

IN THE
Supreme Court of the United States

JOHN C. EASTMAN,

Petitioner,

v.

STATE BAR OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF CALIFORNIA

**BRIEF OF *AMICI CURIAE* LIBERTY LEGAL
FOUNDATION, PROJECT CIVICA, INC.,
NORTH CAROLINA VALUES COALITION,
CHRISTOPHER BYRNE, RONALD D.
COLEMAN, NATHAN EARLE, HARRY
MACDOUGALD, AND RANDY BARNETT
IN SUPPORT OF PETITIONER**

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TABLE OF CONTENTS

	<i>Page</i>
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF CONTENTS.....	ii
TABLE OF CITED AUTHORITIES	iv
INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF THE ARGUMENT.....	5
ARGUMENT.....	9
I. PERMANENT DISBARMENT FOR PUBLIC POLITICAL ADVOCACY AND CONSTITUTIONAL ADVICE TRIGGERS THE FIRST AMENDMENT’S FULL PROTECTION AND THE FOURTEENTH AMENDMENT’S MOST DEMANDING PROCEDURAL SAFEGUARDS	10
II. <i>CHILES</i> AND <i>NIFLA</i> FORECLOSE CALIFORNIA’S ATTEMPT TO CREATE A PROFESSIONAL SPEECH EXCEPTION FOR ELECTION- RELATED ADVOCACY.....	11
III. <i>GENTILE</i> DOES NOT AUTHORIZE DISCIPLINE FOR PUBLIC ADVOCACY UNCONNECTED TO MATERIAL PREJUDICE TO A SPECIFIC PROCEEDING.....	13

Table of Contents

	<i>Page</i>
IV. CALIFORNIA'S USE OF "MORAL TURPITUDE" AND A GENERALIZED DUTY TO "SUPPORT THE CONSTI- TUTION" TO PUNISH SPEECH IS UNCONSTITUTIONALLY VAGUE AND INVITES ARBITRARY ENFORCE- MENT.....	15
V. THE BAR'S "KNOWING FALSEHOOD" THEORY DOES NOT CURE THE CONSTITUTIONAL DEFECTS IN ITS RATIONALE OR ITS SANCTION.....	17
VI. RETROSPECTIVE DISCIPLINE FOR CONTROVERSIAL ADVOCACY BURDENS CLIENTS' ACCESS TO INDEPENDENT COUNSEL	19
VII. THE DECISION BELOW THREATENS TO SUPPLY A TEMPLATE FOR PUNISHING LAWYERS WHO REPRESENT DISFAVORED CLIENTS OR ADVANCE UNPOPULAR LEGAL ARGUMENTS	23
CONCLUSION	24

TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES	
<i>Brown v. Board of Education</i> , 347 U.S. 483 (1954).....	8
<i>Chiles v. Salazar</i> , 607 U.S. 627 (2026).....	6, 11, 12, 13
<i>Gentile v. State Bar of Nevada</i> , 501 U.S. 1030 (1991)	7, 13, 14
<i>Gideon v. Wainwright</i> , 372 U.S. 335 (1963).....	8
<i>In re Williams</i> , 464 A.2d 115 (DC 1983)	10
<i>Matal v. Tam</i> , 582 U.S. 218 (2017)	3, 4
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966).....	8
<i>National Institute of Family & Life Advocates v.</i> <i>Becerra</i> , 585 U.S. 755 (2018).....	6, 11, 12
<i>National Socialist Party v. Village of Skokie</i> , 432 U.S. 43 (1977).....	21

Cited Authorities

Page

MISCELLANEOUS

Cal. Bus. & Prof. Code § 610615

Cal. Bus. & Prof. Code § 6068(a).....15

FRCP Rule 1116

INTEREST OF *AMICI CURIAE*¹

Liberty Legal Foundation (“Liberty Legal”) is a nonprofit legal organization dedicated to defending the rule of law and protecting due process, equal protection, and freedom of expression. Liberty Legal’s work includes legal advocacy and public education concerning constitutional rights and the proper limits on governmental power. Liberty Legal’s mission is grounded in a simple but vital proposition: constitutional rights and the rule of law cannot endure if the government is permitted to weaponize vague and standardless legal rules to punish political dissent or to silence disfavored voices. Liberty Legal has an institutional interest in ensuring that attorney disciplinary systems operate under clear standards and with procedural safeguards before a state may deprive an attorney of the ability to practice law.

