to consider his actions, including sufficient time to decide he would assert to the assembled crowd a wholly unvetted theory about secret folders or phantom or fake ballots he heard at a hotel gathering the night before as established facts. He had absolutely no evidence of such items, just an uncorroborated theory passed along at a hotel

⁷² Eastman raised a First Amendment defense to this count, which we resolve in Section IV, *post*.

reception, and he did not condition his statements that he had been given this theory the night before or that he had not investigated that theory—he asserted the theory as a fact.⁷³ Hence, based on this conduct the record supports finding his statements were purposeful, and thus intentional. (*Zitny v. State Bar, supra*, 64 Cal.2d at p. 792 [intent may be proved by direct or circumstantial evidence].) Eastman’s discussions with a few others at the same hotel reception where he listened to Oltmann and Ramsland’s theories of electronic vote manipulation were not a substitute for a reasonable vetting of their claims.

Eastman failed to establish his assertion on review that he had “conflicting credible evidence” to support the charged false statements or that he vetted Oltmann and Ramsland’s claims.⁷⁴ As detailed in the

⁷³ In response to OCTC’s question whether Eastman was encouraging listeners not to trust the outcome of the election, Eastman said, “The statements I made were encouraging the listeners to focus on the illegality that had occurred in the election and to get to the bottom of what that illegality was and whether it affected the outcome. My view is that that’s encouraging us to get to the bottom of it, to get to the truth.” Eastman’s statement here misses the point: one cannot “get to the truth” by first asserting mere speculation as truth.

⁷⁴ Eastman makes several general references to the record to support his contention that he was familiar with Ramsland’s report on Antrim County, Michigan, and that he was aware of “investigations” that identified serious flaws with Dominion voting systems. One basis for Eastman’s belief was the documentary “Kill Chain.” We have reviewed Eastman’s references and do not find them persuasive. Even if others concluded that, in their opinion, security flaws existed, that does not allow Eastman to specifically assert falsely that Dominion voting systems had “secret folders” that allowed election officials to match “unvoted ballots with an unvoted voter and put them

hearing judge's decision and our discussions of the preceding counts, Eastman consistently rejected information from true experts and relied on unverified assumptions and theories. Contrary to Eastman's arguments, we do not require that he "blindly accept" claims from the government that the election was not conducted fraudulently. However, he is not allowed to assert a theory that he heard the night before as established fact. The record supports a culpability finding of intentional moral turpitude for count seven.

**c. Culpability Not Established for
Count Eleven**

Count eleven alleged Eastman told the crowd of protesters at the Ellipse on January 6, 2021, that election fraud existed, that dead people had voted, that Dominion's electronic voting machines had been used to fraudulently manipulate the election results, that former Vice-President Pence had the legal authority to delay the counting of electoral votes, and that the former Vice-President did not deserve to be in office if he did not delay the counting of votes. OCTC charged that these statements by Eastman were false and misleading and "contributed to provoking the crowd to assault and breach the Capitol in an effort to intimidate [former Vice-President] Pence and prevent the electoral count from proceeding, when such harm was foreseeable," and thus Eastman violated section 6106.

The hearing judge found that the first four of the five statements made by Eastman at the Ellipse were false and deceptive as charged in other counts: (1) that

together in the machine." Eastman testified he did not recall seeing claims regarding pre-loaded ballots before meeting Oltman and Ramsland.

fraud occurred in the 2020 presidential election (count two); (2) that dead people voted (counts two and four); (3) that electronic voting machines were used fraudulently to alter the election results (count seven); and (4) that former Vice-President Pence had the authority to delay the vote counting (count ten).⁷⁵ However, the judge determined OCTC failed to provide any evidence that Eastman's statements "contributed to provoking the crowd to assault and breach the Capitol," and therefore dismissed count eleven with prejudice.

On review, OCTC seeks a culpability finding on count eleven, contending Eastman made false statements to convince the crowd that former Vice-President Pence could stop the electoral count and that he was well aware of the potential for violence. OCTC further contends culpability is established by President Trump, Giuliani, and Eastman acting as coconspirators who made statements that contributed to provoking the violence at the Capitol, which was foreseeable. Eastman's statements followed Giuliani's comments—"let's have trial by combat"—and preceded President Trump's comments—"fight like hell" to save the country—but OCTC presented no

⁷⁵ Regarding the fifth statement in count eleven that claimed Eastman said former Vice-President Pence did not deserve to be in office if he did not delay the counting of votes, the hearing judge concluded, "Eastman did not expressly declare that [former] Vice[-]President Pence did not merit holding office if he refrained from delaying the vote counting but stated that 'anybody' unwilling to postpone the vote tallying was unworthy of office." We agree with the judge's understanding of the record and her finding that, while one could conclude Eastman was "alluding" to the vice-president, one could not reasonably conclude Eastman's statement was an assertion of an objective fact. OCTC did not appeal this finding, and we affirm.

evidence to show that Eastman’s statements contributed to the assault on the Capitol. Accordingly, the hearing judge did not find Eastman culpable of the misconduct alleged in this count. We agree with the judge’s dismissal of count eleven with prejudice, but we elaborate with our discussion of the record, which provides additional support for the judge’s conclusion.

We note OCTC argued, that to establish culpability for moral turpitude under section 6106, Eastman’s statements would have to be intentional, willfully blind, reckless, or done with gross negligence.⁷⁶ Our review of the record does not support a finding in any of these categories as OCTC urges in its brief. First, we see no evidence in the record of intent as alleged in count eleven. (*In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330, 334 [intentional misrepresentation not found where no evidence or witnesses presented to rebut contrary testimony].) At trial, in direct response

⁷⁶ OCTC, in a footnote, states “the hearing judge suggested . . . that count [eleven] charged Eastman with inciting lawlessness,” but disputed that suggestion and emphasized count eleven charged “a violation of section 6106, not criminal incitement.” OCTC makes its discussion in count eleven with the clear goal of finding culpability under section 6106 and not as a permissible restriction on speech within the meaning of *Brandenburg v. Ohio* (1969) 395 U.S. 444, which allows limitation on speech where “advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” (*Id.* at p. 447.) Upon review, we do see that count eleven alleges Eastman’s statements, as described in this count, “contributed to *provoking* the crowd to assault and breach the Capitol . . .” (Italics added.) We see little difference between the verbs “provoke” and “incite.” We act on OCTC’s stated legal position and analyze count eleven using section 6106 and applicable case law.

to the question as to whether Eastman's statements on January 6, 2021, were intended to incite the crowd at the "Stop the Steal" rally to take violent action, Eastman answered, "Absolutely not." We disagree with OCTC's description in its brief that Eastman "told the crowd . . . that they had to act quickly to stop the count that afternoon," or that "it was essential for them to act." His words at the rally establish that he made false and misleading statements, but in no way does he tell the crowd "to assault and breach the Capitol" as alleged in the NDC. Second, we do not see that he engaged in willful blindness at the rally. While OCTC claims his statements were willfully blind, it does not provide a factual basis to support its assertion. We cannot discern the evidence that existed, but Eastman otherwise ignored, when he made his statements that would foretell the crowd's later assault and breach of the Capitol. (See *In the Matter of Carver*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 432-433 [willfully ignoring evidence supports moral turpitude finding].) Likewise, OCTC claims Eastman's statements were reckless or grossly negligent, and while it discusses the law on these points generally, it does not explain how the statements he made would consciously disregard "a substantial and unjustifiable risk" that his statement would result in the assault and breach of the Capitol. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935, fn. 12; see *Sanchez v. State Bar* (1976) 18 Cal.3d 280, 285 [breach of fiduciary relationship that binds attorney by conscientious fidelity to interests of his client is gross negligence].)

Finally, citing *Pinkerton v. United States* (1946) 328 U.S. 640, OCTC contends in its reply brief that,

because Eastman acted as a coconspirator, he was therefore responsible for the natural and foreseeable consequences of all other coconspirator actions in furtherance of the conspiracy. Regardless of President Trump's and Giuliani's comments at the "Stop the Steal" rally, we do not see Eastman's statements supporting a conclusion that the assault and breach of the Capitol was a foreseeable result of his statements, and we decline to extend *Pinkerton* vicarious conspiracy liability as a means to establish culpability in a disciplinary matter for the reasons set forth in our discussion of aggravation for significant harm, *post*. We affirm the hearing judge's dismissal of count eleven with prejudice. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charge for want of proof after trial on merits is with prejudice].)

**6. Eastman Knowingly Used
Misinformation in His Attempt to
Persuade Former Vice-President
Pence (Count Ten)**

Count ten is premised on four instances where Eastman "repeatedly proposed and sought to encourage that [former Vice-President] Pence exercise unilateral authority to disregard the electoral votes of certain states or delay the counting of electoral votes." Those charged instances were contained in the December 23 memo, the January 3 memo, and two emails to Jacob during the evening of January 6, 2021. According to the NDC, each of these writings urged the former Vice-President to either disregard the electoral votes of particular states or delay the electoral vote count even though Eastman knew no basis in law or fact existed for his positions.

The hearing judge found culpability as alleged and reasoned:

“Eastman was aware, or should have been aware, that the course of conduct he proposed in his memos was factually and legally unsupported. Eastman’s dubious strategy to influence [former] Vice[-]President Pence to take unilateral action to determine the validity of [the] slate of electors in the contested states or delay the Joint Session of Congress constitutes moral turpitude in violation of section 6106”

The judge assessed no additional disciplinary weight as the same facts supported culpability for count one. We find the charged statements in the two emails and the two memos were made with the intent to encourage the former Vice-President to take unilateral action at the upcoming Joint Session. We reject Eastman’s arguments as detailed *post* and further find Eastman intentionally pushed both his reject electors and delay theories, knowing those theories were not supported by the facts, the relevant historical record, or the law.

On review, Eastman asserts he is a constitutional expert and his theories were supported by scholarly articles and his interpretations of past elections. We reject his arguments, including that his interpretation of the Twelfth Amendment and the ECA were supported by his sources. We have closely examined Eastman’s testimony as well as the testimony of Yoo, Seligman, and Jacob. We note Eastman’s trial recollection was frequently poor as to what he reviewed, when he reviewed items, and the content he gleaned from his sources. Eastman was never able to

precisely identify at trial the items on which he specifically relied in late 2020 as opposed to materials reviewed after the fact and in anticipation of trial. For example, Eastman did not recall if he reviewed actual historical data or relied on the Ackerman article's recitation of the historical record. Despite Eastman's statement that he is a "constitutional scholar," he made erroneous assertions, in writing, to OCTC about the historical record. For example, Eastman mischaracterized United States Senator Charles Pickney's unconstitutionality arguments relating to an 1800 bill as leading to that bill's defeat. As Seligman detailed, the bill actually passed the Senate but did not survive the congressional reconciliation process. This is but one example of the lack of rigor and discernment Eastman applied to the issue of vice-presidential authority and the analysis of the historical record.

The record established that Eastman presumed the ECA was constitutional for decades and it did not run afoul of the Twelfth Amendment. His December 23 and January 3 memos and the change in his position were part of Eastman's actions to convince former Vice-President Pence to reject properly appointed electors or delay the January 6, 2021 electoral count, and the memos themselves contained false and misleading statements as discussed, *ante*. Moreover, in a January 6 email to Jacob, Eastman conceded that the former Vice-President did not have unilateral authority to reject electors or postpone the count and then reminded Jacob he told that to President Trump, writing "as you know because you were on the phone when I did it. [. . .] But you know him - once he gets something in his head, it is hard to get him to change course." Yet, Eastman continued to

press Jacob to convince the former Vice-President to delay the January 6 proceeding.

Eastman's argument on review references Jacob's December 8, 2020 memorandum to former Vice-President Pence that there was debate about his Joint Session role, but this argument misses the mark. Jacob testified that, at the time he drafted that document, he was just at the start of his research and had not yet reached a definitive conclusion. By December 14, Jacob clearly realized there would be no dual slates of electors. By the time Eastman and Jacob met on January 4 and 5, 2021, Jacob was more fully versed in the issues as established by Eastman's own trial testimony and Jacob's post-January 4 meeting memorandum. Finally, there were still unresolved factual issues in early December 2020 that were no longer at play by January 4, 2021.

Eastman claims Yoo testified that others shared Eastman's views and that Yoo also agreed a vice-president has authority to resolve disputed electoral ballots submitted for counting. This argument contorts Yoo's testimony and ignores distinctions drawn by the witness. First, even if Yoo was correct in his conclusion that a vice-president may have a role to act in a scenario that does not fall under a provision in the ECA, such as a governor or a legislative body submitting competing slates, Yoo's opinion was premised on a real dispute that existed. According to Yoo, the dispute in the 2020 presidential election was contrived rather than an actual dispute. Further, Yoo stated former Vice-President Pence was on "unassailable ground" when he determined the former Vice-President did not have the right to overturn the election.

Eastman worked to create an appearance of a legitimate dispute when in fact none existed. Eastman, through his knowing use of misinformation in his two memos and the charged emails with Jacob, repeatedly pushed for the former Vice-President to delay the electoral count or reject electors on January 6, 2021. We find Eastman engaged in misconduct that violated section 6106 as alleged in count ten; however, no weight will be given to this finding in our culpability analysis as the misconduct is duplicative of count one, discussed *post*. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)⁷⁷

7. Eastman’s January 2021 Media Statements About the 2020 Election (Counts Five and Nine)

In addition to Eastman’s efforts to convince former Vice-President Pence to reject electors or delay the electoral count and his involvement in election-related litigation alleging fraud and other illegalities, Eastman also had a media presence. Eastman is charged with making knowingly false and misleading statements in two of those media efforts: a podcast appearance before the January 6, 2021 Electoral College vote and an article he published in the days following the vote.

a. Eastman Made Misrepresentations During his Appearance on “Bannon’s War Room” Podcast (Count Five)

⁷⁷ Eastman raised a First Amendment challenge as well for this count, which we resolve in Section IV, *post*.

Before Eastman completed his January 3 memo, attended the January 4, 2021 Oval Office meeting, and the January 5 follow-up meeting with Jacob and Short, Eastman appeared on the nationally broadcast program “Bannon’s War Room.” At the start of Eastman’s January 2 interview by host Steve Bannon, Bannon described Eastman to his audience as “[o]ne of the great thinkers about the Constitution, and also a man of action. He’s the President – He runs the overall operation over there. But John Eastman is the *constitutional lawyer* that’s been putting up these lawsuits.” (Italics added.) Bannon described Eastman as President Trump’s lawyer to his audience two additional times. During the Bannon interview, Eastman stated action was needed in the states:

“[W]hat we have here is *massive evidence that this election was at least conducted illegally*. In violation of the state statutes. But, lots of evidence, as well, that as a result of that illegal conduct, removing checks against fraud in the absentee ballot process *that we have absentee fraud more than enough to have affected the outcome of the election.*”

(Italics added). Eastman further claimed Georgia, Pennsylvania, and Wisconsin were the states with the most egregious examples of state election laws being ignored or improperly altered. Prior to Eastman’s January 2 appearance, Georgia, Pennsylvania, and Wisconsin election officials issued various public statements refuting claims of outcome-determinative absentee ballot fraud. Eastman testified that he did not give “much credence” to press releases issued by Democratic elected officials in Pennsylvania and Michigan, and he did not give any weight to Republican election officials in Georgia because he felt

they were untruthful. He also stated he was frequently unaware (or only vaguely aware) of election officials' public statements. Eastman had no specific information about election law violations in Arizona, Michigan, or Nevada. For example, the same day he appeared on Bannon's podcast, Eastman sent an email to an attorney asking for information about Michigan "to the extent the violations are clear."

The NDC charged Eastman's statements on Bannon's War Room broadcast in count five as follows: "[Eastman] stated there was 'massive evidence' of fraud involving absentee ballots in the November 3, 2020 presidential election, 'most egregiously in Georgia, Pennsylvania, and Wisconsin.' [Eastman] further stated that there had been 'more than enough' absentee ballot fraud 'to have affected the outcome of the election.'" In finding Eastman culpable, the hearing judge determined he was grossly negligent. On review, OCTC seeks culpability based on intentional conduct. Eastman seeks a reversal of the judge's finding, arguing the NDC selectively quoted his statement and that the allegation was not proved at trial.⁷⁸

Turning first to Eastman's "selective quote" argument, Eastman said the following during the interview:

"No, this is a power the Constitution assigns exclusively to those state legislators. And they need to act because what we have here is *massive evidence that this election was at least conducted illegally*, you know, in violation of

⁷⁸ Eastman also argues his charged statements in this count are protected under the First Amendment. We address and reject that argument, *post*.

the state statutes. But *lots of evidence*, as well, that as a result of the illegal conduct, removing checks against fraud in the absentee ballot process, that *we have absentee fraud more than enough to have affected the outcome of this election.*⁷⁹

(Italics added.) Eastman claims that, when he said there was “massive evidence that this election was at least conducted illegally ... in violation of state statutes,” he did not refer to fraud. We find his argument wholly unpersuasive when considering the entirety of the interview and the charge. At the outset of the interview, Eastman asserted that election laws—specifically, those requiring a verified signature on absentee ballots designed to minimize the risk of fraud—had not been followed, “most egregiously in Georgia, Pennsylvania, and Wisconsin,” and thus, those states had conducted the election illegally.⁸⁰ A couple minutes later, Eastman explicitly stated that “absentee fraud” occurred because of the illegal conduct he had described and that it was “more than enough to have affected the outcome of this election.” Towards the end of the interview, he described the resulting slates of electors in those states as “illegally certified” and “fraudulently certified,” which is factually untrue. The NDC provided Eastman with the nature of the charge—moral turpitude by misrepresentation, in violation of section 6106—and

⁷⁹ This quotation is from the simultaneous transcription that appears in the video at minutes 2:55 to 3:09, which has some minor differences from the separate, printed transcript, both of which were admitted into the record as a single exhibit.

⁸⁰ Eastman reiterated this claim later in the interview when he said there “was a concerted effort to thwart the . . . anti-fraud provisions [the state legislators] had put in place.”

sufficient factual allegations in support of the charge for Eastman to prepare a reasonable defense. (§ 6085; *In re Ruffalo*, *supra*, 390 U.S. at p. 551; *Van Sloten v. State Bar*, *supra*, 48 Cal.3d at p. 929; *Sullins v. State Bar*, *supra*, 15 Cal.3d at p. 618.)

Although OCTC was not technically accurate in attributing Eastman's use of the phrase "massive evidence" to "fraud," as pleaded in the charge, Eastman's own words inextricably linked "massive evidence" to illegal conduct. Therefore, he has failed to articulate how his claim that "massive evidence that the election was . . . conducted illegally" is meaningfully different from the NDC's charge. (See, e.g., *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 [no due process violation when NDC characterized respondent's post-conviction disclosure duty as legal rather than ethical].)

Even if OCTC's allegation inaccurately conflated Eastman's concepts of state election law violations and fraud, and Eastman's statement of "massive evidence" referred to "illegalities," that misstep does not defeat the charge. OCTC accurately alleged Eastman said there was "more than enough" absentee ballot fraud "to have affected the outcome of this election." This statement strikes at the gravamen of the charge as set forth in the NDC: "[T]hese allegations regarding absentee ballot fraud were false and misleading, as [Eastman] knew at that time that there was no evidence upon which a reasonable attorney would rely of absentee ballot fraud in any state in sufficient numbers that could have affected the outcome of the election." Eastman argues that, while potentially ambiguous, the "more than enough" phrase likely modifies "illegal conduct" and not "absentee fraud." Reviewing the video of the War

Room podcast with the attendant transcript shown in minute increments, we reject this argument as it is apparent that the phrase is modifying “absentee fraud.”

As to culpability, OCTC met its burden of proof that Eastman’s statements were not made with gross negligence but were intentionally false and misleading statements. Thus, the record supports an intentional moral turpitude finding under section 6106. The record supports the conclusion that Eastman knew no basis existed for the assertion that there was sufficient absentee ballot fraud to alter the outcome of the 2020 election. Based upon our review of the record, as discussed *ante*, no massive evidence of either illegality or fraud existed in the states of Georgia, Pennsylvania, and Wisconsin. As was evident throughout the trial, Eastman simply rejected information and court decisions that were contrary to his views.

**b. Eastman Made Misrepresentations
in His “The American Mind” Article
(Count Nine)**

After the Capitol attack and on the eve of former President Biden’s inauguration, Eastman published an article in the Claremont Institute’s online publication, “The American Mind.” Eastman’s article, published on January 18, 2021, was entitled *Setting the Record Straight on the POTUS “Ask.”* The NDC charged in count nine that Eastman made, in the course of the article, false election irregularity claims: (1) votes were electronically “flipped” from President Trump to former President Biden in Antrim County, Michigan; (2) more absentee ballots were cast than requested in parts of Wayne County, Michigan; and

(3) “suitcases of ballots were pulled from under the table after election observers had been sent home for the night” at the State Farm Arena in Fulton County, Georgia. We take each charged statement in turn.

As to the article’s claim that, in Antrim County, Michigan, votes were “electronically flipped” from President Trump to former President Biden, the Michigan Secretary of State issued a press release on November 6, 2020, months before Eastman published his article. It informed the public that the “erroneous reporting of unofficial results from Antrim County was a result of accidental error on the part of the Antrim County Clerk.” The press release further advised the public that there had been human error in an unofficial release of results caused by failure to complete a software update, but no equipment malfunction occurred and the county’s software functioned properly in counting ballots. Another press release followed on December 8 to once again address allegations about the Antrim County vote. A month before Eastman’s article was published, yet another press release was issued on December 17 that announced a hand audit of all presidential votes in Antrim County confirmed the equipment accurately counted the Antrim County votes. This is consistent with Halderman’s March 2021 conclusion, who was an election security expert retained by Michigan’s Secretary of State and Attorney General and who Eastman praised at trial.⁸¹

⁸¹ Halderman’s March 26, 2021 report of his forensic investigation found, *inter alia*, “inaccurate unofficial results were a consequence of human errors” and “not caused by a security breach.” Further, Halderman found, “The final results match[ed] the poll tapes . . . and there [was] no evidence that the poll tapes [were] inaccurate, except . . . in [a few] down-ballot races.”

Eastman had a generalized aversion to information provided by state government officials and also failed to actively seek out credible experts to advise him. As was consistent throughout the trial, Eastman either claimed he was too busy to verify information or had an inability to recall what he knew and what steps he took to verify information forwarded to him. We reject Eastman's assertion that his Antrim County allegation is "demonstrably true." The testimony of Michigan officials at trial and the documentary evidence in the record show the contrary. Thus, Eastman's statement in his article was false, and he is culpable under section 6106.

Regarding Eastman's allegation in his article about Wayne County having more absentee ballots cast than requested, Eastman failed to take into account that Wayne County does not report absentee votes by precinct, but rather by separate counting boards covering multiple precincts. Wayne County precinct data would show no absentee ballots because those ballots are separately counted by an absentee voting board, a different entity from Wayne County. Eastman conceded at trial he did not recall the source of the allegation or whether it was true and repeats the concession on review.⁸² We reject Eastman's arguments that his statement was a mistake, given it is an untrue allegation with his having no recollection

Contrary to Eastman's argument, Halderman did not "confirm that votes had been electronically flipped from Trump to Biden in Antrim County, Michigan."

⁸² We note that, at the end of Eastman's article, it contains an undated correction stating, "a previous version of this article incorrectly stated that there were more votes cast than registered voters in Wayne County, [Michigan]." The parties did not address this on review.

as to its source, or that he is entitled to First Amendment protection pursuant to *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 271. First, Eastman's reliance on *New York Times Co. v. Sullivan* is not applicable here. As discussed in Section IV, *post*, this is a disciplinary proceeding. Hence, we examine Eastman's conduct pursuant to an objective standard, not a subjective one. Eastman's conduct was not objectively reasonable as he did not know the source of his information. By Eastman's own admission, he repeated unsubstantiated information. This is patently unreasonable. (Cf. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370, 375-376 [subjective intent did not apply and no reasonable factual basis existed for attorney's allegation that judge was involved with corporate fraud and bribery].)

Eastman's charged statement was untrue as established by the testimony of the Director of Michigan's Bureau of Elections. The number of absentee ballots counted was consistent with the number of ballots requested. Moreover, the false claim was premised on a fundamental misunderstanding of how Michigan processes absentee ballots. We also reject the contention he was simply negligent in repeating the claim. Intentionality is established by Eastman's willful blindness to the truth or falsity of his published allegation. (*In the Matter of Carver, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 432-433.)

Regarding Georgia, Eastman included the following statement in his article:

"A large portion of the American citizenry believes the illegal actions by partisan election officials in a few states have thrown the

election. They saw it with their own eyes—in Fulton County, Georgia, where suitcases of ballots were pulled from under the table after election observers had been sent home for the night.”

No real dispute exists that Eastman’s claim regarding the “suitcases” of ballots at the State Farm Arena was untrue. (See our count four discussion, *ante*.) By December 5, 2020, investigative personnel within the Georgia Secretary of State’s Office concluded no hidden suitcases of ballots existed and ballots were not improperly counted. As detailed in our discussion regarding Eastman’s First Amendment defense, *post*, his false assertion about the State Farm Arena ballots being in “suitcases” is not protected as “rhetorical hyperbole” as the statement is reasonably “interpreted as stating actual facts.” (*Milkovich v. Lorain Journal Co.*, *supra*, 497 U.S. at p. 20, citations omitted.)

**D. Eastman Failed to Support the
Constitution or Laws of the United States
in His Pursuit to Delay the Electoral
Count (§ 6068, subd. (a)) (Count One)**

Count one charged that Eastman failed to support the Constitution or laws of the United States during his drive to delay the electoral count process or cause duly appointed electors of various states to be rejected, in violation of section 6068, subdivision (a), which imposes a duty on attorneys to support the Constitution and laws of the United States and California. Failure to do so warrants discipline. (*In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar

Ct. Rptr. 91, 110; *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, 487.)⁸³

As the hearing judge found Eastman culpable only for his failure to support the federal criminal prohibition against conspiring to defraud the United States (title 18 U.S.C. § 371), our focus is on the conspiracy allegation.⁸⁴ We utilize the elements of that federal offense to guide our analysis as to whether Eastman violated section 6068, subdivision (a).⁸⁵ The “defraud clause” portion of the general federal conspiracy statute prohibits conspiring “to defraud the United States, or any agency thereof in any manner or for any purpose.” The elements to convict under the federal statute are that a person “(1)

⁸³ A defense to a section 6068, subdivision (a), charge is a good faith mistake of law. (*In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 631.) However, Eastman raised no such defense as he asserts, erroneously, there was “substantial historical and scholarly support” for the positions he took regarding former Vice-President Pence’s authority.

⁸⁴ Count one also alleged Eastman did not support the ECA provisions in effect at the time and that he failed to support article II, section 1 of the Twelfth Amendment. The hearing judge found OCTC did not meet its burden of proof as to those allegations because it only established that Eastman intended to violate these provisions rather than proving an actual violation. OCTC did not challenge this finding on review, and we affirm the finding. Hence, we do not address OCTC’s legal theory in the NDC as to the interplay between section 6068, subdivision (a), and the charged failure to support the ECA or the Twelfth Amendment. We instead focus on whether Eastman used deceitful means and conspired with others to obstruct the electoral count on January 6, 2021.

⁸⁵ State Bar Court proceedings are *sui generis*—neither criminal nor civil. (*Brotsky v. State Bar* (1962) 57 Cal.2d 287, 300.)

entered into an agreement (2) to obstruct a lawful government function (3) by deceitful or dishonest means and (4) committed at least one overt act in furtherance of the conspiracy [citations].” (*United States v. Conti* (9th Cir. 2015) 804 F.3d 977, 979-980.)⁸⁶ The means used to achieve the goal of the conspiracy need not be independently illegal. (*United States v. Caldwell* (9th Cir. 1993) 989 F.2d 1056, 1059, overruled on other grounds by *Neder v. United States* (1999) 527 U.S. 1, 8-9.) In the seminal case of *Hammerschmidt v. United States* (1924) 265 U.S. 182, the U.S. Supreme Court defined “defraud” in the context of an obstruction conspiracy case as “deceit, craft or trickery, or at least *by means that are dishonest*.” (*Id.* at p. 188, italics added.) A “defraud clause” conspiracy charge reaches to “any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of government, [citations].” (*Dennis v. United States* (1966) 384 U.S. 855, 861.)

The hearing judge found Eastman conspired with President Trump to obstruct the Joint Session through deceitful means, and Eastman committed numerous overt acts in furtherance of the conspiracy. Eastman argues on review that two of the four elements of the offense were not established: (1) the Joint Session was not a lawful government function due to underlying election illegalities in some states, and (2) the hearing judge’s application of “defraud” to

⁸⁶ The hearing judge relied on *United States v. Meredith* (9th Cir. 2012) 685 F.3d 814, 822 to establish the elements of 18 U.S.C. section 371, which are very similar to our discussion of the elements in the statute set out in *Conti*.

his conduct was overbroad.⁸⁷ In furtherance of this latter point, Eastman argues the scope of a vice-president's authority was an "open question" and, even if Eastman used a false legal premise, his actions did not amount to "deceit, craft, or trickery." Eastman's arguments are not supported by the record.

Regarding Eastman's first argument, the Joint Session was in fact a lawful government function. No credible evidence exists to the contrary that the meeting of both houses of the United States Congress pursuant to the Twelfth Amendment and the ECA is not a lawful government function. No judicial finding or affirmative legislative action occurred that made the Joint Session unlawful. Sufficient support is in the record, discussed *ante* in several of the other counts and as detailed by the hearing judge, that Eastman used multiple dishonest means to advance his goal to impair, obstruct, or defeat the lawful purpose of the Joint Session.⁸⁸ Eastman made numerous false claims to help accomplish the conspiracy's shared objective: to have former Vice-President Pence run interference on the electoral vote count with the goal to have him reject or delay the counting of electoral votes on

⁸⁷ As Eastman only challenges whether two of the four elements were met, we find he waived the factual findings for the remaining elements. (Rules Proc. of State Bar, rule 5.152(C)). Even if challenged, the remaining elements, based upon our independent review of the record, support a finding they were met. Clear and convincing evidence exists of an agreement with Trump and others, including Eastman, to impede the January 6, 2021 Joint Session. As for the final element, the record is replete with numerous overt acts, such as making intentional false and misleading statements to former Vice-President Pence, his staff, and the public.

⁸⁸ Therefore, we reject Eastman's argument that he did not have the requisite mens rea to violate title 18 U.S.C. section 371.

January 6, 2021. The hearing judge’s detailed decision of the trial record supports the finding that Eastman used dishonest means in order to help advance the conspiracy detailed in the NDC.

As to Eastman’s second argument, the hearing judge’s conclusion is consistent with the U.S. Supreme Court’s definition of “defraud” in *Hammerschmidt*. Accordingly, Eastman failed to support the law that prohibits defrauding of “the United States, or any agency thereof in any manner or for any purpose.” (18 U.S.C. §371; *Hammerschmidt v. United States*, *supra*, 265 U.S. at p. 188; *Dennis v. United States*, *supra*, 384 U.S. at p. 861.) We further find this count and count ten duplicative and assign disciplinary weight only to this count. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127 [no additional disciplinary weight for former rule 4-100(A) violation when duplicative of moral turpitude violation].)

IV. EASTMAN’S FIRST AMENDMENT DEFENSES ARE NOT SUPPORTED BY THE FACTS OR CASE LAW

We now address Eastman’s contention that his statements in counts one through ten, found as misconduct by the hearing judge and affirmed by us, are protected expressions of his rights under the First Amendment, including freedom of speech and the right to petition the government for a redress of grievances.⁸⁹ Eastman contends that his statements cannot be used as grounds for professional

⁸⁹ The First Amendment states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

disciplinary action. Further, Eastman asserts that the hearing judge misinterpreted and misapplied First Amendment jurisprudence in applying an intermediate scrutiny standard for advertising and soliciting cases as opposed to the strict scrutiny standard applicable to restrictions on core political speech issues.

The First Amendment rights of attorneys are linked to the critical role they perform within the judicial system. While these rights are fundamental, they must be calibrated to align with the unique role attorneys play in the administration of justice. As we have stated, “attorneys occupy a special status and perform an essential function in the administration of justice. Because attorneys are officers of the court with a special responsibility to protect the administration of justice, courts have recognized the need for the imposition of reasonable speech restrictions upon them.” (*In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775, 781, citing *Goldfarb v. Virginia State Bar* (1975) 421 U.S. 773, 792 [state’s interest in regulating lawyers is especially great because lawyers are essential to primary governmental function of administering justice and have historically been court officers].)

For these reasons, “speech otherwise entitled to full constitutional protection may nonetheless be sanctioned if it obstructs or prejudices the administration of justice.” (*Standing Comm. on Discipline v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1442, citing *Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030, 1074-1075.)⁹⁰ Because lawyers are “an

⁹⁰ In *Gentile*, the court reviewed a First Amendment challenge to a Nevada bar disciplinary sanction leveled against

intimate and trusted and essential part of the machinery of justice, an officer of the court in the most compelling sense,” (*id.* at p. 1072, citations and internal quotations omitted), it is contemplated that a lawyer’s right to free speech is especially limited in the courtroom. (*Id.* at p. 1071 [“It is unquestionable that in the courtroom itself, during a judicial proceeding, whatever right to ‘free speech’ an attorney has is extremely circumscribed”].) Even beyond the confines of the courtroom or the pendency of a case, attorneys are not necessarily “protected by the First Amendment to the same extent as those engaged in other businesses.” (*Id.* at p. 1073.) In examining the Nevada disciplinary rule at issue, the court in *Gentile* held that the “substantial likelihood of material prejudice” standard used in the Nevada rule constituted a “constitutionally permissible balance between the First Amendment rights of attorneys in pending cases and the State’s interest in fair trials.” (*Id.* at p. 1075.)⁹¹

Eastman contends that the hearing judge erred in applying the commercial speech balancing test to the speech issues in this case. Citing *Gentile*, Eastman argues that strict scrutiny is the appropriate standard

a criminal defense attorney who had given a post-indictment press conference, in which he suggested that his client was an innocent scapegoat, that the actual perpetrator was a crooked police detective, and that others likely to testify as witnesses were drug dealers and money launderers.

⁹¹ Eastman’s contention that some of his statements are merely “rhetorical hyperbole” is not persuasive. Eastman’s statements, such as “We know there was fraud. Traditional fraud that occurred. We know that dead people voted,” would not fall within such an exception. (*Milkovich v. Lorain Journal Co.*, *supra*, 497 U.S. at p. 20.)

when examining core political speech, while OCTC argues that Eastman's speech is subject to intermediate scrutiny pursuant to *Gentile*. We agree with Eastman that strict scrutiny is the applicable standard when examining core political speech and that Eastman's charged statements involved core political speech. (See *Gentile v. State Bar of Nevada*, *supra*, 501 U.S. at pp. 1075-1076 [content neutral Nevada rule was "narrowly tailored" and regulated only limited area of attorney speech]; see also *In the Matter of Parish*, *supra*, 5 Cal. State Bar Ct. Rptr. 370, 375, citing *Republican Party of Minnesota v. White* (2002) 536 U.S. 765, 774 [content-based restriction on judicial campaign speech burdens speech at core of First Amendment freedoms].) ⁹²

While attorneys have a First Amendment right to make statements in public in the course of their professional duties, this right does not extend to making knowing or reckless false statements of fact or law. We addressed this concept in *In the Matter of Parish*.⁹³ In that case, Parish was a candidate for

⁹² To the extent that the correct analytical standard is relevant, we believe the applicable standard is one of strict scrutiny. Regardless, our focus remains on Eastman's false statements and whether or not they violate the rules and statutes governing attorney conduct.

⁹³ Regarding the point of law that false statements do not enjoy First Amendment protection, the U.S. Supreme Court has stated, "Although honest utterance, even if inaccurate, may further the fruitful exercise of the right of free speech, it does not follow that the lie, knowingly and deliberately published about a public official, should enjoy a like immunity. At the time the First Amendment was adopted, as today, there were those unscrupulous enough and skillful enough to use the deliberate or reckless falsehood as an effective political tool to unseat the

judicial office and was found culpable for factual misrepresentations that he made about himself and his opponent. These campaign misrepresentations violated former rule 1-700 of the Rules of Professional Conduct, which prohibited, through the incorporation of former canon 5,⁹⁴ candidates from “knowingly, or with reckless disregard for the truth” misrepresenting their opponents “identity, qualifications, present position, or any other fact concerning the candidate or [their] opponent.” (*In the Matter of Parish, supra*, 5 Cal. State Bar Ct. Rptr. at p. 372, fn. 1].) Parish argued, consistent with a First Amendment defense, that he unknowingly made one false statement about his opponent and further contended he was not culpable because the prosecution failed to prove he made the statements with a reckless disregard of the truth. *Parish* is also consistent with cases where, in balancing an attorney’s First Amendment rights outside of the courtroom with the public protection components of the attorney disciplinary process, the attorney’s conduct is assessed under an objective, reasonableness standard. (*U.S. Dist. Court for Eastern Dist. of Washington v. Sandlin* (9th Cir. 1993) 12 F.3d 861.)⁹⁵

The evidence and testimony at trial established that Eastman made multiple false and misleading statements in his professional capacity as an attorney

public servant or even topple an administration.” (*Garrison v. State of Louisiana* (1964) 379 U.S. 64, 75.)

⁹⁴ Former California Code Judicial Ethics, canon 5B(2), now canon 5B(1)(b), effective January 1, 2013.

