

No. 26-336

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 SEVENTEEN CURRENT AND FORMER
ATTORNEYS OF PRESIDENT DONALD J. TRUMP
AND HIS ASSOCIATES TARGETED
BY BARFARE AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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INTEREST OF THE AMICUS CURIAE¹

The proceedings below are but one part of a concerted, nationwide effort by former government officials and advocacy groups to coopt state bar proceedings to punish, threaten, and drive attorneys out of the legal profession simply because they represented President Trump. The transparently partisan campaign against Petitioner, Dr. John Eastman, a nationally recognized conservative constitutional scholar and attorney, was led primarily by two so-called public interest organizations, Lawyers Defending American Democracy (LDAD) and States United Democracy Center (SUDC). But their efforts were not limited to targeting Petitioner, who represented President Trump in multiple federal and state litigation matters concerning the integrity of our elections. They have filed—and continue to file—similar ‘ethics’ complaints and have waged public smear campaigns against over one-hundred conservative attorneys who represented President Trump, his campaign, electors, political committees, and allied organizations. This cannot be allowed to continue.

Amici appear because they, like Petitioner, have been targeted by LDAD, SUDC, and other leftist advocacy organizations through public campaigns designed to strip them of their licenses simply because they represented

1. Petitioner’s and Respondent’s counsel were provided timely written notice of this brief in accordance with Supreme Court Rule 37.2. No counsel for a party authored this brief, in whole or in part, and no person or entity other than amicus curiae and their counsel made a monetary contribution to the preparation or submission of the brief.

or supported President Trump.² The close coordination between these outside advocacy organizations and state bar disciplinary counsel compromises the neutrality of quasi-judicial attorney disciplinary proceedings. Absent intervention by this Court, organizations like LDAD and SUDC will continue to interfere with state bar disciplinary proceedings and coopt bar counsel to do their political dirty work. Such retaliatory “barfare” against attorneys like Petitioner and amici creates a substantial chilling effect on the practice of law and undermines public trust in the integrity of the profession and our entire judicial system.

This Honorable Court, which is truly the court of last resort for the preservation of our systems of professional responsibility and the rule of law, serves a unique role in protecting the principles of American jurisprudence that entitle all persons of the right to counsel and preserves public trust in the integrity of the legal profession. The proceedings below constitute a threat to these basic principles which only this Court can protect by accepting Petitioner’s claim and addressing the growing cancer of “barfare” on the practice of law in America.

2. A complete list of amici and copies of professional complaints filed against them by third-party organizations appear in Appendices A and B, respectively.

SUMMARY OF THE ARGUMENT

The proceedings against Petitioner are the culmination of a pernicious national scheme in which organized advocacy groups identify attorneys representing their political and ideological opponents, generate boilerplate disciplinary complaints to state bars alleging attorneys' arguments lack merit, provide those supposedly independent disciplinary entities with investigatory and legal support, publicly campaign for sanctions, and leverage their influence and control to impose discipline on those attorneys. This scheme, about which these organizations boast in their public statements and fund-raising materials, threatens attorney independence, the right to counsel, and public trust in the integrity of the profession.

This case presents an important question for this Court concerning the growing practice of “barfare”—the use of professional discipline as a political weapon against lawyers who represent controversial clients and advance challenging, novel legal arguments, particularly with respect to election integrity. The record below demonstrates that Petitioner’s disciplinary proceedings were part of a coordinated effort by outside organizations to instigate and materially influence the investigation, claims, arguments, and evidence employed by the California State Bar’s Office of Chief Trial Counsel (“OCTC”). These organizations have made clear that they will not stop with Petitioner. As they have stated publicly, their goal is to “shame [President Trump’s attorneys] and make them toxic in their communities and in their firms”

and “kill the pool of available legal talent [to represent President Trump and his supporters] going forward.”³

State bar regulated attorney discipline exists to protect the public and ensure that political influences present in everyday politics do not dictate attorney-client relationships or infect the integrity of the profession. Hijacking attorney disciplinary processes for political vendettas harms not only attorneys and their clients, but also the public’s trust in the fairness and impartiality of our judicial system. Amici call upon this Court, the Court of last resort for Petitioner and many others, to protect the independence and neutrality of state bar disciplinary proceedings from outside organizations and maligned actors who seek to weaponize those proceedings against their political and ideological opponents. Regrettably, the California judicial system, whether through indifference or assent, failed to rectify blatant violations of Petitioner’s constitutional rights that occurred during his state bar disciplinary proceedings. That heavy responsibility now falls on this Court. Inaction risks irreparable harm to the profession and our Nation’s legal system.

3. See Lachlan Markay & Jonathan Swan, *Scoop: High-Powered Group Targets Trump Lawyers’ Livelihoods*, Axios (Mar. 7, 2022), <https://www.axios.com/2022/03/07/trump-election-lawyers-disbar> (quoting David Brock and another person involved with The 65 Project).

