

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 California Supreme Court**

**BRIEF *AMICUS CURIAE* OF THE
NATIONAL LEGAL AND POLICY CENTER,
MARGOT CLEVELAND, MARGARET HARKER,
ANDREIA TRIFOI, AND JACK MARSHALL
IN SUPPORT OF PETITIONER**

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QUESTION 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. *Amici Curiae* address the following issue only:

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. In particular, whether California bar authorities and the California Supreme Court erred by sanctioning Petitioner for his speech without requiring the sanctions to be “narrowly tailored to serve compelling state interests.” *Chiles v. Salazar*, 146 S. Ct. 1010, 1021 (2025).

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INTERESTS OF *AMICI CURIAE*

Amici curiae are the National Legal and Policy Center (NLPC), a non-partisan, nonprofit organization, and four attorneys—all of whom have a strong interest in proper administration of the attorney disciplinary system.¹ Their names are listed in the attached appendix.

Amici take no position for or against the statements made by Petitioner John Eastman that led California to deprive him of his law license. *Amici* nonetheless strongly believe that the effort to disbar Eastman violates his First Amendment rights and that review by the Court is warranted. Even accepting as accurate the Review Department's findings that some of Eastman's statements were false, California disbarred Eastman without first seeking to demonstrate that it met its heavy First Amendment burden of demonstrating that its content-based speech restrictions were narrowly tailored to satisfy a compelling state interest.

This proceeding is an example of an all-too-frequent occurrence in our increasingly divided society: partisans on both the left and right abusing legal processes to punish their political opponents. *Amici* are concerned that such “lawfare” significantly chills

¹ Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than *amici* and their counsel, made a monetary contribution intended to fund the preparation and submission of this brief. On September 29, 2026, *amici* notified counsel for the parties of their intent to file.

speech on matters of public interest. Lawyers and other individuals will be discouraged from zealously expressing their views on such matters when they fear that their efforts may lead to severe civil or criminal sanctions, massive legal bills, and irreparable injury to their reputations. *Amici* are filing this brief to urge the Court to halt that pernicious trend by granting review and stating unequivocally that bar officials should not punish an attorney for his/her speech unless they can satisfy the First Amendment's extremely demanding requirements.

SUMMARY OF ARGUMENT

The Petition raises an issue of exceptional importance. Respondent State Bar of California has imposed career-ending sanctions on Petitioner John Eastman because of statements he made in the aftermath of the 2020 presidential election. Respondent concedes that its sanctions were based on the content of Eastman's speech and the viewpoints he expressed. Yet despite this Court's repeated admonition that a government may not impose content-based and viewpoint-based speech restrictions unless it demonstrates that the restrictions are "narrowly tailored to serve compelling state interests," *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015), Respondent persuaded the courts below not to apply that exacting review standard in this case.

The Review Department of the State Bar of California held that although the constitutional scrutiny that courts must apply to content-based speech restrictions is "strict," that scrutiny is less exacting when applied to attorney speech because of

“the unique role attorneys play in the administration of justice.” App.102a, 100a. It held that attorneys’ First Amendment rights do not extend “to making knowing or reckless false statements of fact or law.” *Id.* at 102a. Asserting that the evidence at trial established that Eastman made “multiple misleading statements in his professional capacity as an attorney,” the Review Department held that Eastman was not entitled to First Amendment protection for those statements. *Id.* at 103a-104a. The California Supreme Court denied Eastman’s petition for review of that decision. *Id.* at 1a-2a.

The decision below directly conflicts with this Court’s First Amendment case law. The Court has repeatedly held that “the First Amendment’s protections extend to licensed professionals much as they do to everyone else.” *Chiles v. Salazar*, 607 U.S. 627, 629 (2026). Eastman’s status as a lawyer does not exempt California from the required demonstration that its content-based speech restrictions serve a compelling state interest in a narrowly tailored manner. Speech does not lose its First Amendment protections merely because the government alleges that it is false. *United States v. Alvarez*, 567 U.S. 709, 723 (2012). Review is warranted to consider Respondent’s novel claim that Eastman’s status as an attorney renders *Alvarez* inapplicable to his speech and deprives him of otherwise-available First Amendment protections for his allegedly false speech.