⁹⁵ In contrast, Eastman’s reliance on *New York Times Co. v. Sullivan, supra*, 376 U.S. 254, 269-271, is misplaced as that case involved a claim of defamation by a public official and was analyzed under a subjective standard.

for President Trump in court filings and other written statements, as well as in conversations with others and in public remarks. Both this opinion and the hearing judge’s decision detail, in the discussion of the individual counts where culpability was found, that Eastman knowingly made these false statements or had no reasonable factual or legal basis for making them. Accordingly, while we have applied the strict scrutiny standard to the facts of this case, we find Eastman’s First Amendment defenses regarding his rights to free speech and to petition the government for the redress of grievances do not bar a finding of culpability and discipline in this matter.

Furthermore, the First Amendment does not protect speech that is employed as a tool in the commission of a crime. (See *United States v. Hansen* (2023) 599 U.S. 762, 783 [First Amendment does not protect “speech integral to unlawful conduct”]; *United States v. Williams* (2008) 553 U.S. 285, 298 [“Many long established criminal proscriptions—such as laws against conspiracy, incitement, and solicitation—criminalize speech (commercial or not) that is intended to induce or commence illegal activities”].) Count one of the NDC charges Eastman with conduct and statements made in furtherance of a criminal scheme, i.e., conspiring to promote and assist President Trump in executing a strategy to overturn the legitimate results of the 2020 presidential election by obstructing the count of electoral votes of certain states, in violation of title 18 U.S.C. section 371. Attorneys do not have a constitutional right to collaborate with clients for purposes that are unlawful, criminal, or fraudulent. (Cf. Rules Prof. Conduct, rule 1.2.1 [prohibiting attorney from advising or assisting violation of law].)

Eastman, in the scope of his representation of President Trump, wrote in his January 3 memo that former Vice-President Pence had the power to “gavel” in President Trump as reelected on January 6, 2021. Eastman’s January 3 memo also contained additional deceptive, untrue, and fraudulent statements, such as the claim that there were dual slates of electors for certain states, that former Vice-President Pence was the ultimate arbiter under the Constitution to determine the result and could even declare President Trump the winner, and that such “bold” action was justified because “this Election was Stolen by a strategic Democrat[ic] plan to systemically flout existing election laws.” Eastman knew that his advice lacked a reasonable basis in law because he conceded to Jacob that his argument was contrary to consistent historical practice and would likely be unanimously rejected by the U.S. Supreme Court. In light of the evidence, the First Amendment does not bar disciplinary action against Eastman for his speech in assisting and advising President Trump in illegal, criminal, or fraudulent activities.

Eastman further asserts that he has a separate right to petition for redress of grievances, and we acknowledge Eastman’s First Amendment right. However, restrictions on the right to petition generally are subject to the same analysis as restrictions on the right of free speech. (*Wayte v. United States* (1985) 470 U.S. 598, 610, fn. 11.) Specifically, he asserts that, in his own right, he petitioned legislators to investigate and the President of the Senate to accede to his requests to investigate the impact of illegality in the conduct of the election. Eastman claims he was acting as a private citizen, exercising his right to petition at the January 4, 2021

Oval Office meeting and in his January 6 emails with Jacob. We agree with the hearing judge that Eastman did not attend the January 4 meeting in his capacity as a private citizen. We reach this same conclusion as to Eastman's charged January 6 emails. As such, because we have already determined that Eastman's First Amendment defense to several counts does not preclude disciplinary action against him, we similarly find that Eastman's right to petition for redress does not bar finding culpability and the imposition of discipline. Accordingly, we reject Eastman's First Amendment defenses.

V. AGGRAVATION AND MITIGATION

Aggravating circumstances under the Standards for Attorney Sanctions for Professional Misconduct are "factors surrounding a lawyer's misconduct that demonstrate that the primary purposes of discipline warrant a greater sanction than what is otherwise specified in a given Standard."⁹⁶ (Std. 1.2(h).) Mitigating circumstances are "factors surrounding a lawyer's misconduct that demonstrate that the primary purposes of discipline warrant a more lenient sanction than what is otherwise specified in a given Standard." (Std. 1.2(i).) OCTC is required to establish aggravating circumstances by clear and convincing evidence (std. 1.5), and Eastman must meet the same burden to prove mitigation (std 1.6).

The hearing judge found aggravation for multiple acts of wrongdoing, lack of candor, and indifference.⁹⁷

⁹⁶ All further references to standards are to the Rules of Procedure of the State Bar, Title IV, Standards for Attorney Sanctions for Professional Misconduct.

⁹⁷ The hearing judge declined to find aggravation under standard 1.5(d) for intentional misconduct, bad faith, or

The judge also found mitigation for no record of prior discipline, cooperation, and extraordinary good character. On review, Eastman only disputes the lack of candor finding and asserts that the aggravation and mitigation, when “appropriately balanced,” should result in a lesser degree of discipline if culpability is affirmed. OCTC argues on review that aggravation should be assigned for significant harm.

A. Aggravation

1. Multiple Acts of Wrongdoing (Std. 1.5(b))

The hearing judge assigned substantial weight in aggravation for Eastman’s multiple acts of wrongdoing, including (1) seeking to mislead the U.S. Supreme Court in *Texas v. Pennsylvania*, (2) seeking to mislead the United States District Court for the Northern District of Georgia in *Trump v. Kemp*, (3) making multiple false and misleading statements amounting to moral turpitude (six counts), (4) encouraging former Vice-President Pence to disregard properly certified electoral votes and delay certification of the votes, amounting to moral turpitude, and (5) conspiring to commit an offense against the United States in violation of title 18 U.S.C. section 371.⁹⁸ We agree with the judge that substantial weight in aggravation is appropriate for Eastman’s multiple acts of wrongdoing. (Std. 1.5(b).)

dishonesty as there were not separate and distinct facts supporting aggravation apart from the facts supporting culpability. Neither party challenges these findings on review, and we agree.

⁹⁸ Multiple acts of misconduct as aggravation are not limited to the counts pleaded. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279.)

(See *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555 [repeated similar acts of misconduct considered serious aggravation].)

2. Lack of Candor (Std. 1.5(l))

Standard 1.5(l) provides that aggravation may include “lack of candor and cooperation to the victims of the misconduct or to the State Bar during disciplinary investigations or proceedings.” The hearing judge found a portion of Eastman’s testimony lacked candor: when Eastman falsely testified that he did not exert pressure on Jacob to reject the certified former President Biden electors in the January 5, 2021 meeting.⁹⁹ Such a finding is supported by Jacob’s records from that meeting, his testimony about the January 5 meeting, Jacob’s testimony regarding Eastman’s participation in a call later the same day that included President Trump, and Jacob’s January 6 email response to Eastman recounting that rejecting electors had been discussed in their January 5 meeting and withdrawn that same night. As the lack of candor finding is supported by the record, we give it great weight. (See *Franklin v. State Bar* (1986) 41 Cal.3d 700, 708 [hearing panel findings on witness credibility entitled to great weight because panel saw and heard witness]; *In the Matter of Dahlz, supra*, 4 Cal. State Bar Ct. Rptr. at p. 282 [great weight given to hearing judge’s finding on candor].)

⁹⁹ Eastman testified that he had no recollection of advocating for the option of rejecting electors in his meeting with Jacob and further stated he found it “implausible” that he would have made such a statement. As discussed *ante*, we agreed with the hearing judge’s determination that Jacob’s testimony was more credible than Eastman’s on this point.

We reject Eastman’s broad claim on review that his testimony was “honest, candid, and fulsome,” and the hearing judge erred by assigning aggravation for lack of candor. Eastman’s testimony on this subject was not merely based on his “different memory” of the events. (*In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509, 523.) Based on the record, it is clear that Eastman was not candid about whether he pressured Jacob to reject electors on January 5. No other evidence corroborates Eastman’s testimony. (See *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 791-792 [attorneys lacked candor where record at complete odds with hearing testimony]; *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965, 981 [lack of candor finding where record contradicted with respondent’s uncorroborated testimony].) The judge assigned aggravation to only this portion of the testimony and therefore assigned only limited aggravating weight. We adopt the finding and weight assigned by the judge.

3. Indifference (Std. 1.5(k))

Aggravation may also be found for “indifference toward rectification or atonement for the consequences of the misconduct.” (Std. 1.5(k).) While the law does not require false penitence, it does require that an attorney accept responsibility for wrongful acts and show some understanding of his culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) The hearing judge assigned substantial weight in aggravation for Eastman’s indifference, finding that he failed to understand the wrongfulness of his actions surrounding his efforts to obstruct the 2020 presidential election results. The judge noted that

Eastman gave no consideration in his testimony to the effect of his January 6, 2021 televised statements to the crowd at the Ellipse, where he misrepresented to thousands that electoral fraud from electronic voting had occurred. The judge also specified that Eastman characterized these disciplinary proceedings as a political persecution, claimed that the charges contained false and misleading statements, and called for the disbarment of the attorneys who brought the charges.

Eastman does not make specific arguments on review regarding the judge's aggravation finding for indifference. Rather, he maintains that his actions were factually and legally justified and continues to focus on his belief that these proceedings are political in nature. He describes these proceedings as "an extraordinary, unprecedented, and abjectly misguided foray by the California Bar . . . into the 2020 presidential election" His assertions also focus on a claim that the judge was biased against him, which resulted in a "stupefying" decision "ravaging" his rights. The breadth of his attacks on the judge and the labeling of this disciplinary proceeding as a punitive political exercise causes us the greatest of concerns about his ethical abilities as an attorney and officer of the court and demonstrates a fundamental lack of understanding concerning his professional ethical obligations.

When charged with disciplinary misconduct related to positions taken and dismissed by the courts, an attorney's unwillingness to even consider the appropriateness of his actions or acknowledge that at some point his position may have been meritless or wrong shows that the attorney "went beyond tenacity to truculence." (*In re Morse* (1995) 11 Cal.4th 184,

209.) This is the case here as Eastman has shown nothing but defiance and pugnacity and a refusal to consider the propriety of his actions as an attorney, and he persisted in this stance during oral argument.¹⁰⁰ “It is well settled that an attorney’s contemptuous attitude toward the disciplinary proceedings is relevant to the determination of an appropriate sanction. [Citations.]” (*Weber v. State Bar* (1988) 47 Cal.3d 492, 507.) We affirm the hearing judge’s finding of substantial weight in aggravation under standard 1.5(k) based on Eastman’s continued attacks on these disciplinary proceedings and his inability to show an understanding of his misconduct.

4. Significant Harm (Std. 1.5(j)) Not Established

“[S]ignificant harm to the client, the public, or the administration of justice,” may be an aggravating circumstance. (Std. 1.5(j).) OCTC appeals the hearing judge’s decision to not assess aggravation under this circumstance. We find OCTC did not present any additional facts beyond those we have already considered in determining culpability that would warrant a separate aggravation finding for significant harm. (*In the Matter of Sampson, supra*, 3 Cal. State Bar Ct. Rptr. at p. 133 [no separate aggravation where culpability conclusions directly addressed misconduct].)

Eastman’s actions resulted in culpability that involved (1) conspiring to obstruct the legitimate counting of electoral votes in his campaign to persuade former Vice-President Pence to reject

¹⁰⁰ Although represented by counsel on review, we granted Eastman’s request for an opportunity to address us directly at oral argument.

electors or delay the count; (2) misleading courts in two separate cases; and (3) making false and misleading statements to the former Vice-President, other government officials, and the general public. Naturally, Eastman's actions that we have described harmed the public, the courts, and the legal profession, and resulted in culpability for violating section 6068, subdivisions (a) and (d), and section 6106. The harm that was intertwined with the various culpability findings is considered in our determination of appropriate discipline.

OCTC additionally argues that Eastman caused significant harm to the general public by "sowing doubt" about the electoral process, which harmed those who administer elections with his unsubstantiated claims of illegality and fraud. We do not disagree with OCTC that misinformation about the 2020 election was rampant and consequentially resulted in a loss of confidence in the election process, but Eastman was just one of many who amplified this misinformation. Eastman's lies were only a part of the reason for the public's increased distrust of our electoral process. As to election administration workers and officials, we acknowledge OCTC presented evidence that, due to misinformation regarding the election in the media, election workers were harassed and states had to work to combat the misinformation. However, OCTC did not provide evidence to directly connect these examples of harm to Eastman's statements.

OCTC also seeks aggravation for the January 6, 2021 assault on the Capitol. Like the loss of public confidence in elections and our system of democracy, the January 6 assault cannot be directly attributed to Eastman in order to support an aggravation finding

under standard 1.5(j). Further, OCTC did not show additional facts to justify significant harm to the administration of justice. (See *In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 133 [where respondent's misconduct—failure to perform with competence—caused unnecessary sanction motions and hearings, this alone did not establish significant harm to administration of justice].) The record does not reveal specific evidence that considerable court time or resources were expended due to Eastman's misrepresentations. (Cf. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 75, 79-80 [harm to administration of justice where attorney committed multiple acts of misconduct resulting in considerable court resources wasted].)¹⁰¹

We agree with the hearing judge that OCTC's evidence offered in support of aggravation for significant harm was speculative, and thus OCTC did not prove Eastman was the cause of the harm.¹⁰² Because OCTC has not presented sufficient evidence of additional harm that can be directly attributed to Eastman—beyond what was considered to find

¹⁰¹ Counts two and four (the intervention motion and the *Kemp* action) involve harm to the administration of justice, but additional facts beyond those used to determine culpability were not established.

¹⁰² OCTC went so far as to argue aggravation for significant harm based on *Pinkerton* vicarious criminal liability for the natural and foreseeable consequences of Trump's actions in furtherance of the conspiracy to obstruct the January 6, 2021 Joint Session. (See *Pinkerton v. United States*, *supra*, 328 U.S. 640; *United States v. Fonseca-Caro* (9th Cir. 1997) 114 F.3d 906.) We decline to extend aggravation of Eastman's misconduct based on the actions of President Trump.

culpability—we decline to assign aggravation under standard 1.5(j). (Std. 1.2(h) [aggravation based on “factors surrounding a *lawyer’s* misconduct”] (*italics* added); *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835, 845 [no aggravation where OCTC failed to establish “specific, cognizable, and significant harm” that could be “directly attributed” to respondent’s actions].)¹⁰³

B. Mitigation

1. Extraordinary Good Character (Std. 1.6(f))

A lawyer may receive mitigation for “extraordinary good character” under standard 1.6(f) if it is “attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct.” The hearing judge credited Eastman’s good character evidence and assigned substantial weight in mitigation. Neither party challenges this finding on review. Eastman presented several references attesting to his good character who had known him for a considerable amount of time and understood the disciplinary charges.

Eastman’s character witnesses included three former judicial officers, including a retired United States circuit court judge. We give serious consideration to their testimony and declarations. (*In*

¹⁰³ We have considered the factual record as highlighted in our colleague’s concurring opinion that Eastman’s actions caused significant harm within the meaning of standard 1.5(j). Nonetheless, we remain convinced that Eastman’s actions identified by our colleague either falls within the ten misconduct findings we have affirmed or that the evidentiary record does not demonstrate Eastman’s actions, in and of themselves, caused significant harm.

the Matter of Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [attorneys have strong interest in maintaining honest administration of justice].) Several references expressed that if Eastman were culpable of the alleged misconduct, then it was anomalous behavior that would not recur. We affirm substantial mitigation under standard 1.6(f).

2. Cooperation (Std. 1.6(e))

Mitigation may include “spontaneous candor and cooperation displayed to the victims of the misconduct or to the State Bar.” (Std. 1.6(e).) The hearing judge credited the stipulation as to facts and assigned limited weight for cooperation under standard 1.6(e) because Eastman did not admit culpability, the stipulated facts were easy to prove, and the stipulation “obviated very little in terms of OCTC’s preparation for trial.” We affirm limited mitigating weight for Eastman’s cooperation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation for those who admit culpability and facts]; *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 318 [limited mitigation where stipulation was not extensive, involved easily provable facts, and no admission of culpability].)

3. No Prior Record of Discipline (Std. 1.6(a))

Mitigation for absence of a prior record of discipline may be assigned when there are many years of discipline-free practice coupled with present misconduct that is not likely to recur. (Std. 1.6(a).) Eastman practiced law for approximately 23 years prior to his misconduct. The hearing judge found Eastman has not shown insight into his misconduct

and, therefore, the misconduct was not aberrational. The hearing judge assigned moderate weight under standard 1.6(a).

While we agree with the hearing judge that Eastman has failed to accept responsibility for his wrongdoing, we cannot agree with the weight she assigned here. Given his complete inability to accept responsibility as described in our indifference finding, we have great concern that future misconduct will occur. (*Cooper v. State Bar* (1987) 43 Cal. 3d 1016, 1029 [for protection of the public, court must consider fitness of attorney to continue to practice when determining mitigation for absence of prior discipline].) Eastman continues to fully deny his many unethical actions: he denies he misled the courts; he denies that he made multiple false and misleading statements in various contexts; and he denies that he conspired to subvert the law in order to benefit his client's desire to remain in office after his client lost a fair and lawfully conducted election. Because he fails to recognize his ethical obligations and views any scrutiny of them as an attack on him, we assign only nominal mitigation for Eastman's absence of a prior record of discipline despite his 28 years of being an attorney.¹⁰⁴ (*In the Matter of Jones* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 873, 895 [nominal mitigation for nine years of discipline-free practice where respondent failed to acknowledge any wrongdoing and demonstrate understanding of

¹⁰⁴ OCTC did not challenge the hearing judge's assignment of moderate mitigating weight, but based on the record, we find that less mitigation is warranted. (Rule 5.155(A) [Review Department independently reviews record and may make findings, conclusions, or a decision or recommendation different from those of hearing judge].)

ethical duties]; but see *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 218 [no mitigation for 13-year discipline-free record when attorney failed to accept responsibility for wrongdoing].)

VI. DISBARMENT IS THE APPROPRIATE DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow the standards “whenever possible.” (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

In considering the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction shall be imposed where multiple sanctions apply].) Under standard 2.11, disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, or intentional or grossly negligent misrepresentation.¹⁰⁵ Standard

¹⁰⁵ “The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the practice of law.” (Std. 2.11.)

2.12(a) similarly provides for disbarment or actual suspension for violations of section 6068, subdivisions (a) and (d).

Eastman does not have a prior record of discipline, but that fact alone does not preclude disbarment. In certain circumstances, we have disbarred attorneys who have had no prior record of misconduct. (Cf. *Lebbos v. State Bar* (1991) 53 Cal.3d 37, 41, 45 [disbarment with no prior record for committing multiple acts of moral turpitude and dishonesty, including pattern of abuse of judicial officers and court system combined with failure to appreciate nature of unethical conduct]; *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610, 630 [respondent disbarred pursuant to standard 2.11 with no prior record of discipline due to extent of home loan modification scheme and “egregious aggravation”]; *In the Matter of Lucero, supra*, 6 Cal. State Bar Ct. Rptr. — [attorney disbarred with no prior record of discipline due to multiple misrepresentations to clients and OCTC, misappropriation of less than \$3,000, failure to repay funds, and lack of candor at trial].) While each of these cases are factually unique, their underlying themes of dishonesty and indifference resonate here.

We also examined the pre-standards case of *Segretti v. State Bar* (1976) 15 Cal.3d 878, where a two-year actual suspension was imposed following a determination that underlying federal criminal convictions amounted to moral turpitude due to Segretti’s repeated acts of “deceit designed to subvert the free electoral process” during his time working on former President Richard Nixon’s 1972 reelection campaign. (*Id.* at p. 887.) We agree with the hearing judge that *Segretti* provides guidance and, given the

circumstances, guides us to a recommendation greater than two years' actual suspension. As discussed by the judge, while both Eastman's and Segretti's conduct involves dishonesty, Segretti recognized the wrongfulness of his misconduct. Eastman here clearly does not. Moreover, although the *Segretti* matter is a pre-standards case, Segretti's case did not involve the amount of aggravation present here, and we note that the overall weight of Eastman's aggravation is greater than his mitigation. Based upon the totality of the evidence and guided by the cases discussed, the unique facts of this case lead to the conclusion that disbarment is appropriate and necessary.

Eastman always had a ready excuse for his failure to verify the work of others. He frequently testified he was "busy" or "drinking from a fire hose." We do not find this a reason for a lesser sanction. An attorney's workload does not mitigate against a culpability finding. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 780 [press of business not a mitigating factor]; *Carter v. State Bar* (1988) 44 Cal.3d 1091, 1101.) In addition, Eastman applied little intellectual rigor to the task of understanding election administration and did not seek out true experts to guide his analysis. The trial record has numerous examples of Eastman simply accepting information and material relevant to his election analysis as it was handed to him, but he turned a blind eye to information that did not support his goal of assisting President Trump. Eastman, and many of those providing him with inaccurate information, had a generalized and pervasive lack of understanding of how each state runs its elections and how to access and interpret relevant data. In fact, he ignored or otherwise denigrated election officials in both political parties who, from the record, managed

their elections in accordance with the law and under the most difficult of circumstances—he paid their work no mind.

After reviewing all the testimony and relevant exhibits, the record shows Eastman vainly searched for evidence that would support his predetermined conclusion—whether it was the scope of vice-presidential authority under the Twelfth Amendment or whether the election resulted in former President Biden’s victory because of outcome-determinative illegality or fraud. As for one example, Eastman gave no thought to the import of the Ellipse speech he made before hundreds of thousands of spectators. At trial Eastman asserted, “I never said anything about trusting or not trusting the outcome of the election. I said we had seen evidence of illegality and fraud that warranted further investigation because the election had been certified in the face of illegality.” This assertion is simply untrue—he had no evidence of illegality and he offered his unsupported allegations as established fact. He fails to accept his role in making wholly unsubstantiated and untrue statements to the crowd about the illegality of the election. In defense of his false statements at the Ellipse, Eastman asserts on review that “just because governmental agencies made statements does not mean that [he] had to blindly accept them.” This illustrates the upside-down nature of Eastman’s approach not only to his Ellipse speech but to all the counts where misconduct was found.

Eastman rejected actual experts while he consistently and blindly accepted the ideas of non-experts. Eastman was willing to accept and repeat any theory presented to him, so long as it was consistent with his desire to see President Trump declared the

winner of the 2020 presidential election. For example, Eastman was not able to cogently explain Ramsland and Oltmans's phantom ballot theory at trial. Further, Eastman showed a startling lack of intellectual discernment when faced with opposing fact or opinion, especially given his legal career. On review, there was at least one instance where Eastman mischaracterized his own trial testimony in order to avoid a culpability determination. This conduct is even more troubling when compared to his background as a former U.S. Supreme Court law clerk, a professor of law, a law school dean, and a constitutional scholar.

Attorneys must remember they are "officers of the court, and, while it is their duty to protect and defend the interests of their clients, the obligation is equally imperative to aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice." (*Furlong v. White* (1921) 51 Cal.App.265, 271.) Eastman lost sight of this fundamental requirement. Eastman misled two courts, including our nation's highest court. This conduct alone warrants serious discipline. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 157 [misleading statements are troubling and oppose fundamental rules of ethics—common honesty—without which profession is "worse than valueless" in administration of justice].)

As we noted in counts two and four, "Honesty in dealing with the courts is of paramount importance, and misleading a judge is, regardless of motives, a serious offense." (*Paine v. State Bar, supra*, 14 Cal.2d at p. 154.) In essence, the way Eastman conducted himself during the course of his representation of President Trump had a negative impact on the

judicial system and the administration of justice, which we have noted *ante*. The waste of precious judicial resources on cases premised on false narratives, especially when an attorney knew the allegations were false, is a harm that must be considered even if it does not equate to aggravation. (Cf. *In the Matter of Reiss*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 220 [wasting judicial time and resources is harmful to administration of justice].) There is a distinction with a difference between hard-fought cases premised on actual facts and cutting-edge legal theories and those cases pushed forward based on, at best, mere speculation and a disingenuous take on the law. Eastman unfortunately took the latter path instead of the former. We also are unable to ignore Eastman's generalized failure to be truthful. Whether in the courts, to former Vice-President Pence and his staff, or to the public, Eastman consistently failed to be honest.

We next examine the wide-ranging impact of Eastman's conduct. Although there was no clear and convincing evidence that Eastman's January 6, 2021 statements had a causal connection to the resulting riots, Eastman's misconduct did cause harm. He used his skills to push a false narrative in the courtroom, in the White House, and in the media. That false narrative resulted in the undermining of our country's electoral process, reduced faith in election professionals, and lessened respect for the courts of this land. To this day, Eastman claims nefarious forces behind former President Biden's 2020 electoral win. Eastman even stands apart from his own expert, Professor Yoo, about former Vice-President Pence's authority under the facts of the 2020 election. Further, Eastman is unable to accept post-election

court decisions in favor of the company behind Dominion voting machines.

Eastman argues that disbarment is not warranted if we determine he was culpable of the charged offenses. At oral argument, Eastman requested that if he was found culpable, any suspension should be no longer than the time period between his April 2024 transfer to involuntary inactive status and the issuance of this opinion. We find a 15-month suspension inadequate considering the record we have reviewed. Moreover, when an attorney fails to understand or appreciate present misconduct, it causes concern that the attorney will commit other ethical violations in the future. (See *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380-381 [failure to understand culpability causes concern regarding handling of future cases].) Eastman's considerable indifference weighs heavily in our disbarment recommendation as we are concerned about future misconduct. In sum, Eastman's misconduct from November 2020 to the present as reflected in the record warrants a recommendation of disbarment.

VII. RECOMMENDATIONS

We recommend that John Charles Eastman, State Bar Number 193726, be disbarred from the practice of law in California and that Eastman's name be stricken from the roll of attorneys.

A. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Eastman be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the

date the Supreme Court order imposing discipline in this matter is filed.¹⁰⁶ (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [operative date for identification of clients being represented in pending matters and others to be notified is filing date of Supreme Court order imposing discipline].)

B. MONETARY SANCTIONS

We further recommend that Eastman be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of \$5,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar.¹⁰⁷ Monetary sanctions are

¹⁰⁶ Eastman is required to file a rule 9.20(c) affidavit even if Eastman has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).) The court-approved Rule 9.20 Compliance Declaration form is available on the State Bar Court website at <<https://www.statebarcourt.ca.gov/Forms>>.

¹⁰⁷ The hearing judge recommended \$10,000 in monetary sanctions based on the "gravity of Eastman's misconduct" that involved multiple acts of moral turpitude, misleading courts, his efforts to interfere with the 2021 electoral count, and the substantial aggravation involved. Eastman does not challenge the sanctions amount on review. Although rule 5.137(E)(2)(a) permits imposition of sanctions for each count of culpability and we agree that Eastman both misled the courts and endeavored to impede the counting of electoral votes, we do not find that there is a need to deviate from the maximum \$5,000 sanction for disbarment. (See rule 5.137(E)(3).) Considering the totality of the facts and circumstances of this matter, we find that monetary sanctions of \$5,000 is appropriate. (Rule 5.137.)

enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

C. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is disbarred must be paid as a condition of applying for reinstatement.

D. MONETARY REQUIREMENTS

Any monetary requirements imposed in this matter shall be considered satisfied or waived when authorized by applicable law or orders of any court.

VIII. INVOLUNTARY INACTIVE ENROLLMENT

The hearing judge's order that Eastman be transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4), effective March 30, 2024, will remain in effect pending the consideration and decision of the Supreme Court on this recommendation.

McGILL, J.

I CONCUR:

HONN, P. J.

RIBAS, J.

Concurring Opinion of RIBAS, J.

I agree with the conclusions of culpability and the recommended discipline for John Eastman's misconduct. I write separately to explain that I find the record contains clear and convincing evidence of significant harm as a factor in aggravation, under standard 1.5(j), for Eastman's conspiracy with the President and others to coerce the Vice-President to reject electoral votes or delay the electoral count and for his acts of moral turpitude based on the numerous false statements and unsupported legal theories he presented.

The hearing judge found there was significant harm to the public evidenced by distrust of democratic institutions and the electoral process, but concluded there was no evidence that Eastman caused this harm. We have not disturbed the judge's finding that the harm identified occurred, and the record contains abundant evidence of such harm and other harm identified by the State Bar. That witnesses did not identify Eastman by name to attribute the cause of its distrust is beside the point when Eastman was operating as a primary architect of a strategy to change an election outcome by, in part, exerting public pressure on government officials. To accomplish this, Eastman became a high-profile disseminator of misinformation. The purpose was to sow doubt in the public's mind about the integrity of the election and distrust in democratic institutions. That public doubt and distrust, in fact, occurred is distinct from

Eastman's culpability and is a significant harm that aggravates his misconduct.

As a member of the President's legal team and, specifically, as the President's "constitutional lawyer," Eastman offered credibility to the unsupported claims he presented in various court filings.¹⁰⁸ The public was aware of these as demonstrated by a December 28, 2020 complaint to Kathy Boockvar, Secretary of the Commonwealth of Pennsylvania: "The *Trump legal team* has produced mountains of evidence that indicates election fraud and voter fraud existed on a massive scale. . . . Unfortunately, nobody has refuted any of the actual evidence in court under oath, as the *Trump legal team* has been unable to get to the evidentiary phase of the lawsuits."¹⁰⁹ This individual pointedly told Boockvar: "We the People' are comprised of 70-80 million patriots. . . . [W]e will be closely watching all of our elected officials, holding every corrupt official accountable. You still have time to get on the right side of the situation: you have the choice to either be a hero or a traitor." There were many more complaints directed to Boockvar that repeated the false assertions put forth by Eastman in his court submissions. As Pennsylvania's Deputy Secretary for Elections and Commissions testified, the misinformation expressed in the messages was concerning, partially because voters were losing confidence in the electoral process.

Other evidence in the record that identifies Eastman collectively as a cause of the public distrust

¹⁰⁸ As early as November 9, 2020, Eastman was informing people he was a "member of the [President's] legal team."

¹⁰⁹ Italics contained in this and other quotes in the concurrence were added.

in the integrity of the election is a press conference by Gabriel Sterling, who worked with Georgia's Office of the Secretary of State and was involved with the election in Georgia. In addressing voter discontent on the eve of the January 5, 2021 Georgia runoff elections for the U.S. Senate, Sterling first noted that "there are *people in positions of authority and respect* who have said [people's] votes didn't count, and it's not true[.]" Sterling then described in detail a video documenting election workers' activity in the State Farm Arena during the 2020 presidential election showing nothing illegal occurred and said, "The *President's legal team* had the entire tape. They watched the entire tape, and then from our point of view intentionally misled the State Senate, voters, and the people of The United States about this. It was intentional. It was obvious." Specifically addressing potential changes in voter turnout, Sterling said this was "[i]n large part driven by the continuing misinformation and disinformation concerning the value of people's votes in this state," as he sought to restore the public's confidence that every vote would be counted.

And Georgia Secretary of State Brad Raffensperger was compelled to write a ten-page letter, dated January 6, 2021, to members of Congress who publicly stated they would object to counting the electors presented by Georgia. As with Sterling, Raffensperger did this to refute the "false claims" raised by "the President *and his allies*," which were causing doubt about the validity of the presidential election in Georgia.

The public knew that Eastman was an important ally of the President, a member of the President's legal team, and a person of authority and respect, because on January 2, 2021, Eastman was presented by Steve

Bannon on the broadcast of Bannon’s War Room as “[o]ne of the *great thinkers about the Constitution*,” “the *President’s constitutional lawyer*,” and “the *lead sled dog*.” There, Eastman’s intent to exert public pressure as part of his strategy was made plain when, after reasserting lies about massive fraud occurring in the election, he told listeners that they should put “rolling thunder pressure” on state legislators to “either decertify the existing slate of electors . . . or certify the correct slate of electors” If this was not sufficient amplification of falsehoods made to the public while his stature was promoted, Eastman’s Ellipse speech made four days later would be.

At the January 6 rally at the Ellipse, before hundreds of thousands of attendees, Rudy Giuliani introduced “Professor Eastman” as “*one of the preeminent constitutional scholars* in the country” to explain how it was “perfectly legal” for the Vice-President to determine “the validity of these crooked ballots or he can send them back to the legislatures[.]” and to explain how cheating occurred in the election. Following Eastman’s remarks—in which Eastman reasserted lies about fraud occurring during the election and reiterated a baseless unilateral authority of the Vice-President—the President spoke, calling Eastman “*one of the most brilliant lawyers in the country*” before repeating and elaborating on the falsehoods, as he encouraged the crowd to take action.¹¹⁰ These references to Eastman’s prestige

¹¹⁰ While we found Eastman’s misrepresentations were not proven to be made with the *intent* to provoke the crowd to assault and breach the Capitol, resulting in Eastman escaping culpability under count eleven, the fact remains that significant harm did occur—at a minimum, the public distrusting the legitimacy of the election and government institutions, and at

clearly portrayed to the public an academic heft and credibility to the fabrications asserted by Eastman, Giuliani, and the President and a legitimacy to the crowd's breach of the Capitol. By this point, Eastman had near celebrity status, as evidenced by people approaching him after his speech to introduce themselves and take selfies with him. This status has persisted, as Eastman stated in a 2023 interview with Board Chair of the Claremont Institute Tom Klingenstein: "I'll go into places where people recognize me and give me a standing ovation."

We know that the harm to the public and threat to the democratic process was partially caused by Eastman's actions, because the Vice-President's attorney and Deputy Assistant to the President, Greg Jacob, who was very familiar with Eastman's activities and influence on the President, was a witness to it and directly attributed the harm to Eastman. He did so first in an email sent to Eastman while the Capitol was under siege on January 6, and then again an hour later, stating, in part, that it was "gravely irresponsible for you to entice the President with an academic theory that had no legal viability The knowing amplification of that theory through numerous surrogates, whipping large numbers of people into a frenzy over something with no chance of ever attaining legal force through actual process of law, has led us to where we are."

most, the public trying to thwart the democratic process through violence. Additionally, Eastman's remarks at the Ellipse were part of the factual allegations supporting counts one and seven of the Notice of Disciplinary Charges for which we found him culpable and for which we can consider any resulting significant harm.

That others may also be responsible for this significant harm does not diminish Eastman's contribution. (See *Spindell v. State Bar* (1975) 13 Cal.3d 253, 260 [immaterial that harm was partly attributed to attorney's secretary].) Eastman was not simply one of many voices. As a prominent figure closely associated with the President, Eastman was a leader and influencer in a collective effort that included the dissemination of falsehoods to overturn the outcome of the presidential election. This resulted in a level of distrust of the electoral process that empowered members of the public to attempt to sabotage a pillar of democracy—the peaceful transfer of power. Recognition under standard 1.5(j) of aggravation for significant harm to the public interest caused by Eastman's misconduct is warranted.

132a

No. SBC-23-O-30029

In the Matter of
JOHN CHARLES EASTMAN

Hearing Judge
Hon. Yvette D. Roland

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APPENDIX C

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT
LOS ANGELES****CASE NO. SBC-23-O-30029-YDR****[Filed March 27, 2024]**

In the Matter of

JOHN CHARLES EASTMAN,

State Bar No. 193726.

DECISION AND
ORDER OF
INVOLUNTARY
INACTIVE
ENROLLMENT**Introduction**

In this contested disciplinary proceeding, the Office of Chief Trial Counsel of the State Bar of California (OCTC) charged John Charles Eastman (Eastman) with 11 counts of misconduct arising from certain activities surrounding his representation of former president Donald J. Trump and the 2020 presidential election. Eastman is charged with one count of failing to support the Constitution and laws of the United States (Bus. & Prof. Code § 6068, subd. (a));¹ two counts of seeking to mislead a court (§ 6068, subd. (d)); six counts of moral turpitude by making various misrepresentations (§ 6106); and two additional counts of moral turpitude (§ 6106).

¹ All further statutory references are to the Business and Professions Code, unless otherwise indicated.

After full consideration of the record, the court finds that OCTC has satisfied its burden of proving all charges except for count eleven, which the court dismisses with prejudice.² In view of the circumstances surrounding Eastman’s misconduct and balancing the aggravation and mitigation, the court recommends that Eastman be disbarred.

Significant Procedural History

On January 26, 2023, OCTC initiated this proceeding by filing a Notice of Disciplinary Charges (NDC). Eastman filed a response to the NDC on February 15. Thereafter, the court held an initial status conference wherein the court set trial to commence on May 10.

On March 30, 2023, OCTC filed its motion in limine No. 1, to exclude the testimony of two witnesses. The court granted the motion on May 23.³

² OCTC has the burden of proving the charges by clear and convincing evidence. Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.) This “standard of proof . . . which requires proof making the existence of a fact highly probable—falls between the ‘more likely than not’ standard commonly referred to as a preponderance of the evidence and the more rigorous standard of proof beyond a reasonable doubt.” (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 995.)

³ The court precluded Eastman from offering the testimony of the Honorable Janice Rogers Brown and Rebecca Roiphe regarding: (1) whether OCTC is entering “unchartered territory” in charging Eastman with ethical violations under the facts and circumstances presented in this case; and (2) whether Eastman’s statements are constitutionally protected or if he may be disciplined for such statements.

On April 12, 2023, the court granted the parties' joint motion to continue trial; continuing the trial to June 20.

Thereafter, the court made numerous rulings regarding various motions in limine, requests for judicial notice, and abatement of the proceedings, including: a June 16, 2023 ruling on motion in limine No. 2;⁴ a June 16 ruling on motion in limine No. 3;⁵ a June 16 ruling on motion in limine No. 4;⁶ a June 20 ruling on motion in limine No. 5;⁷ a June 21 ruling on request for judicial notice; an August 16 ruling on motion in limine No. 6;⁸ an August 23 ruling on

⁴ Eastman was precluded from offering expert testimony from Joseph Fried regarding whether it was proper to certify the 2020 election based on the professional standards for certified audits in certain states.

