

No. 26-336

In the Supreme Court of the United States

JOHN C. EASTMAN,
Petitioner,

v.

STATE BAR OF CALIFORNIA,
Respondent.

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

**BRIEF FOR U.S. SENATORS TED CRUZ
AND MIKE LEE AS *AMICI CURIAE*
IN SUPPORT OF PETITIONER**

GENE P. HAMILTON
REED D. RUBINSTEIN
America First Legal
Foundation
611 Pennsylvania Ave. SE
#231
Washington, DC 20003

CHRISTOPHER MILLS
Counsel of Record
Spero Law LLC
557 East Bay St.
#22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

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INTEREST OF *AMICI CURIAE*

Amici are United States Senators Ted Cruz (R-TX) and Mike Lee (R-UT). As elected representatives, *amici* have an interest in protecting their constituents' First Amendment rights—along with the rights of the attorneys who advise and advocate for them. And recognizing the central role of the judiciary in upholding the law, they have a significant interest in protecting vigorous legal advocacy.

Amici's interest is not abstract. Members of Congress, like their constituents, depend on lawyers willing to give candid advice on contested legal questions. That advice will dry up if lawyers must fear that a state bar will later deem their positions not merely wrong but disqualifying for political, ideological, or other reasons. *Amici* themselves have been targeted with bar complaints based on ideological disagreements. Because free and independent advocacy is essential to self-government and to a functioning judicial system, *amici* urge the Court to grant certiorari.*

* Under Rule 37.2, the parties' counsel of record received timely notice of the intent to file this brief. Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

SUMMARY OF THE ARGUMENT

Political activists have turned the bar disciplinary process into a weapon against lawyers on the disfavored side of public controversies. The goal, in one campaign’s words, is “the deterrent effect that it can bring so that you can kill the pool of available legal talent going forward.”¹ California has now amplified that deterrent. It disbarred Dr. Eastman for legal advice, advocacy, and public commentary that the Review Department itself called “core political speech.” Pet. 102a.

That decision cannot be squared with this Court’s precedents, for three reasons. *First*, attorneys keep their Free Speech Clause rights when they advocate for clients—and that protection must include room to press disputed and even losing arguments. “[T]he First Amendment’s protections extend to licensed professionals much as they do to everyone else.” *Chiles v. Salazar*, 607 U.S. 627, 642–43 (2026). And our law develops because advocates ask courts to extend, modify, or reject it. Unsuccessful arguments are part of that process. So if a lawyer’s license turns on whether bar regulators agree with his legal analysis—or like it—he will steer clear of anything contested. Malpractice law and court sanctions already protect clients and courts from deficient counsel. An unpopular or even losing legal argument does not equal professional unfitness.

¹ Lachlan Markay & Jonathan Swan, *Scoop: High-Powered Group Targets Trump Lawyers’ Livelihoods*, Axios (Mar. 7, 2022), <https://perma.cc/92MT-XZC3>.

Second, the Petition Clause protects the client’s side of the same relationship. Clients have their own interest in willing, independent counsel through whom they can seek redress from the government. The chill from ideological attorney discipline sets in long before any bar proceeding begins—and it burdens the client’s right to petition as surely as the lawyer’s right to speak.

Third, the decision below failed to apply the strict scrutiny that this Court’s precedents demand for restrictions on protected speech. The Review Department agreed that strict scrutiny governs and claimed to have applied it. Pet. 102a, 104a. But it never asked whether permanent disbarment was narrowly tailored to any compelling interest. Rather than applying strict scrutiny, the decision below assumed a general exception for false statements that this Court has refused to recognize—and treated the challenged rules as their own justification.

After the Review Department recommended disbarment, the California Bar’s chief trial counsel offered the self-congratulatory statement that the punishment was “a powerful and timely reminder” that attorneys must “respect the rule of law.”² The “timely” message is clear: other attorneys should think twice before engaging in advocacy that the California Bar dislikes. But it does not promote the rule of law “to force individuals to be an instrument for fostering public adherence to [a government-approved] point of view they find unacceptable.” *Nat’l Inst. of Fam. & Life*

² State Bar of California, *John Eastman State Bar Court Review Decision in—Disbarment Recommendation Remains* (June 14, 2025), <https://perma.cc/S4FJ-3WED>.