The Review Department also held that the evidence established that Eastman’s speech “assist[ed] and advis[ed] President Trump in illegal, criminal, or fraudulent activity” and thus is not entitled to First

Amendment protection. App.105a. It observed that “the First Amendment does not protect speech that is employed as a tool in the commission of a crime.” *Id.* at 104a. But this Court has never condoned obliteration of First Amendment protections when the alleged crime—whether by Eastman or those with whom he allegedly conspired—consists solely of speech and does not inflict damage on others.

Moreover, the decision below directly conflicts with a recent Eighth Circuit decision that struck down a Minnesota statute criminalizing false speech uttered for the purpose of impeding others from voting. The Eighth Circuit declared the statute constitutionally impermissible in the absence of a showing that it served a compelling state interest in a narrowly tailored manner. *Minnesota Voters Alliance v. Ellison*, __ F.4th __, 2026 WL 2443854 (8th Cir. Aug. 20, 2026) (Stras, J.). It rejected Minnesota’s effort to analogize its statute to the historical practice of criminalizing fraud, noting that the statute contained “no requirement that someone listening acts upon [the speech] to their detriment.” *Id.* at *5 (stating that “[r]eliance, the element that is missing in Minnesota’s statute, is what creates the speech-related harm that leaves fraud unprotected”). Review is warranted to resolve the conflict between the Eighth Circuit and the decision below.

Review is also warranted because Eastman’s situation is far from unique. As outlined in the Petition, Eastman is one of many right-leaning attorneys subjected to disciplinary proceedings based on their statements challenging the results of the 2020 presidential election. And disciplinary proceedings

have also routinely been initiated against left-leaning attorneys for their statements critical of the current Administration. For example, U.S. Representative Lance Gooden (R-Tex.) recently called on the Justice Department to open a criminal investigation of the National Lawyers Guild and its attorneys, claiming that their defense of anti-government protesters is illegal because they “provide guidance to extremists to help them escape justice.” *See* Ashley Oliver, “Lawyers Guild’s Alleged Ties to Antifa Spark Calls for DOJ Probe,” Fox News (Oct. 17, 2025). Given the frequency with which speech-suppression efforts of this sort arise, it is particularly important for the Court to step in and make clear the standards under which such efforts should be evaluated.

Finally, review is warranted because Eastman’s well-publicized disbarment, if permitted to stand, will have a devastating, chilling effect on the willingness of attorneys to speak out on matters of public importance, in connection both with ongoing court proceedings and other public forums. Lawyers and other individuals will be discouraged from zealously expressing their views on matters of public importance when they reasonably fear (based on Respondent’s actions) that their efforts may lead to severe civil or criminal sanctions, massive legal bills, and irreparable injury to their reputations.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT AND FEDERAL APPEALS COURTS

Respondent does not contest that it imposed sanctions on Eastman based on the content of his statements regarding the 2020 presidential election. The Review Department implicitly acknowledged the content-based and viewpoint-based nature of that speech regulation when it stated that it was applying a heightened scrutiny standard to the facts of this case. App.104a.

As a general rule, content-based speech restrictions “trigger ‘strict scrutiny,’ a demanding standard that requires the government to prove its restriction on speech is ‘narrowly tailored to serve compelling state interests.’” *Chiles v. Salazar*, 607 U.S. 627, 640 (2026) (quoting *Reed*, 576 U.S. at 163). Under that standard, it is “rare that a regulation ... will ever be permissible.” *Brown v. Entertainment Merchants Assn.*, 564 U.S. 786, 799 (2011).