⁵ Eastman was permitted to offer the expert testimony of Stanley Young.

⁶ Eastman was precluded from offering expert testimony from John Valentine regarding his findings about voter registration anomalies he found while searching the voter rolls for numerous states and whether there was voter fraud in the 2020 election.

⁷ Eastman was precluded from offering expert testimony from John Yoo regarding “whether it would be frivolous to assert that Vice President Pence had the authority to unilaterally adjourn the Joint Session of Congress” and “that [Eastman]’s argument that Pence could refuse to count certain electoral votes was non-frivolous.”

⁸ Eastman was precluded from offering the testimony of William M. Briggs, Anthony Cox, Jr., Mark Finchem, Heather Honey, Sandy Juno, Jeffrey O'Donnell, and Wendy Rogers. Joseph Fried and Bruce Patrick Colbeck were permitted to testify as percipient witnesses—excluding any expert opinion testimony. Kurt Olsen was permitted to testify as a percipient witness as specified on page 64 of the June 5, 2023 joint pretrial statement regarding his involvement with the *Texas v.*

motion in limine No. 7;⁹ and an August 25 ruling on Eastman's motion to abate the disciplinary proceeding.¹⁰

The parties filed a stipulation to undisputed facts on June 12, 2023. A 34-day, in-person trial commenced on June 20.¹¹ OCTC was represented by Supervising Attorney Duncan Carling, Deputy Trial Counsel Samuel Beckerman, and Deputy Trial Counsel Christina Wang. Eastman was represented

Pennsylvania case—excluding any expert opinion testimony. The court clarified its ruling on October 2. In a later October 12 order, the court precluded Joseph Fried's testimony as a percipient witness.

⁹ OCTC was not precluded from offering evidence that Eastman conspired to create alternative slates of electors to those that certified the 2020 presidential election.

¹⁰ Eastman sought to abate the case based on the August 1, 2023, federal indictment of former president Donald J. Trump for conspiracy to defraud the United States and other crimes. Eastman maintained that abatement is necessary because although currently unnamed, the potential exists that he may be charged as a co-conspirator and indicted in the criminal case against former president Trump. Eastman argued that abatement was necessary to protect his Fifth Amendment rights against self-incrimination. Subsequently, Eastman was indicted in Fulton County, Georgia on August 14. The court denied the abatement motion, finding that Eastman was aware of his possible criminal exposure and his right to plead the Fifth Amendment before he testified during the disciplinary proceeding, he waived his Fifth Amendment rights, and the factors outlined in rule 5.50 of the Rules of Procedure of the State Bar did not weigh in Eastman's favor.

¹¹ Trial took place on June 20-23; June 29-30; August 24-25; September 5-8; September 12-15; September 26-29; October 3-6; October 17-20; October 23-24; October 30; November 2-3; November 8; and November 13.

by Randall A. Miller, Zachary Mayer, and Jeanette Chu of Miller Law Associates, APC.

On October 3, 2023, Eastman filed a request for judicial notice that was granted, in part, and denied, in part, on October 23. Both parties filed closing argument briefs on December 1 and the case was submitted for decision on the same date.

Thereafter, on December 26, 2023, OCTC filed a notice of errata seeking to correct an error in its closing brief. On December 28, Eastman filed a response to OCTC's notice of errata. As a result, on February 15, 2024, the court issued an order accepting for consideration OCTC's notice of errata and Eastman's response, vacating the December 1, 2023 submission for decision and taking the matter under submission for decision, *nunc pro tunc*, as of December 28.

Jurisdiction

Eastman was admitted to the practice of law in California on December 15, 1997, and has been a licensed attorney of the State Bar of California at all times since that date.

Findings of Fact¹²

¹² The following findings of fact are based on the parties' stipulation to undisputed facts and the testimonial and documentary evidence admitted at trial.

Pursuant to the Rules of Procedure of the State Bar, "[a]ny relevant evidence must be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." (Rules Proc. of State Bar, rule 5.104(C).) It follows that even hearsay evidence must be admitted so long as it is relevant and reliable. However, it may only be "used for the purpose of supplementing or explaining

The NDC alleges misconduct surrounding Eastman's involvement in the efforts to reject, delay and/or obstruct the electoral vote after the 2020 presidential election. Despite the depth, breadth, and complexity of the case law and historical context cited by the parties, this disciplinary proceeding boils down to an analysis of whether or not Eastman, in his role as the attorney for then-President Donald Trump (hereinafter referred to as President Trump) and his re-election campaign, acted dishonestly in his comments and advice given regarding the issue of whether then-Vice President Mike Pence (hereinafter referred to as Vice President Pence) had authority to unilaterally reject certain states' slate of electors and/or delay or recess the electoral count during the Joint Session of Congress on January 6, 2021, and the manner in which he pursued legal action aimed at obstructing the lawful electoral process.

Pertinent Background re Election Law and the Electoral Process¹³

Several provisions of the United States Constitution (Article II and the Twelfth Amendment), along with certain statutory provisions (including the Electoral Count Act), govern the election of the President of the United States, which involves

other evidence, but over timely objection will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." (Rules Proc. of State Bar, rule 5.104(D).)

¹³ In the context of this disciplinary proceeding, the court only addresses some of the most significant constitutional issues relevant to the 2020 presidential election and the charges alleged against Eastman. The court does not set forth a detailed constitutional analysis of election law or election law-related issues.

numerous steps before, during, and after Election Day.

After Election Day, as determined by popular vote for a presidential candidate, electors are appointed by the States. As stated in the United States Constitution: “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.” (U.S. Const. art. II, §1, cl. 2.)

The Electoral Count Act (ECA), which was enacted in 1887 and until 2022, had only minor revisions, further details the electoral process.¹⁴ Section 7 of the ECA requires State electors to meet “the first Monday after the second Wednesday in December” to vote for the President and Vice President as determined by State law. (3 U.S.C. §7.) Furthermore, as set forth in Section 6, it is the duty of the Governor of each State, as the “executive of each State”, to provide as soon as practicable after ascertainment, the final certificate of ascertainment of the electoral votes to the Archivist of the United States and the President of the Senate, among others. (3 U.S.C. § 6.)

Section 15 of the ECA, addresses the Joint Session of Congress, including the manner in which, on January 6, each state’s governor-certified electoral

¹⁴ See Consolidated Appropriations Act of 2023, Pub. L. No. 117-328 (December 29, 2022) 136 Stat. 4459, 5233-5241. Here, the court addresses the ECA as it existed at the time of Eastman’s alleged misconduct.

votes contained in the certificate of ascertainment will be counted and how objections shall be resolved:

Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; ***and the votes having been ascertained and counted according to the rules in this subchapter*** provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcements shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States...[If objections are raised as to any vote from a State], the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives

shall, in like manner, submit such objections to the House of Representatives for its decision; and *no electoral vote or votes from any State which shall have been regularly given¹⁵ by electors whose appointment has been lawfully certified* to according to section 6 of this title from which but one return has been received *shall be rejected*, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. *If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 5 of this title to have been appointed....*”

(3 U.S.C. § 15, italics and emphasis added.)

Section 15 of the ECA further details the procedures to be followed by each chamber in connection with its individual and joint consideration of objections to a State’s votes and, the procedure to be followed if the two Houses disagree: “if the two Houses

¹⁵ Eastman contends that the contested states’ votes were not “regularly given” due to illegalities that resulted in the appointment of former Vice President Biden electors and under the ECA, that could include electoral votes certified after an election that was conducted in violation of state electoral law. (R.T. Vol. XI, pp.123-125.) However, as Congressional Record 52 reflects, in 1886, Representative Adams explained that “[r]egularly given” referred to actions of the elector, not the way in which the elector was appointed. (Exh. 34, p. 7.)

shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted.” (3 U.S.C. § 15.) Significantly, section 15 of the ECA provides “[n]o votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.” (*Id.*)

Section 15 of the ECA is replete with references to electoral votes that must be “certified” and “ascertained” and clearly reflects that when electoral slates are disputed, those electoral votes contained within a certificate of ascertainment executed by the governor of a State, are to be prioritized in the counting and tabulating of votes for President of the United States. So, whether they are called alternate, contingent, or “dual” slates, those slates of electors that are not certified by the governor of the State they purport to represent, are constitutionally invalid and they are not to be counted when a State has final a slate certified by its governor.

Finally, as relevant here, the ECA specifically provided that either chamber could call a recess during the January 6 joint meeting of Congress but does not provide that the President of the Senate could “direct a recess.” (3 U.S.C. §16.) Between 1789 and 2016, Congress initiated or controlled every recess or adjournment of an electoral count. (Exh. 179, p. 84.) Section 16 of the ECA also imposed restrictions on the period of each chamber’s recess, limiting each House of Congress from recessing “beyond the next calendar day, Sunday excepted, at the hour of 10 o’clock,” but “if the counting of the electoral votes and the declaration of the result shall not have been completed

before the fifth calendar day next after such first meeting of the two Houses, no further or other recess shall be taken by either House.”¹⁶ (*Ibid.*) It also unequivocally stated that the “joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared.” (*Ibid.*)

Importantly, the Twelfth Amendment contains the following language: “The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.” (U.S. Const., 12th Amend.)¹⁷

Eastman’s Relationship with President Trump and Trump’s Re-Election Campaign

On September 3, 2020, Eastman was invited to join an Election Integrity Working Group, formed in anticipation of post-election litigation, in connection with the upcoming November 3 presidential election, and organized at President Trump’s request. Eastman began his representation of President Trump, as a

¹⁶ Limits were also imposed on the period of time to debate objections while each House of Congress was meeting in separate sessions; “each Senator and Representative may speak to such objection or question five minutes, and not more than once; but after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate.” (3 U.S.C. §17.)

¹⁷ The Twelfth Amendment, ratified in 1804, required that electors cast two sets of votes for President and Vice President, and changed the requirement previously set forth in Article II, section 1, clause 3, that allowed the candidate with the second most number of electoral votes to assume the role of Vice President, sometimes resulting in a President and Vice President who represented opposing parties. (See exh. 179, p. 11.)

presidential candidate, and his campaign at or around that time.

On December 6, 2020, Eastman received a formal engagement letter for legal services, dated December 5, from President Trump's 2020 presidential re-election campaign committee (Trump's Campaign). The engagement letter was between Eastman and President Trump, in his capacity as a presidential candidate, and Trump's campaign. It defined the scope of the legal representation as follows: "[Eastman] agrees to represent [President Trump and Trump's Campaign], as its interests may appear, in connection with the 2020 presidential general election, including potential litigation matters and matters related to the Electoral College." (Exh. 1, p. 1.)

Eastman's Involvement in *Texas v. Pennsylvania* (filed December 7, 2020)

Subsequent to the 2020 presidential election, but prior to the deadline for the certification of the states' electors, Eastman participated in various election challenges which disputed the results of the 2020 presidential election, including a lawsuit filed by the State of Texas.

Texas v. Pennsylvania

On December 7, 2020, the State of Texas filed, in the United States Supreme Court, a motion for leave (Motion for Leave) to file a bill of complaint (Bill of Complaint) against defendant states Georgia, Michigan, Wisconsin and the Commonwealth of Pennsylvania (*Texas v. Pennsylvania*). Texas sought expedited consideration of its Motion for Leave on the grounds that "[a]bsent some form of relief, the defendants will appoint electors based on

unconstitutional and deeply uncertain election results, and the House will count those votes on January 6, tainting the election and the future of free elections.” (Exh. 260, p. 96.) In its brief in support of the Motion for Leave, Texas asserted that the central question revolved around whether Georgia, Michigan, Wisconsin, and Pennsylvania (the Defendant States) violated the Electors Clause of the U.S. Constitution¹⁸ by implementing non-legislative actions to alter their state election rules governing the appointment of 2020 presidential electors. (*Id.* at p. 60.)

Texas argued that the Defendant States used the COVID-19 pandemic as a ruse or justification to “[usurp] their legislatures’ authority and unconstitutionally [revise] their state’s election statutes” by “executive fiat or friendly lawsuits thereby weakening ballot integrity” while “flood[ing] the Defendant States with millions of ballots to be sent through the mails, or placed in drop boxes, with little or no chain of custody and, at the same time, weaken[ing] the strongest security measures protecting the integrity of the vote—signature verification and witness requirements.” (*Id.* at pp. 8-9, footnote omitted.) Texas contended that there were significant grounds to question the legitimacy of the election outcomes in the Defendant States and urged the United States Supreme Court to extend the December 14, 2020 deadline for certification of presidential electors in those states to allow for thorough investigations to take place. Texas further argued that its citizens “have the right to demand that all other States abide by the constitutionally set rules

¹⁸ See United States Constitution, Article II, Section 1, Clause 2, discussed *supra*.

in appointing presidential electors to the electoral college” (*id.* at p. 69) because “[i]f Defendant States’ unconstitutionally appointed electors vote for a presidential candidate opposed by [Texas]’s electors, that operates to defeat [Texas]’s interests,” (*id.* at p. 71)¹⁹ the State of Texas and the citizens of Texas would suffer injury from the Defendant States’ alleged unconstitutional non-legislative actions.

Factual Allegations in Support of Texas’s Motion for Leave and Bill of Complaint

Texas’s Bill of Complaint contained 127 paragraphs of factual allegations. The Motion for Leave and Bill of Complaint contained the following generalized allegations which are relevant in this disciplinary proceeding:

- “Rampant lawlessness arising out of Defendant States’ unconstitutional acts” and irregularities in the electoral process that “[t]aken together, these flaws affect an outcome-determinative numbers (sic) of popular votes in a group of States that cast outcome-determinative numbers of electoral votes.” (Exh. 260, pp. 4, 11.)
- “The probability of former Vice President Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently given President Trump’s early lead in those States as of 3 a.m. on November 4, 2020, is less than one in a quadrillion, or 1 in 1,000,000,000,000,000. For

¹⁹ For example, Texas argued that “[u]nlike Defendant States, [Texas] neither weakened nor allowed the weakening of its ballot-integrity statutes by non-legislative means.” (*Id.* at p. 71, fn. 5.)

former Vice President Biden to win these four States collectively, the odds of that event happening decrease to less than one in a quadrillion to the fourth power (i.e., 1 in 1,000,000,000,000,0004). [Citation].” (*Id.* at pp. 13-14.)

- “The same less than one in a quadrillion statistical improbability of Mr. Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently exists when Mr. Biden’s performance in each of those Defendant States is compared to former Secretary of State Hilary Clinton’s performance in the 2016 general election and President Trump’s performance in the 2016 and 2020 general elections. Again, the statistical improbability of Mr. Biden winning the popular vote in these **four** States collectively is 1 in 1,000,000,000,000,0005. [Citation.]” (*Id.* at p. 14.)
- “Put simply, there is substantial reason to doubt the voting results in the Defendant States.” (*Id.*)
- “The number of absentee and mail-in ballots that have been handled unconstitutionally in Defendant States greatly exceeds the difference between the vote totals of the two candidates for President of the United States in each Defendant State.” (*Id.* at p. 15.)

Texas’s Claims of Outcome-Determinative Fraud

Texas alleged “rampant lawlessness arising out of Defendant States’ unconstitutional acts” described in unidentified, pending lawsuits filed in Defendant

States, which included: “the physical blocking and kicking out of Republican poll challengers; thousands of the same ballots run multiple times through tabulators; mysterious late night dumps of thousands of ballots at tabulation centers; illegally backdating thousands of ballots; signature verification procedures ignored; more than 173,000 ballots in the Wayne County, MI center that cannot be tied to a registered voter [footnote omitted]”; “[v]ideos of: poll workers erupting in cheers as poll challengers are removed from vote counting centers . . . [and] suitcases full of ballots being pulled out from underneath tables after poll watchers were told to leave”; and “a laptop and several USB drives, used to program Pennsylvania’s Dominion voting machines, were mysteriously stolen from a warehouse in Philadelphia.” (Exh. 260, pp. 11-12.) Texas did not offer any support for the factual claims of widespread lawlessness and failed to elucidate how the alleged unconstitutional actions of any Defendant State were connected to the alleged rampant lawlessness it identified.

According to Texas, Defendant States expanded absentee and mail-in voting opportunities for their voters and by so doing, “created a *massive opportunity* for fraud.” (*Id.* at p. 20, italics added.) Citing to the Pew Research Center, Texas acknowledged that “in the 2020 general election, a record number of votes—about 65 million—were cast via mail compared to 33.5 million mail-in ballots cast in the 2016 general election—an increase of more than 94 percent.” (*Id.* at p. 19.) Texas attributed that large increase in the number of mail-in ballots to the “public-health response to the COVID-19 pandemic [as well as] the urging of mail-in voting’s proponents, and most

especially executive branch officials in Defendant States.” (*Ibid.*) Again, without support, Texas stated that “[s]ignificantly, in Defendant States, Democrat voters voted by mail at two to three times the rate of Republicans”, which “unconstitutional usurpation of legislative authority, and the weakening of legislative mandated ballot security measures” greatly benefited former Vice President Biden. (*Id.* at p. 20.)

Texas tiptoed around the issue of fraud. Although it alleged actions in Defendant States that resembled fraud,²⁰ it left the door open, arguing: “While investigations into allegations of unlawful votes being counted and fraud continue, *even the appearance of fraud in a close election* would justify exercising the Court’s discretion to grant the motion for leave to file. Regardless, Defendant States’ violations of the Constitution would warrant this Court’s review, *even if no election fraud had resulted.*” (*Id.* at p. 90, italics added.)

Texas’s Claims Specific to Philadelphia and Allegheny Counties

In its Bill of Complaint, Texas included factual claims asserting that election officials at both state and local levels in Philadelphia and Allegheny counties—aiming to benefit former Vice President Biden in the 2020 election—allegedly violated Pennsylvania’s election code by failing to adhere to

²⁰ E.g., according to Ethan J. Pease, who subcontracted with the United States Postal Service (USPS) to deliver mail-in ballots to the Madison, Wisconsin sorting center, employees in Wisconsin were allegedly backdating ballots received after November 3, 2020, as well as reporting that there were 100,000 missing ballots, which Texas stated would far exceed former Vice President Biden’s margin of 20,565 votes over President Trump. (Exh. 260, pp. 42-43.)

Pennsylvania Statutes, title 25, section 3146.8, subdivision (b).²¹ Texas asserted that Pennsylvania, by adhering to the guidance issued by Pennsylvania Secretary of the Commonwealth Kathy Boockvar on September 11, 2020,²² neglected the signature verification requirements outlined in its election code.

Without support, Texas further alleged “[a]pproximately 70 percent of the requests for absentee ballots were from Democrats and 25 percent from Republicans. Thus, this unconstitutional

²¹ 25 P.A. § 3146.8, subd. (b) provides: “Watchers shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and recorded.”

²² Secretary Boockvar advised the county board of elections that it was responsible for approving ballots to be counted during pre-canvassing. She further advised that “[t]o promote consistency across the 67 counties, the county boards of elections should follow [certain] steps when processing returned absentee and mail-in ballots.” (Exh. 125, p. 3) For returned absentee and mail-in ballots, the county board of elections was directed to examine the voter declaration on the envelope of the absentee or mail-in ballot return and “compare the information on the outer envelope, i.e., the voter’s name and address, with the information contained in the ‘Registered Absentee and Mail-in Voters File, the absentee voter’s list and/or the Military Veterans’ and Emergency Civilians Absentee Voters File.’ [¶] If the Voter’s Declaration on the return envelope is blank, that ballot return envelope must be set aside and not counted. . . . If the Voter’s Declaration on the return envelope is signed and the county board is satisfied that the declaration is sufficient, the mail-in or absentee ballot should be approved for canvassing unless challenged in accordance with the Pennsylvania Election Code. [¶] *The Pennsylvania Election Code does not authorize the county of board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections.*” (*Ibid*, italics added.)

abrogation of state election law greatly inured to former Vice President Biden's benefit." (Exh. 260, p. 22.)

Texas also claimed that "[s]tatewide election officials and local election officials in Philadelphia and Allegheny Counties, aware of the historical Democrat advantage in those counties, violated Pennsylvania's election code and adopted differential standards favoring voters in Philadelphia and Allegheny Counties with the intent to favor former Vice President Biden. [Citation]" (*Id.* at p. 24.) Although Texas cited to its November 18, 2020 complaint in *Donald J. Trump for President, Inc. v. Boockvar* filing as support for some of these allegations, Texas did not reference the earlier Pennsylvania state and federal cases—all of which rejected those factual allegations outlined in the Bill of Complaint.

Notably, prior to the 2020 presidential election, Secretary Boockvar sought declaratory relief from the Supreme Court of Pennsylvania (Middle District) regarding the guidance she provided. On October 14, 2020, the Pennsylvania Supreme Court granted Secretary Boockvar's request for declaratory relief, allowing it to examine the question of whether the guidance provided by Secretary Boockvar on September 11, 2020, was in accordance with the Pennsylvania Elections Code—specifically, whether the Pennsylvania Election Code authorizes county election boards to reject voter absentee and/or mail-in

ballots during the pre-canvassing²³ and canvassing²⁴ period based on an alleged or perceived signature match variance. (Exh. 233, pp. 1-2.) On October 23, 2020, the Pennsylvania Supreme Court determined that “the Election Code does not authorize or require county election boards to reject absentee or mail-in ballots during the canvassing process based on an analysis of a voter’s signature on the ‘declaration’ [the pre-printed statement] contained on the official ballot return envelope for the absentee or mail-in ballot.” (*Id.* at p. 2.) Accordingly, the Pennsylvania Supreme Court directed “the county boards of elections not to reject absentee or mail-in ballots for counting, computing, and tallying based on signature comparisons conducted by county elections officials or employees, or as the result of third-party challenges based on such comparisons.” (*Ibid.*)

Thereafter, on November 21, 2020, the United States District Court, Middle District of Pennsylvania, in *Donald J. Trump For President, Incl., et al. v. Kathy Boockvar, et al.*, case No. 4:20-CV-02078, granted Secretary Boockvar and certain Pennsylvania counties’ motions to dismiss the Trump Campaign’s action that sought “to disenfranchise

²³ The Pennsylvania Elections Code defines “pre-canvassing” as the “inspection and opening of all envelopes containing official absentee ballots or mail-in ballots, the removal of such ballots from the envelopes and the counting, computing and tallying of the votes reflected on the ballots. The term does not include the recording or publishing of the votes reflected on the ballots.” 25 P.S. § 2602.” (Exh. 233, p. 1, fn. 3.)

²⁴ Pursuant to the Pennsylvania Elections Code, “canvassing” is the ‘gathering of ballots after the final pre-canvass meeting and the counting, computing and tallying of the votes reflected on the ballots.’ (*Id.* at pp. 1-2, fn. 3.)

almost seven million voters” by presenting “strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence.” (Exh. 222, p. 2.)

Six days later, on November 27, 2020, the United States Court of Appeals for the Third Circuit (Third Circuit) rejected the Trump Campaign’s appeal from the Middle District of Pennsylvania., entitled *Trump for President, Inc. v. Secretary Commonwealth of Pennsylvania, et al.* The Trump Campaign’s appeal was based on the narrow argument that it should be allowed to amend its complaint a second time and it requested that the Third Circuit issue “an injunction to prevent the [Pennsylvania] certified vote totals from taking effect.” (Exh. 223, p. 9.) The Third Circuit rejected the Trump Campaign’s “claim that, ‘[u]pon information and belief, a substantial portion of the approximately 1.5 million absentee and mail votes in Defendant Counties should not have been counted.’ [Citation.]” The court found that “[u]pon information and belief” is a lawyerly way of saying that the [Trump] Campaign does not know that something is a fact but just suspects it or has heard it.” (*Id.* at p. 12.) The Third Circuit further stated that “‘While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.’ *Iqbal*, 556 U.S. at 679. Yet the [Trump] Campaign offers no specific facts to back up these claims.” (*Ibid.*) The Third Circuit’s opinion also rejected other Trump Campaign claims regarding Pennsylvania as unfounded—stating, “[f]ree, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.” (*Id.* at p. 2.)

***The Cicchetti Declarations Filed in Support
of Texas's Motion for Leave***

Texas filed two declarations by Charles J. Cicchetti, PhD,²⁵ in support of its Motion for Leave, on December 7 and 11, 2020, respectively. (Exhs. 260, pp. 115-122; 1034.)

The December 7, 2020 Cicchetti Declaration was cited by Texas in support of several of its arguments, including the assertion that there was a one in a quadrillion statistical improbability of former Vice President Biden winning over President Trump in the Defendant States. (Exh. 260, pp. 13-14.) Texas did not argue that this statistical improbability was evidence of fraud, but instead advanced the statistical improbability argument on the assumption that in 2020, former Vice President Biden should have received the same vote share (or number of votes) that

²⁵ In his declaration filed December 7, 2020, Dr. Cicchetti described himself as an *economist* with three years of Post Graduate Research in applied economics and econometrics who “was formally trained [sic] statistics and econometrics and accepted as an expert witness in civil proceedings. (Exh. 260, p. 115.) He further stated that he has “been engaged to design surveys, draw random samples and analyze and test data for significance, and [has] conducted epidemiology analysis using logit models to determine the significance of relative odds of outcomes and relative risk” and that he has “also been tasked with evaluating the work of other experts on the data and methods used and to detect and opine on bias, particularly missing variable bias.” (*Ibid.*) Econometrics is defined as “the application of mathematical and statistical techniques to economic problems and theories.” (*Merriam-Webster.com*, Merriam-Webster, 2024, March 19, 2024.) Dr. Cicchetti did not identify any expertise, education, or experience in the analysis of elections, election data, or political methodology, which involves the application and development of statistical methods for the purpose of studying political science questions.

former Secretary of State Clinton received in 2016 and because former Vice President Joe Biden received more votes or vote share than former Secretary of State Clinton, the ballots that would have been invalid and rejected in 2020 were improperly handled and counted.²⁶ Dr. Cicchetti concluded: “There are many possible reasons why people vote for different candidates. However, I find the increase of Biden over Clinton is statistically incredible if the outcomes were based on similar populations of voters supporting the two Democrat candidates. The statistical differences are so great, this raises important questions about changes in how ballots were accepted in 2020 when they would be found to be invalid and rejected in prior elections.” (*Id.* at p. 118.)

Dr. Cicchetti neither identified nor provided an analysis of what constituted the “similar populations of voters supporting the two Democrat candidates in 2016 and 2020” or why an anomaly would result if the two Democratic candidates did not have the same vote share. Dr. Cicchetti also failed to provide any support for that assumption (or null hypothesis). As testified to by Dr. Justin Grimmer,²⁷ not only did Dr. Cicchetti

²⁶ For example, Dr. Cicchetti compared the number of votes cast in Georgia for former Secretary of State Clinton in 2016 (1,877,963) and former Vice President Biden in 2020 (2,474,507) with President’s Trump in 2016 (2,089,104) and President Trump in 2020 (2,461,837). (Exh. 260, p. 117.)

²⁷ Dr. Grimmer, a tenured Stanford University professor in the Political Science Department and a Senior Fellow at the Hoover Institution thinktank at Stanford University, was designated as an expert by OCTC. Based on his educational experience as a Harvard University Department of Government graduate with master’s and PhD degrees in political science; graduate coursework in American politics, political methodology and statistics; scholarly and peer-reviewed publications

fail to establish that the probability of former Vice President Biden winning the 2020 election was one in a quadrillion, Dr. Cicchetti's conclusions were based on erroneous assumptions and a null hypothesis methodological error.²⁸ (R.T. Vol. V, pp. 175-176.)

In an April 2022 article published in *Academia Letters*, Dr. Cicchetti criticized and disavowed the Texas Bill of Complaint arguments which were purportedly based on his declarations. (Exh. 1181.) Dr. Cicchetti noted that antithetical to "various critiques the Cicchetti Declarations did not claim Trump won or any evidence of fraud was found." (*Id.* at p. 2.) Rather, he noted that "[s]ome critics base their statements on the Texas Attorney General Ken Paxton's complaint which *erroneously* claimed the

regarding statistical methods, statistical theory, election administration, congressional elections and claims of voter fraud, this court found Dr. Grimmer to be well-qualified to give and support the opinions he was offering. (R.T. Vol. V, pp. 117, 118-125.)

²⁸ As Dr. Grimmer explained: "[w]hat Cicchetti does in that analysis is he compares either the vote count or vote share between Biden and Clinton in 2020 and 2016, and flags it as anomalous that there's some difference, but a sort of basic logical assessment of that would say that there are lots of reasons we expect these things to be different across elections, and there's no established literature, empirical pattern, or even common knowledge that would say election results are the same in every state. *In fact, if we took these tests to a logical extreme, if we think about Cicchetti's test, that says, if an election is not anomalous, then the results should be the same, it would imply we could just run one election, once when a state is founded, and then every election would subsequently be the same.* Obviously, that's not the case. Things change. Times change. Voters' preferences may change. Conditions change that people are persuaded. And so that's a basic way we can make that sort of assessment." (R.T. Vol. VI, p. 50, italics added.)

December 7, 2020 Declaration placed exceptional odds in favor of Trump winning”²⁹ and pointedly stated that “[t]he Declarations do not support what Paxton claimed about Trump winning or the odds of this were overwhelmingly [sic].” (*Ibid*, italics added.)

President Trump’s Motion to Intervene in Texas v. Pennsylvania

On December 9, 2020, two days before the United States Supreme Court denied Texas’s Motion for Leave, Eastman, as counsel of record for President Trump,³⁰ filed a Motion to Intervene and a Proposed Bill of Complaint in Intervention in *Texas v. Pennsylvania* (Motion to Intervene). President Trump sought the following relief in his proposed Bill of Complaint in Intervention: (1) a declaration that the Defendant States violated the Electors Clause; (2) a declaration that Electoral College votes cast by Defendant States’ electors would not be counted; (3) to enjoin Defendant States from using 2020 election results to appoint electors unless their legislatures approve the use of those results in a constitutional manner; (4) if they had already appointed electors using 2020 election results, Defendant States would be directed to appoint new electors or not to appoint

²⁹ In an endnote, Dr. Cicchetti stated, “Complaint 1 of the State of Texas aver, [T]he probability of former Vice President Biden winning . . . is less than one in a quadrillion. . . .’ Texas cited Dr. Cicchetti without his knowledge of the filing or input to how Texas interpreted his Declaration. The following discussion repeatedly demonstrates that Dr. Cicchetti did not reach such a conclusion in his statistical analyses, and he also states he found no evidence of fraud in the analysis he performed or reviewed.” (Exh. 1181, p. 4, endnote 7.)

³⁰ President Trump sought to intervene in his personal capacity as a candidate for re-election.

electors at all; (5) award costs to President Trump as plaintiff in intervention; and (6) grant other relief the court deemed proper. (Exh. 262, pp. 17-18.)

Before filing the Motion to Intervene, Eastman reviewed the entire Texas Motion for Leave and Bill of Complaint, including the attached Cicchetti Declaration, which Eastman did not analyze or seek the assistance of an expert to evaluate. In fact, Eastman did not have any communication with Dr. Cicchetti before filing the Motion to Intervene. (R.T. Vol. XXV, pp. 208-209.) Instead, Eastman reviewed Dr. Cicchetti's declaration, including the one in a quadrillion statistical improbability reference and considered it to be sufficient as, in his view, the remark was "preliminary" and not particularly material to the main claims in the intervenor brief.³¹ Eastman assumed that Dr. Cicchetti's declaration and the analysis therein was accurate because he considered the attorneys who drafted the Motion for Leave to be very competent and "very scrupulous in the evidence." (R.T. Vol. I, pp. 111-112.)

Despite his reliance on the work of other attorneys and Dr. Cicchetti, Eastman had conducted extensive reviews of factual information that related to what he

³¹ Eastman testified: "I think I have a duty to try and verify, given the time constraints and materiality, everything to the extent a reasonable lawyer would, and when I saw that clause there, and looked at Mr. Cicchetti's thing, on the quick 24-hour turnaround we had to do for this brief, it looked accurate on first blush, and because it wasn't more substantive for the allegations that were being made in the rest of the brief, it was more preliminary, setting the stage type of assessment. That was sufficient." (R.T. Vol. V, p. 20.) Nonetheless, Eastman agreed that he had an obligation to verify the substance of preliminary and all other material in his filings. (*Id.* at p. 21.)

considered election irregularities and created a spreadsheet on which he recorded and tracked 2020 election litigation challenges found in court documents available on Westlaw, PACER, and other databases.³² The District Court for the Middle District of Pennsylvania opinion and the Pennsylvania Supreme Court opinions were specifically analyzed and placed in Eastman's spreadsheet. (Exh. 1055.) While Eastman acknowledged his responsibility to ensure the accuracy of statements presented in court, he refrained from verifying the validity or invalidity of the Texas arguments and the purported supporting facts. Rather, with few modifications, the Motion to Intervene joined and adopted by reference the purported factual allegations and arguments asserted in the Texas Bill of Complaint. (Exh. 262, p. 13.)

Among the most notable difference between the Motion to Intervene and Texas's Motion for Leave, is Eastman's inclusion of additional facts and allegations regarding "non-legislative changes to State election law by executive-branch election

³² Eastman testified: "let me catalog the things that I have done, and see if I can think of anything that I—we haven't already talked about . . . And then the case law through Westlaw, the state case law through various state court dockets, to the extent they were available. They're disappointingly not as widely available or as easily available as federal court dockets. The federal court cases, I would look at those dockets, either via Pacer or most often, via CourtListener, which replicates the Pacer – the Pacer dockets and provides access, public access to the pleadings in the federal cases.... For the court cases that I was able to obtain access to, I frequently also pulled up the exhibits to look at the various sworn affidavits that were being submitted, or the expert reports that were being submitted in those cases, to try and make my best assessment of the validity of the claims that were being filed." (R.T. Vol. XXVII, pp. 172-173.)

officials of the State, or by judicial officials, in Defendant States . . . in violation of the Electors Clause.” (*Id.* at pp. 16-17.) The additional facts stated that Georgia’s Secretary of State entered into a settlement agreement with the Democratic Party of Georgia to materially alter Georgia’s statutory requirements for signature verification. This allowed absentee ballots to be counted if the signature matched only the signature on the absentee ballot application rather than requiring the absentee ballot signature match the absentee ballot application and the voter registration card signature. Eastman argued that this change resulted in a drastically reduced number of invalid absentee ballots with an invalid rate reduction from three percent to .37 percent, resulting in the counting of about 40,000 ballots that based on historical rejection rates, should not have been counted. The additional facts also provided that Georgia’s legislature did not ratify this material statutory change or the statutory change regarding the early opening of ballots. (*Id.* at pp. 15-16.) Eastman further argued that the constitutional issue was not whether voters committed fraud but whether state officials loosened ballot integrity so that fraud became undetectable. (*Id.* at p. 37.)

Without explanation or support for any partisan malfeasance regarding the Georgia absentee ballots, Eastman argued that an “unconstitutional change in Georgia law appeared to materially benefit Vice President Biden. According to the Secretary of State’s office, Vice President Biden had almost double the number of absentee votes (849,729) as President Trump (451,157) and that the change in signature verification measures “made it more likely that ballots without matching signatures would be counted, [and]

had a material impact on the outcome of the election.”
(*Id.* at p. 16.)

Similar to Texas’s Motion for Leave, Eastman attempted to finesse a discussion about fraud by pointing to the following examples of Defendant States allegedly weakening ballot security and integrity:

Pennsylvania’s Secretary of State issued guidance purporting to suspend the signature verification requirements, in direct violation of state law. In Michigan, the Secretary of State illegally flooded the state with absentee ballot applications mailed to every registered voter despite the fact that state law strictly limits the ballot application process. In Wisconsin, the largest cities all deployed hundreds of unmanned, unsecured absentee ballot drop boxes that were all invalid means of returning absentee votes under state law. In Georgia, the Secretary of State instituted a series of unlawful policies, including processing ballots weeks before election day and destructively revising signature and identity verification procedures.

(*Id.* at p. 11.)³³

³³ Contrary to Eastman’s claims, in *Davis v. Secretary of State*, LC No. 20-000099-MM, Michigan’s lower court, the Court of Claims, considered the issue of whether it was lawful for the Secretary of State to mail absentee ballot applications to all registered voters and in an August 25, 2020 decision, concluded that the Secretary of State had authority to do so. (Exh. 276, pp. 1-2.) By a decision filed September 16, 2020, the Court of Appeal affirmed the lower court’s decision and, as Eastman acknowledged at trial, the Michigan Supreme Court denied review. (*Ibid.*; R.T. Vol. IX, pp. 88-90.)

Although Eastman did not explicitly label any of these actions as fraud, he argued that these (and other) actions invited fraud or were “drastic and *fraud-inducing*.” (Exh. 262, p. 12, italics added.) In general, Eastman argued that President Trump “did not have to prove that fraud occurred. . . it is only necessary to demonstrate that elections in the Defendant States materially deviated from the ‘manner’ of choosing electors established by their respective state Legislatures.” (*Id.* at p. 13.) Eastman speculated that actions taken in Georgia “made it *more likely* that ballots without matching signatures would be counted, [sic] had a material impact on the outcome of the election.” (*Id.* at p. 16.)