ARGUMENT

I. POLITICIZED ADVOCACY ORGANIZATIONS EXERTED EXTRAORDINARY INFLUENCE OVER PETITIONER'S STATE DISCIPLINARY PROCEEDINGS.

The disciplinary proceedings against Petitioner did not arise through the typical routes taken in attorney disciplinary proceedings: client grievance or claim, referral by opposing counsel, or much less referral by a sanctioning court. Rather, the disciplinary proceedings against Petitioner were initiated by advocacy organizations whose publicly stated objectives are to secure professional sanctions against attorneys representing or supporting President Trump.

A. Partisan Organizations Simply Attacked Petitioner for His Zealous Advocacy in Support of a Controversial Client.

SUDC's and LDAD's complaints did not principally argue Petitioner violated a duty to his client, misrepresented facts to a court, or violated a duty of candor to a tribunal.⁴

4. Letter from Stephen Bundy & States United Democracy Ctr. to George S. Cardona, Chief Trial Counsel, State Bar of Cal., *Re: Request for Investigation of John C. Eastman, California State Bar No. 193726* (Oct. 4, 2021) <https://statesunited.org/wp-content/uploads/2021/10/10.4.21-FINAL-Eastman-Cover-Letter-Memorandum.pdf> [hereinafter *SUDC Compl.*]; Letter from Lawyers Defending Am. Democracy to George S. Cardona, Chief Trial Counsel, State Bar of Cal., *Re: Request for Investigation of John C. Eastman, California Bar Number 193726* (Dec. 16, 2021) <https://ldad.org/wp-content/uploads/2021/12/Eastman-Complaint-121621.pdf> [hereinafter *LDAD Compl.*].

They alleged simply that he lacked a good-faith basis for advancing constitutional and election-law arguments on behalf of President Trump.⁵ SUDC and LDAD repeatedly challenged the *merits* of Petitioner’s arguments, asserting that, because some courts, commentators, election officials, and journalists had reached contrary conclusions, Petitioner’s legal theories and arguments were “frivolous” and, on that basis alone, disbarment was necessary.⁶

For example, SUDC asserted that Petitioner’s *Texas v. Pennsylvania* filing was “flatly inconsistent with settled principles of existing law” because, in SUDC’s view, it departed from established doctrines governing original jurisdiction, laches, state autonomy, finality, and preclusion.⁷ SUDC claimed that “[n]o reasonable lawyer could have regarded the theory of Mr. Trump’s complaint as tenable.”⁸ However, contrary to SUDC’s assertions, Petitioner’s legal theories were echoed and supported by many prominent and respected attorneys and jurists.⁹

5. See *SUDC Compl.*, *supra* note 4, at 28–29; *LDAD Compl.*, *supra* note 4, at 6.

6. See *SUDC Compl.*, *supra* note 4, at 22, 24–29; *LDAD Compl.*, *supra* note 4, at 1–6.

7. See President Donald Trump’s Motion to Intervene, *Texas v. Pennsylvania*, No. 220155 (U.S. Dec. 9, 2020); *SUDC Compl.*, *supra* note 4, at 24–25.

8. *SUDC Compl.*, *supra* note 4, at 22.

9. See Brief of Missouri and 16 Other States as Amici Curiae, *Texas v. Pennsylvania*, No. 220155 (U.S. Dec. 9, 2020); Brief of U.S. Representative Mike Johnson and 125 Other Members of the U.S. House of Representatives as Amici Curiae, *Texas v. Pennsylvania*, No. 220155 (U.S. Dec. 10, 2020); *Texas v.*

Moreover, no court found Petitioner’s legal theories or submissions so lacking in merit that Petitioner was ordered to show cause why he should not be sanctioned, much less referred to state bar counsel.¹⁰ No client filed a complaint against Petitioner; rather, grievances came from Petitioner’s political opponents intending to silence him and thwart further representation of his client, President Trump.

SUDC took the same approach in attacking Petitioner for his advice concerning the Vice President’s role in the electoral count. SUDC characterized Petitioner’s memoranda as “frivolous,” “false or deceptive,” and worthy of discipline, simply because other lawyers disagreed with him.¹¹ But the record reflects that other lawyers and scholars made similar arguments concerning the Electoral Count Act’s constitutionality and the Vice President’s role in resolving disputed electoral slates.¹² In truth, the underlying allocation-of-authority question has been debated for years.¹³ Yet SUDC characterized that unresolved legal question as “professional misconduct.”

Pennsylvania, 141 S. Ct. 1230 (2020) (mem.) (denying, without sanctions, leave to file based on standing).

10. *See In re Eastman*, 6 Cal. State Bar Ct. Rptr. 186, 201, 204 (Review Dep’t 2025).

11. *See SUDC Compl.*, *supra* note 4, at 22.

12. *See In re Eastman*, 6 Cal. State Bar Ct. Rptr. at 201–02, 216.