An even more exacting scrutiny is warranted when, as here, the speech restrictions seek to dictate what one is permitted to say about a given subject.² As described by the Court, such viewpoint discrimination is “‘an egregious form’ of content regulation, and

² For example, the Review Department sanctioned Eastman for the views he expressed about the Vice President’s proper role in counting electoral votes, stating that those views “lacked a reasonable basis in law.” App.105a.

governments in this country must nearly always ‘abstain’ from it.” *Chiles*, 607 U.S. at 641 (quoting *Rosenberger v. Rectors and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)).

Although it acknowledged the need for heightened scrutiny of restrictions imposed on Eastman’s speech, the Review Department never examined whether those restrictions qualified as “narrowly tailored to serve compelling state interests.” Indeed, the phrase “compelling state interests” appears nowhere in the Review Department’s decision. Rather, it employed a “balancing” standard (based on the “reasonableness” of challenged statements) to evaluate Eastman’s free-speech claims: “in balancing an attorney’s First Amendment rights outside of the courtroom with public protection components of the attorney disciplinary process, the attorney’s conduct is assessed under an objective, reasonableness standard.” App.103a (citing *U.S. Dist. Court for Eastern Dist. of Washington* 12 F.3d 861 (9th Cir. 1993)).

A. Review Is Warranted to Resolve the Conflict over Whether the Alleged Falsity of an Attorney’s Statements Justifies Failure to Apply the Compelling-State-Interest Standard

Despite acknowledging that “Eastman’s charged statements involved core political speech,” App.102a, the Review Department did not directly explain why its decision did not address whether the sanctions imposed on Eastman were “narrowly tailored to serve compelling state interests.” But its decision indicates that it based its choice not to do so at least in part on

its findings that Eastman “knowingly” made false statements or “had no reasonable factual or legal basis for making them.” *Id.* at 104a.³ It held that in light of

³ Eastman’s First Amendment claims warrant review even if one accepts the accuracy of Respondent’s assertions that Eastman uttered false statements of fact. *Amici* nonetheless note there is reason to question the accuracy of those assertions. For example, the Review Department held that Eastman “inten[ded] to deceive” this Court when in December 2020 he filed a motion (on behalf of President Trump) to intervene in an action filed by Texas two days earlier. The motion to intervene alleged that Georgia had improperly conducted the 2020 election. App.32a. The Review Department charged Eastman with “intent to deceive” because the motion he filed in this Court did not disclose that a federal district court in a separate proceeding had recently rejected those same claims. *Ibid.* But *amici* are unaware of any authority stating that an attorney, in connection with filing a complaint or a motion to intervene, is required to disclose adverse rulings in separate proceedings, and the Review Department cited no such authority.

Moreover, legal scholars have harshly questioned the Review Department’s finding that Eastman’s legal arguments regarding the Vice President’s powers were so objectively unreasonable as to deprive them of First Amendment protection. For example, Professor Gary Lawson has opined:

[G]iven 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 the charge than for disbarring Eastman. Lawyers make adventurous, and even dubious, arguments all the time—just as Congress enacts dubious statutes all the time, with the ECRA [Electoral Count Reform Act] being just the latest example. Eastman’s Twelfth Amendment arguments are at least as plausible as the arguments for the

that falsity, “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.” *Ibid.*

That holding directly conflicts with *United States v. Alvarez*, 567 U.S. 709 (2012), which overturned on First Amendment grounds a defendant’s conviction for falsely stating at a public meeting that he had been awarded the Congressional Medal of Honor. Noting that the false claim was not made for the purpose of gaining any material advantage, the Court explained that a statute authorizing imposition of sanctions against speech simply because it is false creates an unwarranted risk of chilling truthful speech:

Were the Court to hold that the interest in truthful discourse alone is sufficient to sustain a ban on speech, absent any evidence that the speech was used to gain a material advantage, it would give government a broad censorial power unprecedented in this Court’s cases or in our constitutional tradition. The mere potential for the exercise of that power casts a chill, a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of

constitutionality of the ECRA provisions. . . .

G. Lawson & J. Beerman, *Congressional Meddling in Presidential Elections: Still Unconstitutional After All These Years*, 103 B.U. Law Rev. 1189, 1196 n.37 (2023).

our freedom.