However, as Eastman confided in his long-time friend, attorney Cleta Mitchell, on November 29, 2020, Eastman knew that there was no actual evidence of outcome-determinative fraud in the 2020 presidential election in any of the Defendant States, even though the statistical analyses he was aware of (a number of which were cited in the *Texas v. Pennsylvania* briefs), may draw that conclusion.³⁴ Specifically, Eastman stated, in relevant part:

Main thing, and extremely important, is that the legal/constitutional trigger for legislative action after the fact has to be a failure to

³⁴ Among other statistical analyses, the Texas brief cited the Ryan Report’s findings which found a discrepancy of about 400,000 ballots based on a flawed analysis of mail-in ballots in Pennsylvania which Texas determined was outcome-determinative. (Exh. 260, pp. 25-27.) The only copy of the Ryan Report lodged with the court was exhibit 1156, a five-page American Thinker article which referenced the Ryan Report and its conclusions but provided no support or documentation regarding those conclusions.

conduct the election on Nov 3 in accord with the statutory requirements. Article II, in my view, just doesn't allow the Legislature to reclaim the power to choose electors after the fact if the election has been conducted in accord with the statutes.

Second key issue is going to be political. I can't imagine a legislature, particularly one with enough never-Trump republicans to make a difference, taking this step—which would be viewed as rather extraordinary—absent pretty compelling evidence of fraud. The statistical analyses that have been done might get you there, *but it would be nice to have actually hard documented evidence of the fraud in the areas to which the analyses pointed.*

(Exh. 39, italics added.) At trial, Eastman explained that in this email he was conveying that he had seen “significant statistical evidence that there might be fraud” and that the “statistical evidence points to where to look.” (R.T. Vol. X, p. 163.)

The United States Supreme Court Denies Leave in Texas v. Pennsylvania

The United States Supreme Court disagreed with Texas. Without addressing the alleged “facts” or the merits of Texas’s Bill of Complaint, the United States Supreme Court, by order dated December 11, 2020, denied the State of Texas leave to file the Bill of

Complaint³⁵ and dismissed all other pending motions.³⁶ (Exhs. 356, 1376.)

Eastman’s Involvement in Litigation Related to the 2020 Election Results in Georgia

Around the same time that *Texas v. Pennsylvania* was being litigated, Eastman got involved in several other election challenges to the 2020 presidential election results in Georgia.

Georgia’s Presidential Election Results

Based on the machine tally of the 2020 presidential election votes cast in Georgia, Vice President Biden won in Georgia by a narrow margin.³⁷ By law, Georgia was required to conduct a statewide post-election risk limiting audit of the election results (Risk Limiting Audit). The Risk Limiting Audit ordered by Secretary of State Brad Raffensperger was a manual tally of votes cast and originally tabulated by machine count and was conducted from November 11-19, 2020.

³⁵ The denial provided, “The State of Texas’s motion for *leave to file a bill of complaint is denied for lack of standing under Article III of the Constitution*. Texas has not demonstrated a judicially cognizable interest in the manner in which another State conducts its elections. All other pending motions are dismissed as moot.” (Exh. 356, italics added.) Justices Alioto and Thomas dissented, stating “[i]n my view, we do not have discretion to deny the filing of a bill of complaint in a case that falls within our original jurisdiction. See *Arizona v. California*, 589 U. S. ____ (Feb. 24, 2020). . . . I would therefore grant the motion to file the bill of complaint but would not grant other relief, and I express no view on another issue.” (*Id.*)

³⁶ The dismissal of the pending motions as moot included President Trump’s Motion to Intervene and motions to intervene filed by Missouri, Arkansas, Louisiana, Mississippi, South Carolina and Utah. (R.T. Vol. XXV, p. 209.)

³⁷ The margin of victory in Georgia was 0.3%. (Exh. 87.)

(Exhs. 86, 87.) While the Risk Limiting Audit did not confirm or correct the original stated margin of victory, it did confirm the original results; specifically, that former Vice President Biden won the 2020 presidential election in Georgia.

On November 20, 2023, Governor Brian Kemp certified Georgia's sixteen 2020 presidential state electors as former Vice President Biden electors (Biden electors). On November 21, 2023, Ray Smith III, counsel for President Trump, forwarded a vote recount demand to Secretary of State Raffensperger. (Exh. 1048, p. 65.) A statutory recount was conducted.

On December 7, 2020, Governor Kemp amended the original Certificate of Ascertainment and re-certified the Georgia Biden electors. (Exh. 11.)

Trump v. Raffensperger

Amid a flurry of Georgia election challenges, Eastman provided legal advice on *Trump v. Raffensperger*, which was filed on December 4, 2020, in Fulton County Superior Court.³⁸ (Exhs. 2, 1048.) In sum, President Trump alleged that “the November 3, 2020, Presidential Election in Georgia (the “Contested Election”) was not conducted in accordance with the Election Code and that the named Respondents [election officials], deviated significantly and substantially from the Election Code.” (Exh. 1048, p. 4.) Trump further alleged “[d]ue to significant systemic misconduct, fraud, and other irregularities occurring during the election process, many thousands of illegal votes were cast, counted, and included in the tabulations from the Contested

³⁸ *Trump v. Raffensperger*, Fulton County Superior Court, case No. 2020cv343255, was an election contest challenge filed pursuant to O.C.G.A. §21-2-522.

Election for the Office of the President of the United States, thereby creating substantial doubt regarding the results of that election.” (*Ibid.*)

Trump v. Raffensperger had a short but tortured procedural history before the parties reached a publicly filed settlement agreement³⁹ and *Trump v. Raffensperger* was voluntarily dismissed on January 7, 2021.

Additional relevant *Trump v. Raffensperger* allegations are set forth below.

Trump v. Kemp

While *Trump v. Raffensperger* was pending, Georgia attorney Kurt Hilbert, on December 31, 2020,

³⁹ In the agreement, one of the defense counsel noted, on January 3, 2021, “we are still willing to cooperatively share information with you outside the pending litigation on the condition that all currently pending suits against the Governor, the Secretary of State and/or the members of the State Election Board be voluntarily dismissed. . . . The allegations and evidence in the Petition related to the November 3, 2020 Election have been thoroughly examined. That examination shows the claims: (1) are factually wrong; (2) are based on improper speculation and faulty data and data analysis; (3) lack substantive legal merit; (4) are moot; and (5) are procedurally deficient. As you know, even one of your ‘experts,’ Mr. Braynard, recanted many of the positions relied upon in your lawsuits in his testimony before the Georgia House of Representatives Government Affairs Committee. Your other main ‘expert,’ Mr. Geels admits his positions are speculative at best.” (Exhs. 275, p. 3; 358, p. 2.) Defense counsel also noted that “[t]here have already been *three* state election challenges contesting the Presidential Election that have been finally dismissed by Georgia courts.” (*Id.* at p. 2, italics in original.) Mr. Hilbert responded: “after speaking with all clients, and their respective counsel, we hereby accept the terms of your settlement proposal dated January 3, 2021” and stated that they would voluntarily dismiss four of their election challenge lawsuits. (*Id.* at pp. 4-5.)

filed in the United States District Court, Northern District of Georgia, a Verified Complaint for Emergency Injunction and Declaratory Relief on behalf of President Trump (Verified Complaint) in *Trump v. Kemp*, Case No. 20-CV-5310. As Eastman's pro hac vice admission was pending at the time, Eastman signed the Verified Complaint as proposed co-counsel for President Trump. (Exh. 270.)

On December 31, 2020, Eastman's client, President Trump, signed a verification in support of the Verified Complaint.⁴⁰ By the Verified Complaint, President Trump sought a temporary restraining order and preliminary and permanent injunction directing defendants Governor Kemp and Secretary of State Raffensperger, to de-certify the November 3, 2020 election results. President Trump also sought declaratory relief stating that certification of the election results could not be deemed valid due primarily to November 3, 2020 election violations of the Georgia state law election code and, due to the failure of Georgia state courts to afford Trump his statutory right to challenge the results of the election. (*Id.* at pp. 28-29.) The *Trump v. Kemp* Verified Complaint incorporated in its entirety, the *Trump v.*

⁴⁰ The verification stated: "Personally appeared before me, a Notary Public, duly authorized by law to administer oaths, President Donald J. Trump, solely in his capacity as a candidate for President of the United States, who on oath says he has reviewed the Verified Complaint for Emergency Injunctive and Declaratory Relief and with regard to the facts contained therein, states that to the best of his knowledge and belief, and relying on the representations contained therein, the facts are true and correct where derived from his own knowledge and are believed to be true and correct where derived from the knowledge of others or from documents that are maintained in the course of business or are public records." (Exh. 270, pp. 33-34.)

Raffensperger Verified Petition and its exhibits. (*Id.* at p. 13.)

Of the numerous factual allegations set forth in *Trump v. Kemp* (and the incorporated *Trump v. Raffensperger* allegations), the court addresses below only those factual allegations which relate to Eastman's alleged misconduct in this disciplinary proceeding.

a.) State Farm Arena Ballots Counted Without the Public's Open Viewing

One of the most serious factual allegations in the *Trump v. Kemp* Verified Complaint was the allegation that, late on November 3, 2020, Fulton County election officials at the State Farm Arena vote tabulation center stopped the ballot counting. The Verified Complaint alleged that after poll observers and members of the media had left, "several election officials then proceeded to remove suitcases full of ballots from under a table where they had been hidden, and processed those ballots without open viewing by the public in violation of O.C.G.A. §21-2-483. . . . This illegal activity was captured on video tape [sic]. This is but one example of such misconduct by election officials and corruption of the process." (Exh. 270, pp. 10-11.)

To provide transparency about the alleged illegal State Farm Arena activities, Secretary of State Raffensperger had the entire State Farm Arena video posted to the securevotega.com website for viewing by members of the public.

The Georgia Secretary of State conducted an investigation and on December 5, 2020, Frances Watson, Chief Investigator in the Office of the Georgia Secretary of State, executed a declaration under

penalty of perjury setting forth the conclusions reached by the Georgia Secretary of State as a result of its investigation into the State Farm Arena vote tabulation center activities on November 3 (the State Farm Arena investigation).

The State Farm Arena investigation centered around the complaints Secretary of State Raffensperger received on November 3, 2020; specifically, “that Fulton County Board of Registrations and Elections directed clerks, public observers, and media personnel to leave the State Farm Arena location where ballots were being tabulated due to a water leak at the State Farm Arena, but Fulton County staff continued to scan ballots in the tabulation center at the State Farm Arena.” (Exh. 98, p. 2.) Based on witness interviews and a thorough review of the State Farm Arena security footage, the investigators concluded that observers and media were not asked to leave. Rather, they left when they saw other workers depart who had completed their task of opening the envelopes. The investigators’ review of the 24-hour security footage “revealed that there were no mystery ballots that were brought in from an unknown location and hidden under the tables as reported by some.” (*Id.* at p. 3.) Around 10:00 p.m., in the presence of official monitors and the media, the videotape reflects that opened but not counted ballots were placed in the boxes, sealed, and stored under the table because employees thought they had finished for the night. (*Ibid.*) As of December 5, 2020, the Secretary of State investigators were continuing their inquiry.

On January 4, 2021, Robert Gabriel Sterling, Statewide Voting System Implementation Manager for the Secretary of State, held a press conference on

C-Span that addressed the State Farm Arena election day activities. (Exh. 99.) According to Sterling, at around 9:45 p.m., “the cutters began putting their stuff away because everybody was under the impression they were going to get home” and “while the monitors and the press are still in the room” the opened absentee ballots were placed in the ballot carriers (not suitcases), the lids were placed on the carriers, and about 10:30 p.m. everyone was preparing to leave. (*Id.* at p. 3.) However, the Elections Director of Fulton County vetoed their request to finish for the evening because others were going to work through the night. After that directive, the ballot carriers were removed from under the table and those who remained were told “we’ve got to keep on scanning” and they did. (*Id.* at p. 4.)

Before filing *Trump v. Kemp* on December 31, 2020, Eastman had watched only portions of the State Farm Arena security footage. (R.T. Vol. V, p. 77.) Eastman believed “that people were sent home, and then that boxes of ballots or suitcases of ballots were then pulled out and continued to be processing [sic] outside of public view.” (R.T. Vol. XI, p. 108.) However, as Eastman acknowledged, “[the Georgia Election Code] statute gives people the *opportunity* to be there for public [viewership]—for the canvassing. *It doesn’t mandate that people be there.*” (*Id.* at p. 109, italics added.)

Eastman read information from the Office of Georgia’s Secretary of State about the State Farm Arena video before filing the *Trump v. Kemp* complaint and at some point (but he didn’t recall when), Eastman saw Frances Watson’s December 5, 2020 declaration. (*Id.* at pp. 79-80.) During December 2020, Eastman recalled watching a Georgia Secretary

of State press conference or press release which discussed the State Farm Arena.

b.) Georgia Election Officials Allowed Unqualified Individuals to Register and Vote

In *Trump v. Kemp*, President Trump also alleged that the Georgia election officials violated the State's Election Code by allowing unqualified voters to register and vote, resulting in "more than 11,779 'illegal' votes to be counted in the State of Georgia which is sufficient to change the outcome of the election or place the outcome in doubt as determined by the Legislature and set forth in the Election Code." (Exh. 270, pp. 5-6.) Some alleged Election Code violations included: (1) convicted felons still serving their sentence were allowed to vote in violation of O.C.G.A. §21-2-216(b); (2) "allowing underage individuals to register and then vote in violation of O.C.G.A. §21-2-216(c)"; (3) unregistered or late-registered individuals voted in violation of O.C.G.A. §21-2-224 (a); (4) voting in Georgia by out-of-state registered individuals (some of whom voted in another state as well), in violation of O.C.G.A. §21-2-217; (5) voting by individuals who had moved across county lines, in violation of O.C.G.A. §21-2-218 (b); (6) voting by individuals registered with a domicile at a post office box, church, or courthouse, in violation of O.C.G.A. §21-2-217 (a)(1); and (7) accepting votes cast by individuals who were deceased, in violation of O.C.G.A. §21-2-23 (a)-(b) and (d). (*Id.* at p. 5.)

At trial, Eastman did not recall the basis for each of these *Trump v. Kemp* allegations but contended they were supported by certain *Trump v. Raffensperger* allegations and the affidavits of

retained experts Bryan Geels,⁴¹ Matthew Braynard,⁴² and Mark Davis, which were filed in support of the *Trump v. Raffensperger* Verified Complaint. (R.T. Vol. V, pp. 65-66, 74-77.)

Eastman received the Geels affidavit around December 3, 2020. (R.T. Vol. I, p. 99.) Between the time Eastman received the Geels affidavit and December 31, 2020, when Eastman caused the *Trump v. Kemp* complaint to be filed, Eastman reviewed the Geels affidavit, and decided that it looked credible to

⁴¹ Geels prepared two expert reports which were filed in support of the *Trump v. Raffensperger* and *Trump v. Kemp* verified petitions. (Exh. 1048, pp. 545, 613.) Geels described himself as “a licensed CPA, and I own a data analytics consultancy firm, Geels Consulting, based in Seattle, Washington. Before starting Geels Consulting, I worked for 9 years in public accounting at a large CPA firm. Based on my experience as an auditor working as a Senior Manager at a large CPA firm, I am an established data analytics and risk assessment expert.” (*Id.* at p. 549.) Geels identified no experience or education involving the analysis of election data.

⁴² According to Braynard’s resume attached to his affidavit, he earned a Bachelor of Business Administration degree from George Washington University in 2000 and graduated from Columbia University with a Master of Fine Arts in 2018. His most recent employment included working as the Senior Analyst with Election Data Services, Inc. from 2001-2005; Director of the Data Division of Donald J. Trump for President, Inc. from October 2015 to March 2016; President of Look Ahead America, Inc. from March 2017 to the December 2020 and Principal of External Affairs, Inc. (Exh. 1048, p. 84). Braynard stated that he has “worked to build and deploy voter databases for the Republican National Committee, five Presidential campaigns and no less than 100 campaigns and election-related organizations.” (*Id.* at p. 71.) Braynard had not authored any publications within the 10-year period before his affidavit was filed and he had not provided expert testimony at trial or in deposition between 2016 and 2020. (*Ibid.*)

him, based on what he knew about voter rolls “and things like that.” (R.T. Vol. I, pp.100-101.) Eastman took no affirmative measures to determine the reliability of the information in the Geels affidavit. Rather, Eastman assumed the *Trump v. Raffensperger* attorneys had assessed and determined that the information in Geels’ affidavit was reliable since he believed the *Trump v. Raffensperger* lawyers to be “competent and adamant about not submitting anything they could not verify.” (*Id.* at pp. 100-101.)

The declaration of Charles Stewart III,⁴³ the expert retained by the Georgia election official respondents, was filed on January 4, 2021. (Exh. 202.) Stewart’s declaration critiqued the analysis of each *Trump v. Raffensperger* retained expert and his summary of certain relevant specific shortcomings in each “expert” analysis is set forth below. Stewart stated that all of the Trump “experts” lacked training and professional experience in database matching and election administration and failed to acknowledge election science literature and the inherent limitations in the analyses they performed. Eastman

⁴³ According to Stewart’s declaration, he is a Distinguished Professor of Political Science at the Massachusetts Institute of Technology (MIT), where he had been on the faculty since 1985. During that time, he has “done research and taught classes at the graduate and undergraduate levels in the fields of American politics, research methodology, elections, and legislative politics.” (Exh. 202, p. 1.) In January 2016, he became the founding director of the MIT Election Data and Science Lab which was “devoted to impartial, scientific analysis of elections and election administration” in the United States. (*Id.* at p. 2.) Stewart also authored and co-authored numerous peer-reviewed publications and books on election administration and election science and has served as an expert witness in three federal district court cases.

read Stewart's declaration by December 30 or December 31, before the filing of *Trump v. Kemp*. (R.T. Vol. I, p. 102.)

In a December 31, 2020 email to co-counsel Hilbert, Eastman acknowledged that some of the evidence cited in the *Trump v. Raffensperger* complaint was inaccurate: "Here's the issue. The complaint incorporates by reference the state court challenge [*Trump v. Raffensperger*]. Although the President signed a verification for that back on December 1, he has since been made aware *that some of the allegations (and evidence proffered by experts) has been inaccurate*. For him to sign a new verification with that knowledge (and incorporated by reference) would not be accurate." (Exh. 51, italics added.) Even though Eastman knew that some of the *Trump v. Raffensperger* allegations and evidence proffered by experts in support of those allegations were incorrect, he failed to identify the inaccurate accusations or evidence for the Northern District of Georgia court in his *Trump v. Kemp* filing. Nor did Eastman object to co-counsel Hilbert's attempt to camouflage the inaccurate and misleading information that formed the basis of the outcome-determinative vote allegations: "I took out numbers from the complaint, left them in the memorandum [of law]." (Exh. 52, p. 5.)

Instead of candidly addressing the erroneous evidence, Eastman and co-counsel Hilbert inserted an ambiguous and disingenuous footnote in the *Trump v. Kemp* complaint seeking to distance President Trump from the allegations and evidence which Eastman

knew contained false and inaccurate statements.⁴⁴ (Exh. 270, p. 6.)

c.) Convicted Felons Still Serving a Sentence Were Allowed to Vote

According to the Geels Declaration, Geels compared the Inmates File and Georgia's November 3, 2020 voter database and determined "there could have been up to 2,560 individuals who cast ballots that were accepted and counted but who were inmates." (Exh. 1048, pp. 556, 570.) Geels stated that those 2,560 individuals in the Active Inmate File, identified by First Name, Last Name, and Birth Year, matched exactly to the Georgia Voter History File. However, Geels acknowledged that there may have been imperfect matches resulting in false positives because

⁴⁴ The footnote read: "The facts and figures set forth in the [*Trump v. Raffensperger*]'s Verified Petition was presented to Plaintiff through the affidavits and expert opinions/reports attached to the Verified Petition and such information was presented to that lower court in affidavit form based on information publicly available to said experts, and without having access to the actual information being withheld and kept private by the Georgia Secretary of State and other governmental entities. Open Records requests have been timely submitted to attempt to obtain such information, but no records have been timely produced or made available. Accordingly, as a state court election contest is required to be verified, the facts and figures submitted by affidavits and experts reports/opinions in the lower court and incorporated herein by reference, have been relied upon by Plaintiff only to the extent that such information has been provided to Plaintiff, and which are subject to amendment, adjustment, and cure through expert opinion and final reports based on actual data and completion of ongoing government investigations (which the Secretary of State and other agencies are currently conducting). Plaintiff has not sworn to any facts under oath for which he does not have personal knowledge or belief." (Exh. 270, pp. 6-7, fn. 4.)

only the Birth Year was available in Georgia’s voter record files. Stewart confirmed that Geels’s matching methodology was “guaranteed to produce a result in which the number of false positives vastly exceeds the number of true positives.” (Exh. 202, p. 22.) Stewart explained that a lack of unique identifiers across large databases creates a greater likelihood of false positive matches.⁴⁵ Geels did not state that he had created unique identifiers that would avoid the likelihood of false positive matches or utilized a more reliable matching method. Geels’s calculations regarding the number of convicted felons who voted in the November 3, 2020 election were not reliable.

d.) Underaged Individuals Register and Then Vote

The *Trump v. Kemp* complaint alleged that Georgia election officials “allowed underage individuals to register and then vote, in violation of O.C.G.A. §21-2-216 (c).”⁴⁶ (Exh. 270, p. 5.) Similarly, in *Trump v. Raffensperger*, the parties alleged that “[i]n violation of O.C.G.A. §21-2-216(c), Respondents, jointly and severally, allowed at least 66,247 underage—and therefore ineligible—people to illegally register to vote, *and subsequently illegally*

⁴⁵ Stewart illustrated this concept by stating that “[i]n September 2020, I purchased a copy of the Georgia voter file from the Secretary of State, to use in my academic research. That file, dated September 9, 2020, contains 7,346,219 records. Of these, 7,280,948 are unique name + birth year combinations, leaving the remaining 65,271 registrants sharing a first name, middle name, last name, and birth year with *at least one* other voter.” (Exh. 202, p. 8.)

⁴⁶ According to Eastman, Georgia allows an individual to register to vote when they reach the age of 17 ½. (R.T. Vol V, p. 67.)

vote.” (Exh. 1048, p. 17, italics added.) It was further alleged that “[i]n violation of Georgia law, Respondents, jointly and severally, counted these illegal votes in the Contested Election.” (*Id.* at p. 18.) According to Eastman, each 66,247 “underage individual” registration and voter allegation was based on and supported by the same Geels expert report filed as an affidavit in *Trump v. Raffensperger*. (R.T. Vol. V, pp. 65-66.)

However, Geels’s expert report was flawed. Although Geels initially stated in his report that he compared Registration Dates and Birthdates in Georgia’s Voter Registration File and Absentee Early Votes and concluded that 66,247 underaged individuals were allowed to register to vote, that was not true. As Eastman acknowledged, Geels *actually* compared data from the Georgia Voter Data “Date Added” field instead of using the “Registration Date” field in performing his analysis. (*Id.* at pp. 73-74.)

Moreover, as Geels subsequently admitted, his use of the wrong data field in his December 1, 2020, declaration resulted in a gross miscalculation. (Exh. 1271.) Instead of 66,247 underaged individuals who allegedly registered to vote in Georgia, Geels determined that the correct number should have been much lower—2,047. Later, after an additional reassessment of his analysis, Geels, using the “Registration Date” field instead of the “Date Added” field, further lowered the number of underage individuals he contended to have registered in Georgia to 778. (*Ibid.*)

However, as Eastman knew when *Trump v. Kemp* was filed on December 31, 2020, Geels neither analyzed data for, nor quantified, the number of

purported underage individuals who actually voted in the 2020 presidential election.⁴⁷ (R.T. Vol. V. 68; see also Exh. 1048, pp. 565-566.) Therefore, the allegation of any underaged individuals that registered and voted in the 2020 presidential election was unsupported and false.

e.) Unregistered or Late Registered Individuals Vote

Geels stated that 98 absentee and early voters registered to vote in Georgia after October 5, 2020, the last date to legally register and to vote in the November 3, 2020 election. (Exh. 1048, p. 562.) Geels applied a general filter to an unidentified database and concluded that the 98 voters registered after the October 5, 2020 deadline to legally register to vote.

f.) Individuals Allowed to Vote Across County Lines

⁴⁷ “Court: Is it your understanding that the Geels analysis included underage individuals who were not only registered to vote, but who did vote? Is that your understanding?”

Eastman: No. The Geels analysis never asserts that underage people voted.”

(R.T. Vol. V., p. 68.)

It is Eastman’s view that if an underage person registered to vote and if, by the time s/he voted, that individual is legal voting age, that individual’s vote would be illegal (but not fraudulent), due to that individual’s underage registration and his/her post-registration vote would continue to be an illegal vote until that individual re-registered. (*Id.* at p. 69.) Eastman had no information from Geels and identified no other source which identified the number of these purported underage individuals who may have re-registered to vote. (*Id.* at p. 74 [“My understanding is that Mr. Geels never identified people who were underage when they voted”].)

Eastman incorporated into *Trump v. Kemp*, the *Trump v. Raffensperger* the allegation that 40,279 individuals voted who had moved across county lines at least 30 days prior to November 3, 2020, and voted in their old county without re-registering to vote in their new county. (Exh. 1048, p. 22.) President Trump supported that allegation with the affidavit of Mark Alan Davis. According to Davis, Georgia allows a 30-day grace period for an individual who has relocated to a new county to vote in the old county of residence. Davis stated that based on his review of the USPS National Change of Address (NCOA) records, 312,971 Georgians moved within the state during an undefined time frame. Davis did not clearly explain how he reached the 40,279 cross-county relocation figure but speculated: “[I]t appears to me we *probably* had tens of thousands of illegal votes cast in our last election. Worse, that has *probably* been happening for many, many years.” (*Id.* at p. 580, italics added.)

g.) Individuals Registered to Vote with Non-Residential Addresses

Based on his review of Georgia’s Voter Absentee Files and the USPS Owned and Leased Facilities Reports, Braynard stated that 1,043 early and absentee ballots were cast by voters who registered their primary residential address as a post office box. (Exh. 1048, pp. 79, 81.)

However, as Stewart opined, Braynard’s analysis is unreliable because some voters do actually live in commercial facilities that conform to local building codes; other voters may have been uncertain about how to properly fill out the voter registration materials and “Braynard relies on unreliable algorithms to conduct the matching and provides no

information about how he confirmed that his matches were precise enough to warrant his conclusions.” (Exh. 202, p. 13.)

h.) Acceptance of Votes of Deceased Individuals

Geels opined that as many as 10,315 individuals cast ballots but were deceased prior to the November 3, 2020 presidential election and 8,718 of those individuals passed prior to the date Georgia accepted their ballot. Geels pointed out that “only the Birth Year is available for records of voters in the [Georgia] database” and “[b]ecause only a Birth Year is provided, there may indeed be false positives in the population—for example, due to the match of multiple people with a common name who were also born in the same year or to the omission of a suffix.” (Exh. 1048, p. 556.)

Stewart agreed that there was a likelihood of false positive matches, noting that “1,091,659 Georgia voters share an exact match on first name, last name, and birth year” and by applying Georgia’s 1.06% death rate to the number of Georgians with first and last name and birth year matches, he “would expect 11,572 registered voters in Georgia to share the same first and last name of another voter in the state who died.” (Exh. 202, p. 21.)

Grimmer also agreed that Geels’s faulty methodology rendered many false positives, which would seem to render Geels’s analysis unreliable. (R.T. Vol. VI, pp. 26-27.)

Eastman’s Testimony Regarding Outcome-Determinative Fraud in Georgia

On several occasions, Eastman stated that there was outcome-determinative absentee ballot fraud in

Georgia. When asked, at trial, about evidence he had of outcome-determinative absentee ballot fraud that he was aware of as of January 2, 2021, Eastman responded that he had evidence that “the weakening of signature verification in Georgia and Pennsylvania caused a dramatic decline in the disqualification of ballots” and “the declined disqualification rates in both of those states was significant enough to have affected the outcome of the election.” (R.T. Vol. X, p. 79.) Eastman also contended “[w]hen a ballot comes in and the signature does not even remotely look like the signature on file, that’s evidence of potential voter fraud.” (*Ibid.*) In other words, in Georgia, Eastman equated absentee ballot fraud with lax signature verification and lax signature matching by election officials in the 2020 presidential election.

According to Eastman, the evidence of outcome-determinative fraud in Georgia could also be established by the number of “people voting after they had moved out of the jurisdiction,”⁴⁸ and the failure to perform signature verification when “absentee ballot applications were brought in.” (R.T. Vol. XXXI, p. 89.) He also speculated that “if the signature on the absentee ballot application or on the absentee ballot bears no resemblance to the signature on file in the registration card, that’s a pretty good indication of fraud.” (*Ibid.*) Eastman pointed to a forensic audit performed by Garland Favorito⁴⁹ supposedly showing

⁴⁸ Eastman characterized this as evidence of fraud and illegality. (R.T. Vol. XXXI, p. 89.)

⁴⁹ Garland Favorito is an IT consultant who formed his consulting company in the 1980s and by 2002, he began to focus on voting machines. He co-founded VoterGA (Voters Organized for Trusted Election Results in Georgia) in 2006. (R.T. Vol. XIV, p. 50.) VoterGA is comprised of volunteers who are involved in

“about 5,000 votes fraudulently counted multiple times—and the vote flipping that went on in Ware County” which taken together he believed were “outcome-determinative.” (*Ibid.*) However, Favorito’s “multiple counting” and “vote flipping” conclusions were debunked by Halderman and Harry Hursti and Dr. Phillip Stark, and other computer scientists and election security experts who stated on November 16, 2020, that claims regarding technical vulnerabilities were unsubstantiated. (Exh. 187.)

As further evidence of outcome-determinative fraud in the 2020 Georgia presidential election, Eastman relied on the absentee ballot analyses performed by Geels, Braynard, and Dr. Cicchetti—none of which actually concluded that there was outcome-determinative fraud in the Georgia 2020 presidential election. Eastman nonetheless believed fraud was evidenced by a decline in the disqualification rate of 2020 absentee ballots as compared to the 2016 presidential election. (R.T. Vol. X, pp. 80-82.) Eastman didn’t recall whether any of these analyses addressed the disqualification rate based on category or reason for disqualification. Nor did Eastman recall whether, in Georgia, the reason for rejection of an absentee ballot was publicly available information in the absentee voter file. (*Id.* at pp. 79-82.)

Eastman’s conclusion that there had been a notable change in the absentee rejection rate in Georgia was correct, as there was a 3.1 percentage point decline from 2018 to 2020. (R.T. Vol. XXXI, p.

giving legislative advice, addressing election integrity issues surrounding “verifiability” and “auditability.” (*Id.* at pp. 51-52.) It also filed several lawsuits involving the 2020 general election.

226.) However, that decline was a decline in overall ballot rejections—not just a decline in the signature verification or signature match rejection rate and it did not equate to absentee ballot fraud. Based on information publicly available in 2020, the decline in Georgia rejected absentee ballots was not primarily due to signature match issues as about 90 percent of this decline resulted from both a decrease in the percentage of ballots arriving after the deadline and a decrease in the percentage of ballots rejected due to issues with the oath envelope. (*Ibid.*)

Eastman’s Dual Slate of Electors Theory

Alongside the aforementioned legal challenges, from at least early December 2020 through December 14, 2020, Eastman worked mightily (meeting and conferencing with contested state legislators and various individuals and groups, speaking publicly and forwarding emails to Eric Herschmann, President Trump’s White House advisor), to encourage Republicans in the seven “contested states” to meet and vote on Trump electors by December 14, 2020, and then to transmit those non-certified slates to Vice President Pence and the Archivist of the United States. (Exhs. 40, 42, 44, 45; R.T. Vol. X, pp. 165-169.) Eastman believed that by creating a non-certified “contingent” slate of electors on December 14, and with pending election challenge lawsuits (many of which he coordinated or filed), uncertainty would be created in some states as to both the certified and “contingent” slates of electors. Eastman also believed that he may then have time to expose illegality that might prompt legislatures to act. (*Id.* at p. 168.)

Eastman asserted that his belief was rooted in historical precedent in the 1960 presidential election

in Hawaii, which involved competing slates of electors for John F. Kennedy and Vice President Richard Nixon when the State of Hawaii forwarded three slates of electors to then President of the Senate, Vice President Nixon.⁵⁰ However, Eastman ignored the

⁵⁰ The first slate of electors for Hawaii were electors for Vice President Nixon that were certified as electors by the acting Governor of the State on November 28, 1960. They met on the date designated by Congress, cast their votes, and transmitted those votes to the President of the Senate. The group of Kennedy electors from Hawaii also met on the designated date and, without having been certified by any authority in the State, the Kennedy electors from Hawaii cast votes and transmitted those votes to the President of the Senate. (Exhibit 1011.) A recount of Hawaii's votes, ordered by a Hawaii court in response to a petition filed by 30 Hawaii voters, was pending at the time the Nixon and Kennedy electors met and cast votes. On December 28, 1960, the recount concluded, and the state court determined that Kennedy won the State of Hawaii, instead of Vice President Nixon. On January 4, 1961, the newly-elected Democratic Governor of Hawaii, based on the results of the recount conducted pursuant to the court order, certified the Kennedy electors and the Governor of Hawaii transmitted his certification of ascertainment, along with the Kennedy elector votes, to the President of the Senate.

On January 6, 1961, Vice President Nixon, in his capacity as President of the Senate, stated; "The Chair has received three certificates from persons claiming to be the duly appointed electors from the State of Hawaii. The Chair will hand these certificates one at a time to the tellers who will read the certificates and the attached papers in full." (Exh. 1012, p. 3.) After consideration of the certificates by the tellers, Vice President Nixon stated, "[t]he Chair has knowledge, and is convinced that he is supported by the facts, that [the Kennedy certificate issued by the Governor, dated January 4, 1961,] properly and legally portrays the facts with respect to the electors chosen by the people of Hawaii. (*Id.* at p. 4.) He then stated, "[i]n order not to delay the further count of the electoral vote here, the Chair, *without the intent of establishing a precedent*, suggests that the electors named in the certificate of

fact that the 1960 Hawaii presidential election involved competing slates of electors, two certified by the Governor of Hawaii and one non-certified, which resulted in the counting of the more recent *certified* slate of electors, which was certified by the Governor of Hawaii due to a recount. Moreover, no member of Congress objected to the counting of the second certified slate of electors and Vice President Nixon expressly stated that his actions were not intended to establish any precedent outside of this particular set of circumstances.

Eastman, as a constitutional scholar, understood that alternate, contingent or “dual” slates of *non-certified* electors would carry no import on January 6 during the counting of electoral votes. Eastman knew that there was no constitutionally mandated provision allowing for any non-certified, non-ascertained “dual” or “contingent” slates to be considered in conjunction with the voting or counting of presidential electoral votes. As Eastman stated in his email of December 19, 2020, to Bruce Colbert, “[a]s for the Legislatures—not a one has acted. *Electors* did in 7 states, but unless those electors get a certification from their State Legislators, they will be dead on arrival in Congress. With such a certification, we will have a deadline that will invoke sec. 15, but the textual claim that the ‘executive’ certification would prevail in such an instance over the legislature-certified slate is contrary

the Governor of Hawaii dated January 4, 1961, be considered as the lawful electors from the State of Hawaii. (*Ibid.*) Vice President Nixon continued: “If there be no objection in this joint convention, the Chair will instruct the tellers—and he now does—to count the votes of those electors named in the certificate of the Governor of Hawaii dated January 4, 1961.” (*Ibid.*) No objection being registered, the votes were counted.

to Article II. And at that point, we might well have the opportunity for a Supreme Court resolution without the need to trigger the Pelosi scenario.” (Exh. 380, p. 2; see also exh. 6, p. 30.)⁵¹

Eastman’s view on this issue did not change. In his January 10, 2021 response to Valerie Moon’s emailed inquiry—“[t]ell us in layman’s language, what the heck happened with the dual electors? Please?” (Exh. 61.) Eastman reiterated his view that “[n]o legislature certified them (because governors refused to call them into session), so they had no authority. Alas.” (*Ibid.*, italics added.)

Eastman’s trial constitutional expert, Dr. John Yoo,⁵² agreed with the characterization that the Trump Campaign’s dispute over the 2020 presidential electors, specifically, the appointment of Trump electors, was “a made-up dispute, rather than a real

⁵¹ According to Eastman, “Section 15 of the same Title [3 of the U.S. Code] provides in part that, in the case of a disagreement between the House and Senate as to which slate of electors to count if two or more have been received, then ‘the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted,’ *even if the alternate slate was certified by the Legislature of the State.*” (*Id.*, italics added.)

⁵² Dr. Yoo is a Harvard University graduate who earned a Juris Doctor degree from Yale Law School in 1992. As an Acting Professor (1993-1999), Professor of Law (1999-2013) and in his present role as Emanuel S. Heller Chair in Law & Distinguished Professor of Law, he has taught Constitutional Law at the University of California at Berkeley School of Law since 1993. Dr. Yoo has been a Visiting Scholar (2003-2021) and Nonresident Senior Fellow (2021-present) at American Enterprise Institute. He has been a Visiting Fellow at Stanford University Hoover Institute from 2018 to the present. Dr. Yoo has authored or co-authored about 100 scholarly articles and 10-12 books on Constitutional Law.

one” (R.T. Vol. XVIII, p. 62), reasoning that each contested state had only one certified set of electors, “[n]o branch of any state government challenged its electors in 2020,” and “[n]o state or federal court and no legislature or executive had found fraud”; as such, there was no “factual predicate” to trigger Vice President Pence’s dispute resolution role with regard to the elector slates. (*Id.* at pp. 63-64). Dr. Yoo concluded that not only did Vice President Pence not have authority to reject elector votes on January 6 on the grounds that the elector appointments were invalid but, under the circumstances present, Vice President Pence was on “unassailable” grounds for not overturning the electoral results of the 2020 presidential election. (R.T. Vol. XVIII, p. 47:17; p. 66:20-25.)