Project Civica, Inc. is a New York-based, nonpartisan, tax-exempt social welfare organization devoted to civic engagement, citizen oversight of government, and public confidence in lawful and verifiable elections. Consistent with its governing purposes, Project Civica educates, supports, and develops citizen participation in the oversight of governmental processes, including election administration, through legislative, legal, educational, and advocacy initiatives. Its work includes research and public education concerning election procedures, ballot handling,

1. Per Supreme Court Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part, and no entity or person made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2(a), counsel of record for all parties received timely notice of *amici curiae*’s intention to file this brief.

voter access, government accountability, and safeguards intended to promote the accuracy and reliability of electoral outcomes.

The questions presented directly concern Project Civica's work. Civic organizations, candidates, public officials, and citizens frequently need candid legal advice about election administration, electoral procedures, constitutional structure, and other issues of public importance. Project Civica therefore has an interest in the constitutional limits governing a state's ability to discipline attorneys for election-related advocacy and advice.

North Carolina Values Coalition is a nonpartisan, statewide grassroots network founded in 2011 that supports and advocates pro-family positions in law and public policy. It is a nonprofit education and lobbying organization that qualifies for tax-exempt status under Section 501(c)(4) of the Internal Revenue Code. The Coalition's work includes public education and advocacy concerning life, family, religious liberty, and related constitutional and policy questions. Its leadership includes attorneys and policy professionals with substantial experience in public interest advocacy.

North Carolina Values Coalition has an interest in preserving the ability of citizens and advocacy organizations to obtain legal advice and representation in matters involving politically sensitive constitutional and policy questions. The outcome of this case may affect the legal and advocacy environment in which the Coalition, its members, and allied organizations participate.

Attorney *amici*, Christopher Byrne, Ronald D. Coleman, Nathan Earle, and Harry MacDougald are private practicing attorneys from across the United States. Collectively, the attorney *amici* have substantial experience representing clients in state and federal courts, including clients involved in politically sensitive, unpopular, or controversial matters. Their practices require them to advise clients concerning legal claims, factual records, litigation strategy, constitutional questions, and public communications, often in areas in which the law is unsettled or the underlying facts are contested.

Christopher Byrne is a seasoned attorney and business executive with more than forty years of experience in private practice, federal government service, and entrepreneurial ventures. He has led high-stakes, multimillion-dollar litigation and complex financial investigations including matters involving major financial institutions, global corporations, and catastrophic bank failures. A former Senior Executive Service official at the Federal Deposit Insurance Corporation and founding partner of a \$17 million emergency management simulation company, he brings combined legal, accounting, and corporate expertise to sensitive, high-risk engagements. Christopher holds a J.D. from the Catholic University of America and a B.S.F.S. from Georgetown University's School of Foreign Service.

Ronald D. Coleman of Coleman Law Firm, P.C., is a commercial litigator focusing on free speech and reputational torts. He was lead counsel for Simon Tam in *Matal v. Tam*, the case which led to the U.S. Supreme Court's landmark First Amendment decision in *Matal v.*

Tam. He is also a leader among lawyers in social media, having authored one of the leading blogs on intellectual property for over 15 years and now prominent as a podcaster and legal commentator. Admitted in every federal circuit court, Mr. Coleman practices primarily in New York and New Jersey but has appeared in trial and appellate courts throughout the country.

Nathan Earle graduated *cum laude* from the University of Tennessee College of Law in 2005. Mr. Earle is a certified circuit court mediator, serves on the South Carolina Bar's Fee Dispute Resolution Board, and has served on Bar committees concerning practice and procedure and professional responsibility. He also holds a master's degree in history from Clemson University, where his thesis examined the seventeenth-century Court of Star Chamber.

Harry MacDougald is a practicing lawyer in Atlanta, Georgia with significant experience defending politically motivated criminal and bar disciplinary proceedings against Jeffrey B. Clark and Edward R. Martin over politically controversial positions taken in good faith. These cases implicate overlapping fundamental constitutional rights and similarly threaten the traditional functions of the legal profession.