13. *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 L. Colvin & Edward

LDAD followed suit. After expressly adopting SUDC's factual assertions, LDAD claimed Petitioner advised the Vice President to exercise powers “neither the Constitution nor any relevant statute gave him” and characterized Petitioner's advocacy as “reckless fantasies” that were so “footless” that they appeared to be “deliberate falsehoods.”¹⁴ LDAD then urged the Bar to treat Petitioner's collaboration with other lawyers as an aggravating circumstance and impose sanctions, branding their collective advocacy an “attempted coup” undertaken to inflict “grave constitutional trauma.”¹⁵

At bottom, SUDC's and LDAD's accusations against Petitioner amounted to little more than a difference of legal opinion along political lines.¹⁶ On these strictly partisan grounds, the organizations demanded California revoke Petitioner's license.

**B. Outside Organizations Materially Supported,
If Not Guided, the State Bar's Investigative
and Prosecutorial Process.**

Having concocted a pretextual basis to disbar Petitioner, SUDC and LDAD next fed bar counsel the

B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb*, 64 U. Miami L. Rev. 475 (2010).

14. See *LDAD Compl.*, *supra* note 4, at 1, 6.

15. *Id.* at 6, 8.

16. Compare *SUDC Compl.*, *supra* note 4, at 22–29, and *LDAD Compl.*, *supra* note 4, at 4–8, with Brief of Missouri and 16 Other States as Amici Curiae, *supra* note 9, and *In re Eastman*, 6 Cal. State Bar Ct. Rptr. at 201–02, 216; see also *infra* Part II.A.

legal research, analysis, and evidence it used to determine that Petitioner violated the rules of professional conduct.

Following its October 4, 2021 complaint, SUDC offered to consult with OCTC concerning the ethics violations it identified.¹⁷ SUDC then corresponded with OCTC during the investigation, including through a November 16, 2021 letter stating that new “revelations highlight[ed] the need for the bar to undertake a thorough review,” and through an April 14, 2022 letter supplying “additional facts related to the conduct described in [SUDC’s] Complaint.”¹⁸ OCTC apparently treated these submissions as the “starting point” for its investigation and invited SUDC to provide “additional facts.”¹⁹

OCTC’s Notice of Disciplinary Charges (“NDC”) subsequently incorporated SUDC’s factual assertions, legal theories, and scienter formulations, in some

17. See *SUDC Compl.*, *supra* note 4, cover letter at 1.

18. Letter from Stephen Bundy & States United Democracy Ctr. to William Todd, Assistant Chief Trial Counsel, State Bar of Cal., *Re: Matter of John Eastman, Case Number 21-O-12451*, at 1–3 (Nov. 16, 2021), <https://statesunited.org/wp-content/uploads/2021/11/Supplemental-Letter-to-State-Bar-of-California.pdf> [hereinafter *First Supplemental Submission*]; Letter from States United Democracy Ctr. to William Todd, Assistant Chief Trial Counsel, State Bar of Cal., at 1–3 (Apr. 14, 2022), https://statesunited.org/wp-content/uploads/2022/04/04.14.22_Case-Number-21-O-12451_Second-Supplemental-Filing_Final1.pdf [hereinafter *Second Supplemental Submission*].

19. See *Second Supplemental Submission*, *supra* note 18, at 1.

instances verbatim.²⁰ For example, SUDC’s original complaint singled out Petitioner’s obviously hyperbolic assertion in *Texas v. Pennsylvania* that the probability of Joseph Biden prevailing in each of four contested States was “less than one in a quadrillion.”²¹ The NDC then repeated the same “one in a quadrillion” allegation and charged that it rested on a statistical analysis that “no reasonable expert on statistical analysis would agree with,” mirroring precisely the basis made by SUDC for this allegation.²²

SUDC also urged the Bar to investigate Petitioner under Business and Professions Code § 6106,²³ arguing discipline could be predicated on dishonest conduct undertaken intentionally, recklessly, or with gross negligence.²⁴ Following suit, OCTC charged Petitioner with the same violations of § 6106 and repeated that Petitioner either knew, or was “grossly negligent in not

20. Compare *SUDC Compl.*, *supra* note 4, at 13, 20–21, 26, with Notice of Disciplinary Charges ¶¶ 22–38, 53–56, *In the Matter of John Charles Eastman*, No. SBC-23-O-30029 (State Bar Ct. Cal. Jan. 26, 2023) [hereinafter *NDC*].

21. See *SUDC Compl.*, *supra* note 4, at 26 (asserting that the statistical allegation rested on a “transparently false assumption”).

22. See *NDC*, *supra* note 20, ¶¶ 36(c), 38(c), *In the Matter of John Charles Eastman*, No. SBC-23-O-30029 (State Bar Ct. Cal. Jan. 26, 2023).