Eastman’s Two-Page and Six-Page Memos Detailing January 6 Scenarios

On December 23, 2020, Eastman drafted and sent a two-page legal memorandum to Boris Epshteyn and Kenneth Chesebro, attorneys and strategic advisors to President Trump and the Trump Campaign (two-page memo). (Exh. 6, p. 26; R.T. Vol. X, p. 69.) The two-page memo outlined Eastman’s suggested “January 6 scenario,” detailing a strategy and plan of action for Vice President Pence to declare President Trump as the re-elected president. (Exh. 3.)

Central to Eastman’s new two-page memo strategy was his belief that it was “hugely important” for Republican electors in the “contested states”—Arizona, Georgia, Michigan, Nevada, Pennsylvania, New Mexico and Wisconsin to meet and to vote for a Trump slate of electors on the constitutionally set date of December 14 and then transmit those slates of

Trump electors in accordance with federal law. (Exh. 40; R.T. Vol. X, p. 165-166.)

The first sentence of the two-page memo states, “7 states have transmitted *dual* slates of electors to the President of the Senate.” (Exh. 3, p. 1, italics added.) The seven states are referring to Arizona, Georgia, Michigan, Nevada, Pennsylvania, New Mexico and Wisconsin (the contested states). Before December 23, 2020, the date Eastman forwarded the two-page memo, Eastman was aware that Arizona, Georgia, Michigan, Nevada, Pennsylvania, New Mexico and Wisconsin had each forwarded as required, at least one official Certificate of Ascertainment⁵³ referencing presidential electors who had been certified by the governor of that state. (Exhs. 10-17.)

The major premise underlying Eastman’s two-page memo was that under the Twelfth Amendment, Vice President Pence in his role as President of the Senate, had the authority to not only open and count each state’s elector certificates of ascertainment but he also had the authority to unilaterally resolve “disputed” or “contested” electoral votes. Essentially, the two-page memo provided that on January 6, Pence would proceed as follows:

⁵³ The states of Arizona (exh. 10, p. 6), Nevada (exh. 14, p. 3), and Wisconsin (exh. 17, p. 3), stated in their respective final Certificates of Ascertainment, that an election challenge had been filed in their state and judicially rejected before December 23, 2020. Arizona filed a supplemental Certificate of Final determination of Presidential Electors on January 6, 2021, which stated that a final determination of an election challenge regarding Arizona’s electors had been resolved in *Burk v. Ducey*, case No. CV-20-0349-AP-EL, on January 5, 2021, and that case upheld the previously certified list of electors filed with the Archivist. (Exh. 10, p. 7.)

- 1) beginning with Alabama, Pence would begin to open and count the ballots;
- 2) when Arizona was called, Pence would announce that he had multiple slates of electors so he would “defer decision” on Arizona until he finished calling the other States;
- 3) declare that due to the “ongoing disputes in the 7 States,” none of their electors would be deemed validly appointed, **resulting in none of the 7 States’ electors’ votes being counted** (according to Eastman’s calculation, President Trump would prevail with 232 elector-appointed votes and Vice President Biden would only have 222 so “Pence then gavels Trump as re-elected”;
- 4) after Democrats complain, Pence declares that no candidate has the required majority, sending the matter to the House “where ‘the votes shall be taken by the states,’” and Trump would win under this scenario as well because Republicans controlled 26 of the state delegations; the bare majority needed to win;
- 5) if the ECA protocol was followed and there were objections to the Arizona slates, the two chambers convene separately and a senator would demand normal rules, creating a stalemate that might give sufficient time for the state legislatures to generate support for the alternate slate of electors; and
- 6) Vice President Pence should not ask for permission from members of the Joint Session of Congress or from the court since his position is “that the Constitution assigns this power to the Vice President as the ultimate arbiter.”

Eastman acknowledged that several steps in this two-page memo scenario represent a violation of the Electoral Count Act, e.g. deferring Arizona's electoral count until the end of the electoral count and refusing to adhere to the ECA time constraint on debating objections.

(Exh. 3, p. 2.)

However, Eastman has not always supported this position. For example, in November 2000, when Eastman testified before the Florida state legislature in connection with the *Bush v. Gore* presidential election, Eastman explained that *Congress* counts the votes, *Congress* is the ultimate arbiter as to any disputes regarding the count and, *Congress* answers to no one on this issue. (R.T. Vol. IX, p. 27; Exh. 25.)

Twenty years later, in a mid-October 2020 exchange between Eastman and Colbert discussing their post-election recommendations to President Trump, Eastman emphatically supported this position when Colbert suggested “[t]hat the President of the Senate decides authoritatively what ‘certificates’ from the states to ‘open’ and what electoral votes are ‘counted,’ under the 12th Amendment and the Electoral Count Act of 1887, 3 U.S.C. §15.” (Exh. 38, p.1.) Eastman replied, “*I don’t agree with this. The 12th Amendment only says that the President of the Senate opens the ballots in the joint session and then, in the passive voice, that the votes shall then be counted. 3 U.S.C. §12 says merely that he is the presiding officer, and then it spells out specific procedures, presumptions, and default rules for which slates will be counted. Nowhere does it suggest that the President of the Senate gets to make*

the determination on his own. §15 doesn't either." (Exh. 38, pp. 1-2, italics added.)

Eastman also disagreed with Colbert's interpretation of Article II regarding two or more conflicting slates of electoral votes authorizing the Legislature, not the governor or the popular vote to determine the appointment of the electors, stating: "*I don't agree with this either.* Article II says the electors are to be appointed 'in such manner as the Legislature thereof may direct,' but I don't think that entitles the Legislature to change the rules after the election and appoint a different slate of electors in a manner different than what was in place on election day. And 3 U.S.C. §15 gives dispositive weight to the slate of electors that was certified by the Governor in accord with 3 U.S.C. §5." (*Id.* at p. 2, italics added.)

Acknowledging that these were positions Eastman held for over 20 years, positions which were contrary to the two-page memo scenario which stated Vice President Pence had unilateral authority to count and resolve disputed votes, Eastman claimed that his change of position between October 2020 and December 2020 was due to a significant amount of additional research.⁵⁴ (R.T. Vol. IX, pp. 23-25, 27.)

Approximately 11 days later, on January 3, 2021, Eastman drafted and sent a six-page legal memorandum to Epshteyn, an attorney and strategic advisor to Trump's campaign (six-page memo).

⁵⁴ The Court does not find that explanation credible as this new position seems to correlate more closely with the time frame of Eastman's representation of President Trump and the Trump Campaign than it does with time frame of the published research that Eastman relied upon, almost all of which pre-dated Eastman's newly articulated view by several years.

Eastman composed this memo to outline a range of scenarios or options he was recommending to President Trump and the Trump campaign regarding the January 6th strategy they should pursue. It delineated the course of action Vice President Pence should take in relation to the electoral vote during the Joint Session of Congress on January 6, 2021.

As with the two-page memo, this six-page memo sets forth Eastman's proposed "January 6 scenario," which Eastman summarized in four sections: (1) a sampling of illegal conduct by election officials in Georgia, Pennsylvania, Wisconsin, Michigan, Arizona and Nevada; (2) a brief analysis of the 12th Amendment and Electoral Count Act of 1887 relating to the constitutional and statutory process of opening and counting electoral votes; (3) discussion of a proposed strategy and course of action (framed as War Gaming the Alternatives), for Vice President Pence to one way or the other, declare President Trump as re-elected president; and (4) justification for taking the BOLD action he recommended in the six-page memo. (Exh. 4.)

Eastman also claimed in the six-page memo that **"this Election was Stolen by a strategic Democrat plan to systemically flout existing election laws for partisan advantage; we're no longer playing by Queensbury Rules, therefore."** (*Id.* at pp. 3, 5, emphasis in original.)

Eastman's sampling of alleged illegalities set forth in the six-page memo contained one which Eastman acknowledged to be false—his statement that Michigan mailed out absentee ballots to every registered voter contrary to statutory requirements. This statement was false because Michigan's

Secretary of State had mailed absentee ballot *applications*, not absentee ballots, to Michigan's registered voters.⁵⁵ (R.T. Vol. IX, pp. 87-88.) Despite acknowledging the falsehood of the statement, Eastman tried to justify it by stating that the Michigan Supreme Court's review of the *Davis* decision, discussed *supra*, had been denied amidst "significant dissent" and pointing out that members of the Michigan legislature vigorously contested the validity of those court decisions. (*Id.* at pp. 89-90.)

Although Eastman described the six-page memo as a compilation of nine January 6 scenarios that had been publicly discussed and intended for internal deliberation among Trump strategists, he disavows that it includes any explicit recommendations. (R.T. Vol. XXXI, pp. 40- 41.) However, Eastman made several recommendations in reference to the action(s) called for by the scenarios which he labeled as "**BOLD, certainly.**" (Exh. 4, p. 5, bold in original.) Eastman recommended that, for the purpose of counting the electors, Vice President Pence should, among other actions, unilaterally consider the validity (or invalidity) of certain ballots and adjourn the Joint Session of Congress, "determining that the time restrictions in the Electoral County [sic] Act are contrary to his [Vice President Pence's] authority

⁵⁵ "Q: You had mentioned three violations of state law in the six-page memo regarding Michigan. The first one is that: 'Michigan mailed out absentee ballots to, every registered voter, contrary to statutory requirement that voter apply for absentee ballots. Do you recall that? Eastman: Yes. Q: And you have subsequently acknowledged that that statement is incorrect. Is that right? Q: Yes. They didn't mail out absentee ballots. They mailed out absentee applications for ballots." (R.T. Vol. IX, pp. 87-88.)

under the 12th Amendment and therefore void.” (*Ibid.*) Moreover, Eastman directed, “[t]he main thing here is that VP Pence *should* exercise his 12th Amendment authority without asking for permission—either from a vote of the joint session or from the Court.” (*Ibid.*, italics added.)

In both the two-page and six-page memos, Eastman stated that the ECA was “likely unconstitutional” because contrary to the 12th Amendment, which provides for a Joint Session of Congress, the ECA states that the two chambers of Congress, “acting separately” will decide the question of which votes of the electors shall be counted. (Exh. 3, p. 1.) As Eastman stated, “there is no court case holding either that the Electoral Count Act is constitutional or unconstitutional.” (Exh. 6, p. 29, fn. 29.)

In the memos, Eastman also stated, falsely, that “[t]here is *very solid legal authority and historical precedent*, for the view that the President of the Senate does the counting, including the resolution of disputed electoral votes (as Adams and Jefferson did while Vice President, regarding their own election as President), and all the Members of Congress can do is watch.” (*Id.* at p. 3, italics added.) However, as Eastman knew before, during and subsequent to the time that he drafted and advocated implementation of certain of the January 6th scenarios, there was no *solid* legal authority regarding this issue and the only legal authority upon which he relied in drafting the memo consisted of four law review articles.⁵⁶ (R.T. Vol. IX, p. 159:8-161.)

⁵⁶ The “solid legal authority” Eastman relied upon in the six page memo included the following law review articles: 1) Bruce

Moreover, Eastman contended that the question as to whether Vice President Pence had unilateral authority to resolve disputed electoral votes or to delay the electoral counting, was an “open question” and he knew there was no real judicial or primary legal authority, much less controlling legal authority on the issue.⁵⁷ (Exh. 31, p. 6.) During a January 4,

Ackerman and David Fontana, *Thomas Jefferson Counts Himself Into the Presidency*, 90 Va. L. Rev. 551 (2004); 2) Vasana Kesavan, *Is the Electoral Count Act Unconstitutional*, 80 N.C. L. Rev. 1653 (2002); 3) Edward B. Foley, *Preparing for A Disputed Presidential Election: An Exercise in Election Risk Assessment and Management*, 51 Loyola Chi. L. J. 309(2019); and 4) Nathan Colvin and Edward B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb* (2010). (Exh. 6, pp. 5-6; see also exhs. 1014, 1019, 1020, 1212.) Eastman testified that he also considered the Jack Beermann and Gary Lewis article, *The Electoral Count Mess: The Electoral Count Act of 1887 Is Unconstitutional, and Other Fun Facts (Plus a Few Random Academic Speculations) About Counting Electoral Votes*. However, the Beermann and Lewis article was published March 1, 2021—almost 2 months after the January 3, 2021 six-page memo was circulated. The Robert Delahunty and John Yoo article, *Who Counts?: The Twelfth Amendment, the Vice President, and the Electoral Count*, 73 Case W. Rsr. L. Rev., 27 was published in 2022. Dr. Yoo and Delahunty’s article, *What Happens If No One Wins?* published in American Mind on October 17, 2020, was not a law review article.

⁵⁷ Many constitutional scholars will agree with Eastman’s constitutional law expert, Dr. Yoo, that there are no Supreme Court cases that directly address whether Congress, the President of the Senate, the United States Supreme Court, or any other entity has authority to resolve a dispute arising over electoral votes – although, as Dr. Yoo noted, in *Bush v. Gore* the Supreme Court did discuss the Electoral College. (R.T. Vol. XIII, p. 46.) The dearth of judicial and legal authority on this issue has not impeded its vigorous discussion among constitutional scholars who debated it in a handful of law review articles that Eastman read and, for some reason considered not only as solid

2021 meeting in the Oval Office, Eastman discussed and provided candid advice regarding the six-page memo scenarios to his client, President Trump. (R.T. Vol. XXXI, pp. 40-41.) President Trump was aware of the scenarios as early as December 2020.

Eastman's Appearance on the Bannon's War Room

Just before drafting and sending the six-page memo, on January 2, 2021, Eastman appeared as a guest on the “Bannon’s War Room” radio program. Eastman was introduced as “one of the great thinkers about the Constitution” and repeatedly referred to by Steven Bannon as “the President’s constitutional lawyer.” (Exh. 28, pp. 1, 4.) Eastman spoke regarding the “failed” and “illegally conducted” 2020 presidential election, where, “in a number of state [sic] and most egregiously in Georgia, and Pennsylvania and Wisconsin, partisan elected officials, and in some cases partisan judicial officials, ignored or altered those legislative commands [regarding election laws requiring signature verification on absentee ballots and voter ID requirements] and conducted the election in violation of the manner that the legislature had set out.” (*Id.* at p. 4.)

Eastman urged listeners to put pressure on their respective state legislators (especially in Georgia, Pennsylvania, Wisconsin and Arizona) to demand that they convene a session to “either decertify the existing slate of [Biden] electors if there’s just too much uncertainty about the results of the election, or *certify the correct slate of electors if the number of*

scholarship but also as precedent supporting the view that the President of the Senate does the counting, including the resolution of disputed electoral votes.

ballots that are shifted if you get rid of the illegal ones are enough to effect the outcome, as we believe they are." (*Id.* at p. 5, italics added.) Eastman proposed that listeners pressure their state legislators because "there was illegal conduct, and that likely opened the door for voter fraud that may have affected the outcome of the election." (R.T. Vol. X, p. 84.)

In discussing the power that the Constitution affords to state legislatures in the electoral process, Eastman stated that state legislators needed to act *promptly* because "what we have here is *massive evidence* that this election was at least conducted illegally. In violation of the state statutes. But, lots of evidence, as well, that as a result of that illegal conduct, removing checks against fraud in the absentee ballot process that *we have absentee fraud. More than enough to have affected the outcome of the election.* And, I think the duty of these legislators to fix this egregious conduct and make sure that we're not putting in the White House some guy that didn't get elected." (Exh. 28, p. 2, italics added.)

Although Eastman stated that illegality opened the door for fraud, Eastman acknowledged at trial that he did not know the extent to which there was any outcome-determinative fraud in the 2020 presidential election in Arizona, Michigan, Nevada, New Mexico or Wisconsin. (R.T. Vol. XXXI, pp. 87

[Wisconsin];⁵⁸ 88 [Nevada];⁵⁹ 90 [Arizona];⁶⁰ 93 [New Mexico and Michigan]⁶¹.)

⁵⁸ Eastman initially testified that the report prepared by Justice Gableman regarding the Wisconsin election confirmed the illegality of steps taken by the Secretary of State that “opened the door for fraud,” in a manner which affected as many of 200,000 ballots, (R.T. Vol. XXXI, p. 86.) Eastman then acknowledged that Justice Gableman did not make a determination as to how many ballots were fraudulently cast, and Eastman agreed with Gableman’s view that there was more than an outcome-determinative number of ballots cast as a result of illegality even though Eastman could not quantify that number of fraudulent votes:

Q: “What is your view as to whether there was outcome-determinative fraud? Not asking about Justice Gableman.

Eastman: Well, you know, as I’ve said, I think, a number of times, once the ballots are separated from the envelopes it’s hard to determine with proof—dispositive proof how much fraud was. That’s why I’ve focused pretty regularly on the question of illegality. *I don’t know the extent to which fraud affected the outcome.*” (R.T. Vol. XXXI, p. 87, italics added.)

⁵⁹ Q: “But I didn’t hear you say that you believe there was outcome-determinative fraud in Nevada. Is it fair to say you don’t know whether there was outcome-determinative fraud in Nevada?

Eastman: I don’t know the extent of the fraud versus the illegality. I’ve not looked at that detail—and I said several times now. The illegality is sufficient in my view. To the extent that that actually produced fraudulent votes rather than illegal votes, I don’t know, and it’s a very hard thing to assess after the fact.” (*Id.* at pp. 88-89.)

⁶⁰ Q: “I’m asking if you believe whether there was, in fact, outcome-determinative voter fraud in Arizona in the 2020 presidential election.

Eastman: Well, in Arizona, I had seen evidence—and again, I didn’t have any involvement with Arizona, so I don’t know the detail of that particularly. But I had seen evidence of a 35,000 vote injection at the third-party processor of votes. That’s greater

Nevertheless, up to the date of trial, Eastman adhered to his false belief that “lots of evidence” of outcome-determinative fraud existed in the Pennsylvania 2020 presidential election, as he had emphatically stated during the Bannon radio program on January 2, 2021:

Q: Were you alleging that there had been outcome-determinative absentee voter fraud to suggest that the election results were illegitimate?” [Objection overruled.]

Eastman: I was alleging primarily there was illegal conduct, and that that likely opened the door for voter fraud that may have affected the outcome of the election.

Q: But you didn’t say that it may have affected the outcome of the election. You said that there was lots of evidence of fraud, and that there was more than enough to have affected the outcome of the election, right?

than the margin. *If that occurred*, that is evidence of fraud greater than the margin.

Q: If that occurred. *But do you know whether that occurred or not?*

Eastman: *I don’t.*” (*Id.* at p. 90, italics added.)

⁶¹ Q: “What about New Mexico? Do you believe there was outcome-determinative fraud in New Mexico in the 2020 election?”

Eastman: I hadn’t looked at New Mexico at all.” (*Id.* at p. 93.)

Q: “What about Michigan?”

Eastman: I don’t know. There’s a lot of evidence of—there’s a lot of evidence of fraud in Michigan. I’ve not put together a spreadsheet identifying how many votes in Michigan may have been affected by fraud as opposed to illegality. I just don’t know the answer to that.” (*Ibid.*)

Eastman: That's correct.

Q: Okay. And that was your belief at the time, correct?

Eastman: That was my belief at the time.

Q: And is that still your belief?

Eastman: Yes, it is.

(R.T. Vol. X, pp. 84-85.)

He characterized those “illegalities” as including the Pennsylvania Supreme Court’s decision, *In re November 2, 2020 General Election*, which he said allowed removal of signature verification, the use of drop boxes and changing the deadline for mail-in ballots, providing advance notice of disqualified ballots in the pre-canvassing phase to “undermine” the Pennsylvania election law. (R.T. Vol. XXIX, p. 51.) Citing to the Pennsylvania State Representative Ryan’s December 4, 2020 letter (the Ryan Report), Eastman contended that 58,200 absentee ballots were returned only one day after the mail date which was “near impossible.” (*Id.* at p. 53; Exh. 1155.)

Yet, there was no massive evidence of outcome-determinative fraud related to these alleged “illegalities” or any absentee voter fraud in connection with the Pennsylvania 2020 presidential election. The Ryan Report did not reference or set forth the data that supported its inaccurate claims, some of which seemed to be based on a misunderstanding of the publicly available data.⁶² (*Id.*; R.T. Vol. III, pp. 121-123.)

⁶² Among other allegations, the Ryan Report calculated 400,000 missing votes, based on an erroneous analysis of the publicly available mail-in ballot data and a discrepancy between the number of ballots issued and the number of ballots received,

None of the counties in Pennsylvania opened and counted mail-in or absentee ballots during the pre-canvassing period (before 7:00 a.m. on election day) or disclosed the vote totals prior to 8:00 p.m. on election day, contrary to Pennsylvania election laws.⁶³ (R.T. Vol. III, pp. 175, 151-153.) As the Pennsylvania Deputy Secretary of Elections and Commissions stated, there was no systemic insecurity or inaccuracy regarding Pennsylvania's 2020 presidential election based on the publicly available information posted by the county elections boards, the two-percent statistical sampling performed by each county three weeks after election day, and the statewide risk-limiting audit performed after the counties had certified their results of the November 2020 presidential election. (*Id.* at pp. 112-114.)

Moreover, pursuant to the Pennsylvania Election Code, the county boards of election and county district attorneys investigated 2020 presidential election-related complaints and claims of fraud and

which seemed to be based on a misunderstanding of Pennsylvania Act 77, enacted in 2019 regarding traditional absentee ballot voting and mail-in voting. (R.T. Vol. III, pp. 121-122.)

⁶³ As clarified by Pennsylvania's Deputy Secretary of Elections and Commissions, a 20 plus year employee whose duties included overseeing election administration at the Pennsylvania Department of State, the pre-canvassing of absentee and mail-in ballots refers to the handling of ballots "no earlier than 7:00 a.m. on election day, up to 8:00 p.m. on election day, there's canvassing of absentee and mail-in ballots that occurs after 8:00 p.m., and then there's the official canvass, which actually, pursuant to state law, begins on Friday after election day, when the county basically starts to accumulate all of the vote totals and adjudicate provisional ballots, et cetera." (R.T. Vol. III, pp. 146-147.)

subsequently reported the outcome to the Elections and Commissions office with the Department of State, which learned of “individual cases of fraud prosecuted in various counties, but no indication that there was widespread fraud.” (*Id.* at p. 117.)

January 4, 2021 Oval Office Meeting

On January 4, 2021, an Oval Office meeting at the White House was convened, with Eastman present as President Trump’s counsel,⁶⁴ alongside President Trump, Greg Jacob, and Vice President Pence’s Chief of Staff, Marc Short (the Oval Office meeting). (R.T. Vol. X, p. 86.) The purpose of the Oval Office meeting was to discuss Vice President Pence’s role during the electoral count and Joint Session of Congress on January 6, 2021.

Starting from early December 2020, Vice President Pence had maintained the stance that he lacked the authority to reject electors on January 6th. By the time he attended the Oval Office meeting, Vice President Pence had participated in numerous discussions with Jacob, his White House Counsel,⁶⁵ reviewed a memo prepared by Jacob which analyzed constitutional and historical authority on the topic; read law review articles; obtained information from the parliamentarian; and sought and obtained the advice of constitutional scholar, Dr. Yoo, on the issue

⁶⁴ This Court concludes that Eastman did not attend the Oval Office meeting as a private citizen petitioning for redress of a grievance. The meeting was scheduled at President Trump’s request and during the meeting, President Trump asked and Eastman provided legal advice regarding the constitutionality of Vice President Pence rejecting certain elector votes.

⁶⁵ At the time, Jacob was serving as Counsel to the Vice President and Deputy Assistant to the President.

of whether Vice President Pence had the authority to unilaterally delay the electoral count or to disregard and/or reject electoral votes. (R.T. Vol. II, pp. 41-44; exh. 71.) Neither Dr. Yoo, nor any of these other sources, supported the view that Vice President Pence had the authority to delay the electoral count, disregard or reject the electoral votes under the circumstances present in January 2021, as the contested states had each provided a single set of executive-certified slate of electors and no state legislature had challenged them. Vice President Pence also came to the conclusion that he lacked the authority to preside over the Joint Session of Congress in the manner Eastman and President Trump were pressuring him to because Vice President Pence believed his role as President of the Senate was a ministerial role that did not involve rejecting, delaying or counting electoral votes.

Eastman recalled that during the Oval Office meeting, President Trump asked whether Eastman agreed that Vice President Pence could “simply reject electors if he [Pence] had information that they were not legally certified” and Eastman responded, “[i]t’s more nuanced than that” and “it’s an open question in these circumstances that, namely, [with] only one set of certified electors—whether you have that power.” (R.T. Vol X, p. 86-87.) Eastman suggested that even if Vice President Pence had that power, that he should refrain from exercising it, since the state legislatures had not provided an alternative certified elector slate. (*Id.* at pp. 86-87.) During the Oval Office meeting, Eastman stated that Vice President Pence “had unilateral authority to determine the validity of the electoral vote certificates” but proposed that Vice President Pence exercise the option to “delay” the

electoral count for 10 days, rather than to reject certain electoral votes. (*Ibid.*) The meeting ended with President Trump requesting, and Vice President Pence agreeing, that Jacob would meet with Eastman again the next day however, Vice President Pence and Jacob thought that President Trump and Eastman were no longer pressuring Vice President Pence to reject electoral votes.

Events of January 5, 2021

On January 5, 2021 at 8:06 am., President Trump tweeted, “The Vice President has the power to reject fraudulently chosen electors.” (Exh. 297.)

That same day, Jacob sent Vice President Pence a memo Jacob had prepared which outlined and analyzed some of Eastman’s January 6 proposals that had been discussed during the January 4 Oval Office meeting (Jacob’s Jan. 5 Memo). (Exh. 71; R.T. Vol. II, p. 80.) In the memo, Jacob characterized Eastman’s proposals as requiring Vice President Pence to “skip opening and reading the electoral certificates for any state for which an alternate but uncertified slate of electors has been submitted”; open and read the Arizona, Georgia, New Mexico, Nevada and Pennsylvania electoral certificates at the end of the Joint Session rather than reading the certificates for those states in alphabetical order; and to refrain from counting the electoral certificates for these states until their state legislature determines whether to certify a competing slate of electors. (Exh. 71, p. 1.) Jacob outlined how each proposed step violated the Electoral Count Act and was also in conflict with *Wisconsin Voters Alliance*, a Washington D. C. district court decision filed the day before. Jacob noted that *Wisconsin Voters Alliance* held that “[p]laintiffs’

theory that [the Electoral Count Act is] unconstitutional and that the Court should instead require state legislatures themselves to certify every Presidential election lies somewhere between a willful misreading of the Constitution and fantasy.”⁶⁶ (*Id.* at p. 3.)

Meeting Between Eastman, Jacob, and Short

Later that day, Jacob and Short met with Eastman in Short’s office between 11:00 and 11:30 a.m. (January 5 meeting). However, Eastman’s “ask” during the January 5 meeting differed from his “ask” at the end of the day before. Initially, during the January 5 meeting, Eastman asked that Vice President Pence *reject* the electoral votes from Arizona, Georgia, Wisconsin, Michigan, Pennsylvania and, possibly Nevada and New Mexico as well.⁶⁷ That

⁶⁶ The court notes that the District Court’s denial of preliminary injunction was also based on plaintiffs’ failure to demonstrate standing, personal jurisdiction, or service on defendant Vice President Pence. In sum, plaintiffs did not establish a likelihood of success on the merits. (See *Wisconsin Voters Alliance, et al. v. Pence et al.* (2021) 514 F.Supp. 3d 117, 120-122). The notice of errata filed by OCTC on December 26, 2023 and Eastman’s December 28 response, addressed the District Court’s January 4, 2021 decision in *Wisconsin Voters Alliance*.

⁶⁷ Eastman contends that during the January 5 meeting, he did not propose that Vice President Pence should reject the elector slates from the contested slates. However, that is not credible as during the January 5 meeting Jacob made handwritten notes, indicating “John Eastman meeting 1/5/21... Requesting VP reject...” (Exh. 65.) Moreover, certain January 6 emails (4:29 p.m. by Jacob) and Eastman (6:09 p.m.) acknowledge that elector rejection the “most aggressive position (the elector rejection option) had been raised and not “retreated to” until the night of January 5. Therefore, this court finds Jacob’s testimony credible that Eastman did initially, during the

request precipitated a robust, almost 2 hour discussion regarding historical precedent, the fact that no vice president in the entire history of the country ever actually exercised authority to reject electoral vote certificates and, how courts would likely deny Eastman's rejection theory. (R.T. Vol. X, pp. 57-58.)

During the January 5 meeting, Jacob and Eastman discussed a number of law review articles regarding the authority of a vice president, including a 2004 law review article entitled "Thomas Jefferson Counts Himself into the Presidency" by Bruce Ackerman and David Fontana which addressed actions taken by Vice Presidents John Adams in connection with the election of 1796;⁶⁸ and Thomas Jefferson in connection

January 5 meeting, request that Vice President Pence reject electoral votes from the contested states rather than delay the counting until it became apparent that Eastman's rejection request didn't gain traction with Jacob; then Eastman changed his request to a delay of the electoral count. (R.T. Vol. X, pp. 77-78.)

⁶⁸ The election of 1796 was the first contested presidential election in the United States. The leading candidates were John Adams (the sitting Vice President) and Thomas Jefferson. Adams presided over the electoral count on February 8, 1797. Vermont was a pivotal state in the 1796 election and although contemporaneous sources rumored that Vermont's electors were appointed in violation of state law, the *Annals of Congress* reflect that Adams handed the certificate with the four Vermont votes cast for Adams to the teller for counting, and, hearing no objection, Adams sat down for a moment and then stood up and announced that in obedience to the commands of Congress and pursuant to the joint resolutions—John Adams was elected President of the United States. (Exhs. 179, pp. 32-35; 1358, pp. 72-73.)

However, as Dr. Yoo pointed out, the Vermont electoral votes were the only votes certified by Vermont and for that reason, Vice

with the election of 1800.⁶⁹ Eastman agreed with Jacob that the actions taken by Jefferson, basically ignoring defects in Georgia's certificate, crediting Georgia with its three electoral votes and proceeding with the electoral count, did not give rise to a rejection of electors or represent an incident where a vice president asserted any authority involving a substantive determination about an electoral certificate. (R.T. Vol. II, p. 63-65.) After further discussion about the 1796 incident involving Adams, Eastman agreed that neither the Adams nor Jefferson examples reflected that either vice president had rejected electoral vote certificates, claimed any authority to do so or claimed they had authority to make any substantive decisions about electoral vote certificates. (*Id.* at pp. 65-67.) Jacob concluded that neither Congress nor a vice president has authority to reject electors and, as Vice President Pence stated all

President Adams may have thought he was required to count them and that he had no authority to look past the certification he had received in order to identify possible irregularities. (Exh. 1358, p. 74.)

⁶⁹ The electoral count for the 1800 presidential election was held on February 11, 1801 and lasted almost a week. The leading presidential candidates were President John Adams who was seeking re-election and Thomas Jefferson. There were technical deficiencies in Georgia's certificate for four electors which could have supported rejection and that potentially could have been outcome determinative, even though the deficiencies did not affect the validity of the appointment of the electors. Yet, the Georgia votes were counted and neither the *Annals of Congress*, the House Journal nor the Senate Journal reflect any dispute, resolution of a dispute by the President of the Senate or others during or after the electoral count. Although Eastman contends that Jefferson exercised unilateral authority to resolve a Georgia electoral vote dispute, the historical records do not support that contention. (Exh. 179, pp. 37-42; see also exh. 1358, pp. 75-77.)

along and articulated clearly in his Dear Colleague letter the next day, Vice President Pence had reached the same conclusion.

Jacob and Eastman had a further discussion about whether the United States Supreme Court would agree with Eastman's view that a vice president could reject electoral votes and they subsequently agreed that although there may be one or two dissenting opinions, a majority of the justices would likely vote against it. (*Id.* p. 70.)

Eastman and Jacob ultimately agreed that during the 130 years that the Electoral Count Act had been in effect, there was never a departure from its procedures, not even when Nixon, as President of the Senate on January 6, 1961, announced that with no objections, the third slate, which was the last slate certified and ascertained by the Governor of Hawaii, was the operative slate of electors for Hawaii. (*Id.* at p. 61.)

Following that hearty discussion during the January 5 meeting, Eastman requested that Vice President Pence delay rather than reject the contested state electors, based in part, on requests made for a delay by some individual state legislators. (*Id.* at pp. 72-73.) However, as Jacob noted, "[t]here was no dual slates of electors where there was an imprimatur of state authority that would cause them to have legal status under the Electoral Count Act that would trigger its procedures," no state legislature had sought a delay of the electoral count and no state legislative majorities indicated an intent to do so. (*Id.* at p. 76; exh. 71, p. 3.)

Eastman's Discussions with Trump and Jacob After the Jan. 5th Meeting

After Eastman met with Jacob and Short in Short's office, Jacob and Eastman had two more phone calls that day – the first of which took place at 5:00 or 5:30 p.m. and included President Trump, Eastman, and another attorney. During that call, they acknowledged that Vice President Pence was not going to agree to reject electors so they asked whether Vice President Pence “would reconsider the possibility of the procedural option of sending it back to the states” – in other words, to opt for an adjournment, recess, or delay for some period of time. (R.T. Vol. II, p. 169.)

The second phone call Jacob had with Eastman on the evening of January 5th involved a renewed discussion about a delay for further consideration by the state legislatures and that while some individual Republican state legislators forwarded letters seeking a delay of the electoral count, numerous state legislature leaders stated they had no interest in taking further action and that “no legislative body in any of the states where a majority of that body had indicated that that they were interested in revisiting the question of who had won that state in the [2020 presidential] election.” (R.T. Vol. II, pp. 74, 169-170.)

Neither the January 5 meeting nor the subsequent two phone calls caused Jacob or Vice President Pence to alter their position that as President of the Senate, Vice President Pence did not have authority to reject electoral votes, to recess or delay the electoral count.

Eastman emailed Jacob at 9:32 p.m. that night, stating: “This is huge, as it looks like PA legislature will vote to recertify its electors if Vice President Pence implements the plan we discussed. Give me a call once you’ve had your sit-down with the VP and let

me know where we stand.” (Exh. 66, p. 2) Jacob and Vice President Pence were not swayed.

According to the White House Presidential Call Log, Eastman and President Trump spoke from 9:54 p.m. to about 9:58 p.m. on January 5. (Exh. 386, p. 3) Two minutes later, at 10:00 p.m., President Trump tweeted “If Vice President@Mike Pence comes through for us, we will win the Presidency. Many States want to decertify the mistake they made in certifying incorrect & fraudulent numbers in a process NOT approved by their State Legislatures (which it must be). Mike can send it back!” (Exh. 298.) Eastman knew that contrary to the statements he made in his email about Pennsylvania, no state legislature was going to certify a Trump slate of electors.

The White House Presidential Call Log further reflects that from 11:23 to 11:37 p.m. and then from 11:39-11:50 p.m., President Trump spoke with Giuliani. (Exh. 386, p. 5.)

Eastman’s Discussions with Russell Ramsland and Joe Oltmann

Also on January 5, 2021, Eastman had conversations with a few people among the Willard Hotel Save America rally organizers whom he believed had varying levels of technical expertise and who had been involved with analyses of the systems, among them Russell Ramsland and Joe Oltmann. Eastman met Ramsland and Oltmann for the first time the evening of January 5, 2020. (*Id.* at pp. 52-5.) During a reception, they discussed a single page chart compiled by Ramsland and Oltmann (Ramsland/Oltmann diagram). (R.T. Vol. XI, pp. 93-94; see also exh. 1217.) The Ramsland/Oltmann diagram was a flow chart suggesting that phantom

and fake ballots⁷⁰ were introduced into the voted stream of ballots at multiple points by manipulating Dominion voting machine vulnerabilities. (*Id.*; R. T. Vol. XI, pp. 91-92.)⁷¹

Eastman had never heard of Oltman, and he did not conduct any background Internet or other research regarding either Ramsland or Oltman.⁷² (*Id.* at pp. 55, 99.) As a matter of fact, Eastman did not recall inquiring about Oltmann's credentials, e.g., educational or professional background or professional experience, that would qualify Oltmann to competently render the analysis of the Dominion voting machine vulnerabilities set forth in the Oltmann diagram. (*Id.* at pp. 88-89, 96.) Eastman did not recall Oltmann providing any support for the purported Dominion machine vulnerabilities or quantifying the number of pre-loaded ballots/suspense folder ballots that were allegedly counted due to Dominion machine vulnerabilities.

Eastman did recall, however, that none of the individuals with whom he discussed this issue provided any documentation, research or data regarding the credibility of the alleged Dominion

⁷⁰ Eastman was told that phantom ballots were ballot images copied/replicated within the system and fake ballots were ballots pre-loaded into the system. Both phantom and fake ballots would have occurred after the initial processing of verified paper ballots. (R.T. Vol. XI, pp. 91-92.)

⁷¹ A credible study of Dominion voting machines concluded that there was no evidence to suggest that Biden exceeded voting expectations in counties where these machines were utilized. (Exh. 174, p. 4.)