The attorney *amici* have a direct professional interest in the standards governing lawyer discipline and disbarment. They are concerned with maintaining clear boundaries between sanctionable professional misconduct and the provision of legal advice, advocacy in litigation, and participation in public debate about contested legal and constitutional questions. They submit this brief to

assist the Court in considering the consequences that the decision below may have for attorneys' ability to represent clients and to advance nonfrivolous legal arguments in high-profile and politically charged matters.

Professor Randy E. Barnett is the Patrick Hotung Professor of Constitutional Law at the Georgetown University Law Center. Professor Barnett is a former criminal prosecutor who, while a professor, has represented clients in very high-profile and controversial constitutional cases and made numerous media appearances about these cases during their pendency. Professor Barnett joins this brief solely in his individual capacity; his participation does not represent the view of his employer, academic institution, or any other organization with which he is affiliated.

Amici do not submit this brief to endorse every factual assertion, legal theory, or litigation decision attributed to Petitioner. Rather, *amici* submit it because the petition presents important questions concerning the constitutional constraints on attorney discipline where the alleged misconduct includes public expression, legal advocacy, and advice regarding contested matters of election law and constitutional structure.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case concerns a state's use of the legal profession's ultimate punishment—permanent disbarment—to penalize an attorney's public political speech, legal advice, and constitutional advocacy regarding one of the most consequential and contested elections in the

Nation's history. California did not merely punish fraud on a tribunal, perjury, bribery, client theft, or another established form of professional misconduct. Rather, it invoked expansive and malleable disciplinary concepts, including "moral turpitude" and an attorney's duty to "support the Constitution," to condemn Petitioner's election-related speech and legal theories and to strip him of his livelihood.

That approach collides with the First Amendment and the Due Process Clause. A lawyer does not surrender constitutional protection for public political advocacy merely because he holds a law license, represents a controversial client, or speaks on a subject related to legal representation. This Court's recent decision in *Chiles v. Salazar* confirms that states may not evade First Amendment scrutiny through the label "professional speech" or by recharacterizing speech as "conduct" without demonstrating that the speech is genuinely integral to independently unlawful conduct. *Chiles v. Salazar*, 607 U.S. 627 (2026) (U.S. Mar. 31, 2026). *Chiles* thus reinforces *National Institute of Family & Life Advocates v. Becerra*, which rejected the proposition that speech is less protected simply because it is uttered by a professional. *National Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018).

The decision below effectively revives the professional speech doctrine this Court has rejected. It treats Petitioner's public remarks, media appearances, and written advocacy as subject to a special disciplinary regime just because he is a lawyer and because the subject matter overlapped with his representation of President Trump. But public political speech does not become

regulable professional conduct merely because the speaker holds a bar license, is counsel, or because the controversy has legal consequences. The State Bar Court of California (hereinafter “Bar”) identified no basis for treating Petitioner’s speeches, podcast appearances, and public essays as the equivalent of false representations to a court, perjury, fraud, or speech integral to an independently unlawful act. *See* Pet. 8-10; Pet. App. 83a-97a, 99a–106a.

Gentile v. State Bar of Nevada does not support the Bar’s approach. *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991). *Gentile* concerned trial publicity that posed a substantial likelihood of materially prejudicing a pending adjudication. Its limited rationale rests on the State’s compelling interest in preserving the fairness of specific proceedings. The decision below, by contrast, extends heightened regulation to advocacy directed at the public on disputed constitutional and political questions, without a showing that Petitioner’s statements materially prejudiced any particular proceeding. Indeed, the Bar could not establish that Petitioner’s Ellipse speech contributed to the assault on the Capitol, yet it relied on the same speech to support moral turpitude findings and permanent disbarment.

The constitutional infirmity is magnified by the disciplinary rules the Bar deployed. A prohibition on “acts involving moral turpitude, dishonesty or corruption” and a generalized duty to “support the Constitution” cannot function as free-floating authorizations to punish lawyers who articulate controversial constitutional theories or contested factual claims in the public square. When those provisions are used to regulate core political expression and to extinguish a valuable professional license, the First

Amendment and due process require narrow specificity, fair notice, a clear culpability standard, and safeguards against arbitrary or viewpoint-based enforcement.