Advocs. v. Becerra, 585 U.S. 755, 780 (2018) (“*NIFLA*”) (Kennedy, J., concurring, joined by Roberts, C.J., and Alito and Gorsuch, JJ.) (citation modified).

Rather, the rule of law is promoted “by reading the First Amendment as ratified in 1791,” “understand[ing] the history of authoritarian government” and its “relentless” “attempts to stifle free speech,” and “carry[ing] those lessons onward as we seek to preserve and teach the necessity of freedom of speech for the generations to come.” *Ibid.* “Freedom of speech secures freedom of thought and belief,” and California’s punishment of an attorney for constitutional advocacy “imperils those liberties.” *Ibid.* The Court should grant certiorari.

REASONS FOR GRANTING THE WRIT

I. The Free Speech Clause protects lawyers’ right to engage in zealous advocacy, including making disputed, controversial, or unsuccessful legal arguments.

The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech” or “the right . . . to petition the Government for a redress of grievances.” U.S. Const. amend. I. Its “broad protection” “reflects our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *Fed. Election Comm’n v. Ted Cruz for Senate*, 596 U.S. 289, 302 (2022). The First Amendment protects attorneys when they advocate for clients, and that protection necessarily includes room to press disputed—and even losing—legal arguments. A State’s after-the-fact disagreement with an attorney’s

reasonable legal judgment therefore cannot justify punishment, particularly when malpractice law already protects clients from deficient counsel.

A. Attorneys retain First Amendment protection when they speak and advocate in their professional capacity.

Lawyers do not lose First Amendment rights after joining the bar, for “the First Amendment’s protections extend to licensed professionals.” *Chiles*, 607 U.S. at 642. “[W]hatever traditional interest a State may have in ensuring a professional possesses a particular set of qualifications, that interest does not automatically entail a right to dictate a professional’s point of view.” *Id.* at 652. Accordingly, “this Court has applied strict scrutiny to content-based laws that regulate the noncommercial speech of lawyers.” *NIFLA*, 585 U.S. at 771.

In *NAACP v. Button*, this Court considered Virginia’s effort to apply an “expanded definition of improper solicitation of legal business” against the NAACP. 371 U.S. 415, 425 (1963). The State also accused the NAACP of violating the American Bar Association’s Canons of Professional Ethics, adopted into state law. *Id.* at 425–26.

This Court held that the NAACP’s legal advocacy constituted “modes of expression and association protected by the First and Fourteenth Amendments which Virginia may not prohibit[] under its power to regulate the legal profession.” *Id.* at 428–29. The Court rejected the notion that speech connected with legal representation “is wholly outside the area of freedoms protected by the First Amendment.” *Id.* at

429. “[A] State cannot foreclose the exercise of constitutional rights by mere labels,” and the First Amendment “protects vigorous advocacy, certainly of lawful ends, against governmental intrusion.” *Ibid.* Indeed, “litigation is not [merely] a technique of resolving private differences,” but can be “a form of political expression” used as “a means for achieving” political objectives. *Ibid.* It made no difference that “the purpose of these regulations was merely to insure high professional standards and not to curtail free expression.” *Id.* at 438–39. “[A] State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights.” *Id.* at 439.

The Court applied these rules again in *In re Primus*, 436 U.S. 412 (1978). There, the South Carolina Supreme Court found that an attorney “engaged in unethical conduct because she solicited a client for a non-profit organization.” *Id.* at 426–27 (citation modified). This Court disagreed, holding that the case was within “the protection of *Button*.” *Id.* at 429. The Court reiterated that “[t]he First and Fourteenth Amendments require a measure of protection for advocating lawful means of vindicating legal rights.” *Id.* at 432 (citation modified). Applying “exacting scrutiny,” the Court held that the State’s “prophylactic” rules failed to regulate with sufficient “precision.” *Id.* at 432, 437–38.