⁷² Eastman did recall learning that Ramsland was consulted by Texas at some point when it was trying to determine which voting machines to purchase.

machine vulnerabilities set forth in the Ramsland/Oltmann diagram. And Eastman did not make any effort to obtain information from Dominion regarding the Ramsland claims about the Dominion voting machines. (*Id.* at p. 59.)

Nevertheless, Eastman found the Ramsland/Oltmann diagram to be credible because some unnamed individuals who he believed had technical expertise, told him that there were vulnerabilities in the system and, because he believed he saw the diagram predictions play out as he was watched the Georgia Senate runoff election returns on January 5, 2021.⁷³ (R.T. Vol. XI, pp. 95-96.) The Ramsland/Oltmann prediction was that as a share of the counted votes would no longer increase, the estimated vote total would continue to increase. However, on January 5, 2021, the Ramsland/Oltmann

⁷³ Specifically, Eastman believes he saw the number of votes cast (the denominator in the vote total estimates) change unexpectedly and then the counting or the reporting of the counting of ballots shutting down for an hour or two. (R.T. Vol. XI, p. 98.) When Eastman observed this phenomenon during the Georgia Senate race, he believed that as the reported vote totals reached 100%, that number would not change but more ballots were reported because pre-loaded ballots were being withdrawn from the suspense folders in the Dominion machines and were added into the vote tally. (Resp's closing brief – incorrectly cited p. 31.) Eastman was mistaken.

By October 2021, Eastman came to understand that the Associated Press characterized the fractional number to which Eastman referred, was actually an estimate which the Associated Press adjusted as they learned more during vote tabulation. (*Id.* at p. 101.) However, even after learning of that explanation, Eastman still believed the results were disputed, indicative of fraud and warranted further review since he was told by statistician Eric Quinnell that it was unlikely that the Associated Press estimate was so far off the actual figure.

prediction did not occur.⁷⁴ (*Id.* at pp. 255-256, 259-260.)

Events of January 6, 2021

Trump’s Early Morning Tweet

At 8:17 a.m., President Trump tweeted that “States want to correct their votes All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage.” (Exh. 299, p. 1.)

Vice President Pence’s January 6, 2021 Letter

On January 6, 2021, shortly before the Joint Session of Congress, Vice President Pence forwarded a public letter to Congress (Dear Colleague Letter), which stated in pertinent part:

Dear Colleague:

Today, for the 59th time in our Nation’s history, Congress will convene in Joint Session to count the electoral votes for President of the United States. Under our Constitution, it will be my duty as Vice President and as President of the Senate to serve as the presiding officer.

After an election with significant allegations of voting irregularities and numerous instances of officials setting aside state election law, I

⁷⁴ “The estimated vote count is just that, an estimate. It’s going to change over the course of the evening. And there’s no literature that indicates that movement in the estimated vote count from media companies like Edison is an indication that fraud of any kind or illegality of any kind is happening, let alone that there’s machine manipulation occurring.” (R.T. Vol. XXXI, p. 260.) Moreover, a gap in the reporting of votes did not mean that the counting of votes stopped. (*Id.* at p. 261.)

share the concerns of millions of Americans about the integrity of this election. . . . [¶]

During the 130 years since the Electoral Count Act was passed, Congress has, without exception, used these formal procedures to count the electoral votes every four years. . . .

Some believe that as Vice President, I should be able to accept or reject electoral votes unilaterally. Others believe that electoral votes should never be challenged in a Joint Session of Congress.

After a careful study of our Constitution, our laws, and our history, I believe neither view is correct. [¶]. . . [¶]

[I]t is my considered judgment that my oath to support and defend the Constitution constrains me from claiming unilateral authority to determine which electoral votes should be counted and which should not.

(Exh. 64, pp. 2-3, italics added.)⁷⁵

Eastman's Speech at the Ellipse

On January 6, 2021, Eastman spoke to a crowd on the National Mall Ellipse at a televised “Save America” rally, better known as the “Stop the Steal” rally. Eastman estimated that there were between 250,000 and 500,000 people in attendance. (Eastman’s Answer, pp. 38-39.) During the rally, speakers and attendees protested the results of the 2020 presidential election, which most of them

⁷⁵ Jacob did not believe that these allegations of voting irregularities or election law officials setting aside state election law gave Vice President Pence authority to unilaterally reject any electors. (R.T. Vol. II, p. 84.)

characterized as having been stolen from President Trump.

Before he spoke, Eastman was introduced to the crowd by Rudy Giuliani, one of President Trump's lawyers, who stated, "I have Professor Eastman here with me to say a few words about that [everything outlined for the day being perfectly legal]. He's one of the preeminent constitutional scholars in the United States. . . ." (Exh. 30, p.1.) Giuliani contended that given the "questionable constitutionality" of the Electoral Count Act of 1887 (ECA), Vice President Pence could "cast it aside" and "can send it" back to the legislatures to give them five to ten days to find proof that the 2020 election was stolen—"over the next 10 days, we get to see the machines that are crooked. The ballots that were fraudulent." (*Ibid.*) Giuliani stated "let's have trial by combat," noting that Giuliani was willing to stake his reputation and "the President is willing to stake his reputation on the fact we're gonna find criminality there." (*Ibid.*) Giuliani went on to rail about his proof that the 2020 presidential election had been stolen;⁷⁶ "last night, one of the experts that has examined these crooked Dominion machines has absolutely what he believes is conclusive proof that in the 10%, 15% of the vote counted, the votes were deliberately changed by the same algorithm that was used in cheating President Trump and Vice President Pence. . . . You noticed they were ahead until the very end, right?" (*Id.* at p. 2.) Giuliani then asked Eastman to explain how "they"

⁷⁶ According to Giuliani, the 2020 presidential election had been stolen in seven states with "crooked Democratic cities where they could push everybody around." (*Id.* at p. 2.)

cheated in the January 5, 2021 Georgia Senate run-off and the November 3, 2020 [presidential] elections.

Eastman picked-up where Giuliani left off, alleging illegalities, election fraud, fraud involving Dominion voting machines⁷⁷ and demanding that Vice President Pence unilaterally delay the 1:00 p.m. electoral count to allow state legislatures to investigate these issues:

Look, we've got petitions pending before the Supreme Court that identify it, chapter and verse, the number of times state election officials ignored or violated the state law in order to put Vice President Biden over the finish line. *We know there was fraud.* Traditional fraud that occurred. *We know that dead people voted.* But, we now know because we caught it live last time in real time how the machines contributed to that fraud.

And, let me, as simply as I can, explain it. . . . They put those ballots in a secret folder in the machines. Sitting there waiting until they know how many they need. And then, the machine, after the close of polls, we now know whose [sic] voted and we know who hasn't. And, I can now, in that machine, match those unvoted ballots with an unvoted voter and put them together in the machine.

And, how do we know that happened last night [January 5, 2021] in real time? You saw when it got to 99% of the vote total, and then it stopped. The percentage stopped, but the votes

⁷⁷ Eastman's comments regarding the purported vulnerabilities of the Dominion voting machines were based in large part on his discussions with Ramsland and Oltmann.

didn't stop. What happened, and you don't see this on Fox or any of the other stations, but the data shows that the denominator, how many ballots remain to be counted. How else do you figure out the percentage that you have? How many remain to be counted? That number started moving up. That means they were unloading the ballots from that secret folder, matching them to the unvoted voter, and voila. We have enough votes to barely get over the finish line.

We saw it happen in real time last night, and it happened on November 3rd, as well. *And, all we are demanding of Vice President Pence is this afternoon at 1:00, he let the legislators of the state look into this so we get to the bottom of it,* and the American people know whether we have control of the direction of our government or not. We no longer live in a self-governing Republic if we can't get the answer to this question.

This is bigger than President Trump. It is the very essence of our Republican form of government, and it has to be done. *And, anybody that is not willing to stand up to do it does not deserve to be in the office. It is that simple.*

(Exh. 30, pp. 2-3, italics added.)

Eastman knew that any votes cast in the name of a deceased person were not outcome-determinative in any state. (R.T. Vol. XI, pp. 49-50.) Eastman knew that his statements made during his January 6th speech on the Ellipse implied that there was fraud related to electronic voting. (R.T. Vol. XXXI, p. 84 ["Q:

And you don't believe that your statements on January 6th at the Ellipse implied that there had been fraud related to electronic voting? A: It's quite possible it implied that"].) Eastman gave no consideration to the effect that his statements would have on the crowd. (*Id.* at p.85 [Q: Did you give any consideration to the effect that your statements would have on the crowd? A: I did not. I think I've testified earlier I was asked at the last minute to speak, and I spoke a lot less than three minutes"].)

Eastman made the damning statements at the Ellipse regarding purported Dominion voting machine vulnerabilities even though he had not seen conclusive proof that Dominion voting machines were used to fraudulently flip votes in the 2020 presidential election. (R.T. Vol. XI, pp. 33-34.)

Significantly, about two months before Eastman made the damning Dominion voting machine vulnerabilities remarks on the Ellipse, Eastman had become aware that the Cybersecurity and Infrastructure Security Agency (CISA) stated on November 12, 2020, "[t]he November 3rd election was the most secure in American history," notwithstanding the "many unfounded claims and opportunities for misinformation about the process of our elections." (Exh. 201.) CISA further stated "[w]e can assure you we have the utmost confidence in the security and integrity of our elections and you should, too. When you have questions, turn to the elections officials as trusted voices, as they administer elections." (*Ibid.*) Eastman found the CISA statement to be "rather implausible" and did not reach out to any election officials regarding the Dominion voting machines or the reliability of the election in their state. (R.T. Vol. X, pp. 121-124.) Eastman was also

aware of the Election Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees, bipartisan groups which prepared a November 16, 2020 statement by 59 computer scientists and election security experts⁷⁸ which stated there was no credible evidence that supports claims that the 2020 election outcome in any state was altered through technical compromise.⁷⁹ (Exh. 187.)

President Trump's Speech at the Ellipse

President Trump was the last speaker during the Stop The Steal rally. He complimented Giuliani⁸⁰ and thanked Eastman for a fantastic job, commenting that Eastman “is one of the most brilliant lawyers in the country and he looked at this and he said, what an absolute disgrace that this could be happening to our

⁷⁸ Notably, Eastman found credible the work of J. Alex Halderman, who Eastman mistakenly claims supported Eastman's views on election irregularities (particularly with regard to the election in Antrim County, Michigan), and who was one of the computer scientists and election security experts who signed the November 16, 2020 statement. (Exhs. 206, p. 3; 187.) (See also discussion *infra*, re Antrim County and Halderman's forensic conclusions re its election.) Halderman commented that Ramsland's report on Antrim County “contain[ed] an extraordinary number of false, inaccurate or unsubstantiated statements and conclusions, the most serious of which I refute below.” (Exh. 1062, p. 40; see also R.T. Vol. XI, pp. 56-58.)

⁷⁹ On January 11, 2021, Eastman sent an email to Giuliani, requesting to be included on President Trump's pardon list. This request stemmed from Eastman's apprehension that some individuals perceived his remarks at the Ellipse during the Save America rally as potentially influencing the events of the January 6 riots at the Capitol. (Exh. 62; R.T. Vol. XI, pp. 106-107.)

⁸⁰ “And Rudy, you did a great job. He's got guts.” (Exh. 322, p. 3.)

Constitution.” (Exh. 322, p. 3.) Stating that “[w]e will never give up. We will never concede”, President Trump for almost an hour railed about illegalities, election fraud in the contested states, “overwhelming evidence about a fake election”, how he had won the 2020 presidential election by a “landslide” and numerous other false election denier troupes. (*Id.* at p. 2.) During his speech, President Trump repeatedly pressured Vice President Pence to act unilaterally to reject the electoral votes by sending them back to the states to re-certify their votes.⁸¹

⁸¹ “And he [Eastman] looked at Mike Pence, and I hope Mike is going to do the right thing. I hope so. I hope so, because if Mike Pence does the right thing, we win the election. All he has to do, all—this is—this is from the number one or certainly one of the top Constitutional lawyers [Eastman] in our country. He [Pence] has the absolute right to do it. . . . States want to revote.” (Exh. 322, p. 3)

“The states got defrauded.... Now they want to recertify. They want it back. All Vice President Pence has to do is send it back to the states to recertify, and we become president. . . . I just spoke to Mike. I said, Mike, that doesn’t take courage. What takes courage is to do nothing. That takes courage, and then we’re stuck with a president who lost the election by a lot. . . . We’re just not going to let that happen.” (*Ibid.*)

“And Mike Pence is going to have to come through for us, and if he doesn’t, that will be a sad day for our country, because you’re sworn to uphold our Constitution. Now it is up to Congress to confront this egregious assault on our democracy, and after this, we’re going to walk down, and I’ll be there with you.” (*Id.* at p. 6.)

“And they want to recertify their votes. They want to recertify, but the only way that can happen is if Mike Pence agrees to send it back. Mike Pence has to agree to send it back.” (*Id.* at p. 14.) [The crowd chanting, “Send it back!”] (*Id.* at p. 14.).

“And Mike Pence, I hope you’re going to stand up for the good of our Constitution and for the good of our country, and if you’re

Trump encouraged his supporters to march down Pennsylvania Avenue to the Capitol and concluded by urging them to “fight like hell” to save the country. (*Id.*)

After the speeches at the Ellipse, at 2:24 p.m., President Trump tweeted that “Mike Pence didn’t have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!” (Exh. 300.)

Assault On The Capitol

Toward the end of the Stop The Steal rally on the Ellipse, some members of the crowd, protestors, rioters, and members of militia groups marched to the Capitol and began to riot around 2:00 p.m. EST; overwhelming the 800 deployed Metropolitan police, attacking the Capitol police, breaching the Capitol, breaking windows, entering and damaging Capitol offices and the chambers of Congress. Vice President Pence, members of Congress and their staff had to be evacuated to other locations for their safety. (R.T. Vol. II, pp. 86-89; exh. 165, pp. 31-33.) The violence and turmoil at the Capitol resulted in a cessation of the electoral count, which had started when the Joint Session of Congress convened at 1:00 p.m. Congress

not, I’m going to be very disappointed in you, I will tell you right now.” (*Id.* at p. 18.)

“When you catch somebody in a fraud, you’re allowed to go by very different rules. So, I hope Mike has the courage to do what he has to do.” (*Id.* at p. 22.)

eventually reconvened and began to continue with the electoral count around 8:30 p.m. Eastern time.

Communications Between Jacob and Eastman

During the morning of January 6th and the violent attack on the Capitol, Jacob and Eastman continued to argue regarding the scope of Vice President Pence's unilateral authority as raised in the six-page memo, during the meetings and calls with President Trump and others. At 10:44 a.m., Jacob responded to Eastman's January 5th email sent at 9:32 p.m. by inquiring whether Eastman's proposal was constitutional in light of the ECA constitutional imperative regarding the process for addressing objections. (Exh. 66, p. 1.) Eastman's 1:33 p.m. email was dismissive: "I'm sorry Greg, but this is small-minded. You're sticking with minor procedural statutes while the Constitution is being shredded." (*Ibid.*)

Jacob retorted by pointing out that he did not believe a single Justice on the United States Supreme Court or a Courts of Appeal would be as "broad minded" as Eastman "when it comes to the irrelevance of statutes enacted by the United States Congress, and followed without exception for more than 130 years. They cannot be set aside except when in direct conflict with the Constitution I want election integrity fixed. But I have run down every legal trail placed before me to its conclusion, and I respectfully conclude that as a legal framework, it is a results oriented position that you would never support if attempted by the opposition and essentially entirely made up. And, thanks to your bullshit, we are now under siege." (Exh. 66, p. 1.)

A few minutes later Eastman pushed back—“My ‘bullshit’ ---seriously? You think you can’t adjourn the session because the ECA says no adjournment, while the compelling evidence that the election was stolen continues to build and is already overwhelming. The ‘siege’ is because YOU and your boss did not do what was necessary to allow this to be aired in a public way so the American people can see for themselves what happened.” (Exh. 67, p. 1.)

Jacob’s 1:05 p.m. email was pointedly but accurately critical of Eastman and his advice to President Trump:

Respectfully, it was gravely, gravely irresponsible for you to entice the President with an academic theory that had no legal viability, and that you well know we would lose before any judge who heard and decided the case. And if the courts decline to hear it, I suppose it could only be decided in the streets. The knowing amplification of that theory through numerous surrogates, whipping large numbers of people into a frenzy over something with no chance of ever attaining legal force through actual process of law, has led us to where we are.

I do not begrudge academics debating the most far-flung theories. I love doing it myself, and I view the ferment of ideas as a good and helpful thing. But advising the President of the United States, in an incredibly constitutionally fraught moment, requires a seriousness of purpose, an understanding of the difference between abstract theory and legal reality, and an appreciation of the power of both the office and

the bully pulpit that, in my judgment, was entirely absent here.

(Exh. 69, pp. 2-3.)

Between 4:29 p.m. and 4:45 p.m., Eastman and Jacob exchanged emails regarding the nature of the advice that Eastman gave to President Trump; specifically, whether Eastman had advised President Trump that “Vice President Pence ‘DOES NOT have the power to decide things unilaterally? Because that was pushed publicly, repeatedly, by the President and by his surrogates this week. And without apparent legal correction.” (Exh. 68, emphasis in original.) Eastman confirmed that he had given Trump that advice when Jacob was on the phone presumably, the evening of January 5th. (*Ibid.*)

Eastman emailed Jacob again at 6:09 p.m., advocating for an adjournment and criticizing Vice President Pence’s Dear Colleague statement regarding his unilateral authority to accept or reject electoral votes as “the most aggressive position that was discussed and rejected.” (Exhs. 68, p. 1; 69, p. 2.) Eastman noted that “*we* had given a much more limited option, merely to adjourn to allow state legislatures to continue their work. I remain of the view not only would that have been the most prudent course as it would have allowed for the opportunity for this thing to be heard out, but also had a fair chance of being approved (or at least not enjoined) by the Courts. Alas.” (*Id.* at p. 2, italics added.)

At 9:44 p.m., after the electoral count had resumed, Eastman again emailed Jacob, stating that the ECA had been violated that evening by both the Senate and House by debating the Arizona objections longer than the 3 U.S.C. §17 period of two hours and

Vice President Pence had allowed debate after the question had been voted upon. Relentlessly, Eastman stated that with these purported ECA violations, “I implore you to consider one more relatively minor violation and adjourn for 10 days to allow the legislatures to finish their investigations, as well as to allow a full forensic audit of the massive amount of illegal activity that has occurred here.” (*Id.*)

The American Mind Article

On January 18, 2021, the American Mind, an online publication of the Claremont Institute, published an article written by Eastman regarding the November 3, 2020, presidential election, entitled “Setting the Record Straight on the POTUS ‘Ask’.” Eastman wrote this article to dispute statements made by Vice President Pence in his January 6 “Dear Colleague” letter regarding President Trump’s requests that Vice President Pence exercise unilateral authority to accept, reject, dispute, count and/or not count certain electoral votes during the Joint Session of Congress. Eastman contended that “when all was said and done” President Trump had not asked Vice President Pence to take these actions regarding the electoral count. (Exh. 31, p. 2.) Rather, according to Eastman, Vice President Pence was asked by both President Trump and by Eastman to merely “pause” the proceedings long enough to give the few states whose legislators had asked for more time to assess whether there was illegal conduct by their state election officials sufficient to warrant revoking the certified election results. (*Id.* at p. 7.) However, this Court notes, that the 10-day “pause” Eastman sought from Vice President Pence would, in and of itself, violate the Electoral Count Act and the evening of

January 6, and Eastman himself acknowledged that fact.⁸² (Exh. 69, p. 2.)

In the January 18, 2021 American Mind article, Eastman set forth a brief constitutional analysis of a hypothetical scenario, 3 U.S.C. §15 of the Electoral Act, the 12th Amendment and the vice president’s role vis-a-vis Congress in the opening and counting of electoral votes, as analyzed by certain constitutional scholars. Amazingly, and contrary to statements made in his two-page and six-page memos and all of his post mid-October 2020 public statements, Eastman concluded “[a]ll this by way of background to show that *whether or not Vice President Pence had the constitutional authority to determine that certain slates of electors were invalid remains an open question.*” (Exh. 31 p. 6, italics added.)

In the January 18, 2021 American Mind article Eastman further proclaimed:

A large portion of the American citizenry believes the illegal actions by partisan election officials in a few states have thrown the election. They saw it with their own eyes—in Fulton County, Georgia, where suitcases of ballots were pulled from under the table after election observers had been sent home for the night; in parts of Wayne County (Detroit),

⁸² After claiming that the Senate, the House, and Vice President Pence had violated the Electoral Count Act during the night of January 6 by extending the debate after Congress resumed its session following the assault on the Capitol, Eastman emailed Jacob: “I implore you to consider one more relatively minor violation and adjourn for 10 days to allow the legislatures to finish their investigations. . . .” (Exh. 69, p. 2.) This would have been a violation of the ECA that would have been unprecedented in American history.

Michigan, where there are more absentee votes cast than had been requested; . . . in Antrim County, Michigan, where votes were electronically flipped from Trump to Biden.

(Exh. 31, pp. 9-10.) These statements were false.

According to Jonathan Brater, Director of the Michigan Bureau of Elections,⁸³ the voter turnout in Detroit for the 2020 presidential election was about 4 percent higher in 2020 than it was in 2016 but, it was still less than the overall voter turnout which was about 15 percent higher. (R.T., Vol. VI, p. 169.)

As discussed previously, Eastman and others erroneously stated that the Michigan Secretary of State mailed absentee ballots to all registered voters. Moreover, absentee ballot applications were widely available in Michigan and could even be downloaded from the Michigan Department of State website. (*Id.* at p. 180.) In fact, according to Michigan Secretary of State Benson, over 174,000 absentee ballots were cast in Detroit in the 2020 presidential election. (Exh. 112, p. 20.) However, the Wayne County Absentee Voting Counting Boards displayed the data on a spreadsheet that reflected that there were *no* absentee ballots; and the City of Detroit reported a tally of zero absentee ballots, creating the impression that 100 percent of the absentee ballots cast were illegally or fraudulently cast. (R.T. Vol. XXXII, pp. 69-71.)

Although Eastman stated in the American Mind article that in parts of Wayne County, Michigan, more absentee votes were cast than had been requested, at

⁸³ Mr. Brater supervised the Bureau of Elections which supports Michigan's chief election official, the Secretary of State, in administering Michigan's election laws and supervising election city and local clerks.

trial Eastman stated he was unsure about the origin of this “information.” Furthermore, because he was unable to retrace the information, he did not know if it was true. (R.T. Vol. XI, pp. 110-111.)

Secretary of State Benson congratulated the 1,600 local and county election officials who helped with Michigan’s 2020 presidential election record-breaking turnout of 5.5 million voters. From October 2020 through mid-January 2021, Secretary of State Benson and her staff publicized numerous and ongoing statements regarding various election-related issues surrounding the 2020 presidential election in Michigan.⁸⁴

In an effort to be transparent, Secretary Benson’s November 11, 2020 press release acknowledged that there had been an “erroneous reporting of *unofficial* results from Antrim County [which] was a result of accidental error on the part of the Antrim County Clerk. The equipment and software did not malfunction, and all ballots were properly tabulated. However, the clerk accidentally failed to update the software used to collect voting machine data and report unofficial results.” (Exh. 100, p. 1, *italics* added.) Secretary Benson explained that “even though the tabulators counted all the ballots correctly, those accurate results were not combined properly when the clerk reported unofficial results” and “this was an honest mistake and did not affect any actual vote totals.” (*Ibid.*)

In a December 17, 2020 press release, Secretary Benson stated that Michigan had conducted a full

⁸⁴ See exhs. 100-112.

hand count audit of Antrim County 2020 presidential electoral votes and found that the Dominion vote tabulation machines accurately calculated the final votes: 9,759 for Trump and 5,959 for Biden. (Exhs. 109, 110.) According to the audit, the net difference between the hand-tallied audited votes and the Dominion tabulated votes was 12 votes—12 votes out of 15,718 total votes.

Eastman learned by November or December 2020, that Michigan state officials had analyzed the Antrim County software issue and determined that it was human error. (R.T. Vol. X, pp. 112-113.)⁸⁵ Nonetheless, Eastman stated in the American Mind article in mid-January 2021, that during the 2020 presidential election, Antrim County, Michigan votes for Trump had been electronically flipped to Biden. At trial, Eastman shied away from stating that any of those “electronically flipped” unofficial votes had been improperly counted for Biden. (R.T. Vol. XI, pp. 111-112.) But, Eastman affirmed his belief that his statement was true, noting that “experts” on both sides confirmed the statement⁸⁶ but there was a

⁸⁵ Eastman incorrectly commented that expert Alex Halderman’s March 26, 2021 Analysis of the Antrim County, Michigan report supported his statement lacks merit, given the publication date of the report. (*Id.* at pp. 112-115.)

⁸⁶ Eastman commented that the report prepared by one of the experts, Alex Halderman, supported his statement. But, as Halderman’s report, Analysis of the Antrim County, Michigan November 2020 Election Incident, predated Eastman’s January 18, 2021 American Mind article by about two months, Eastman was incorrect. (See exh. 1062.) Moreover, Halderman summarized his findings as follows: “the Antrim County incident was not caused by a security breach. There is also no credible evidence that it was caused deliberately. . . . The major discrepancies in Antrim’s results have been fully corrected. The

dispute as to whether this happened due to machine software. Eastman equivocated by stating that in the

final results match the poll tapes printed by the individual ballot scanners, and there is no evidence that the poll tapes are inaccurate, except for in specific precincts where particular circumstances I explain affected small numbers of votes, mainly in down-ballot races. . . . In Antrim, several layers of protections that were supposed to ensure accuracy broke down *due to human errors* on multiple levels....” (Exh. 1062, pp. 3-4, italics added.)

The other “expert” who prepared a declaration that addressed the use of the Dominion voting machines in Michigan was Russell Ramsland—one of the two individuals that Eastman collaborated with the evening of January 5 when Eastman, Ramsland and Oltmann fabricated the Dominion allegations (and Oltmann provided the one page diagram) that Eastman based some of Dominion-related remarks the next day at the Ellipse. Ramsland clearly lacked any election-related expertise and his declaration filed in the *King v. Whitmer* lawsuit erroneously stated that in two counties in Michigan, the Dominion machines were not functioning properly. Ramsland’s analysis was actually based on election results from Minnesota, not Michigan and the Michigan counties that he referenced did not even utilize Dominion voting machines in the 2020 presidential election. (See R.T. Vol. VI, pp. 162-165.)

As to Antrim County, Ramsland prepared the “Antrim Michigan Forensics Report” (exh. 1047), which concluded that the Antrim County results should not have been certified and “that the Dominion Voting System is intentionally and purposefully designed with inherent errors to create systemic fraud and influence election results. The system intentionally generates an enormously high number of ballot errors. The electronic ballot errors are then transferred for adjudication” with no oversight, no transparency and no audit trail. (*Id.* at p. 1.) Ramsland’s claims were not credible and reflected a fundamental misunderstanding of Michigan election administration. (R.T. Vol. VI, pp. 172-173.)

After an extensive analysis using “rigorous specifications,” election expert, Grimmer did not find that Vice President Biden outperformed expectations in counties where Dominion voting machines were used. (Exh. 174, p. 4.)

article he did not mean that Antrim County votes had been counted for Biden, but rather that he “was simply stating there was fact, that votes that had been case [sic] for Trump were recorded for Biden.” (*Ibid.*) Eastman testified that he did not think that any flipped votes or that the missed Dominion machine software upgrade was deliberate or fraudulent. (R.T. Vol. X, pp. 119-120.)

Eastman’s statement about “electronically flipped” Trump to Biden votes was a misrepresentation of the facts because, as Eastman knew, what he characterized as “electronically flipped” votes were not votes that were counted in the final results.⁸⁷

Conclusions of Law

Eastman’s First Amendment Defense

During these proceedings, Eastman has consistently asserted that his statements, specifically his interview at the Bannon War Room (count 5), his public statements at the Ellipse on January 6 (counts 1 and 7), his article in the American Mind (count 9), and his statements to Vice President Pence (counts 8 and 10), are protected expressions of his rights under the First Amendment, including freedom of speech and the right to petition the government for a redress of grievances. As such, he contends that these statements cannot be used as grounds for professional disciplinary action. The court disagrees.

The First Amendment provides, in relevant part, that “Congress shall make no law . . . abridging the freedom of speech, or . . . to petition the Government

⁸⁷ Moreover, although the mistake had been disclosed and any presidential candidate could have requested a recount of the Antrim County votes, no recount was requested. (Exh. 105.)

for a redress of grievances.” It is well-established that the “First Amendment protects the freedom of expression of all citizens, including lawyers.” (*Jacoby v. State Bar* (1977) 19 Cal.3d 359, 368; *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775, 781 [“Like all other citizens, attorneys are entitled to the protection of the First Amendment, even as participants in the administration of justice”].) Therefore, this court cannot discipline an attorney for speech that is protected by the First Amendment. (*In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23, 30 [“Disciplinary rules governing the legal profession cannot punish activity protected by the First Amendment”].)

At the same time, the First Amendment rights of attorneys are linked to the critical role that they perform within the judicial system. While these rights are fundamental, they must be calibrated to align with the unique role attorneys play in the administration of justice. As the Review Department has stated, “attorneys occupy a special status and perform an essential function in the administration of justice. Because attorneys are officers of the court with a special responsibility to protect the administration of justice, courts have recognized the need for the imposition of reasonable speech restrictions upon them.” (*In the Matter of Anderson, supra*, 3 Cal. State Bar Ct. Rptr. at p. 781, citing to *Goldfarb v. Virginia State Bar* (1975) 421 U.S. 773, 792.) Even the United States Supreme Court has emphasized that “States have a compelling interest in the practice of professions within their boundaries, and . . . as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing

practitioners and regulating the practice of professions.” (*Florida Bar v. Went For It, Inc.* (1995) 515 U.S. 618, 625, citations omitted.) “The interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been ‘officers of the courts.’” (*Goldfarb v. Virginia State Bar, supra*, 421 U.S. at p. 792.)

For these reasons, “speech otherwise entitled to full constitutional protection may nonetheless be sanctioned if it obstructs or prejudices the administration of justice.” (*Standing Comm. on Discipline v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1442, citing *Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030, 1074-1075.) Because lawyers are “an intimate and trusted and essential part of the machinery of justice, an officer of the court in the most compelling sense,” (*id.* at p. 1072, citations and internal quotations omitted), it is contemplated that a lawyer’s right to free speech is especially limited in the courtroom. (*Id.* at p. 1071 [“It is unquestionable that in the courtroom itself, during a judicial proceeding, whatever right to ‘free speech’ an attorney has is extremely circumscribed”].) Even beyond the confines of the courtroom or the pendency of a case, attorneys are not necessarily “protected by the First Amendment to the same extent as those engaged in other businesses.” (*Id.* at p. 1073.) For example, in evaluating restrictions on attorney solicitation or advertising, the Supreme Court has typically “engaged in a balancing process, weighing the State’s interest in the regulation of a specialized profession against a lawyer’s First Amendment interest in the kind of speech at issue.” (*Ibid.*)

Eastman is charged with making false and misleading public statements in his capacity as an attorney in violation of section 6106 (moral turpitude, dishonesty, or corruption), as charged in counts 5, 7, and 9. It has been established that the provisions of section 6106 satisfy *Gentile's* balancing test. (See *Canatella v. Stovitz* (N.D. Cal. 2005) 365 F.Supp.2d 1064, 1072-1073 [applying *Gentile's* balancing test for in-court and out-of-court attorney speech charged as violation of section 6106].)⁸⁸ There is little doubt that the State's interest in section 6106, i.e., to protect the public, maintain the highest professional standards by attorneys, and preserve public confidence in the legal system, outweighs any potential free speech rights attorneys may assert in making false and misleading statements. It follows then that Eastman does not have a First Amendment right to make statements that violate the provisions of section 6106.

Separately, the protections of the First Amendment are not absolute and certain categories of speech are subject to less constitutional protection. For example, false statements made knowingly or with reckless disregard of the truth are not protected speech. (*Garrison v. State of Louisiana* (1964) 379 U.S. 64, 75 ["the knowingly false statement and the false statement made with reckless disregard of the truth,

⁸⁸ Attorney speech under the First Amendment can be understood as speech made by an attorney in the course of their professional duties. (See *Jacobson v. Schwarzenegger* (C.D. Cal. 2009) 650 F.Supp.2d 1032, 1054 [attorney's pursuit of administrative remedies, cross-examinations, and letters to state officials were part of his duties as appointed counsel for parolees and were not protected by the First Amendment as they were not made in his capacity as a private citizen but rather in his professional role].)

do not enjoy constitutional protection”];⁸⁹ *In the Matter of Anderson, supra*, 3 Cal. State Bar Ct. Rptr. at p. 782 [“Neither a false statement made knowingly nor a false statement made with reckless disregard of the truth enjoys constitutional protection because there is no constitutional value in such false

⁸⁹ Eastman cites to *United States v. Alvarez* (2012) 567 U.S. 709, for the proposition that even if his statements were false (which he disputes), they are protected by the First Amendment. The court disagrees. In *Alvarez*, a majority of the Justices agreed that the Stolen Valor Act, which criminalized false claims of military honors, violated the First Amendment. A shared theme by the opinions was that the Act in question prohibited false statements only because of their falsity, stating that falsity alone is not sufficient to bring the speech outside the First Amendment. *Alvarez* does not hold that false statements are always protected speech, it merely holds that false speech is not, as a bright line rule, unprotected by the First Amendment. (*Id.* at p. 722 [rejecting the notion that “false speech should be in a general category that is presumptively unprotected”].) At the same time, the Court acknowledged that certain false speech could be restricted under the First Amendment and emphasized that its ruling did not suggest vulnerability in targeted prohibitions on such speech; “there are instances in which the falsity of speech bears upon whether it is protected,” and “[t]his opinion does not imply that any of these targeted prohibitions are somehow vulnerable.” (*Id.* at p. 721.) One such recognized exception to the First Amendment is making knowingly false statements and false statements made with reckless disregard of the truth. (*Garrison v. State of Louisiana, supra*, 379 U.S. at p. 75.) Further, Eastman’s reliance on *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, is equally misguided. There, the court also acknowledged a specific restriction on speech that was knowingly false or made with reckless disregard of the truth. (See *id.* at p. 280 [prohibiting recovery of damages for defamation unless the statement was made “with knowledge that it was false or with reckless disregard of whether it was false or not”].)

statement of fact”].)⁹⁰ To evaluate whether an attorney’s false speech involves reckless disregard for the truth, the court applies an objective standard; it must determine “what the reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances.” (*U.S. Dist. Court v. Sandlin* (9th Cir. 1993) 12 F.3d 861, 867.) “The inquiry focuses on whether the attorney had a reasonable factual basis for making the statements, considering their nature and the context in which there were made.” (*Standing Committee v. Yagman, supra*, 55 F.3d at p. 1437.) In assessing reckless disregard for the truth, the court “may take into account whether the attorney pursued readily available avenues of investigation.” (*Id.* at p. 1437, fn 13; *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370, 375.)

In sum, attorneys have a First Amendment right to make statements in public in the course of their professional duties. However, this right does not extend to making knowing or reckless false statements of fact or law. Here, as shown below, Eastman made multiple false and misleading statements in his professional capacity as attorney for President Trump in court filings and other written statements, as well as in conversations with others and in public remarks. As further shown below, Eastman knowingly made these false statements or had no reasonable factual or legal basis for making

⁹⁰ In the attorney discipline context, OCTC bears the burden of proving the falsehood of any statement that serves as basis for culpability. (*In the Matter of Anderson, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 778, 786.)

them. Hence, Eastman’s First Amendment defense fails.

Likewise, the First Amendment does not protect speech that is employed as a tool in the commission of a crime. (See *United States v. Hansen* (2023) 599 U.S. 762, 783 [the First Amendment does not protect “speech integral to unlawful conduct”]; *United States v. Williams* (2008) 553 U.S. 285, 298 [“Many long established criminal proscriptions—such as laws against conspiracy, incitement, and solicitation—criminalize speech (commercial or not) that is intended to induce or commence illegal activities”].) Count 1 of the NDC charges Eastman with conduct and statements made in furtherance of a criminal scheme, i.e., conspiring to promote and assist President Trump in executing a strategy to overturn the legitimate results of the 2020 presidential election by obstructing the count of electoral votes of certain states, in violation of 18 U.S.C. § 371. Attorneys do not have a constitutional right to collaborate with clients for purposes that are unlawful, criminal, or fraudulent. (Cf. Rules Prof. Conduct, rule 1.2.1 [prohibiting an attorney from advising or assisting the violation of law].) It follows then that Eastman can face disciplinary action for his speech in assisting and advising President Trump in illegal, criminal, or fraudulent activities.⁹¹

⁹¹ A separate category of speech subject to no constitutional protection is “advocacy of the use of force” where it is “directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” (*Brandenburg v. Ohio* (1969) 395 U.S. 444, 447.) Although Eastman asserts that OCTC must prove that he intended to incite lawless action and his statements were likely to incite lawlessness, OCTC did not charge Eastman with inciting lawlessness except for count 11, which for the reasons

Finally, although the First Amendment protects the right “to petition the Government for a redress of grievances,” which includes the right of access to the courts as with freedom of speech, the right to petition for redress of grievances has never been absolute. (*Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174, 195 [“The right to petition for redress of grievances includes the right to sue . . . private as well as governmental entities. . . . However, ‘the right to petition has never been absolute’. . . . [C]onstitutional rights to petition have been subjected to reasonable restrictions to prevent abuse of the right, and narrowly drawn restrictions on that right can be valid”].) In fact, it is “generally subject to the same constitutional analysis” as the right to free speech. (*Wayte v. United States* (1985) 470 U.S. 598, 610, fn. 11 [“Although the right to petition and the right to free speech are separate guarantees, they are related and generally subject to the same constitutional analysis”]; see also *Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151, 162 [“Restrictions on the right to petition generally are subject to the same analysis as restrictions on the right of free speech”].) Since the court finds that Eastman’s free speech argument fails, so must his petition clause argument. (See *Canatella v. Stovitz, supra*, 365 F.Supp.3d at pp. 1077-1078.)