The Bar's decision supplies none of those limits. It conflates deliberate, provable deception with allegedly insufficiently verified factual claims and with legal positions that regulators later describe as "unreasonable." It treats "should have known" and "no reasonable attorney" formulations, standards sounding in negligence or disagreement in the context of an actual proceeding, as sufficient to sustain findings carrying the moral condemnation of intentional dishonesty outside the context of an actual proceeding. And it establishes a precedent under which any lawyer who represents an unpopular client, advances a minority constitutional position, or participates vigorously in a politically charged public controversy may face professional ruin whenever disciplinary authorities later reject the lawyer's account of the facts or law outside any constitutionally approved context or standard.

The danger inherent in this case is not confined to Petitioner or to the 2020 election. Throughout American history, lawyers associated with unpopular causes have been vulnerable to efforts to equate political disagreement with professional unfitness. Cases such as *Miranda v. Arizona*, 384 U.S. 436 (1966), *Gideon v. Wainwright*, 372 U.S. 335 (1963), and *Brown v. Board of Education*, 347 U.S. 483 (1954) may never have been filed. If California's approach is left undisturbed, it will provide a ready template for future disciplinary campaigns against lawyers whose clients, legal theories, or public advocacy depart from prevailing political narratives. To prevent

this downward spiral, a constitutional line must be drawn, and it must be drawn now.

The First Amendment does not permit states to use professional licensure as a means of imposing an official orthodoxy on contested political and constitutional questions, and the Fourteenth Amendment does not permit the permanent destruction of a lawyer's professional life under vague, shifting, and politically malleable standards.

The Court should grant the petition, reverse the judgment below, and hold that a state may not permanently disbar an attorney for public political advocacy and contested constitutional advice under vague disciplinary provisions absent a clear and constitutionally sufficient showing of actual, knowing misconduct within a recognized category of regulable professional conduct.

ARGUMENT

When a state seeks to impose disbarment based materially on an attorney's speech or advocacy concerning a matter of public controversy, it must identify the particular statement or act at issue and establish that it constitutes either: (1) a materially false factual representation made with the constitutionally required culpability; (2) fraud or deception in an adjudicative proceeding; or (3) speech integral to independently unlawful conduct. A lawyer's unpopular client, political viewpoint, unsuccessful legal position, or participation in public debate cannot substitute for those showings.

I. PERMANENT DISBARMENT FOR PUBLIC POLITICAL ADVOCACY AND CONSTITUTIONAL ADVICE TRIGGERS THE FIRST AMENDMENT'S FULL PROTECTION AND THE FOURTEENTH AMENDMENT'S MOST DEMANDING PROCEDURAL SAFEGUARDS.

A law license is not a conditional privilege that may be withdrawn whenever a state disapproves of an attorney's politics, public statements, or constitutional theories. It is a constitutionally protected property and liberty interest and is treated as such in bar discipline hearings. *See In re Williams*, 464 A.2d 115 (DC 1983). Permanent disbarment terminates an attorney's ability to practice his chosen profession, inflicts enduring reputational injury, and brands the attorney as dishonest and morally unfit. When a state imposes that professional death penalty based substantially on public speech and legal advocacy, the First Amendment and the Due Process Clause apply with full force.

The conduct that drove Petitioner's disbarment was substantially speech: public remarks, podcast appearances, an essay in *The American Mind*, communications concerning election litigation, and advocacy concerning the 2020 election, the Twelfth Amendment, alternate electors, and the Vice President's role in the electoral count process. The Bar did not premise its sanction on client theft, bribery, perjury in a completed adjudication, or fraud on a tribunal. It imposed permanent disbarment because it concluded that Petitioner's election-related claims and constitutional arguments were false, dangerous, and incompatible with what the tribunal regarded as his professional obligations.

That is a constitutionally consequential distinction. The government may regulate genuine professional misconduct. But it may not use professional discipline to impose an official account of contested elections, disputed facts, or unsettled constitutional questions. Nor may it use the severity of disbarment as leverage to suppress lawyers' willingness to advise controversial clients, advance minority legal theories, or speak publicly about issues at the center of hotly contested national political debate.

The Bar's decision threatens exactly that result. It teaches attorneys that a lawyer who speaks forcefully for a politically disfavored client, advocates an unconventional constitutional position, or participates in public debate about an election may later be judged not merely mistaken, but dishonest, guilty of moral turpitude, and professionally unfit. That rule threatens the very foundation of an independent bar, distorts the adversary system, and chills the very advocacy through which constitutional doctrine is tested and developed. This foundation is fundamental to American jurisprudence.