More recently, the Court considered a state rule barring judicial candidates from personally soliciting campaign contributions. *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 442 (2015). Eight Justices applied strict scrutiny, with the plurality opinion explaining that “[a] State may restrict the speech of a judicial

candidate only if the restriction is narrowly tailored to serve a compelling interest.” *Id.* at 444; see *id.* at 463 (Scalia, J., dissenting); *id.* at 478 (Kennedy, J., dissenting); *id.* at 479 (Alito, J., dissenting).

In sum, States do not have “unfettered power to reduce a group’s First Amendment rights by simply imposing a licensing requirement.” *NIFLA*, 585 U.S. at 773. Though States may license attorneys, that prerogative does not include an unfettered ability to prevent attorneys from exercising First Amendment rights—even when acting as attorneys. Attorney speech is not “a separate category of speech that is subject to different rules.” *Id.* at 767. Rather, when a State restricts “the written and spoken advice of professionals like lawyers”—or purports to punish an attorney for such speech—the First Amendment applies in full. *Chiles*, 607 U.S. at 645.

B. Zealous advocacy necessarily includes room to advance disputed and unsuccessful legal arguments.

Attorneys’ speech rights include the right to put forth positions that are controversial and ultimately do not prevail. Like other “[l]icensed professionals,” attorneys “have a host of good-faith disagreements.” *Id.* at 654. And an adversarial legal system cannot function if lawyers may safely advance only propositions already accepted by courts or by some sufficiently large consensus. “[T]he law is not always clear and never is static.” *Talamini v. Allstate Ins. Co.*, 470 U.S. 1067, 1071 n.11 (1985) (Stevens, J., concurring) (quoting Model Rules of Pro. Conduct r. 3.1 cmt. (Am. Bar Ass’n 1983)).

Legal doctrine develops because advocates ask courts to distinguish, extend, modify, or reject existing law. So “in determining the proper scope of advocacy, account must be taken of the law’s ambiguities and potential for change”—and “[a]n action is not frivolous even though the lawyer believes that the client’s position ultimately will not prevail.” *Ibid.* (citation modified).

This Court has recognized that “even unsuccessful” litigation “advance[s] some First Amendment interests.” *BE & K Constr. Co. v. NLRB*, 536 U.S. 516, 532 (2002). “Like successful suits, unsuccessful suits allow the public airing of disputed facts and raise matters of public concern.” *Ibid.* (citation modified). “They also promote the evolution of the law by supporting the development of legal theories that may not gain acceptance the first time around.” *Ibid.* “Moreover, the ability to lawfully prosecute even unsuccessful suits adds legitimacy to the court system as a designated alternative to force.” *Ibid.*

Punishing attorneys for advancing novel or disputed views, especially on controversial legal issues, thereby “distorts the legal system by altering the traditional role of the attorneys” as advocates. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 544 (2001). “The clash of adverse parties sharpens the presentation of issues upon which the court so largely depends for illumination of difficult questions.” *GTE Sylvania, Inc. v. Consumers Union of U.S., Inc.*, 445 U.S. 375, 382–83 (1980) (citation modified). “The parties frame the issues for decision, while the court serves as neutral arbiter of matters the parties

present.” *Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (citation modified).

Put another way, the judicial process *depends* on attorneys’ freedom to identify and test competing legal theories, because it “assumes that adversarial testing will ultimately advance the public interest in truth and fairness.” *Polk Cnty. v. Dodson*, 454 U.S. 312, 318 (1981). Limiting the range of “acceptable” advocacy necessarily endangers that interest.

C. A State’s retrospective disagreement with an attorney’s reasonable judgment cannot be grounds for punishment.

Zealous advocacy will disappear if professional survival depends on whether bar regulators later agree with an attorney’s legal analysis. This Court has explained that “regulating the content of professionals’ speech poses the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information.” *NIFLA*, 585 U.S. at 771. And “the First Amendment stands as a shield against any effort to enforce orthodoxy in thought or speech in this country.” *Chiles*, 607 U.S. at 655. Both the justice system and “[t]he people lose whenever the government transforms prevailing opinion into enforced conformity.” *Ibid.* (citation modified).