23. See *SUDC Compl.*, *supra* note 4, at 21 (identifying Cal. Bus. & Prof. Code § 6106 as a basis for discipline).

24. *Id.* at 20–21.

knowing,” that the challenged representations were false or misleading.²⁵

OCTC also lifted entire misconduct allegations directly from SUDC’s complaint in charging Petitioner. For example, OCTC adopted nearly verbatim SUDC’s specific claim that Petitioner violated California Rules of Professional Conduct 4.1 and 8.4(c) when he argued that the election was tainted by “outright fraud,” including “electronic manipulation of voting tabulation machines,” and that there were “dual sets of electors from seven states.”²⁶ OCTC identified the same representations as the basis of a § 6106 misrepresentation count against Petitioner, parroting the same allegations made by SUDC.²⁷

LDAD coordinated closely with SUDC in targeting Petitioner, filing its complaint with the OCTC in December 2021.²⁸ Rather than engage in an independent analysis, LDAD acknowledged that it built upon what SUDC already submitted to the OCTC.²⁹ In March 2022, LDAD

25. *See NDC, supra* note 20, ¶¶ 22–34 (charging multiple violations of § 6106 and repeatedly alleging intentional or grossly negligent misrepresentation).

26. *See SUDC Compl., supra* note 4, at 13.

27. *See NDC, supra* note 20, ¶¶ 53–56 (making the same “outright fraud,” “electronic manipulation of voting tabulation machines,” and “dual slates of electors from seven states” allegations predicates of Count Six under § 6106).

28. *See LDAD Compl., supra* note 4, at 1.

29. *LDAD Compl., supra* note 4, at 1 (“Before filing this complaint, we reviewed the complaints States United Democracy

transmitted to State Bar Investigator Timothy Caldwell a detailed timeline it prepared while working on its complaint against Petitioner, explaining that LDAD was providing the timeline for the “exclusive use of the California State Bar Eastman investigation staff.”³⁰ Six weeks later, OCTC’s May 11 investigative letter followed much of the same chronology and questioned Petitioner about many of the events LDAD had catalogued.³¹ OCTC ultimately charged Petitioner with misconduct arising from those same events.³² LDAD and SUDC would later jointly submit a complaint against Petitioner to the District of Columbia Bar making the same allegations.³³

Center filed with you on October 4 and November 16, 2021. We adopt the carefully-documented and richly annotated factual assertions those documents contain.”).

30. See Email from Cheryl Niro, LDAD, to Timothy Caldwell, OCTC (Mar. 29, 2022) [hereinafter *Niro Email*], attachment at 2, reproduced in Appendix C.

31. Compare *Niro Email*, *supra* note 30, attachment at 4, 6–8 (cataloguing Petitioner’s electoral-count memoranda, January 2 appearance, January 4 meeting, and January 6 communications and speech), with Letter from Randall A. Miller, Miller Law Associates APC, to Angie Esquivel, Staff Counsel & Charlie Hummell, Investigator, State Bar of California, *Re: Respondent: John C. Estman State Bar Case No.: 21-O-11801* at 3, 73–78, 87–98 (Sept. 22, 2022), <https://johneastman.substack.com/p/response-to-california-bar-investigation> (reproducing OCTC’s May 11, 2022 inquiries concerning those subjects).

32. See *NDC*, *supra* note 20, ¶¶ 12–28, 48–67.

33. Dennis Aftergut signed both California complaints; he and several SUDC signatories later signed SUDC and LDAD’s joint D.C. complaint. See *SUDC Compl.*, *supra* note 4, cover letter at 1–3; Letter from States United Democracy Ctr. & Lawyers

In short, there is ample evidence showing that the OCTC did not conduct an independent investigation and legal analysis of the facts. Instead, it essentially outsourced its investigation to SUDC and LDAD by adopting their factual allegations, legal theories and work product wholesale. OCTC welcomed outside advocacy groups to drive and ultimately influence the outcome of the disciplinary process against Petitioner. OCTC's reliance on SUDC and LDAD was, in fact, so strong that, in March 2022, California Bar staff publicly thanked SUDC and LDAD for their help in launching Petitioner's disciplinary proceedings.³⁴

Defending Am. Democracy to Hamilton P. Fox III, Disciplinary Counsel, D.C. Ct. App., *Re: Request for Investigation of John Charles Eastman* at 6–10 (Aug. 11, 2022), https://statesunited.org/wp-content/uploads/2022/08/08.11.22_States-United-LDAD_Complaint-to-DC-ODC-re-John-Eastman_Final.pdf [hereinafter *SUDC-LDAD D.C. Compl.*].

34. See *State Bar Announces John Eastman Ethics Investigation*, State Bar of California (Mar. 1, 2022), <https://www.calbar.ca.gov/news/state-bar-announces-john-eastman-ethics-investigation>; *Second Supplemental Submission*, *supra* note 18, at 1; *California Bar Agrees to Investigate John Eastman*, Lawyers Defending American Democracy (Mar. 3, 2022), <https://ldad.org/letters-briefs/ca-bar-to-investigate-eastman>.