Alvarez, 567 U.S. at 723 (plurality opinion). In an opinion concurring in the judgment, which was joined by Justice Kagan, Justice Breyer fully agreed with that assessment:

[T]he threat of criminal prosecution for making a false statement can inhibit the speaker from making true statements, thereby “chilling” a kind of speech that lies at the First Amendment’s heart. Further, the pervasiveness of false statements, made for better or for worse motives, made thoughtlessly or deliberately, made with or without accompanying harm, provides a weapon to a government broadly empowered to prosecute falsity without more. *And those who are unpopular may fear that the government will use that weapon selectively.*

Id. at 733-34 (Breyer, J., concurring in the judgment) (emphasis added).

There undoubtedly are some instances in which a government can demonstrate a compelling interest in engaging in content-based regulation of false speech. But *Chiles* and *Alvarez* sharply conflict with the Review Department’s holding that falsity by itself suffices to exempt government regulators from the “narrowly tailored to serve compelling state interests” standard. Review is warranted to resolve that

conflict.⁴

Moreover, all federal appeals court that have addressed First Amendment challenges to content-based speech restrictions post *Chiles* have *explicitly* addressed whether the restrictions could pass muster under the compelling-state-interest test. *See, e.g., Welty v. Dunaway*, __ F.4th __, 2026 WL 2874671 at *12, *20 (6th Cir., Sept. 24, 2026) (striking down Tennessee law that criminalized certain abortion-related speech, holding that Tennessee failed to satisfy the compelling-state-interest test); *Planned Parenthood of Great Northwest v. Commissioner*, __ F.4th __, 2006 WL 2409722 at *17 (7th Cir., Aug. 19, 2026) (similar); *Minnesota Voter Alliance*, 2026 WL 2443854 at *3 (applying the compelling-state-interest test and stating that “[t]he First Amendment protects speech on a matter of public concern, like these statements, whether they are correct or not”); *Rodriguez-Colto v. Gonzalez-Colon*, 185 F.4th 264, 273 (1st Cir. 2026) (holding that Puerto Rico law that criminalizes the making of false statements during a declared emergency is facially invalid under the First Amendment, finding that Puerto Rico failed to satisfy the compelling-state-interest test). The First Circuit

⁴ Nor does Eastman’s status as a licensed professional lessen that conflict. *Chiles* stated expressly that “the First Amendment’s protections extend to licensed professionals much as they do to everyone else.” *Chiles*, 607 U.S. at 642. While *National Institute of Family and Life Advocates v. Becerra* (“*NIFLA*”), 585 U.S. 755, 768 (2018), recognized two specific circumstances under which content-based restrictions can apply to professional speech without triggering the compelling-state-interest test, neither of those two narrow exceptions applies here.

held that the statute was constitutionally deficient because its restrictions were not limited to speech shown to cause identifiable harm. *Id.* at 274.

The failure of the decision below to discuss whether the restrictions on Eastman’s speech can pass muster under the compelling-state-interest test stands in sharp contrast to each of those federal appeals court decisions. Nor did the Review Department seek to distinguish *Alvarez* by asserting that Eastman’s allegedly false statements were motivated by a desire to gain personal advantage. Its assertion that the compelling-state-interest test can be bypassed based solely on the alleged falsity of Eastman’s statements contrasts sharply with *Alvarez*, *Chiles*, and subsequent federal appeals court decisions—and warrants review by this Court.

B. The Holding that Eastman’s Statements Are Not Constitutionally Protected Because They Were “A Tool in Commission of a Crime” Directly Conflicts with a Recent Eighth Circuit Decision

The Review Department also sought to avoid First Amendment constraints on its sanctioning of Eastman by asserting that his speech was constitutionally unprotected because it “assist[ed] and advis[ed] President Trump in illegal, criminal, or fraudulent activities.” App.105a. It cited this Court for the proposition that “speech integral to unlawful conduct” is unprotected by the First Amendment. *Id.* at 104a (citing *United States v. Hansen*, 599 U.S. 762, 783 (2023)). Review is warranted because the Review Department’s construction of the integral-to-unlawful-

conduct exception directly conflicts with a recent Eighth Circuit decision.