What is more, because the right to petition the government for redress of grievances is a personal right, an attorney does not have the right to claim a personal right to petition based on the representation of a client. (*DePaoli v. Carlton* (E.D. Cal. 1995) 878 F.

stated below, this court has dismissed. Thus, the *Brandenburg* analysis does not apply in this case.

Supp. 1351, 1355 [“In the context of a court proceeding the right to petition is the client’s, not the attorney’s. An attorney may not claim a right to petition based upon representation of a client”].) So, Eastman cannot claim this right as part of his representation of President Trump or the Trump Campaign.

Based on the foregoing, the court rejects Eastman’s First Amendment defense, and now turns to assessing the charges of professional misconduct brought against him.

Count Two – Seeking to Mislead a Court (§ 6068, subd. (d))⁹²

OCTC charged Eastman with willfully violating section 6068, subdivision (d), by seeking to mislead the United States Supreme Court when he knowingly adopted certain false and misleading factual allegations contained in the Bill of Complaint filed in *Texas v. Pennsylvania*.

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with the truth and never to seek to mislead a judge or any judicial officer by an artifice or false statement of fact or law. “The statute requires an attorney to refrain from misleading and deceptive acts *without qualification*.” (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 315, italics added.) Moreover, “[c]oncealment of a material fact misleads a judge just as effectively as a false statement.” (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174.) “No distinction can therefore be drawn among concealment, half-truth, and false

⁹² The court will address Count One last due to its extensive overlap with some of the allegations in the other counts.

statement of fact.” (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.)

The Supreme Court has explained that whether an attorney has violated section 6068, subdivision (d), “depends first upon whether his representation to the . . . court was in fact untrue, and secondly, whether he knew that his statement was false and he intended thereby to deceive the court.” (*Vickers v. State Bar* (1948) 32 Cal.2d 247, 252-253; accord, *In the Matter of Chestnut*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 174.) Willful blindness is equivalent to actual knowledge. (See *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427, 433.) “The conduct denounced by [section 6068, subdivision (d)] is not the act of an attorney by which he successfully misleads the court, but the presentation of a statement of fact, known by him to be false, which tends to do so. It is the endeavor to secure an advantage by means of falsity which is denounced.” (*Pickering v. State Bar* (1944) 24 Cal.2d 141, 144-145.)

OCTC contends that Eastman knew that the factual allegations in Texas’s Bill of Complaint were false and misleading, in violation of section 6068, subdivision (d). These allegations are separately considered below.

Allegation of Outcome-Determinative Voting Irregularities

OCTC argues that Eastman misled the court by adopting, in his Motion to Intervene, the following factual allegation contained in Texas’s Bill of Complaint: “Citing ‘rampant lawlessness arising out of Defendant States’ unconstitutional acts,’ the lawsuit asserted that ‘[t]aken together, these flaws affect an outcome-determinative numbers of popular

votes in a group of States that cast outcome-determinative numbers of electoral votes.” (NDC, p. 17.) OCTC alleges that Eastman knew there “was no evidence upon which a reasonable attorney would rely of fraud in any state election in sufficient numbers that could have affected the outcome of the election.” (*Id.* at p. 18.)

Eastman’s allegation of “outcome-determinative” voting irregularities was false and misleading. At the time Eastman filed the Motion to Intervene, it was evident, and known to Eastman, that federal courts had already considered and dismissed claims of outcome-determinative irregularities affecting the 2020 presidential election. The District Court for the Middle District of Pennsylvania had specifically ruled that these claims were “unsupported by evidence.” (Exh. 222, p. 2.) Furthermore, the Third Circuit had concluded that the allegations lacked both specificity and proof of unfairness in the election.

Eastman knew about the federal court decisions because, at the time Eastman filed the Motion to Intervene, he had already undertaken a comprehensive examination of cases and factual information pertaining to what he perceived as election irregularities. He compiled this information into a spreadsheet, where he documented and monitored 2020 election litigation challenges he found in court documents. (Exh. 1055.) The Pennsylvania District Court case was included in his database, proving he was aware of the court’s “unsupported by evidence” finding. Yet, although prior courts considered and rejected the claims of outcome-determinative irregularities, he continued to raise them in the Supreme Court.

Eastman's convenient failure to acknowledge the federal court cases that had already considered and rejected the factual allegations regarding outcome-determinative voting irregularities in his Motion to Intervene is evidence of his intent to mislead the court. Attorneys have a duty to provide courts with complete information, which includes prior adverse rulings, and to identify adverse authorities. (See *Ainsworth v. State Bar* (1988) 46 Cal.3d 1218, 1224-1225, 1233 [attorney violated § 6068, subd. (d), after filing complaint that cited Supreme Court decision as authority without disclosing the grant of a rehearing—rendering the opinion invalid]; see also *Perry v. Kia Motors of America, Inc.* (2023) 91 Cal.App.5th 1088, 1095-1096 [citing § 6068, subd. (d), plaintiff lost opportunity for appellate review because appellate counsel made misleading claim in her brief—incorrectly asserting that trial court found defendant improperly concealed evidence while, in truth, the court stated no concealment occurred]; *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, 172 [attorney violated section 6068, subd. (d), by concealing from commissioner who granted client's bail that bail had twice been previously denied]; *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 219 [attorney had duty to disclose death of client to court, especially considering court's inquiries that should have prompted attorney to reveal information].) This duty is part of an attorney's overarching ethical obligation to utilize methods that employ only such means as are consistent with the truth.

Eastman's omission of relevant case decisions was misleading as it excluded vital information about prior court rulings rejecting the unfounded outcome-

determinative claims—creating the false impression that such matters had not been considered and decided. As the court in *Perry v. Kia Motors of America, Inc.* states: “Counsel should not forget that they are officers of the court, and while it is their duty to protect and defend the interests of their clients, the obligation is equally imperative to aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice.’ [Citations.]” (*Perry v. Kia Motors Am., Inc.*, *supra*, 91 Cal. App.5th at p. 1096.)

Additionally, Eastman’s contemporaneous email to Cleta Mitchell is further proof of his intent to mislead the court. He told Mitchell there was no documented evidence of fraud that existed but expressed optimism in the potential discovery of such evidence. His repeated claims of fraud with the knowledge that such assertions lacked support serve as compelling proof of Eastman’s intent to mislead the court.

In his defense, Eastman claims he cannot be found culpable of this charge unless he was sanctioned under Rule 11 of the Federal Rule of Civil Procedure, which he was not. The court rejects this argument. There is no requirement that an attorney be sanctioned by the civil court for this court to find the attorney violated ethical standards. (Cf. *Franklin v. State Bar* (1986) 41 Cal.3d 700, 709 [violation of § 6068, subd. (d), without imposition of sanctions]; see also *Di Sabatino v. State Bar*, *supra*, 27 Cal.3d at pp. 162-164.)

Based on the foregoing, the court finds Eastman willfully violated section 6068, subdivision (d), with respect to this allegation.

Allegations of Election Code Violations in Pennsylvania

Next, OCTC argues that Eastman misled the court when he adopted the following factual allegation in his Motion to Intervene: “Statewide election officials and local election officials in Philadelphia and Allegheny Counties, aware of the historical Democrat advantage in those counties, violated Pennsylvania’s election code and adopted the differential standards favoring voters in Philadelphia and Allegheny Counties with the intent to favor former Vice President Biden.” (NDC, p. 17.) OCTC maintains that Eastman knew the factual allegations in the Bill of Complaint were false and misleading and “[t]here was no evidence upon which a reasonable attorney would rely that the election officials in Philadelphia and Allegheny Counties had acted with the intent to favor Biden in the election through the alleged violations of election codes or adoptions of differential standards, or that the alleged violations of election codes or adoptions of differential standards ‘affect[ed] an outcome-determinative numbers [sic] of popular votes.’” (*Id.* at p. 18.)

When the Bill of Complaint was filed, the Pennsylvania Supreme Court had considered and already rejected the argument that the Pennsylvania Secretary of State’s guidance regarding the prohibition against rejecting absentee or mail-in ballots violated Pennsylvania election laws. Yet, Eastman adopted those false statements contained in the Bill of Complaint. Moreover, as stated above, when Eastman filed the Motion to Intervene, he created a matrix where he recorded and tracked legal challenges related to the 2020 election that he had identified in court documents. The matrix contained

an analysis of the Pennsylvania Supreme Court’s opinion—demonstrating that Eastman knew what the court had considered and decided. The contentions asserting non-legislative modifications to state election regulations by election officials within the executive branch were both material and false.

Eastman’s failure to disclose, in his Motion to Intervene, the Pennsylvania Supreme Court opinion is strong evidence of his intent to mislead the court. A duty existed to reveal that the Pennsylvania Supreme Court had already determined that Pennsylvania’s election laws had not been violated, but Eastman purposely omitted this information. (Cf. *Di Sabatino v. State Bar*, *supra*, 27 Cal.3d at p. 172.) Once again, Eastman left the impression that no court had resolved an important issue in the Bill of Complaint when that was not accurate.

So, Eastman’s culpability for willfully violating section 6068, subdivision (d), has been clearly and convincingly established with respect to this allegation as well.

Allegation of Statistical Probability of Vice President Biden Winning the Popular Vote

Finally, OCTC argues that Eastman violated section 6068, subdivision (d), by adopting the factual allegation in the Bill of Complaint that the odds of Biden winning the popular vote in the Defendant States was less than 1 in 1,000,000,000,000,000 (one quadrillion)—an allegation that was false.⁹³ As there

⁹³ Specifically, OCTC alleged that the following statements were false: “The probability of former Vice President Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently given President Trump’s early lead in those States as of 3 a.m. on

is no clear and convincing evidence that Eastman knew the statements were false, the court does not find Eastman culpable of violating section 6068, subdivision (d), by adopting the statements regarding the statistical probability of former Vice President Biden winning the popular vote in the Defendant States.

The statistical analysis in the Bill of Complaint was supported by the declaration of Dr. Cicchetti. Eastman reviewed Dr. Cicchetti's declaration but never questioned him about his methodology or analysis—believing the information to be accurate.

OCTC presented evidence during the trial from its expert, Dr. Grimmer, who pointed out flaws in Dr. Cicchetti's analysis and methodology. And Dr. Cicchetti later criticized the utilization of his declaration to bolster the filing, noting it did not effectively support the argument that President Trump's odds of winning were significantly high. Dr. Cicchetti contested the interpretation of his declaration, which arguably suggests that the

November 4, 2020, is less than one in a quadrillion, or 1 in 1,000,000,000,000,000. For former Vice President Biden to win these four States collectively, the odds of that event happening decrease to less than one in a quadrillion to the fourth power (i.e., 1 in 1,000,000,000,000,0004)"; and "The same less than one in a quadrillion statistical improbability of Mr. Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin— independently exists when Mr. Biden's performance in each of those Defendant States is compared to former Secretary of State Hilary Clinton's performance in the 2016 general election and President Trump's performance in the 2016 and 2020 general elections. Again, the statistical improbability of Mr. Biden winning the popular vote in these four States collectively is 1 in 1,000,000,000,000,0004." (NDC, pp. 17-18.)

assertions regarding the likelihood of Biden winning the popular vote in the Defendant States were false. Nonetheless, OCTC has not furnished any proof indicating that Eastman was aware of the inaccuracy or falsehood of the statements when he endorsed them, nor has it demonstrated any intent on Eastman's part to mislead or deceive. Once it was established that the statements were untrue, the Bill of Complaint had already been dismissed. Thus, the court does not find Eastman violated section 6068, subdivision (d), by adopting the statements regarding the probability of former Vice President Biden winning popular vote in the Defendant States.

In sum, the court finds clear and convincing evidence that Eastman violated section 6068, subdivision (d), by adopting the false and misleading allegations and contentions in the Bill of Complaint with the intent to mislead the Supreme Court, as stated above.

**Count Three – Moral Turpitude
[Misrepresentation] (§ 6106)**

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Broadly, any act contrary to honesty and good morals involves moral turpitude. (See *Stanford v. State Bar* (1940) 15 Cal.2d 721, 727.) Acts of moral turpitude include an attorney's concealment as well as affirmative misrepresentations. (See *Grove v. State Bar*, *supra*, 63 Cal.2d at p. 315.) Indeed, as stated previously "[n]o distinction can . . . be drawn among concealment, half-truth, and false statement of fact." (*Ibid*; see also *In the Matter of Chesnut*, *supra*, 4 Cal. State Bar Ct.

Rptr. at p. 174.) While neither evil intent nor injury to a client is necessary for moral turpitude, some level of guilty knowledge or at least gross negligence is required. (See *Fitzsimmons v. State Bar* (1983) 34 Cal.3d 327, 331; see also *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 241.) Furthermore, an attorney's knowledge or intent can be established by direct or circumstantial evidence. (See *Zitney v. State Bar* (1966) 64 Cal.2d 787, 792.) Finally, willful blindness is tantamount to actual knowledge. (See *In the Matter of Carver, supra*, 5 Cal. State Bar Ct. Rptr. At pp. 432-433.)

In count three, OCTC charged Eastman with willfully violating section 6106 by drafting a two-page memo dated December 23, 2020, which falsely stated that seven states (Arizona, Georgia, Michigan, Pennsylvania, Nevada, New Mexico, and Wisconsin) "have transmitted dual slates of electors to the President of the Senate." (NDC, p. 19.) The court agrees and finds Eastman is culpable as charged.

The evidence shows that Eastman's "dual slates of electors" statement was false and misleading. Eastman knew that there were no legitimate dual slates of electors in the seven contested states because the Trump electors lacked certification and could not be legally considered on January 6, 2021. Moreover, Eastman was aware that Vice President Pence lacked the authority to decide which slate of electors would be counted because his sole responsibility was simply to open the ballots. Yet, Eastman used the false assertion concerning dual slates of electors to provide an alternative strategy for Vice President Pence to declare President Trump as the winner of the 2020 presidential election. The two-page memo was

designed to provide legal support and convince Vice President Pence to carry out that strategy.

Eastman's claims, in this proceeding, that he believed "the slates were legitimate as a matter of historical precedent" are unbelievable and not supported by the record. (Eastman's Closing Brief, p. 56.) Likewise, the court finds no support for Eastman's purported belief, at the time, that the supposed Trump electors qualified for recognition by Vice President Pence under the ECA because it directs the Vice President to open and acknowledge all "papers purporting to be certificates of the electoral votes." (*Ibid.*)

As a constitutional expert, Eastman knew that the only slates of electors which Vice President Pence could lawfully consider, were those included in the certificates of ascertainment executed by the governor of each state. Eastman understood that the so-called dual electors lacked legitimacy and would not be tallied on January 6, 2021, and he also knew that there was no constitutional provision permitting counting of uncertified, unascertained dual slates of electors. None of the contested states' officials had submitted a certificate of ascertainment naming Trump electors, thereby lacking any semblance of authority or official endorsement. In fact, Eastman conceded so much in his December 19, 2020 email to Colbert, acknowledging that, without certification from state legislatures, the Trump electors would not be recognized by Congress. Even Dr. Yoo, Eastman's constitutional expert and friend, affirmed that despite the ambiguity in language and scholarly opinions, the absence of certification by state executive officers meant there was no constitutional dilemma on

January 6, 2021, necessitating any purported unilateral action from Vice President Pence.

In defending his actions, Eastman incorrectly attempts to draw an analogy between the events of the 2020 presidential election and the 1960 presidential election in Hawaii. Eastman misconstrues the circumstances regarding the Hawaii slates of electors by ignoring the fact that the third and final slate of electors in Hawaii was certified by the Governor after a recount. It was that third certificate that Vice President Nixon considered without objection or dispute. Here, in the 2020 presidential election, each of the contested states had only one slate of electors certified by the governor of that state and, as Eastman knew, section 15 of Title 3 of the United States Code is clear—the officially certified slate is the one certified by the governor in the certificate of ascertainment.

Eastman also argues that he cannot be found culpable of moral turpitude because his statement amounted to no more than zealous advocacy in his representation of President Trump's interests. It is true that an attorney has a duty to engage in zealous advocacy on behalf of a client. (See Rules Prof. Conduct, rule 1.3 [duty to perform with diligence].) However, Eastman's inaccurate assertions were lies that cannot be justified as zealous advocacy. Eastman failed to uphold his primary duty of honesty and breached his ethical obligations by presenting falsehoods to bolster his legal arguments. Finally, the court notes that acts of moral turpitude are a departure from professional norms and are unequivocally outside the realm of protection afforded by the First Amendment and the obligation of

vigorous advocacy. (*Lebbos v. State Bar* (1991) 53 Cal.3d 37, 45.)

In sum, Eastman’s claim that there were dual slates of electors was knowingly false and made with the intent to deceive, given that Eastman knew the purported Trump electors lacked the proper certification and official approval mandated by law. As such, Eastman is culpable of willfully violating section 6106, as charged in count three.

Count Four – Seeking to Mislead a Court (§ 6068, subd. (d))

In count four, OCTC alleges that Eastman willfully sought to mislead the United States District Court for the Northern District of Georgia, by making statements in the Verified Complaint filed in *Trump v. Kemp* about the administration of Georgia’s election, which Eastman knew to be false and misleading. Specifically, OCTC charges Eastman with making the following false statements: “Georgia election officials allowed unqualified individuals to register and vote, allowed convicted felons still serving their sentence to vote, allowed underaged individuals to register and then vote, allowed unregistered or late registered individuals to vote, allowed individuals to vote who had moved across county lines, allowed individuals to vote who had registered at a P.O. Box, church, or courthouse rather than their residence, and accepted votes cast by deceased individuals.” (NDC, pp. 20-21.) The court agrees.

All of the statements above allege that individuals lacking the necessary qualifications were permitted to register and vote. However, at the time Eastman filed *Trump v. Kemp* on December 31, 2020—incorporating

by reference the complaint and exhibits in *Trump v. Raffensperger*—Eastman knew these allegations were false because he was aware that the information upon which he relied in making these assertions, i.e., the declarations of Braynard and Geels, contained inaccurate and unreliable data. After the declarations were filed in *Trump v. Raffensperger*, and before *Trump v. Kemp* was filed, it was determined that the analysis and conclusions in the Braynard and Geels declarations contained inaccurate information and were unreliable. The Georgia official's expert, Stewart, scrutinized the evaluation conducted by Braynard and Geels, highlighting particular deficiencies found in the analysis of each expert and summarizing relevant shortcomings identified in their analyses. Eastman was aware that Stewart had undermined Braynard's and Geels's findings, causing Eastman to doubt the accuracy of the information they provided. This was evident from the filing of the *Trump v. Kemp* complaint, which omitted any mention of numerical values.

As further evidence that Eastman was aware of the inaccuracies in the allegations and evidence in support thereof, he consented to adding a footnote in the Verified Complaint and amending President Trump's Verification, disclaiming personal knowledge regarding the facts and figures stated therein, while keeping the allegations unchanged.

Furthermore, regarding the specific assertion that underage individuals were allowed to register and vote, Eastman acknowledged that he understood Geels's declaration to support the claim that underage individuals had been permitted to register, but the analysis "never asserts that underage people voted." (R.T. Vol V, p. 68.) Eastman also acknowledged that if

an underaged person registered to vote, but did not actually vote, that person's registration would not be outcome-determinative. By knowingly presenting false and misleading information in the pleadings of *Trump v. Kemp*, Eastman's intent to deceive is established. (See *Vickers v. State Bar*, *supra*, 32 Cal.2d 247 at pp. 252-253.)

In addition to the statements alleging that unqualified individuals were permitted to vote in Georgia, OCTC alleges that the following statement in the *Trump v. Kemp* complaint was false and misleading: "Fulton County election officials 'remove[d] suitcases of ballots from under a table where they had been hidden, and processed those ballots without open viewing by the public in violation of [state law].'" (NDC, p. 21.) This statement was also false.

The State Farm Arena investigation revealed, as early as December 5, 2020, that there were no ballots "hidden" under a table. Moreover, Eastman acknowledges that Georgia law did not require public viewing of ballot canvassing at the State Farm Arena. Rather, the law merely gives the public the opportunity to view the process. Eastman also acknowledged that he did not view the entire video of the activities in the State Farm Arena, and he could not recall if he read Investigator Watson's declaration providing that there were no mystery ballots hidden under a table. Nevertheless, the entire video was available for review, and Eastman read information from Georgia's Secretary of State about the legitimacy of the activities at the State Farm Arena before the complaint in *Trump v. Kemp* was filed.

Enough information existed which revealed that the statements about the activities at the State Farm Arena were false, but Eastman never actively sought out information that might challenge his narrative nor considered any available accurate information. Eastman cannot avoid culpability through his willful blindness—willful blindness that is tantamount to Eastman’s actual knowledge that the allegations regarding hidden ballots were false. (See *In the Matter of Carver*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 433 [attorney’s willful blindness to ineligibility to practice law culpable of moral turpitude for the unauthorized practice of law; willful blindness equivalent to having actual knowledge of his ineligibility].)

In his defense, Eastman argues that OCTC failed to prove he had actual knowledge that the allegations in *Trump v. Kemp* regarding outcome-determinative illegal votes were false and that he intended to deceive the District Court for the Northern District of Georgia. Eastman’s argument fails. He knew there was no hard evidence of outcome-determinative fraud in the 2020 presidential election. He explained to Mitchell in November 2020 that the statistical analyses were not enough to demonstrate fraud and that he was hoping the statistical analyses would assist with uncovering hard documented evidence of fraud. Moreover, as stated above, Eastman knew that the supporting evidence offered by the experts was faulty and inaccurate. “The presentation to a court [in a complaint] of a fact known to be false presumes an intent to secure a determination based upon it and is a clear violation of [§ 6068].” (*Davis v. State Bar* (1983) 33 Cal. 3d 231, 239-40; see also *Pickering v. State Bar*, *supra*, 24 Cal.2d at p. 144.)

Next, Eastman argues that he had a reasonable and good faith belief, based on the evidence that the combined tally of votes impacted by violations of state election statutes exceeded the 11,779-vote margin of victory. As detailed earlier, the evidence in support of the alleged violations of state election laws was flawed and invalidated. The inclusion of the footnote distancing Trump from the allegations and supporting evidence did not make the allegations in the complaint true, as Eastman asserts. Rather, it strongly demonstrates knowledge of the falsity of the allegations, otherwise such a footnote would not be needed.

Eastman also contends that he is not culpable of this charge because he relied on Hilbert, who was lead counsel, as well as credentialed, qualified experts. The argument fails because every attorney, including Eastman, bears an individual responsibility for their actions to ensure compliance with ethical obligations. Relying on the work of others, even attorneys, does not exempt a lawyer from discipline for a breach of ethics. Each attorney has a responsibility to uphold their professional duties and adhere to their ethical commitments, irrespective of the actions of others.

Finally, Eastman argues that the claims about the hidden ballots in the State Farm Arena were supported by witness affidavits and that he viewed a portion of the video during a Georgia Senate subcommittee hearing that occurred on December 3-4, 2020, thereby supporting his claims. Even if there was no information that the allegations regarding hidden ballots were false when *Trump v. Raffensperger* was filed, by the time *Trump v. Kemp* was initiated, evidence of the falsity of those

allegations existed. Eastman chose to ignore that evidence.

Based on the foregoing, the court finds that the evidence clearly and convincingly establishes Eastman's violation of section 6068, subdivision (d), as charged in count four.

**Count Five – Moral Turpitude
[Misrepresentation] (§ 6106)**

OCTC charged Eastman with willfully or gross negligently violating section 6106 – by aiming to foster doubt about the legitimacy of the election results in making statement on Bannon's War Room radio program that: (1) "there was massive evidence of fraud involving absentee ballots in the November 3, 2020 presidential election, 'most egregiously in Georgia and Pennsylvania and Wisconsin'; and (2) "there had been more than enough absentee ballot fraud 'to have affected the outcome of the election.'" (NDC, p. 22.) The court finds that Eastman is culpable of this charge.

Despite Eastman's assertions, there was no credible evidence of widespread absentee ballot fraud that impacted the outcome of the 2020 presidential election, as affirmed by federal and state courts that dismissed related claims due to lack of proof. While Eastman claimed that various illegalities provided opportunities for fraud, he admitted to having uncertainty regarding the degree of outcome-determinative fraud in the 2020 presidential election in Arizona, Michigan, Nevada, New Mexico, or Wisconsin. Furthermore, none of the analyses by the individuals Eastman relied upon established the presence of outcome-determinative fraud in the 2020 presidential election.

Next, Eastman's allegations of widespread absentee voter fraud in Pennsylvania during the 2020 presidential election were baseless and contradicted by official investigations, audits, and court rulings. During Pennsylvania's 2020 presidential election, no counties opened, counted, or disclosed mail-in or absentee ballots before the pre-canvassing period or before 8:00 p.m. on Election Day. The Pennsylvania Deputy Secretary of Elections and Commissions affirmed that—according to publicly available data, county election board postings, statistical sampling, and a statewide risk-limiting audit—there was no systemic insecurity or inaccuracy in the election outcomes. Additionally, in accordance with the Pennsylvania Election Code, county boards of election and district attorneys investigated complaints and allegations of fraud related to the 2020 presidential election, reporting their findings to the Department of State's Elections and Commissions office, which found no indication of pervasive fraud. Eastman relied on a report that failed to cite or present the data backing its erroneous assertions, some of which appeared to stem from a misinterpretation of publicly accessible information. Also, the Third Circuit rejected the claim that 1.5 million absentee and mail-in votes in Defendant Counties should not have been counted as there were no specific allegations of proof.

Eastman's claims of widespread absentee ballot fraud in Georgia during the 2020 election were also unfounded and contradicted by available data and analyses. Eastman's claims regarding signature matching did not equate to absentee ballot fraud. According to data accessible in 2020, the decrease in rejected absentee ballots in Georgia was not predominantly attributable to signature match

discrepancies. Instead, approximately 90% of this decline stemmed from two main factors: a reduction in the proportion of ballots arriving after the deadline and a decrease in the percentage of ballots rejected due to problems with the oath envelope. As stated in count four, the various analyses Eastman relied upon were found to be inaccurate, and the individuals responsible for drafting the reports never actually concluded that fraud was established in the 2020 election in Georgia. Eastman himself acknowledged that he lacked evidence of outcome-determinative fraud, instead attributing any potential irregularities to illegalities that could enable fraud.

In sum, Eastman exhibited gross negligence by making false statements about the 2020 election without conducting any meaningful investigation or verification of the information he was relying upon. His interpretation of absentee ballot data was flawed; yet, had he sought the expertise of a professional to review his analysis, the inaccuracies could have been identified. Eastman made no inquiries into the studies, audits, or other information he received, which served as the foundation for his erroneous statements. He never verified the accuracy of the information received from others; rather, he simply accepted it as valid. In addition, Eastman never reached out to any Secretary of State in the contested states to inquire about or dispute their election findings. Once courts determined that there were no illegalities in the execution of the elections in the contested states, Eastman nevertheless continued to insist there was outcome-determinative fraud. Eastman's false statements regarding absentee voter fraud were significant and material, as they were intended to sow doubt about the legitimacy of the 2020

presidential election. He urged Bannon's audience to exert pressure on their legislators to invalidate former Vice President Biden's victory due to alleged uncertainties surrounding the election outcome—uncertainties that he assisted with creating. Eastman aimed to instill doubt about the election, prompting listeners to advocate for certifying Trump's electors over Biden's as part of his strategy to delay the electoral count. Despite knowing that the methodologies and reports he relied on were flawed and inaccurate, and being aware that federal courts had concluded there was no evidence of outcome-altering voter fraud, Eastman chose to appear on Bannon's War Room and perpetuate these false claims, showing a disregard for the truth and a willingness to mislead the public.

Eastman argues that his speech was protected by the First Amendment. But, as discussed above, Eastman does not have a First Amendment right to make false and misleading statements that violate the provisions of section 6106. Eastman also claims that he did not engage in moral turpitude as his statements were not made with “baseness, vileness or depravity” or intended to mislead anyone.” (Eastman's Closing Brief, p. 76.) However, Eastman overlooks case law indicating that moral turpitude can also be established through gross negligence. (*Fitzsimmons v. State Bar*, *supra*, 34 Cal.3d at p. 331; *In the Matter of Respondent H*, *supra*, 2 Cal. State Bar Ct. Rptr.at p. 241.) Eastman also claims that his statements were based on his zealous advocacy of his client and his intent was to “try to identify problems with the conduct of the election and to try to investigate them and identify whether the problems and illegality may have affected the outcome of the election. . . .”

(Eastman's Closing Brief, pp. 76, 77.) He ignored credible evidence that did not support his position of fraud, and as stated above, he failed to investigate or challenge the secretaries of state regarding the election results in the contested states. He turned a blind eye to any information that would not support his position of election fraud.

Finally, Eastman maintains that he had an honest, sincere belief in his statements at the time he made them. A defense against an accusation of moral turpitude through gross negligence arises when an attorney genuinely, albeit unreasonably, believes their actions are justifiable. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9-11.) As the court found previously (count two) Eastman had no actual knowledge or hard evidence of outcome-determinative voter fraud and the analyses he relied on lacked credibility (count four). In addition, the day before and the morning of his appearance on the Bannon War Room, Eastman was still searching for but had no evidence of fraud in Michigan, Arizona, and Nevada—demonstrating that he knew that he had no basis to state that there was evidence of outcome-determinative fraud. Despite Eastman's claim of an honest belief in his statements, the evidence demonstrates that he knew he lacked a factual basis for making any claims of outcome-determinative fraud, and he recklessly made these false claims during the Bannon's War Room interview.

Therefore, the court finds Eastman culpable of willfully violating section 6106, as charged in count five.

**Count Six – Moral Turpitude
[Misrepresentation] (§ 6106)**

OCTC charged Eastman with moral turpitude and willful violation of Business and Professions Code section 6106 by stating the following in his January 3, 2021, six-page memo:

- There had been “outright fraud” through “electronic manipulation of voting tabulation machines;”
- There were “dual slates of electors from 7 states,” because the Trump electors in Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin had met on December 14, 2020, cast their electoral votes for Trump, and transmitted those votes to Pence;⁹⁴
- The State of Michigan “mailed out absentee ballots to every registered voter, contrary to statutory requirement that voter (sic) apply for absentee ballots”; and
- “This election was stolen by a strategic Democrat plan to systemically flout existing election laws for partisan advantage.”

(NDC, p. 23.)

Despite the absence of substantiated evidence, Eastman knowingly made false claims of fraud in the 2020 presidential election, suggesting manipulation of electronic voting machines to bolster his case for Vice President Pence to adjourn the Joint Session of Congress. A thorough examination of the data using strict criteria revealed no evidence to suggest that former Vice President Biden did better than expected in counties where Dominion voting machines were used. In addition, the Election Infrastructure

⁹⁴ The court has already determined in count three that Eastman’s statement that dual slates of electors had been transmitted to Vice President Pence was false.

Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees found no credible evidence supporting claims that the 2020 election results in any state were changed due to technical compromise. In fact, CISA confirmed that the 2020 presidential election was the most secure in American history. Eastman was informed by November 2020, that CISA had determined the November 3 election to be the most secure in U.S. history, contradicting the numerous baseless claims and potential for misinformation surrounding the electoral process. Nevertheless, Eastman chose to ignore credible sources indicating there was no voting machine manipulation.

Eastman's assertion that every registered voter in Michigan received a ballot by mail was also untrue. As Eastman acknowledged, every registered voter was mailed an absentee ballot *application*, not the ballot itself. The fact that there was dissent regarding the Supreme Court's refusal to review the case establishing the Secretary of State's authority to send absentee ballot applications to all registered voters and that the Michigan legislature disagreed with the decision, does not make Eastman's statement true. The misrepresentations about the manipulation of voting machines and Michigan absentee ballots were significant and material. Eastman used them to bolster the argument for Vice President Pence to reject electoral votes and/or delay or adjourn the Joint Session of Congress.

Regarding the fourth alleged false statement about the election being stolen by a "Democrat Plan", numerous facts related to this representation are detailed within or closely connected to the facts outlined in other counts, i.e., election officials across

Pennsylvania, particularly in Philadelphia and Allegheny Counties (where Democrats historically hold an advantage) knowingly violated the state's election laws by implementing biased standards to favor voters in these counties, aiming to benefit former Vice President Biden (count two); and Fulton County officials removed ballots from under a table, where they were concealed, and processed them without public observation, breaking state law (count four). Nevertheless, the court finds that Eastman's fourth statement was a statement of opinion rather than a statement of fact. In context, his statement reflected his opinion on summarizing what the purported "facts" revealed.

As it relates to the allegations in the six-page memo, Eastman contends that he did not violate section 6106 because Kurt Olsen, an attorney who worked with Eastman, concluded that it was illegal for Michigan Secretary of State, Jocelyn Benson, to distribute ballot applications to all registered voters. The court dismisses this argument because Eastman was aware, as of December 28, 2020, that the Michigan Secretary of State had such authority. Furthermore, the crucial falsehood that Eastman stated was that the Secretary of State sent ballots, not ballot applications to all registered voters. As such, Olsen's opinion concerning ballot applications is immaterial.

Eastman next asserts that he held a sincere, honest good faith belief in the truth of his statements based on his knowledge and understanding at the time. The court does not consider Eastman's beliefs to be sincere, honest, or credible. He knowingly ignored any evidence contradicting the notion of voting machine manipulation; was aware that the Michigan

Secretary of State had not distributed ballots to all registered voters; and as a constitutional scholar, understood that no conflicting dual slates of electors had been transmitted.

Finally, as determined above, the court rejects Eastman's claim that he was vigorously representing President Trump, as he exceeded ethical boundaries by transitioning from an impassioned advocate to engaging in deception.⁹⁵

The evidence presented demonstrates that Eastman, despite claiming sincere belief, deliberately propagated false claims about the 2020 presidential election, thereby breaching his ethical duty as an attorney to prioritize honesty and integrity. With the exception of Eastman's opinion regarding the election being "stolen by a strategic Democrat plan," the court finds Eastman culpable of willfully violating section 6106 as alleged in count six.

**Count Seven – Moral Turpitude
[Misrepresentation] (§ 6106)**

Eastman is charged with violating section 6106 by stating that "Dominion electronic voting machines had fraudulently manipulated the election results during the November 3, 2020, presidential election and during the January 5, 2021, run-off election in Georgia for its two Senate seats." (NDC, p. 25.)

During his speech on the Ellipse, Eastman was addressing a television audience and a live crowd that he estimated to include 250,000 to 500,00 individuals in his capacity as a lawyer. (R.T. Vol. XI, p. 49.)

⁹⁵ Eastman employs the "zealous advocate" defense for counts seven through ten, all of which fail because, as stated above, zealous advocacy cannot excuse a section 6106 violation.

Giuliani introduced him as one of the preeminent constitutional scholars in the United States, who intended to explain how the Dominion machines were manipulated. Eastman claimed that during the 2020 presidential and the Georgia runoff elections, ballots were allegedly placed in a hidden folder within voting machines until it was determined how many votes were needed and after the polls closed, these ballots were used to manipulate the election results in favor of former Vice President Biden and other Democratic candidates. Eastman stated that an analysis of vote percentages indicated that these ballots were unloaded from the secret folder and fraudulently matched with unvoted voters, thereby tipping the election outcome in favor of the Democrats.

Eastman's statements were false. The court has previously determined that there was no voting machine manipulation (count six) and that Eastman ignored readily available evidence demonstrating that his statements were false. As such, the record demonstrates that Eastman willfully violated section 6106 by making intentionally false statements on January 6, 2021, at the Save America rally at the Ellipse.

Even if Eastman's false representations were not intentional, at a minimum, he is culpable of violating section 6106 by gross negligence. Eastman's statements about the Dominion voting machines were based on the theories of Ramsland and Oltmann and others he met on January 5, 2021. Before making the misrepresentations on January 6, 2021, Eastman failed to vet Ramsland and Oltmann, their theories, and their credentials. He never determined the credibility of the Ramsland/Oltmann diagram but accepted its conclusions because certain individuals

(whose names he could not recall and whom he perceived to possess technical expertise) informed him about alleged potential vulnerabilities in the Dominion voting machine system. He ignored CISA's unwavering confidence in the security and integrity of the 2020 election. Eastman recklessly relied on Ramsland, Oltmann, and others without verifying the validity of their findings.

Eastman maintains that he is not culpable of willfully violating section 6106 because he held a sincere, honest belief that his representations were true at the time. The court disagrees. Eastman deliberately disregarded information from credible sources confirming the security of the election and the absence of any credible evidence supporting allegations that the 2020 election results in any state were altered due to technical compromise. Eastman also claims his speech is protected by the First Amendment. The court has already determined Eastman did not have a constitutional right to make false and misleading statements in violation of section 6106.