II. ADVOCACY ORGANIZATIONS LIKE SUDC AND LDAD ARE PART OF A COORDINATED CAMPAIGN TO HIJACK AND WEAPONIZE STATE BAR DISCIPLINARY PROCEEDINGS AGAINST ATTORNEYS REPRESENTING PRESIDENT TRUMP.

Lest the Court believe Petitioner’s disciplinary proceedings are an isolated incident, amici, who have also represented or advised President Trump, are victims of the same collusive relationship between outside advocacy organizations and state bar disciplinary counsel. The organizations’ playbook against them is largely the same—file boilerplate state bar complaints on the pretext that President Trump’s attorneys violated the rules of professional conduct by making allegedly “frivolous” arguments, supply conspiring bar counsel with evidence, arguments, and other work product needed to paper disciplinary proceedings and obtain sanctions, then rinse and repeat in other states. Their goal, about which they boast to the public and use to raise funds, is transparent: “kill the pool of available legal talent” to represent President Trump.

A. Advocacy Organizations’ Public Statements Betray Their Political Objectives in Harnessing Disciplinary Proceedings Against President Trump’s Attorneys.

The same organizations that initiated and supported the proceedings against Petitioner openly advocated for disciplinary investigations of numerous other attorneys associated with post-election litigation on behalf of

President Trump.³⁵ Their statements surrounding those complaints tout the use of attorney discipline to deter and punish lawyers who represented President Trump, his campaign, electors, political committees, and allied organizations.

SUDC, for example, describes its initiatives as part of a broader campaign aimed at attorneys who challenged the 2020 election results on behalf of President Trump,³⁶ saying that attorneys like Petitioner “should never be allowed to practice law again.”³⁷ LDAD similarly celebrates disciplinary investigations and sanctions as important tools for deterring or driving President Trump’s lawyers out of the profession, accusing them of

35. See, e.g., *Ethics Complaints*, Lawyers Defending American Democracy, <https://ldad.org/category/ethics-complaint> (last visited Sept. 9, 2026); Letter from States United Democracy Center to Hon. Bennie G. Thompson & Hon. Liz Cheney 2–9 (Dec. 1, 2022) [hereinafter *SUDC Referral Letter*], <https://statesunited.org/wp-content/uploads/2022/12/2022-12-01-Select-Committee-Bar-Referrals-Letter-FINAL.pdf>; *Ethics Complaints*, The 65 Project, <https://the65project.com/ethics-complaints/> (last visited Sept. 9, 2026).

36. See *Bar Complaints—John Eastman (CA and DC)*, States United Democracy Center (Aug. 11, 2022), <https://statesunited.org/resources/california-bar-complaint-against-john-eastman/>; *SUDC Referral Letter*, *supra* note 35, at 2–9.

37. States United Democracy Center, *States United Democracy Center Applauds California Bar for Holding Trump Attorney John Eastman Accountable* (Jan. 26, 2023), <https://statesunited.org/cabar-holding-eastman-accountable/> (calling for Petitioner’s disbarment and encouraging other state bars to take similar action against attorneys involved in efforts to overturn the 2020 election).

“what amounted to an attempted coup” and seeking to “inflict on the Nation a grave constitutional trauma.”³⁸ As a result, LDAD advocated that Petitioner “should be severely sanctioned for his extreme misconduct.”³⁹

These statements cannot be blithely attributed to organizations of concerned citizens. SUDC’s complaints against Petitioner bear the names of many prominent former Democratic officeholders who are openly hostile to President Trump: Steve Bullock, former Governor and Attorney General of Montana; Jack Conway, former Attorney General of Kentucky; Jim Hood, former Attorney General of Mississippi; Patricia Madrid, former Attorney General of New Mexico; and Scott Harshbarger, former Attorney General of Massachusetts; Norman Eisen, former White House Special Counsel for Ethics and Government Reform; Joyce Vance, former United States Attorney for the Northern District of Alabama; and Sarah Saldaña, former Director of U.S. Immigration and Customs Enforcement and United States Attorney for the Northern District of Texas, among many others.⁴⁰ These partisan officials publicly lent their names to SUDC’s and LDAD’s complaints against Petitioner, and in many instances to complaints against amici.⁴¹ Consequently,

38. See *LDAD Compl.*, *supra* note 4, at 6.

39. *California Bar Agrees to Investigate John Eastman*, Lawyers Defending American Democracy (Mar. 3, 2022), <https://ldad.org/letters-briefs/ca-bar-to-investigate-eastman>.

40. See *SUDC Compl.*, *supra* note 4, cover letter at 1–3; *LDAD Compl.*, *supra* note 4, at 8.

41. See *SUDC Referral Letter*, *supra* note 35, at 4–9 & nn.14, 25, 31, 33, 37; see generally Appendix B.

SUDC and LDAD can only be understood as entities designed to advance partisan causes and effectuate political vendettas.