II. *CHILES* AND *NIFLA* FORECLOSE CALIFORNIA'S ATTEMPT TO CREATE A PROFESSIONAL SPEECH EXCEPTION FOR ELECTION-RELATED ADVOCACY.

Chiles v. Salazar makes clear that a state may not reduce First Amendment protection simply by reclassifying speech as "professional speech" or by attaching speech regulation to a professional license. *Chiles* rejects the proposition that speech loses constitutional protection because the speaker is a professional, because the subject

matter touches professional services, or because the state prefers to describe the speech as “conduct.” *Chiles*, 607 U.S. at 645-48.

The point is decisive here. The Bar treated Petitioner’s public advocacy as subject to discipline in significant part because he was speaking as a lawyer for President Trump and because his comments concerned legal theories and factual allegations related to election litigation. That is precisely the sort of profession-based speech regulation that *Chiles* forbids.

Similarly, *NIFLA* held that “[s]peech is not unprotected merely because it is uttered by ‘professionals.’” *Nat’l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755, 767 (2018). The state retains authority to regulate professional conduct that incidentally involves speech. But that narrow principle does not allow a state to regulate speech itself merely by asserting that it occurred in a professional context or concerned a client matter. Otherwise, every public statement by a lawyer concerning a client, a legal controversy, or a constitutional question could be subjected to a separate and diminished First Amendment standard.

The Bar’s reasoning does precisely that. It treats public speeches, media appearances, and published commentary as though they were functionally equivalent to representations in pleadings, testimony in court, or evidentiary submissions to a tribunal. Yet the Bar did not establish that Petitioner’s public comments were made to a court, submitted as evidence, directed to a jury, or otherwise connected to the integrity of an identifiable adjudication. The state cannot convert public political advocacy into punishable professional conduct simply

because the speaker also happened to represent a client with a stake in the controversy.

Chiles also clarifies the limits of the “speech integral to conduct” formulation. That doctrine does not permit the government to call speech “conduct” whenever it is connected in some general way to a professional service. The state must identify independently unlawful conduct to which the speech was integral. It cannot use the doctrine as a shortcut to suppress a lawyer’s political advocacy, legal advice, or constitutional argument. *Chiles*, 607 U.S. at 641-42.

California identified no such limiting principle. Its theory would permit the state to discipline attorneys for speaking publicly about clients’ causes whenever regulators later conclude that the attorney’s factual premises or legal analysis were mistaken. That is not regulation of conduct that incidentally involves speech. It is direct regulation of speech because of the speaker’s status as an attorney and the government’s disapproval of the content of his message.

III. *GENTILE* DOES NOT AUTHORIZE DISCIPLINE FOR PUBLIC ADVOCACY UNCONNECTED TO MATERIAL PREJUDICE TO A SPECIFIC PROCEEDING.

The Bar cannot derive authority for its ruling from *Gentile v. State Bar of Nevada*. *Gentile* addressed a limited trial publicity rule governing lawyers’ out-of-court statements when those statements created a substantial likelihood of materially prejudicing an identifiable pending proceeding. 501 U.S. 1030, 1075 (1991). The case recognized

that attorneys' public comments may be regulated in the narrow setting in which they threaten jury impartiality, compromise a pending adjudication, or otherwise impair the administration of justice in a concrete case.

That rationale does not extend to broad public discussion of elections, alleged election irregularities, constitutional structure, or the authority of government officials. The Bar did not establish that Petitioner's Ellipse remarks, podcast appearances, or published essay created a substantial likelihood of material prejudice to a particular adjudication. Nor did it show that those communications threatened to taint a jury, interfere with a judicial ruling, corrupt the evidentiary process, or disrupt the fairness of a pending proceeding.

The absence of the *Gentile* nexus is especially important because the Bar treated Petitioner's public expression as a major basis for disbarment. It relied on speech delivered to the public at large in the midst of a national political controversy, not speech designed to influence jurors or undermine an ongoing proceeding. The State may not expand *Gentile*'s limited trial publicity holding into a general license to impose professional discipline on lawyers who speak publicly about politically sensitive legal controversies.

California's expansion of this doctrine is dangerous. Lawyers routinely explain litigation positions, defend clients in the public arena, criticize governmental conduct, and participate in debates about unsettled constitutional questions. Political cases frequently involve intense media attention and highly charged public disagreement. If a state may treat such speech as subject to discipline

whenever it later desires to find the lawyer's claims as "unpersuasive" or "inadequately substantiated," then lawyers who represent controversial clients will practice under a continuing threat of retrospective punishment.