Many of this Court’s First Amendment decisions emphasize that “erroneous statement is inevitable in free debate, and it must be protected if the freedoms of expression are to have the ‘breathing space’ that they need to survive.” *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964) (citation modified); see, e.g., *BE & K*, 536

U.S. at 531. “[I]t is perilous to permit the state to be the arbiter of truth,” for “[t]oday’s accepted wisdom sometimes turns out to be mistaken.” *United States v. Alvarez*, 567 U.S. 709, 752 (2012) (Alito, J., dissenting).

That is especially true of legal advocacy, where the choice is rarely between a “true” and a “false” argument. Legal arguments present questions of interpretation in which text, history, structure, and precedent all play a part. Each is open to reasonable disagreement—and so is how to weigh them against one another. Even when one of these factors is “clear”—say, a binding precedent exists—this Court “has overruled important constitutional decisions” on “many” occasions. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 265 & n.48 (2022). So it is particularly important to give legal advocates room to make a wide range of arguments.

Imposing liability for reasonable legal argument—including career-ending sanctions—will severely chill advocacy. Even for ordinary speech, this Court has recognized “the prospect of chilling non-threatening expression, given the ordinary citizen’s predictable tendency to steer wide of the unlawful zone.” *Counterman v. Colorado*, 600 U.S. 66, 77–78 (2023) (citation modified). “The speaker’s fear of mistaking whether a statement is [protected]; his fear of the legal system getting that judgment wrong; his fear, in any event, of incurring legal costs—all those may lead him to swallow words that are in fact” perfectly justified. *Id.* at 78.

These fears are exacerbated in the legal context, where attorneys who must work within the legal

system for a living could see their careers destroyed even by a bar investigation or unsuccessful charges. The freedom to provide candid legal advice and advocacy is “delicate and vulnerable,” and “[t]he threat of sanctions may deter [its] exercise almost as potently as the actual application of sanctions.” *Button*, 371 U.S. at 433. “The result is ‘self-censorship’ of speech that could not be proscribed.” *Counterman*, 600 U.S. at 75. That chilling effect would deprive the legal system and litigants of meritorious advice and arguments that could change important decisions.

This threat is not hypothetical. “History is littered with examples of official efforts to manipulate and control professional speech . . . in ways designed to increase state power, suppress minorities, and muzzle unpopular ideas.” *Chiles*, 607 U.S. at 647. And “over the past several years, political activists have weaponized the bar complaint and investigation process.” *Review of State Bar Complaints and Allegations Against Department of Justice Attorneys*, 91 Fed. Reg. 10780, 10782 (Mar. 5, 2026). “For example, political activists have filed bar complaints against senior Department officials, including the Deputy Attorney General, the former Acting Deputy Attorney General, the Deputy Assistant Attorney General for the Federal Programs Branch of the Civil Division, and the former interim United States Attorney for the District of Columbia, as well as career Department of Justice attorneys.” *Ibid.* “Even more troubling than the recent spate of State bar complaints is the willingness of some State bar disciplinary authorities to give credence to such complaints.” *Ibid.*

Chilling speech is the motivation behind these actions. One of the third-party ideological groups that filed a complaint against Dr. Eastman here proclaimed that his punishment “sends an unmistakable message” to other attorneys.³ Similarly, the 65 Project is a “dark money group” created with the stated goal of disbarring and “sham[ing]” attorneys who represented former President Trump or challenged the results of the 2020 presidential election.⁴ David Brock, who was advising the group, candidly stated that the 65 Project would “not only bring the grievances in the bar complaints, but shame them and make them toxic in their communities and in their firms.”⁵ Brock explained the strategy: “I think the littler fish are probably more vulnerable to what we’re doing.” “You’re threatening their livelihood. And, you know, they’ve got reputations in their local communities.”⁶

Amici have been subject to meritless bar complaints, filed on plainly partisan grounds.⁷ And even otherwise hostile academics have “ha[d] to admit there’s something to the observation that a lawyer not working for the Trump administration, and not involved in . . . litigation over the 2020 election would almost certainly not have been subjected to a disciplinary grievance—let alone have a disbarment

³ States United Democracy Ctr., *Press Release* (Mar. 27, 2024), <https://perma.cc/L5EC-2CBV>.