A sister organization to SUDC and LDAD called “The 65 Project” states in its public materials that it was created for the specific purpose of pursuing disciplinary complaints against attorneys involved in post-election litigation for President Trump and securing professional sanctions against them through state bar proceedings.⁴² One media outlet reporting on The 65 Project quoted sources within the organization as claiming that their work was “mostly important for the deterrent effect that it can bring so that you can kill the pool of available legal talent [available to President Trump] going forward.”⁴³ David Brock, a major Democratic party fundraiser, founder of “Media Matters for America” and advisor for The 65 Project, stated publicly that The 65 Project’s goal is to “not only bring the grievances in the bar complaints, but shame [Trump attorneys] and make them toxic in their communities and in their firms.”⁴⁴

The brazen public admissions of these organizations leave little doubt that it is their mission to use the attorney disciplinary process to accomplish specific political goals. The inevitable result is that any state bar disciplinary

42. *See About Us*, The 65 Project, <https://the65project.com/about/> (last visited Sept. 9, 2026) (describing its efforts to secure professional discipline against lawyers involved in post-election litigation and to strengthen “accountability and deterrence”).

43. Markay & Swan, *supra* note 3.

44. *Id.*

proceeding they initiate is highly suspect and poisoned with partisan motives.

B. Amici Are Also Political Targets of These Advocacy Organizations.

Amici, like Petitioner, have endured years of protracted disciplinary proceedings targeting them for representing or supporting President Trump and various campaign-related enterprises during and after the 2020 election. In responding to complaints and disciplinary demands filed or promoted by organizations like LDAD, SUDC and The 65 Project, amici have incurred millions in defense costs and been subjected to proceedings lasting years, sometimes across multiple jurisdictions. Many endured these burdens despite being cleared of misconduct following the dismissal of disciplinary complaints against them, the complete absence of judicially initiated sanctions, and the absence of any findings of misconduct by any tribunal.

For example, Attorney Christina Bobb represented President Trump's campaign in litigation challenging aspects of Arizona's 2020 elections. Beyond filing a mere bar complaint, SUDC took upon itself the extraordinary role of prosecutor by obtaining a pro bono appointment from the Arizona Attorney General to investigate *and prosecute* Attorney Bobb for allegedly conspiring to overturn Arizona's election results.⁴⁵ This highly unusual level of cooperation with the Arizona AG's Office accidentally came to light through an inadvertent

45. *Letter from Christine P. Sun, SVP, Legal, States United Democracy Ctr., to Dan Barr, Chief of Staff, Ariz. Att'y Gen.'s Off.* (May 4, 2023) reproduced in Appendix D.

discovery disclosure of SUDC’s work, which prosecutors previously submitted in support of several search warrants concerning Attorney Bobb.⁴⁶ Although the prosecution’s case was ultimately dismissed when the court determined prosecutors denied her “a substantial procedural right as guaranteed by Arizona law”,⁴⁷ Attorney Bobb spent nearly \$350,000.00 defending herself in a baseless, politically-driven criminal prosecution, in addition to subpoenas, civil litigation, and a bar complaint from which she was exonerated.⁴⁸

Attorney Kurt Hilbert was targeted by The 65 Project for his representation of President Trump in *Trump v. Kemp*, No. 1:20-cv-5310-MHC (N.D. Ga.), the same litigation forming the basis of SUDC’s complaint against Petitioner in California. Despite the fact that the judge complimented Mr. Hilbert on the quality of his advocacy,⁴⁹ The 65 Project filed a complaint against him alleging that he, like Petitioner, knowingly pursued election challenges

46. *Email from Kimberly J. Hunley, Senior Litig. Couns., Ariz. Att’y Gen.’s Off., to Defense Counsel* (Dec. 12, 2024, 5:52 PM), reproduced in Appendix E.

47. *State v. Bobb*, No. CR2024-006850-016 (Ariz. Super. Ct. May 16, 2025), Minute Entry at 2.

48. *See* Letter from Charlie Hummell, Investigator, Off. of Chief Trial Couns., State Bar of Cal., to Paul J. Pfingst, Esq., *Re: Christina G. Bobb, Case No. 22-O-12246* (Nov. 22, 2023), reproduced in Appendix F.

49. Transcript of Motion Proceedings at 52:5-7, *Trump v. Kemp*, No. 1:20-cv-5310-MHC (N.D. Ga. Jan. 5, 2021) (“. . . Mr. Hilbert, you do a very good argument on behalf of your client. I hope he’s paying you well, but you can tell him on my account he needs to pay you even more.”) reproduced in Appendix G.

lacking basis in law or fact.⁵⁰ However, after investigating the complaint, the Georgia Bar dismissed the matter, finding that the investigation “did not disclose sufficient evidence to justify formal proceedings against [Hilbert].”⁵¹ Even though he was swiftly exonerated, defending himself against these baseless allegations came at a tremendous personal cost to him and his family, including approximately \$50,000.00 in legal fees and related losses.