IV. CALIFORNIA'S USE OF "MORAL TURPITUDE" AND A GENERALIZED DUTY TO "SUPPORT THE CONSTITUTION" TO PUNISH SPEECH IS UNCONSTITUTIONALLY VAGUE AND INVITES ARBITRARY ENFORCEMENT.

The First Amendment demands heightened clarity when a state regulates speech, particularly political speech. Vague rules chill expression because speakers cannot determine in advance what speech will trigger punishment and because broad standards invite selective or viewpoint-based enforcement. The Due Process Clause independently prohibits a state from permanently depriving an attorney of a professional license under standards so indefinite that they fail to provide fair notice or constrain official discretion.

California's reliance on "moral turpitude" and a generalized duty to "support the Constitution" raises those concerns in their sharpest form. Section 6106 prohibits "acts involving moral turpitude, dishonesty or corruption." Cal. Bus. & Prof. Code § 6106. Section 6068(a) requires attorneys to "support the Constitution and laws of the United States and of this state." *Id.* § 6068(a). Whatever legitimate applications those provisions may have to concrete misconduct, they cannot become open-ended tools for punishing lawyers who advocate contested constitutional theories or forcefully dispute the government's account of a political controversy.

The Bar's application of these provisions demonstrates the danger. It treated Petitioner's statements concerning alleged fraud, alternate slates of electors, and the constitutional role of the Vice President as proof of moral turpitude and as a failure to support the Constitution. In doing so, it transformed disagreement about evidence and constitutional meaning into professional disloyalty.

That transformation is incompatible with fair notice. Attorneys must be able to distinguish intentional fraud, perjury, or knowing deception from advocacy based on incomplete evidence, contested factual inferences, or aggressive constitutional argument. The Bar's analysis blurred those distinct categories. It treated disputed assertions, alleged failures of verification, and legal theories regarded as unreasonable by the tribunal as though they established the intentional dishonesty necessary for moral turpitude.

The Bar's reliance on "should have known" and "no reasonable attorney" formulations makes the defect even more serious. Such formulations invoke FRCP Rule 11 or negligence-like situations without the protections involved with standards. They do not clearly establish that the attorney "knowingly" made a false statement, had no cognizable basis for the statement, that the statement could not under any further discovery of proof be true, or that the attorney intended to deceive. Yet the Bar used them to impose a sanction that rests on a judgment of moral unfitness and permanently excludes Petitioner from his profession.

If those standards are permitted to stand, attorneys will have no reliable way to know, or have fair notice, when vigorous legal advocacy on a divisive political question will later be characterized as dishonesty or constitutional disloyalty. The inevitable result will be self-censorship, diminished representation of unpopular clients, and a bar less willing to test prevailing assumptions about government power, election administration, or constitutional meaning.

V. THE BAR’S “KNOWING FALSEHOOD” THEORY DOES NOT CURE THE CONSTITUTIONAL DEFECTS IN ITS RATIONALE OR ITS SANCTION.

The Bar seeks to characterize this case as a straightforward matter of knowing falsehoods rather than political speech. But the constitutional question cannot be resolved merely by affixing that label after the fact. The relevant inquiry is whether the State applied clear, narrowly defined, and constitutionally permissible standards to distinguish intentional deceit from contested advocacy—and whether it imposed disbarment based on conduct that properly falls outside First Amendment protection.

The Bar’s decision did not maintain that distinction. It repeatedly moved between allegations of deliberate falsehood, assertions that Petitioner was objectively unreasonable, and conclusions that he “should have known” his claims lacked adequate support. It treated a broad course of advocacy—public comments, legal theories, disputed factual claims, and advice on a fast-moving constitutional controversy—as a unified body of misconduct. That mode of analysis makes it impossible

to determine whether the sanction rested on narrowly identified, knowing falsehoods or on a broader repudiation of Petitioner's political and constitutional advocacy.

The State may punish genuine fraud and intentional deception, including deceit directed at tribunals. But it cannot use that legitimate authority to treat an attorney's entire public advocacy campaign as professional misconduct merely because the State rejects the attorney's factual assertions or constitutional conclusions. The Constitution requires an exacting distinction between provable deceit and advocacy that is controversial, erroneous, speculative, or ultimately unsuccessful.