The Review Department cited 18 U.S.C. § 371, which makes it a crime to “conspire either to commit any offense against the United States, or to defraud the United States.” It alleged that Eastman violated the statute when he wrote a January 3, 2021 memorandum asserting that Vice President Pence possessed broad authority to determine the outcome of the 2020 presidential election. App.105a. It held that Eastman’s assertion constituted conspiracy to defraud the United States because he “knew that his advice lacked a reasonable basis in law.” *Ibid.* It did not find that Eastman’s alleged false speech misled others to their detriment; it held that false speech designed to overturn election results sufficed to constitute a violation of Section 371—thereby allegedly triggering the speech-integral-to-unlawful-conduct exception to First Amendment protection. *Ibid.*

The Eighth Circuit reached the opposite conclusion in a case involving closely analogous facts. At issue in *Minnesota Voters Alliance v. Ellison*, 2026 WL 2443854, was a Minnesota criminal statute that prohibited anyone within 60 days of an election from disseminating information he knows to be “materially false” with the intent “to impede or prevent another person from exercising the right to vote.” Minn. Stat. § 211B.075, subd. 2. The prohibition explicitly included dissemination of information “regarding ... the qualifications for or restrictions on voter eligibility at an election.” *Ibid.*

The Minnesota Voter Alliance (MVA) is a voter

advocacy organization that opposes allowing felons to vote until after they have completed their sentences—including completion of any term of supervised release. A Minnesota statute states that felons are permitted to vote unless they are currently behind bars, even if they are still subject to supervised release. Minn. Stat. § 201.014. MVA took the position that the statute is invalid because it allegedly violates a provision of the Minnesota Constitution stating that a Minnesota citizen is not eligible to vote if he or she “has been convicted of treason or felony, unless restored to civil rights.” Minn. Const. art. VII, § 1. When, prior to an election, MVA made statements warning some released felons that they were ineligible to vote, Minnesota officials said that MVA’s statements were false and not protected by the First Amendment, *Minnesota Voters Alliance v. Ellison*, 2026 WL 2443854 at *3, and Anoka County filed a claim against MVA, seeking damages and injunctive relief. *Id.* at *1.

Reversing a district court’s dismissal of MVA’s claim that state officials were violating its First Amendment rights, the Eighth Circuit directed entry of a preliminary injunction against enforcement of the no-false-information statute as applied to MVA. *Id.* at *10. Minnesota deemed MVA’s statements that Minnesota law barred voting by felons still subject to supervised release to be “false,” because (Minnesota claimed) they were based on an implausible interpretation of Art. VII, § 1 of the Minnesota Constitution. The appeals court nonetheless held that MVA’s statements were protected by the First Amendment because “[t]he First Amendment protects speech on a matter of public concern, like these statements, whether they are correct or not” and thus

that Minnesota’s speech regulation was subject to strict scrutiny. *Id.* at *3-*4 (citing *Alvarez*). The court then concluded that the no-false-information statute was not narrowly tailored to serve Minnesota’s compelling interest in protecting voters from confusion and undue influence. *Id.* at *7-*8.⁵

Most pertinent to this Petition, the Eighth Circuit rejected Minnesota’s contention that MVA’s speech could be prohibited because it constituted fraud—one of the very few categories of speech historically and traditionally deemed unprotected by the First Amendment. *Id.* at *5. The court held that the no-false-information statute “d[id] not work like a fraud statute” because it targeted mere speech without regard to whether the speech actually succeeded in impeding another individual’s ability to vote. *Ibid.* Writing for the panel, Judge Stras explained that “[r]eliance, the element that is missing in Minnesota’s statute, is what creates the speech-related harm that leaves fraud unprotected.” *Ibid.* (citing *Alvarez*, 567 U.S. at 719 (plurality opinion)). The court held that “unlike fraud, defamation, and trespass, there is no ‘historic and traditional categor[y]’ of unprotected speech covering false statements about voting,” and thus that a government may not bar such statements without demonstrating that doing so furthers a compelling state interest in a narrowly tailored manner. *Ibid.* (quoting *Free Speech Coal. v. Paxton*, 606 U.S. 461, 471 (2025)).