The lack of merit to any of these proceedings is of no consequence to the complaining organizations. Their purpose is purely political, and their strategy is to make the process punishment enough regardless of the outcome. In other words, to make representing President Trump so fatal to an attorney’s livelihood that the disciplinary process, itself, even if unsuccessful, deters future representation.

III. OUTSIDE INFLUENCE AND CONTROL OVER ATTORNEY DISCIPLINE THREATENS PUBLIC TRUST IN THE INTEGRITY OF THE PROFESSION.

The proceedings against Petitioner, and amici, illustrate the danger that arises when outside organizations are permitted to initiate, then intervene in, materially support, and even guide state bar disciplinary proceedings against lawyers who undertake politically divisive representations. As discussed above, these organizations

50. See Appendix B at 70a.

51. *Letter from Christian J. Steinmetz, III, Chair, Ga. State Disciplinary Bd., to Douglas Vincent Chandler* (Aug. 21, 2024) reproduced in Appendix H.

did not merely criticize Petitioner's representation or submit complaints and await an independent investigation. They actively supplied legal theories, rationales, and investigative assistance to the disciplinary authorities charged with determining Petitioner's professional fate.

When political advocacy organizations are permitted to influence state bar disciplinary machinery in the pursuit of professional sanctions, the risk of harm extends far beyond the targeted attorney. First, the integrity of the disciplinary proceedings themselves is compromised, not only depriving the attorney of a fair and impartial hearing, but signaling to other attorneys and the public that they cannot get an unbiased, fair hearing, free from political influences or control by partisans who disagree with them. Second, it creates a chilling effect on the right to legal counsel—particularly for the most challenging or controversial cases and clients—which is precisely what these organizations seek to achieve. Attorneys who see their colleagues subjected to years of investigations, public accusations, and threats to licensure will inevitably hesitate before accepting similar representations. Third, referral to bar counsel by a client's political opponents for allegedly making 'frivolous' legal arguments will ultimately dissuade attorneys from representing controversial clients and from advancing challenging and novel legal arguments that push the boundaries of precedent to create new law. These are the intended goals of the advocacy groups responsible for Petitioner's disbarment.

**A. Participation by Outside Organizations
Compromises the Independent Judgment
Required in Attorney Disciplinary Proceedings.**

Attorney discipline is a public responsibility requiring independent judgment and fundamentally fair procedures. *See In re Ruffalo*, 390 U.S. 544, 550 (1968) (describing attorney discipline as “quasi-criminal” and holding that procedural due process applies). That responsibility is compromised when outside advocacy organizations are not merely disinterested complainants but are active political adversaries of the attorney and his client.

Here, advocacy organizations publicly vowed they would use their resources to oppose President Trump through the attorney disciplinary process by targeting his attorneys. Permitting political adversaries to participate in bar counsel’s case compromises the fair, unbiased, and independent judgment of bar counsel and corrupts the proceedings on which the legitimacy of professional discipline depends. *Cf. Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 807–09 (1987) (counsel for an interested party could not prosecute a criminal contempt and prosecutors must be disinterested both in fact and appearance); *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 249–50 (1980) (due process constrains prosecutorial arrangements presenting a realistic possibility that enforcement decisions will be distorted by improper interests).

In Petitioner’s case, partisan advocacy organizations supplied OCTC with the starting point,⁵² continued

52. *See supra* notes 18–19.

providing support during the investigation,⁵³ advanced theories later reflected in the charges,⁵⁴ and publicly advocated for professional discipline against him.⁵⁵ The unfettered and improper participation of these organizations in Petitioner’s disciplinary proceedings is a clear and present danger to our systems of professional responsibility and warrants this Court’s review.

B. Outside Advocacy Organizations’ Participation in State Bar Disciplinary Proceedings Imperils Client Representation.

Meaningful access to the courts depends upon the availability of counsel willing to undertake representation. This Court has recognized the important relationship legal representation has with expressive association and the right to petition. *See NAACP v. Button*, 371 U.S. 415, 429–31 (1963); *In re Primus*, 436 U.S. 412, 426–32 (1978); *United Mine Workers of America, District 12 v. Illinois State Bar Ass’n*, 389 U.S. 217, 221–22 (1967); *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1, 5–7 (1964). And because litigation is an established form of petitioning, the government may not burden a party’s right to litigate merely because the litigation may have a disfavored purpose in the eyes of the government. *See BE&K Construction Co. v. NLRB*, 536 U.S. 516, 525–32 (2002) (“[E]ven unsuccessful but reasonably based suits advance some First Amendment interests”).

53. *See supra* Part I.B.

54. *See supra* Part I.B.

55. *See supra* Part II.A.

This is especially true when the litigation has a political element and organizations like SUDC, LDAD and The 65 Project harness the disciplinary process as a weapon to restrict client access to legal representation. The contagion extends beyond the targeted lawyer and client; it sends a signal throughout the profession that attorneys, too, will be targeted if they take on disfavored clients. An attorney considering a politically controversial representation therefore must prepare not only for the demands of such litigation, but for the likelihood that such representation may trigger a bar complaint from political opponents resulting in years of baseless, partisan disciplinary proceedings at great expense, reputational injury, and loss of livelihood.