The Bar's approach also creates an unacceptable risk of selective enforcement. Elections and constitutional controversies invariably produce competing factual claims, competing accounts of official conduct, and legal theories that are vigorously contested. Lawyers across the ideological spectrum frequently advance assertions that later prove incorrect, rely on disputed evidence, and urge arguments that courts reject. A disciplinary system that singles out one lawyer's speech in one high profile political controversy for permanent disbarment under vague standards presents an obvious danger of arbitrary and viewpoint-based enforcement.

The First Amendment does not permit a state to reserve professional death penalties for those who take the wrong side of an intensely contested political debate. And due process does not permit a state to employ vague disciplinary language, shifting culpability standards, and retrospective judgments of reasonableness to extinguish a lawyer's license.

**VI. RETROSPECTIVE DISCIPLINE FOR
CONTROVERSIAL ADVOCACY BURDENS
CLIENTS' ACCESS TO INDEPENDENT
COUNSEL.**

The consequences of the decision below extend far beyond Petitioner and the constitutional stakes extend beyond a lawyer's individual interest in speaking or practicing. Clients depend on counsel to give candid advice before the law is settled, the facts are fully developed, or public opinion has formed a consensus. That need is especially acute for citizens and organizations engaged in public advocacy, election-related activity, religious exercise, civil rights work, and other issues that generate intense public disagreement. A disciplinary regime that permits retrospective professional discipline for contentious advocacy burdens not merely the lawyer and law firms but clients, civic organizations, religious institutions, advocacy groups, candidates, and citizens who need candid counsel in difficult matters.

Although *amici* differ in their personal politics and views about the 2020 election and about Petitioner John Eastman's legal theories, they are united in a professional concern: the decision below blurs the line between zealous advocacy for a controversial client and sanctionable misconduct. *Amici* have strong, practical stakes in how this Court resolves this matter. Day to day, *amici* give and/or receive advice about what arguments may lawfully be presented to courts and advanced to the public, often based on incomplete evidence and in areas where constitutional doctrine is unsettled.

If bar authorities may, after the fact, recharacterize contested constitutional positions or reliance on developing factual records as “dishonesty” or “moral turpitude”—particularly in cases involving hot-button political issues—then any lawyer who represents a controversial client or advances an unpopular argument does so under the shadow of professional ruin. That risk will inevitably chill robust advocacy on behalf of clients, deter lawyers from taking politically sensitive matters, and skew the development of the law by discouraging litigants from testing the limits of existing precedent.

Amici are also acutely aware, from both history and experience, that professional discipline regimes can be used to target disfavored lawyers and clients. In prior eras, bar authorities and political actors sought to discipline lawyers who represented alleged communists, civil rights activists, and other unpopular groups, often invoking broad notions of “loyalty” or “constitutional governance” to justify punitive action. The decision below reproduces the core features of those episodes: it applies vague norms, in a highly politicized environment, primarily against counsel associated with a particular national political figure, while treating their advocacy as a “threat to democracy” rather than as contested legal argument subject to ordinary judicial review.

Lawyers who anticipate retrospective scrutiny of their public comments, legal analysis, or advocacy may decline representation, avoid urgent matters, soften advice that clients need to hear, or refuse to pursue arguments that are novel but lawful. The predictable result is not simply self-censorship by lawyers. It is reduced access to

independent counsel for the clients and causes most likely to be socially and politically disfavored.

The attorney-client relationship is a principal means by which members of the public translate grievances and legal positions into lawful participation in government. A rule that makes representation of unpopular causes professionally perilous thus burdens the clients' ability to obtain effective counsel as well as the attorney's ability to provide it.

Amici offer a perspective rooted in the function of the legal profession and access to it. Lawyers are not merely technicians who repeat prevailing popular institutional views. They must evaluate incomplete records, advise clients under time pressure, test statutory and constitutional arguments, preserve issues for review, and press positions that clients and courts may ultimately reject. The profession has a proud history of advocacy of unpopular causes and clients. *See, e.g., National Socialist Party v. Village of Skokie*, 432 U.S. 43 (1977). The profession cannot carry out those functions if subsequent professional discipline treats legal failure, minority reasoning, or political controversy as a proxy for dishonesty.