⁵ In particular, the court concluded that Minnesota could protect its compelling interests by engaging in counter speech—a more narrowly tailored and “speech-promoting” alternative. *Id.* at *7.

The facts that led California to disbar Eastman cannot be meaningfully distinguished from those in *Minnesota Voters Alliance*, yet the two courts reached directly conflicting results. The Review Department held that Eastman could be sanctioned for making false statements designed to affect the outcome of an election; the Eighth Circuit held that MVA could not be sanctioned for making similar false statements. The Review Department held that Eastman’s statements were entitled to no constitutional protection because they were “integral to criminal conduct” (they were part of a conspiracy to defraud the United States by overturning the results of the 2020 presidential election), regardless of whether anyone acted in reliance on his false statements. Conversely, the Eighth Circuit held that MVA’s false statements about Minnesota’s elections could not be categorized as fraud in the absence of a showing that citizens relied on MVA’s statements to their detriment. The Review Department imposed sanctions on Eastman without requiring a showing that they were narrowly tailored to serve a compelling state interest. The Eighth Circuit enjoined enforcement of Minnesota’s no-false-information statute because it failed to satisfy the compelling-state-interest test as applied to MVA.

It should not be the case that citizens’ First Amendment rights to speak out about elections and other matters of public interest depend on whether they live in California or Minnesota. The Court should grant the petition to resolve the conflict between the decision below and the Eighth Circuit’s decision in *Minnesota Voters Alliance*.

II. IMPOSING SANCTIONS ON POLITICALLY CHARGED SPEECH IS BECOMING INCREASINGLY COMMON, RESULTING IN THE CHILLING OF SPEECH ON MATTERS OF PUBLIC CONCERN

These disciplinary proceedings against John Eastman are not unique. Eastman is one of many right-leaning attorneys subjected to disciplinary proceedings based on their statements challenging the results of the 2020 presidential election. The Petition details some of those proceedings. Pet.2-3. See 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/leftwing-groups-weaponize-bar-complaints-againstrump-admin-attorneys/>. The District of Columbia Bar is seeking the disbarment of Jeffrey Clark, a former Justice Department official, for mere recommendations he made to senior officials concerning the 2020 presidential election, recommendations which were not adopted. *In re Jeffrey B. Clark, Esq.*, No. 25-BG-0731 (D.C. Ct. App., filed Aug. 2025).⁶ And left-leaning attorneys have faced similar misconduct charges based on their statements on matters of public interest. For example, as noted *supra* at 5, a Texas Congressman recently referred criminal charges to the Justice Department against the National Lawyers Guild and its attorneys, alleging that their representation of anti-government protesters was illegally providing

⁶ Several of the *amici* on this brief, as well as their counsel, filed a brief in support of Clark, asserting that his statements giving rise to the disbarment proceedings were fully protected by the First Amendment.

“guidance to extremists to help them escape justice.”

The frequency with which speech-suppression efforts of this sort arise underscores the need for the Court to grant review in this case. Lower courts would benefit greatly were the Court to provide clear guidance regarding when efforts to regulate attorney speech run afoul of First Amendment constraints.

Moreover, efforts to regulate attorney speech have not been confined to speech arising in court proceedings or in connection with contested elections. With increasing frequency, state bars are seeking to regulate anything attorneys say in public or private.