Faced with these risks, it is reasonable to expect that attorneys will decline such engagements, avoid signing pleadings, and withhold legal advice for fear they could be exposed to similar political witch-hunts. But that is precisely what SUDC, LDAD, and The 65 Project aim to accomplish. And it is antithetical to what this Court and other courts have held about the importance of preserving client access to legal representation, especially in the most contentious cases.

C. Compromised, Partisan-Fueled Disciplinary Proceedings Dissuade Controversial, Challenging, and Novel Legal Advocacy.

Drawing a line between a challenging, novel, yet unsuccessful, legal argument and professional misconduct is vital. California Rule of Professional Conduct 3.1 expressly permits a lawyer to advance a good-faith argument for extending, modifying, or reversing existing

law. But the eventual rejection of such an argument does not mean that counsel somehow acted dishonestly or outside the bounds of professional conduct. Courts have in fact rejected such “post hoc reasoning,” finding that unsuccessful claims must have been unreasonable from the outset, a form of hindsight that would discourage all but the most certain litigation. *Cf. Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421–22 (1978) (cautioning against concluding that an unsuccessful claim must have been unreasonable when filed because that hindsight “could discourage all but the most airtight claims”). Attorney disciplinary regimes that impose discipline based upon the outcome of difficult or novel legal theories risk violating this principle, thereby chilling zealous and creative advocacy.

This applies to Petitioner’s ultimately unsuccessful legal arguments concerning the 2020 election which, despite being denounced and ridiculed by some legal scholars and attorneys backing SUDC, LDAD and The 65 Project, elicited strong support from other attorneys including State attorneys general from Texas, Missouri, Louisiana, Arkansas, Mississippi, Alabama, Florida, Indiana, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, and West Virginia.⁵⁶

This principle also applies to Petitioner’s constitutional theories concerning the Electoral Count Act, presidential electors, and the Vice President’s role in the counting process, which received support from legal scholars, commentators, elected officials, former government

56. *See supra* note 9.

lawyers, and constitutional litigants.⁵⁷ Petitioner’s theories about the Electoral Count Act were arguably validated when Congress recognized and sought to close statutory gaps by passing the Electoral Count Reform Act of 2022.⁵⁸ Legislators described the Electoral Count Act as “badly outdated” and “in bad need of reform,” explaining that the 2022 legislation “clarifies some of the ambiguities” concerning state and federal roles in selecting the President and referenced “ambiguities in the ECA and its potential misinterpretation.”⁵⁹ Because the drafters of a legislative overhaul openly conceded that the text was rife with statutory gaps, it is hard to understand how Petitioner’s attempt to navigate such ambiguities is inherently frivolous.

It also is telling that not one court hearing Petitioner’s arguments sanctioned him for making those arguments. However, even assuming *arguendo* Petitioner’s arguments and theories were as ‘frivolous’ as SUDC and LDAD claimed, one would expect at least one court to find violations of Fed. R. Civ. P. 11. That did not happen. Courts, themselves, possess broad authority to address frivolous pleadings, unsupported factual contentions, and other misconduct. *See, e.g.*, Fed. R. Civ. P. 11; 28 U.S.C. § 1927. Generally, they are also better positioned than state bar counsel to evaluate attorney conduct in

57. *See, e.g., supra* notes 12–13; Robert J. Delahunty & John Yoo, *Who Counts?: The Twelfth Amendment, the Vice President, and the Electoral Count*, 73 Case W. Rsrv. L. Rev. 27, 33–35 (2022).

58. *See* Pub. L. No. 117-328, div. P, tit. I, 136 Stat. 4459, 5233 (2022).

59. 168 Cong. Rec. S3545 (daily ed. July 20, 2022); 168 Cong. Rec. S3600-02 (daily ed. July 21, 2022).

context because they know the record, the parties, and the circumstances in which the disputed arguments were presented, and whether they constitute a violation of professional standards warranting sanctions. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 401–05 (1990) (the district court, familiar with the issues and litigants, is best positioned to apply Rule 11’s fact-dependent standard); *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764–67 (1980) (recognizing courts’ authority to address attorney misconduct occurring before them); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43–50 (1991) (describing courts’ inherent authority to sanction abuse of the judicial process).

In sum, the complaints filed against Petitioner reflect what can best be described as strong differences of legal opinion concerning hotly contested, politically divisive issues. While SUDC and LDAD may criticize, decry, or even ridicule Petitioner’s legal theories, they should not have been permitted a voice and a role in the disciplinary proceedings against Petitioner. Allowing such participation stifles attorney advocacy and diminishes the profession as a whole.

CONCLUSION

For the foregoing reasons, the petition should be GRANTED.

Respectfully submitted,

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