Legal doctrine develops through adversarial presentation. Arguments now viewed as orthodox were often initially disputed, novel, or rejected in lower tribunals. The relevant constitutional principle is not that every legal position is sound or that every claim should be pursued. It is that an attorney's legal conclusion does not become a knowingly false factual statement merely

because a court, regulator, or later consensus rejects it. The boundary between permissible advocacy and disciplinary misconduct must remain tied to recognizable categories of wrongdoing, rather than to hindsight judgments about whether a lawyer argued what most decision-makers now regard as the better position.

This point matters to ordinary legal practice far beyond high-profile public controversies. Lawyers routinely face unsettled statutes, inconsistent precedent, disputed facts, compressed deadlines, and clients who require advice before every issue can be conclusively resolved. If permanent disbarment can turn on a regulator's retrospective assessment that counsel should have been more cautious, more conventional, or more aligned with a prevailing view, lawyers will have powerful incentives to avoid hard cases and to substitute institutional conformity for independent professional judgment.

When disciplinary standards are used to punish speech, legal analysis, or public advocacy in a contested political setting, their breadth creates an obvious danger: the same conduct may be described as zealous advocacy in one context and moral unfitness in another, depending on the popularity of the client, the political valence of the dispute, or the identity of the decision-maker. Lawyers on all sides of public controversies must be able to represent clients, state legal positions, and participate in lawful debate without fearing that an adverse reaction to the cause itself will later be recharacterized as proof of dishonesty.

**VII. THE DECISION BELOW THREATENS TO
SUPPLY A TEMPLATE FOR PUNISHING
LAWYERS WHO REPRESENT DISFAVORED
CLIENTS OR ADVANCE UNPOPULAR LEGAL
ARGUMENTS.**

Lawyers have historically served as advocates for unpopular clients, minority positions, and constitutional claims that powerful institutions initially rejected. The legal profession cannot perform that function if attorneys must fear that regulators will treat controversial legal theories, public criticism of government, or advocacy in politically charged matters as evidence of moral unfitness.

The danger is especially acute in disputes concerning elections and government power. Those controversies arise quickly, involve incomplete and disputed factual records, generate intense public pressure, and often require lawyers to advise clients before every factual question has been conclusively resolved. A rule that authorizes retrospective disbarment whenever regulators later regard a lawyer's advocacy as factually or legally unacceptable will deter lawyers from offering candid advice, representing controversial clients, or pressing claims that depart from prevailing views of those in power.

The Bar's decision therefore does more than discipline a single lawyer. It announces that a state may use vague concepts of moral turpitude and constitutional loyalty to supervise lawyers' participation in public debate and to enforce a state-approved understanding of democracy, elections, and constitutional governance. That is fundamentally inconsistent with the First Amendment,

the adversary system, and the independence of the legal profession.

This Court need not endorse Petitioner's views concerning the 2020 election to reject that dangerous proposition. The question is whether the Constitution permits a state to impose permanent disbarment under vague, politically malleable disciplinary standards because a lawyer advanced controversial claims and constitutional theories in a national political dispute. The answer must be no.

CONCLUSION

The Constitution requires a clear and narrow basis before a state may disbar a lawyer for speech and advocacy. States retain authority to discipline attorneys for actual professional misconduct. Nothing in this brief questions a state's power to punish fraud on a court, perjury, knowing submission of false evidence, theft, bribery, obstruction, or other well-defined forms of misconduct. Nor does this brief suggest that a law license immunizes attorneys from generally applicable laws.

But when the alleged misconduct consists substantially of public speech, legal advice, and constitutional advocacy, the state must satisfy the First Amendment and the Due Process Clause. It must identify a clear rule, establish the requisite culpability, and demonstrate that the lawyer's conduct falls within a constitutionally permissible ground for discipline. It may not rely on professional status to reduce constitutional protection, invoke an undifferentiated theory of speech-integral-to-conduct, or deploy vague standards of moral turpitude and

constitutional loyalty as retrospective tools for punishing controversial viewpoints.

That is particularly so when the penalty is disbarment. Permanent exclusion from a profession requires more than a later determination that a lawyer's election-related public statements or constitutional arguments were wrong. It requires a clearly defined and constitutionally valid showing of professional misconduct.

The Court should grant the petition and reverse the judgment below.

Respectfully submitted,

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