For example, in 2016 the American Bar Association added to its Model Rules of Professional Conduct a new Rule 8.4(g), which is in essence a speech code for attorneys. Model Rule 8.4(g) provides that attorneys are guilty of misconduct if they make comments that they know “or reasonably should know” constitute harassment or discrimination on the basis of any one of 11 listed characteristics—including race, sex, disability, sexual orientation, and gender identity. More than 15 States have adopted Rule 8.4(g), either verbatim or in substantial part. Charges of Rule 8.4(g) violations have been filed against dozens of attorneys.⁷

⁷ To cite but two examples: (1) Invoking its equivalent of Rule 8.4(g), the Maryland Court of Appeals indefinitely suspended the law licenses of two attorneys found to have exchanged private emails on their employer’s email system that contained what the court deemed racially insensitive language. *Attorney Grievance Comm’n v. Markey*, 469 Md. 485 (2020); (2) the Colorado Supreme Court suspended a lawyer for violating Rule 8.4(g) by sending an

A federal district court held that Pennsylvania’s initial version of Rule 8.4(g) unconstitutionally suppressed attorney speech and enjoined its enforcement. *Greenberg v. Haggerty*, 491 F. Supp. 3d 12, 27 (E.D. Pa. 2020).⁸

California’s efforts to disbar Eastman, as well as other government speech-suppression proceedings, have an obvious direct effect on the speech rights of the targeted attorneys. But of far greater concern is the indirect effect that such proceedings have on the speech of all attorneys. Attorneys who reasonably fear that their speech on matters of public concern may place their law licenses in jeopardy are far less likely to speak. This chilling effect on speech is a significant loss to society, particularly with respect to the expression of unpopular ideas. As Justice Breyer explained, if governments can gain authority to punish dissenting voices simply by branding the speech false, “those who are unpopular may fear that the government will use that weapon selectively” and will remain silent in the face of government misconduct. *Alvarez*, 567 U.S. at 734 (Breyer, J., concurring in the judgment).

email to a client that criticized the judge hearing their case and that used an anti-gay slur to refer to the judge. *Matter of Abrams*, 488 P.3d 1043 (Colo. 2021).

⁸ Pennsylvania chose not to appeal from that decision. Instead, it adopted a new version of Rule 8.4(g) that was somewhat less speech-restrictive. The Third Circuit dismissed for lack of standing a First Amended challenge to the new version, without addressing the merits of the constitutional claims. *Greenberg v. Lehocky*, 81 F.4th 376 (3d Cir. 2023).

The reality of chilling effects on speech created by fear of future enforcement action is well recognized by this and other Courts. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 160 (2014), held that the chilling effect on one's speech suffices to create the injury-in-fact necessary to establish Article III standing if an individual faces a "credible threat" of future enforcement, even if enforcement has not been directly threatened. The Second Circuit recently held that Connecticut's version of Rule 8.4(g) credibly threatens prosecution of attorney speech and thus injures Connecticut attorneys who self-censor their speech to avoid prosecution. *Cerame v. Slack*, 123 F.4th 72, 80 (2d Cir. 2024).

The case of David Streever well illustrates the chilling effect that credible threats of prosecution can have on political speech. Following the death of two Minnesotans during demonstrations protesting immigration enforcement by U.S. Immigration and Customs Enforcement (ICE), Streever sent an email to Todd Lyon, the Acting Secretary of Homeland Security, that was highly critical of Lyon's conduct. The email concluded:

You will never know peace. You will seek
to lose yourself, to escape the burden of
knowing the truth about yourself. But
wherever you go, you will find yourself.
You will torment yourself until your last
day on Earth.

ICE responded to the email by opening an official investigation of Streever and hand-delivering to his house a letter entitled "Warning Notice." The letter

stated, “You may be in violation of federal law” and cited federal criminal statutes that prohibit assaults on federal officers.

Not surprisingly, the letter chilled Streever’s speech activity. Even though every statement in Streever’s email was fully protected by the First Amendment, both he and others who knew of his situation were less willing to repeat his criticisms of ICE policy. Few are willing to speak freely in the face of government threats of criminal prosecution.