The court finds that Eastman, at a minimum, acted with gross negligence amounting to moral turpitude by recklessly relying on unverified sources and unverified information while deliberately disregarding credible information about the security of the 2020 election, thereby violating section 6106. (See *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 155 [gross negligence amounting to moral turpitude where attorney filed verification that his clients were out of the county without first confirming that fact]; see also *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330 [culpability under section 6106 for act of

moral turpitude where attorney was found to be grossly negligent in reporting her MCLE compliance without making any effort to confirm its accuracy].)

**Count Eight – Moral Turpitude
[Misrepresentation] (§ 6106)**

In count eight, Eastman is charged with willfully violating section 6106 by sending an email to Greg Jacob on January 6, 2021, with the intent to pressure Vice President Pence to adjourn the Joint Session of Congress, wherein he wrote: “You think you can’t adjourn the session because the [Electoral Count Act] says no adjournment, while the compelling evidence that the election was stolen continues to build and is already overwhelming?” The court finds Eastman culpable of willfully violating section 6106.

As previously established, there was no outcome-determinative fraud in the 2020 presidential election (counts four, five, six, and seven), and Eastman was aware or should have known that there was no affirmative proof of fraud (counts five, six, and seven). This lack of outcome-determinative fraud evidence indicates that there was no compelling or overwhelming evidence that the 2020 presidential election was stolen as Eastman claimed.

During the violent attack on the Capitol and while the electoral vote count remained unfinished, Eastman persisted in his attempts to persuade Vice President Pence to postpone the Joint Session of Congress, despite the ongoing crisis and the incomplete democratic process. Eastman continued to pressure Jacob and Vice President Pence even though Eastman, a constitutional scholar, knew that Vice President Pence had no authority to recess, delay, or adjourn the electoral count because as provided by 3

U.S.C. section 16, only the House or Senate may direct a recess—not a President of the Senate. Moreover, as the scholarship and history reflect and as Eastman, a constitutional scholar, had to know, from 1789 to 2016, all recesses and adjournments were initiated and controlled by Congress and “no President of the Senate has ever unilaterally declared a recess.” (Exh. 179, p. 84.)

Once again, Eastman contends that his statements are protected by the First Amendment. As stated above, this defense fails because Eastman’s false statements are not protected speech. Eastman also argues that he had a sincere, honest belief in his statements. Eastman’s defense fails because a sincere, unreasonable belief in one’s actions does not excuse intentional misconduct.

In sum, despite substantial evidence disproving his claims, Eastman made false statements in his January 6, 2021 email with the intent to deceive and pressure Vice President Pence to violate the ECA, thereby demonstrating his willful violation of section 6106.⁹⁶

Count Nine – Moral Turpitude [Misrepresentation] (§ 6106)

In count nine, OCTC charged Eastman with making the following three statements in the January 18, 2021 “Setting the Record Straight on the POTUS ‘Ask’” article, which Eastman knew were false and misleading:

⁹⁶ Although the facts that support culpability in count eight also support culpability in other counts, i.e., counts two and five, the court does not find the counts duplicative as Eastman made the misrepresentations to different individuals, in different situations, and at different timeframes.

- “[I]n Fulton County, Georgia, where suitcases of ballots were pulled from under the table after election observers had been sent home for the night;”
- “[I]n parts of Wayne County (Detroit) Michigan, where there were more absentee votes cast than had been requested;” and
- “[I]n Antrim County, Michigan, where votes were electronically flipped from Trump to Biden.”

(NDC, p. 28.)

First, the court has previously determined that Eastman’s statement regarding the alleged hidden “suitcases of ballots” was false and that Eastman ignored any evidence of its falsity (count four). Eastman cannot evade responsibility for his “ostrich-like” behavior once he was aware that information existed showing there were no hidden ballots or evidence of improper activity. (*In the Matter of Carver*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 432-433; see also *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, 388.)⁹⁷

Wayne County, Michigan

Eastman also intentionally misrepresented that votes in Michigan were electronically flipped from President Trump to former Vice President Biden. Eastman’s half-truth assertion was deceptive and intellectually dishonest since he was well aware that any human error that occurred only affected the

⁹⁷ In both *Carver* and *Pierce*, the attorneys changed their official membership addresses to evade receiving notices from the State Bar and purposefully failed to retrieve or review mail from the State Bar. By avoiding the notices, each attorney remained willfully blind to their ineligible status to practice law.

initial unofficial results and this error had been rectified before the final results were tallied. Furthermore, according to experts, and Eastman himself, there were no instances where Trump votes were flipped and tallied as Biden votes. Eastman became aware of the falsehood of the statement and acknowledged that he had learned about the comments made by Michigan election officials regarding this matter in November or December 2020. Eastman's false representations were significant and material. He persisted in misrepresenting the validity the 2020 presidential election to sow doubt among the public regarding the legitimacy of the results.

Eastman contends that he genuinely believed in the accuracy of his misrepresentations. As stated previously, Eastman's willful ignorance and refusal to consider evidence contrary to his assertions do not excuse him from responsibility for spreading falsehoods. The court also rejects Eastman's First Amendment defense since the court has already concluded that Eastman did not have a constitutional right to make false and misleading statements that violate section 6106.

Count Ten – Moral Turpitude (§ 6106)

In count ten, OCTC charges Eastman with moral turpitude in violation of section 6106, by repeatedly proposing and seeking to encourage Vice President Pence to exercise authority to disregard the electoral votes of certain states or delay the counting of electoral votes.

The evidence establishes that shortly before the counting of electoral votes on January 6, 2021, Eastman prepared a two-page memo and a six-page memo that falsely asserted that the Vice President

was the “ultimate arbiter” to resolve disputes regarding electoral votes, and claiming that the Vice President had the power to take various unilateral actions, including determining the validity of electoral votes and adjourning the Joint Session of Congress.

The court has already determined, in counts three and six, that Eastman’s statements in his two memos regarding the powers of the Vice President were false. No law or provision in the Constitution confers on the Vice President the power to reject electoral votes or delay the counting of votes. Eastman knew this. He knew, but didn’t disclose, that there were only a handful of law review articles, not historical or legal precedent (such as the ECA or the Twelfth Amendment), which supported his contention that such unilateral authority was vested in the Vice President as President of the Senate. As further discussed under count six, Eastman also knew that the factual assertions of fraud and dual slate of electors underpinning the need for his unsupported plan were false. Still, he promoted this wild theory for the benefit of his client’s desire to retain the presidency. Notably, the course of action Eastman proposed for Vice President Pence to take on January 6, 2021, was directly contrary to what he told Colbert just a few months prior—that nowhere in the law does it say that the President of the Senate (i.e., the Vice President) has the power to determine what electoral votes are counted. Eastman’s scheme also faced criticism from his own expert, Dr. Yoo, who testified that not only did Vice President Pence not have authority to reject elector votes on the grounds that the elector appointments were invalid but, under the circumstances present, Vice President Pence was on “unassailable” grounds for not overturning the

electoral results of the 2020 presidential election. (R.T. Vol. XVIII, pp. 47, 66.)

Still, Eastman persisted with his plan. At the January 4, 2021 Oval Office meeting with President Trump, Vice President Pence, Jacob, and Short, Eastman discussed his unfounded theory outlined in his memos, and presented Vice President Pence two options: reject electors or delay the count. He made the same request to Jacob and Short at another meeting the following day. In his conversations with Jacob, however, he conceded that his position would likely be unanimously rejected by the Supreme Court.

After attempts to convince Vice President Pence during the meetings failed, Eastman resorted to applying additional pressure on Vice President Pence through several emails sent to Jacob requesting that Vice President Pence follow his strategy. In a 6:09 p.m. email on January 6, 2021, Eastman told Jacob that “adjourn[ing] to allow state legislatures to continue their work” was the “most prudent course.” (Exh. 68, p. 1.) Later that evening, at 9:44 p.m., Eastman insisted that the Vice President adjourn the counting of electoral votes, stating: “I implore you to consider one more relatively minor violation and adjourn for 10 days . . .” (Exh. 69, p. 2.).

Eastman was aware, or should have been aware, that the course of conduct he proposed in his memos was factually and legally unsupported. Eastman’s dubious strategy to influence Vice President Pence to take unilateral action to determine the validity of slate of electors in the contested states or delay the Joint Session of Congress constitutes moral turpitude in violation of section 6106, as charged in count ten. No additional weight in discipline is assigned to this

violation, however, because the same facts support culpability under count one below. (See *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520 [no dismissal of charge where same misconduct proves culpability for another charge but no additional weight assigned for discipline purposes].)

Count Eleven – Moral Turpitude (§ 6106)

In count eleven, Eastman is charged with violating section 6106 by telling the crowd of protesters at the Ellipse on January 6, 2021, “that fraud had occurred in the election, that dead people had voted, that electronic voting machines had been used to fraudulently alter the election results, that Pence had authority to delay the counting of votes, and that [Vice President] Pence did not deserve to be in office if he did not delay the counting of votes.” (NDC, p. 33.) OCTC alleged that these statements were false and misleading and “contributed to provoking the crowd to assault and breach the Capitol in an effort to intimidate [Vice President] Pence and prevent the electoral count from proceeding, when such harm was foreseeable.” (*Ibid.*) The court does not find Eastman culpable of the misconduct alleged in this count.

The court has already determined that the following statements made by Eastman were false and deceptive: (1) that fraud occurred in the 2020 presidential election (count two); (2) that dead people voted (counts two and four); (3) that electronic voting machines were used fraudulently to alter the election results (count seven); and (4) that Vice President Pence had the authority to delay the vote counting (count ten). Regarding the fifth statement, Eastman did not expressly declare that Vice President Pence

did not merit holding office if he refrained from delaying the vote counting but stated that “anybody” unwilling to postpone the vote tallying was unworthy of office. In the context of the speech, it suggests that Eastman was alluding to Vice President Pence. Nevertheless, a “reasonable factfinder could [not] conclude that the contested statement implies an assertion of objective fact.’ [Citation.]” (*Lieberman v. Fieger* (9th Cir. 2003) 338 F.3d 1076, 1079.) Therefore, the court finds that Eastman’s statement regarding Vice President Pence is one of opinion and does not imply a factual assertion and it is thus protected by the First Amendment. (*Ibid.*)

Although four of the five statements made at the Ellipse were false and misleading, OCTC failed to provide any evidence that Eastman’s statements “contributed to provoking the crowd to assault and breach the Capitol . . . when such harm was foreseeable.” (NDC, p. 33.) Eastman’s statements followed Giuliani’s comments—“let’s have trial by combat”—and preceded President Trump’s comments—“fight like hell” to save the country—but OCTC presented no evidence to show that Eastman’s statements contributed to the assault on the Capitol.

As such, count eleven is dismissed with prejudice.

Count One – Failure to Support the Laws of The United States (§ 6068, subd. (a))

Section 6068, subdivision (a), places a duty on attorneys to support the Constitution and laws of the United States and of this state. OCTC is required to specifically identify the underlying provision of law allegedly violated. (See *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, 486.) “The requirement of specification of the underlying

provision of law allegedly violated means that the Supreme Court interprets section 6068(a) as a conduit by which attorneys may be charged and disciplined for violations of other specific laws which are not otherwise made disciplinable under the State Bar Act.” (*Id.* at p. 487.)

Here, OCTC charges Eastman in count one with failure to support the Constitution and the laws of the United States in violation of section 6068, subdivision (a), by violating three provisions of the law; (1) 3 U.S.C. § 15; (2) Article II, Section 1, Clause 2 and the Twelfth Amendment of the United States Constitution; and (3) 18 U.S.C. § 371.

The 3 U.S.C. § 15 of the ECA outlines the precise procedure for the counting of electoral votes in Congress on January 6 following every meeting of the electors. Related to this statute, Article II, Section 1, Clause 2 of the United States Constitution provides that each state shall appoint electors, and the Twelfth Amendment specifies that, on January 6, the votes submitted by the electors for each state shall be counted, with the President determined by the winner of a majority of electoral votes. OCTC fails to assert, let alone prove, that Eastman violated either 3 U.S.C. § 15; Article II, Section 1, Clause 2 of the United States Constitution; or the Twelfth Amendment. OCTC merely alleges that Eastman *intended* to violate these provisions, which falls short of establishing culpability under section 6068, subdivision (a). (See *In the Matter of Lilley, supra*, 1 Cal. State Bar Ct. Rptr. at pp. 486-487 [section 6068, subd. (a), is a “a conduit by which attorneys may be charged and disciplined for *violations* of other specific laws” (italics added)].)

By contrast, OCTC has shown that Eastman conspired with President Trump to obstruct a lawful function of the government of the United States; specifically, by conspiring to disrupt the electoral count on January 6, 2021, in violation of 18 U.S.C. § 371. To prove a violation of 18 U.S.C. § 371, it must be established that: (1) at least two people entered into an agreement to obstruct a lawful function of the government; (2) by deceitful or dishonest means; and (3) there was at least one overt act in furtherance of the conspiracy. (See *United States v. Meredith* (9th Cir. 2012) 685 F.3d 814, 822.) “An agreement to commit a crime ‘can be explicit or tacit, and can be proved by direct or circumstantial evidence, including inferences from circumstantial evidence.’” (*United States v. Kaplan* (9th Cir. 2016) 836 F.3d 1199, 1212.)

The evidence clearly and convincingly proves that Eastman and President Trump entered into an agreement to obstruct the Joint Session of Congress by unlawfully having Vice President Pence reject or delay the counting of electoral votes on January 6, 2021. Specifically, on December 23, 2020, and January 3, 2021, respectively, Eastman wrote two-page and six-page memos outlining a detailed plan of action for Vice President Pence to declare President Trump the re-elected president. On January 2, Eastman appeared on the Bannon War Room and publicly spoke about the illegal conduct of the 2020 presidential election and claimed that more than enough fraud had occurred to affect the outcome of the election.

On January 4, 2021, President Trump, Vice President Pence, Eastman, Jacob, and Short met at the Oval Office to discuss Eastman’s memo, at which time Eastman presented Vice President Pence with

two options: reject electors or delay the count. On January 5, Eastman met with Jacob and Short and asked again that Vice President Pence reject the electors and later, only after Jacob (Vice President Pence's counsel) refused to capitulate to Eastman's requests, in an evening phone call with President Trump and Jacob on January 5th, Eastman proposed that the Vice President delay the count of electoral votes the following day. A second phone call Eastman had with Jacob on the evening of January 5th involved a renewed discussion about a delaying to allow for further consideration by the state legislatures, in which it was noted that while some individual Republican state legislators forwarded letters seeking delay of the electoral count, numerous state legislature leaders had stated they had no interest in taking further action and no legislative body in those states had indicated that they were interesting in revisiting the question of who had won the state in the 2020 presidential election.

On January 6, 2021, at 1:00 a.m., President Trump tweeted "If Vice President @Mike_Pence comes through for us, we will win the Presidency . . . Mike can send it back." (Exh. 298.) At 8:17 a.m., President Trump tweeted again that "States want to correct their votes . . . All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage." (Exh. 299, p. 2.) Later that day, Eastman gave his remarks at the Ellipse, where he made false claims about the conduct of the election to the large crowd of protestors that had gathered. Eastman also told the crowd that they were "demanding" that at 1:00 p.m. Vice President Pence delay the electoral count so states could investigate.

Eastman's speech was followed by President Trump, who not only made similarly false and misleading statements to the crowd but who made multiple statements about Vice President Pence "doing the right thing" by unilaterally delaying the electoral count. Then, at 2:24 p.m., President Trump tweeted that "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!" (Exh. 300.)

Later that day, while the Capitol was under attack, Jacob emailed Eastman stating, "thanks to your bullshit, we are now under siege." (Exh. 67.) Eastman responded to Jacob at 2:25 p.m.:

My 'bullshit'—seriously? You think you can't adjourn the session because the ECA says no adjournment, while the compelling evidence that the election was stolen continues to build and is already overwhelming. The 'siege' is because YOU and your boss did not do what was necessary to allow this to be aired in a public way so the American people can see for themselves what happened.

(Ibid.)

In another email to Eastman that same day, Jacob highlighted the gravity of Eastman's conduct:

Respectfully, it was gravely, gravely irresponsible for you to entice the President with an academic theory that had no legal viability, and that you well know we would lose before any judge who heard and decided the case. And if the courts decline to hear it, I

suppose it could only be decided in the streets. The knowing amplification of that theory through numerous surrogates, whipping large numbers of people into a frenzy over something with no chance of ever attaining legal force through actual process of law, has led us to where we are. . . [A]dvising the President of the United States, in an incredibly constitutionally fraught moment, requires a seriousness of purpose, an understanding of the difference between abstract theory and legal reality, and an appreciation of the power of both the office and the bully pulpit that, in my judgment, was entirely absent here.

(Exh. 69, pp. 2-3.)

Eastman pressed on. He emailed Jacob again at 6:09 p.m., advocating for an adjournment and criticizing Vice President Pence's Dear Colleague letter. (Exhs. 68, p.1; 69, p. 2.) At 9:44 p.m., after the electoral count had resumed, Eastman again emailed Jacob, stating: "I implore you to consider one more relatively minor violation and adjourn for 10 days to allow the legislatures to finish their investigations, as well as to allow a full forensic audit of the massive amount of illegal activity that has occurred here." (*Id.*)

Upon consideration of the totality of the facts, the court finds weighty circumstantial evidence demonstrating a collaborative effort between Eastman and President Trump to impede the counting of elector votes on January 6, 2021, as articulated in Eastman's memos. (See *United States v. Kaplan, supra*, 836 F.3d at p. 1212 [an agreement to commit a crime "can be explicit or tacit, and can be proved by direct or circumstantial evidence"].) There

is also extensive direct evidence demonstrating that each party involved in this plan actively participated in overt acts through in person meetings, communications with Vice President Pence and his counsel, and in public remarks to advance their shared objective—i.e., to have Vice President Pence reject or delay the counting of electoral votes on January 6. Furthermore, the court has previously determined, in the aforementioned counts, that Eastman’s actions were carried out with deceit or dishonesty, as he was aware that his plan was unlawful and lacked any factual or legal support. Here, all elements of 18 U.S.C. § 371 are established.

Based on this evidence, the court finds that OCTC has met its burden of showing by clear and convincing evidence that Eastman violated section 6068, subdivision (a), by violating 18 U.S.C § 371 as charged in count one.

Aggravation and Mitigation

The parties must prove aggravating or mitigating factors by clear and convincing evidence. (Stds. 1.5 and 1.6.)⁹⁸

Aggravating Circumstances

The court finds aggravation for three factors: multiple acts of wrongdoing, lack of candor and indifference.

Multiple acts of Wrongdoing (Std. 1.5(b)): Substantial Weight

Eastman is culpable of multiple acts of misconduct, including seeking to mislead the United States

⁹⁸ All references to standards (std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Supreme Court in *Texas v. Pennsylvania* and seeking to mislead the United States District Court for the Northern District of Georgia in *Trump v. Kemp*. Eastman has engaged in other misconduct including six counts of moral turpitude by making numerous false and misleading statements to the general public and others, as well as one count of moral turpitude by encouraging Vice President Pence to disregard properly certified electoral votes and delay or adjourn the electoral count. Eastman is also culpable of failing to support the laws of the United States by violating 18 U.S.C. § 371. Given the numerous and serious transgressions, the court affords this aggravating factor substantial weight. (See *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555 [multiple acts of misconduct as aggravation are not limited to the counts pleaded]; see also *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 [53 threatening and abusive messages made over an approximately 8-month period found to be multiple acts of wrongdoing in aggravation]; *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 317 [24 counts of misconduct assigned significant weight in aggravation].)

Intentional Misconduct, Bad Faith or Dishonesty (Std. 1.5(d)): No Weight

Standard 1.5(d) provides that aggravating circumstances may include intentional misconduct, bad faith, or dishonesty. OCTC argues that Eastman's actions were aggravated by his bad faith in pursuing a course of conduct to overturn the 2020 presidential election, which he knew lacked factual or legal merit. However, OCTC has not presented additional facts, separate and distinct from Eastman's misconduct

leading to culpability, to support this aggravating circumstance. Therefore, the court assigns no aggravation as Eastman's alleged acts of bad faith were already considered in establishing culpability under sections 6068, subds. (a) and (d), and 6106. (*In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402, 409, fn. 13 [improper to consider in aggravation factual findings already used to determine culpability].)

Significant Harm (Std. 1.5(j)): No Weight

Standard 1.5(j) allows for aggravation when an attorney's actions result in "significant harm to the client, the public, or the administration of justice." OCTC contends that Eastman's misconduct contributed to the violent attack on the Capitol on January 6, 2021. Additionally, OCTC claims that documents and testimony from multiple current and former state election officials demonstrate the harm caused by Eastman's misconduct, including the expenditure of resources to counter election disinformation, increased security measures, wasteful audits of the 2020 presidential election results, erosion of trust in election integrity, turnover in election offices, and harassment and threats against officials and their offices.

While the court acknowledges that there has been significant harm to the general public as evidenced by ongoing distrust in some of our democratic institutions and the electoral process, OCTC has not presented specific evidence to establish that the alleged harm occurred as a result of Eastman's actions. OCTC did not provide any witness or other evidence showing that Eastman's statements or actions, such as his speech on January 6, contributed

to the attack on the Capital or that Eastman's peddling of disinformation regarding the 2020 presidential election specifically caused the harm unfortunately experienced by election workers, state election officials or the institutions they serve. The court rejects OCTC's argument that it is exempt from proving that Eastman was the cause of the harm. Under standard 1.5, OCTC must show aggravating circumstances by clear and convincing evidence. Here, the connection between Eastman's actions and the alleged harm remains speculative. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 784-785 [significant harm to client was not appropriate factor in aggravation without evidence that client suffered harm attributable to the attorney's misconduct].)

OCTC's other argument that Eastman bears responsibility for the actions of others—presumably referring to then President Trump and Giuliani—based on a “concert of action” theory, is unpersuasive. OCTC cites to *Sindell v. Abbott Labs.* (1980) 26 Cal.3d 588, which examined the principle of group liability in tort when multiple parties collaboratively commit a tortious act. The court declines to adopt a theory of tort liability applied in civil cases under a different standard of proof than that required in a disciplinary proceeding. Extending such a theory of liability from tort law to this case would burden Eastman for the independent actions of others without OCTC meeting the requisite burden of proof for aggravation in disciplinary cases.

Based on this record, OCTC has not shown by clear and convincing evidence that Eastman caused the alleged harm. Therefore, the court assigns no aggravation under this factor.

Indifference (Std. 1.5(k)): Substantial Weight

“Indifference toward rectification or atonement for the consequences of the misconduct” is an aggravating circumstance. (Std. 1.5(k).) This case presents a clear instance of such indifference by Eastman. While the law does not require false penitence, it does require that an attorney accept responsibility for wrongful acts and come to grips with culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Eastman has failed to do so.

Despite the compelling evidence against him, as established in the culpability findings above, Eastman remains defiant, refusing to acknowledge any impropriety whatsoever in his actions surrounding his efforts to dispute the 2020 presidential election results. His lack of insight into the wrongfulness of his misconduct is deeply troubling. For instance, he testified he gave no consideration to the effect his televised statements made on January 6, 2021, at the Ellipse—implying electoral fraud from electronic voting—would have on the crowd, which he estimated to include one-half to a quarter million people. Eastman continues to hold the view that his statements were factually and legally justified. He demonstrated disdain for these proceedings by characterizing them as a political persecution, claiming that the disciplinary charges against him contained false and misleading statements, and that those who brought them should themselves be disbarred.

Eastman’s complete denial of wrongdoing, coupled with his attempts to discredit legitimate disciplinary proceedings are concerning. While Eastman is entitled to defend himself, his conduct goes beyond

this, revealing a complete failure to understand the wrongfulness of his actions. His unwillingness to consider the impropriety of his conduct goes “beyond tenacity to truculence.” (*In re Morse* (1995) 11 Cal.4th 184, 209 [unwillingness to consider appropriateness of legal challenge or acknowledge its lack of merit is aggravating].) Accordingly, the court assigns substantial weight in aggravation under this factor. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380-381 [ongoing failure to acknowledge wrongdoing instills concern that attorney may commit future misconduct].)

Lack of Candor (Std. 1.5(l)): Limited Weight

Aggravating circumstances in disciplinary proceedings may include lack of candor to the State Bar or State Bar Court during disciplinary investigations or proceedings. OCTC argues that Eastman demonstrated a lack of candor at trial because his testimony was evasive, inconsistent, and untruthful with respect to numerous issues such as whether there was outcome-determinative fraud in the seven states he contested and whether he urged Vice President Pence to reject certified slates of electors.

The court, in determining culpability, has rejected certain aspects of Eastman’s unconvincing testimony in favor of more compelling evidence in the overall record. Eastman’s testimony seemed evasive and inconsistent at times and there is limited clear and convincing evidence to establish that Eastman was dishonest in his testimony. (See *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 67 [this factor must be supported by finding that testimony lacked candor or was dishonest].)

Nonetheless, the court finds that Eastman lacked candor when he falsely testified that he did not exert pressure on Jacobs to reject the certified Biden electors. Jacob's records from January 5, 2021, revealed that Eastman urged Vice President Pence to reject the Biden electors, and Eastman's January 6, 2021 email acknowledged that the option of rejecting the electors had been discussed and dismissed the day before. Accordingly, the court affords limited weight in aggravation for this factor.

Mitigating Circumstances

The court finds mitigation for three factors; no prior discipline, cooperation, and good character.

No Prior Record of Discipline (Std. 1.6(a)): Moderate Weight

The absence of any prior record of discipline over many years of practice, coupled with present misconduct which is not likely to recur, is a mitigating circumstance. (Std. 1.6(a).)

Eastman was admitted to the State Bar of California in 1997. At the time of his misconduct, he had practiced law for approximately 23 years without discipline. This length of discipline-free practice satisfies the first prong of the standard—no prior record of discipline over many years of practice—and generally warrants substantial mitigation. (See, e.g., *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [significant weight for more than 10 years of practice].) However, the misconduct at issue is quite serious and, in consideration of his ongoing lack of insight or remorse, the facts of this case do not reflect aberrational misconduct, thus diminishing the mitigating weight of this factor. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is

serious, long-term discipline-free practice is most relevant where misconduct is aberrational].) Under these circumstances, the court affords moderate weight in mitigation for Eastman's lack of prior discipline.

Good Faith (Std. 1.6(b)): No Weight

Eastman may be entitled to mitigation if he can establish a "good faith belief that is honestly held and objectively reasonable." (Std. 1.6(b).) Eastman contends that he is entitled to mitigation for his good faith belief that his statements and conduct did not violate any ethical standards.

As discussed, *ante*, the court finds among other things that Eastman made multiple false and misleading statements regarding the conduct of the 2020 presidential election and Vice President Pence's powers to refuse to count or delay counting properly certified slates of electoral votes on January 6, 2021. Even if Eastman honestly believed he acted in good faith, it was not objectively reasonable for him to have such belief. The circumstances of this case preclude any finding of good faith mitigation. (*Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 331 [attorney's honest belief not mitigating because belief was unreasonable].) Therefore, the court assigns no weight in mitigation for Eastman's assertion of good faith belief.

Lack of Harm (Std. 1.6(c)): No Weight

Standard 1.6(c) provides for mitigation where lack of harm to clients, the public, or the administration of justice can be established.

Eastman argues that OCTC failed to present evidence demonstrating that his actions caused any harm; and by implication that there is no harm. This argument is fundamentally flawed. The absence of

evidence of harm does not constitute evidence of lack of harm. Eastman bears the burden to show mitigating circumstances by clear and convincing evidence. (Std. 1.6). He cannot simply shift the burden of proof onto OCTC without providing any evidence to support his assertion that no harm occurred. While it is true that OCTC did not present evidence to establish that Eastman's actions caused significant harm, this does not absolve him of his responsibility to demonstrate that his actions did not cause harm to his client, the public, or the administration of justice.

Without meeting this burden, his argument for mitigation on the grounds of a lack of harm fails. The court declines to assign any credit for this factor.

Cooperation (Std. 1.6(e)): Limited Weight

Mitigation may be assigned under standard 1.6(e) for cooperation with the State Bar. Eastman demonstrated cooperation with OCTC by entering into a stipulation as to facts. Eastman, however, did not admit culpability and "more extensive weight in mitigation is accorded those who, where appropriate, willingly admit their culpability as well as the facts." (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.) Also, the nature of the stipulation, which admitted facts that were easily proven, obviated very little in terms of OCTC's preparation for trial. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [stipulation to easily provable facts mitigating if facts assisted prosecution of case].) Thus, the court affords limited weight for Eastman's cooperation.

Extraordinary Good Character (Std. 1.6(f))—Substantial Weight

Eastman may obtain mitigation for “extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct.” (Std. 1.6(f).)

Eastman presented 14 witness declarations and five live witnesses (four of whom also provided declarations) in support of his good character from a wide range of references in the legal and general communities, including a priest, an attorney, a writer, the Director of Administration at Claremont Institute, an associate professor at Benedictine College, a senior fellow and member of the board of directors of the Claremont Institute and Professor Emeritus at Azusa Pacific University, a managing editor of a magazine, the Director of the Claremont Institute, a retired attorney and former law clerk to former Supreme Court Justice Byron White, a former Attorney General of the United States, an Emeritus Dean and Professor at Michigan State University, a former justice of the California Supreme Court and United States Court of Appeals, a retired judge of the Los Angeles County Superior Court, a Professor Emeritus of Law at Cleveland State University and an attorney and adjunct professor at Trinity Law School. The court gives serious consideration to the attorney declarations in support of Eastman’s character. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [attorneys and judges have “strong interest in maintaining the honest administration of justice”].)

Further, the court finds that the majority of these witnesses, who have known Eastman professionally for a period ranging from eight to 45 years, have shown understanding and familiarity with these

disciplinary proceedings and the claims leveled against Eastman. Despite their awareness of the pending charges, the witnesses consistently and uniformly attested to Eastman's positive character traits, such as his professionalism, integrity, honesty, fairness, and respect. The court finds strong evidence of Eastman's good character and accords substantial weight in mitigation. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591–592 [significant mitigation for good character for three witnesses who had longstanding familiarity with attorney and broad knowledge of good character, work habits, and professional skills].)

Discussion

Professional discipline aims to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high standards for attorneys. (Std. 1.1.) In its analysis, the court first considers the standards, which are not binding but entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Although not mandatory, a compelling, well-defined reason must be articulated for any deviation from the standards. (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.7 provides that any aggravating or mitigating circumstance should be considered alone and in balance with other factors. If two or more acts of misconduct are present, the sanction shall be the most severe applicable. (Std. 1.7(a).) Several standards apply here. Standard 2.11 provides that “[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty . . . intentional or grossly negligent misrepresentation or concealment of a material fact. The degree of sanction

depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the [attorney's] practice of law." Standard 2.12(a) also applies, and similarly provides that disbarment or actual suspension is the presumed sanction for a violation of section 6068, subdivisions (a) and (d). OCTC argues that Eastman should be disbarred, while Eastman disputes all charges and seeks dismissal.

As an initial matter, the court rejects Eastman's contention that this disciplinary proceeding and Eastman's resultant discipline is motivated by his political views or his representation of President Trump or President Trump's Campaign. Rather, Eastman's wrongdoing constitutes exceptionally serious ethical violations warranting severe professional discipline. As stated by Earl C. and others, "there is no right way to do the wrong thing." As counsel for President Trump during a disputed presidential election, Eastman made multiple patently false and misleading statements in court filings, in public remarks heard by countless Americans and to others regarding the conduct of the 2020 presidential election and Vice President Pence's authority to refuse to count or delay counting properly certified slates of electoral votes on January 6, 2021. These statements, made with varying degrees of intent, were improperly aimed at casting doubt on the legitimate election results and support for the baseless claim that the presidency was stolen from his client—all while relying on his credentials as an attorney and constitutional scholar to lend credibility to his unfounded claims.

Even after courts in key states authoritatively rejected unsupported allegations of outcome-determinative fraud in the election, Eastman persisted in proposing a legally unsustainable strategy. From November 2020 forward, as his many legal challenges failed, Eastman substantively advanced the false narrative that widespread fraud had tainted the election, and that Vice President Pence possessed the power to contravene the constitutional electoral process. His demonstrated intent was to foment loss of public confidence in the integrity of the 2020 election and persuade Vice President Pence to refuse to count or delay the counting of electoral votes on January 6. Most of his misconduct occurred squarely within the course and scope of Eastman's representation of President Trump and culminated with a shared plan to obstruct the lawful function of the government.

While attorneys have a duty to advocate zealously for their clients, they must do so within the bounds of ethical and legal constraints. Eastman's actions transgressed those ethical limits by advocating, participating in and pursuing a strategy to challenge the results of the 2020 presidential election that lacked evidentiary or legal support. Vigorous advocacy does not absolve Eastman of his professional responsibilities around honesty and upholding the rule of law. While his actions are mitigated by his many years of discipline-free practice, cooperation, and prior good character, his wrongdoing is substantially aggravated by his multiple offenses, lack of candor and indifference. Given the serious and extensive nature of Eastman's unethical actions, the most severe available professional sanction is

warranted to protect the public and preserve the public confidence in the legal system.

After careful review, the court could not find any controlling case law directly on point or substantially analogous to the facts of this case. OCTC cites to *Segretti v. State Bar* (1976) 15 Cal.3d 878, and argues that, here, disbarment is warranted because the misconduct in this case exceeds that of *Segretti*—who received a two-year actual suspension. The court agrees.

In *Segretti*, the attorney pleaded guilty to two federal offenses related to his work on President Richard Nixon’s 1972 reelection campaign, including violating 18 U.S.C. section 612 (publication or distribution of political statements) and 18 U.S.C. section 371 (conspiracy). Among other things, Segretti distributed letters containing false accusations about other candidates for president in order to create confusion among the candidates. The court found Segretti’s actions involved moral turpitude as he “repeatedly committed acts of deceit designed to subvert the free electoral process.” (*Id.* at p. 887.) Segretti had significant mitigation. He was only 30 years old at the time of the misconduct and thought he was acting under the umbrella of the White House. The court emphasized that Segretti’s misconduct “was not committed in his capacity as an attorney” and that he recognized the wrongfulness of his acts, expressed regret, and cooperated with the investigating agencies. (*Id.* at p. 888.) Segretti received a two-year actual suspension.

The scale and egregiousness of Eastman’s unethical actions far surpasses the misconduct at issue in *Segretti*. Unlike Segretti whose offenses

occurred outside his role as an attorney, Eastman's wrongdoing was committed directly in the course and scope of his representation of President Trump and the Trump Campaign. This is an important factor, as it constitutes a fundamental breach of an attorney's core ethical duties. Additionally, while the *Segretti* court found compelling mitigation based on his expressed remorse and recognition of his wrongdoing, no such mitigating factor is present with Eastman. To the contrary, Eastman has exhibited an unwillingness to acknowledge any ethical lapses regarding his actions, demonstrating an apparent inability to accept responsibility. This lack of remorse and accountability presents a significant risk that Eastman may engage in further unethical conduct, compounding the threat to the public. Given the greater magnitude of Eastman's transgressions compared to *Segretti* and the heightened risk of future misconduct from his complete denial of wrongdoing, imposing greater discipline than in *Segretti* is appropriate to protect the public and uphold public confidence in the legal system.

Guided by the standards, case law, and the purposes of attorney discipline, the court recommends that Eastman be disbarred.

Monetary Sanctions are Warranted

As the NDC, filed after April 1, 2020, provided Eastman with notice that he could be subject to monetary sanctions, the court must make a recommendation to the Supreme Court regarding monetary sanctions. (See Rules Proc. of State Bar,⁹⁹

⁹⁹ Further references to rules are to this source, unless otherwise specified.

rule 5.137(E)(1), (H).) Here, the court recommends that Eastman pay \$10,000 in monetary sanctions.

The court recognizes that the recommended amount is a deviation from rule 5.137(E)(2)(a), which provides for monetary sanctions up to \$5,000 for disbarment. However, rule 5.137(E)(3) authorizes the court, in its discretion, to deviate from the range set forth in subdivision (E)(2)(a) “to a maximum of \$5,000 *for each violation*, and \$50,000 for each disciplinary order.” (Rule 5.137(E)(3), italics added.) Here, a deviation from the range provided in subdivision (E)(2)(a) is appropriate under the facts and circumstances of this case given the gravity of Eastman’s misconduct involving multiple acts of moral turpitude and the substantial aggravation, including his refusal to acknowledge any impropriety in his actions. Specifically, the court recommends that Eastman pay \$5,000 in sanctions for his misconduct in connection with filing several pleadings seeking to mislead the courts. The court also recommends that Eastman pay another \$5,000, for a total of \$10,000, for making numerous false and misleading statements regarding the conduct of the 2020 presidential election and Vice President Pence’s authority to refuse to count or delay counting properly certified slates of electoral votes and for his collaborative efforts with President Trump to impede the counting of electoral votes.

RECOMMENDATIONS

It is recommended that John Charles Eastman, State Bar Number 193726, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

**CALIFORNIA RULES OF COURT, RULE
9.20**

It is recommended that John Charles Eastman be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed.¹⁰⁰ (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [the operative date for identification of clients being represented in pending matters and others to be notified is the filing date of the Supreme Court order imposing discipline].)

MONETARY SANCTIONS

It is further recommended that John Charles Eastman be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of \$10,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

¹⁰⁰ John Charles Eastman is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

COSTS

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of applying for reinstatement or return to active status.

INVOLUNTARY INACTIVE ENROLLMENT

John Charles Eastman is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). His inactive enrollment will be effective three calendar days after this order is served and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: March 27, 2024 /s/ Yvette D. Roland
YVETTE D. ROLAND
Judge of the State Bar Court