Only after the government’s investigation of Streever persisted for several months did he file suit for violation of his First Amendment rights. Last month, a federal district judge permanently enjoined the Department of Homeland Security from making similar threats against Streever or making good on its initial threat. *Streever v. Mullin*, __ F. Supp. 3d __, 2026 WL 2720475 (D.D.C. Sept. 15, 2026). In concluding that Streever possessed standing to sue and would suffer irreparable harm in the absence of an injunction even though the federal government had officially closed its investigation, the district court repeatedly emphasized the chilling effect that such “Warning Notices” have on free speech. The court stated:

Streever’s injury is the loss of his freedom to engage in political speech now because the threat of such an investigation or prosecution looms over him like the sword of Damocles, and he is forced to self-censor under that threat. ... That loss of speech is both imminent and certain

because it does not rely on Defendants actually opening a new investigation. The Warning Notice works because Mr. Streever is too intimidated by the threat of future government action that he will not test whether the government will follow through on its threat. As the Supreme Court recently explained, “[t]he value of a sword of Damocles is that it hangs—not that it drops.”

Id. at *14 (quoting *First Choice Women’s Resource Centers, Inc. v. Davenport*, 608 U.S. 174, 192 (2026)).

The specter of Eastman’s disbarment hangs as a similar sword of Damocles over attorneys who might in the future consider speaking up on matters of public importance. Review is warranted to ensure that such attorneys can speak with confidence that their First Amendment rights will be fully protected.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted,

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APPENDIX

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APPENDIX A**List of Groups and Attorneys Joining This Brief**
(affiliations are listed for identification purposes only)

The National Legal and Policy Center (NLPC) is a non-partisan, nonprofit organization that promotes ethics in public life through research, investigation, education, and legal action. Since its founding in 1991, NLPC has regularly served as an ethics watchdog, exposing government officials and interest groups that have engaged in unethical and illegal activities. Besides filing ethical complaints against Member of Congress, NLPC has filed complaints against left-leaning members of the bar only to see those summarily dismissed or lightly sanctioned. At the same time, NLPC supports the robust defense of the First Amendment and opposes its arbitrary application in the instant case.¹

Margot Cleveland (Of Counsel with the New

¹ See, e.g., NLPC Staff, “NLPC Appeals Dismissal of Bar Complaint Against E. Jean Carroll’s Lawyer Roberta Kaplan” (Sept. 2, 2026).<https://nlpc.org/uncategorized/nlpc-appeals-dismissal-of-bar-complaint-against-ejean-carrolls-lawyer-robert-a-kaplan/>; Paul Sperry, “DC Fails To Disbar Anti-Trump FBI Lawyer Despite Guilty Plea,” Real Clear Investigations (Jan. 28, 2021).https://www.realclearinvestigations.com/articles/2021/01/28/dc_fails_to_disbar_antitrump_fbi_lawyer_despite_guilty_plea_126937.html. See also NLPC Staff, “Appeals Court to Hear Case of Berkshire Hathaway Shareholder Arrested for Bringing Up Gates and Epstein,” (May 12, 2026).<https://nlpc.org/corporate-integrity-project/appeals-court-to-hear-case-of-shareholder-arrested-at-berkshire-annualmeeting-for-bringing-up-gates-and-epstein/>

Civil Liberties Alliance), Margaret Harker (Senior Litigation Counsel with the New Civil Liberties Alliance), and Andreia Trifoi (Litigation Counsel with the New Civil Liberties Alliance) are attorneys whose practices include defense of free-speech rights. Cleveland and Trifoi previously filed a brief in the District of Columbia Court of Appeals, raising First Amendment claims in support of a former Justice Department official, Jeffrey Clark, who is fighting disbarment efforts similar to those facing Petitioner.

Jack Marshall is a legal ethics expert. He is President of ProEthics, a national ethics training and consulting firm. He has served as an Adjunct Professor of Legal Ethics at The Washington College of Law at American University in Washington, D.C., and taught CLE seminars in legal ethics to bar associations, law firms, corporations, state and local governments and U.S. government agencies across the country. He regularly provides legal ethics counsel to law firms and attorneys. He submits that John Eastman's disbarment by the California Bar for his legal opinions was totally unwarranted and a danger to the First Amendment rights of lawyers to be zealous advocates for their clients.