⁴ Markay & Swan, *supra* note 1.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ See, e.g., Maggie Haberman, *Group Seeks Disbarment of Ted Cruz Over Efforts to Overturn 2020 Election*, N.Y. Times (May 18, 2022).

recommendation entered”—for the speech in some of these cases.⁸

But even if attorneys eventually prevail in these cases—far from a sure bet, given how politicized many bars have become—the consequences for legal advocacy are stark.⁹ The organizers of the 65 Project put it bluntly: “This is mostly important for the deterrent effect that it can bring so that you can kill the pool of available legal talent going forward.”¹⁰ Killing protected advocacy is the point.

Courts must therefore ensure that no State punishes attorney advice and argument based on retrospective disagreement about contested legal questions. The free and open advocacy on which our system of adjudication depends requires nothing less.

D. Malpractice law and court sanctions already protect clients from deficient counsel.

As this Court has explained, “[l]ongstanding torts for professional malpractice . . . fall within the traditional purview of state regulation of professional

⁸ Brad Wendel, *The DOJ Supremacy Clause Lawsuit and the Jeff Clark Disciplinary Action*, Legal Ethics Stuff (May 27, 2026), <https://perma.cc/DMN4-NUQV>.

⁹ See generally Alec Schemmel, *Watchdog Warns Legal Powerhouse Has Made Far-Left Advocacy Their ‘Dominant Focus’ Over the Last Decade*, Fox News (Mar. 26, 2026), <https://bit.ly/4xUzVoT>; Rules of the State Bar of Cal., tit. 3, r. 3.601(C)–(D) (listing diversity, equity, and inclusion requirements for continuing legal education courses); Gail L. Heriot & Carissa Mulder, *The Sausage Factory*, Univ. of San Diego Legal Studies Paper No. 22-003 (2022), <https://perma.cc/DUS6-WUYL>.

¹⁰ Markay & Swan, *supra* note 1.

conduct.” *NIFLA*, 585 U.S. at 769 (citation modified). Tort law thus protects clients from deficient legal counsel—without broadly infringing on First Amendment-protected speech or converting disputed legal judgment into professional ruin.

“In a traditional malpractice action, liability attaches only if the plaintiff shows, among other things, that he has suffered an injury caused by the defendant’s breach of the applicable duty of care.” *Chiles*, 607 U.S. at 653. For instance, “[i]n California, an attorney is subject to liability for malpractice when his or her negligent investigation, advice, or conduct of the client’s affairs results in loss of a meritorious claim.” Cal. Civ. Prac. Torts § 33:39 (June 2026 update). A “simpl[e] showing” of error “is not enough”; “[t]he plaintiff must also establish that, but for the alleged malpractice, a better outcome would have resulted.” *Ibid.*

“Those kinds of exacting proof requirements” “may provide sufficient breathing room for protected speech,” while holding attorneys accountable for deficient counsel. *Chiles*, 607 U.S. at 653 (citation modified). Further, courts already have other mechanisms to deal with frivolous litigation, including Rule 11, attorneys’ fee provisions, and their inherent authority. See, e.g., *BE & K*, 536 U.S. at 537. Given the availability of these remedies—and their narrower effect on advocacy protected by the First Amendment—the bar discipline process should be a last resort. An unpopular or even losing legal argument does not equate to professional unfitness.

II. The Petition Clause protects clients' access to willing and independent counsel.

The First Amendment also protects “the right of the people . . . to petition the Government for a redress of grievances.” U.S. Const. amend. I. And “litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.” *Button*, 371 U.S. at 430. Freewheeling use of bar disciplinary processes threatens clients’ ability to use the courts for petitioning. Meaningful access to counsel requires lawyers who can exercise independent legal judgment. As this Court has put it, “[a]n informed, independent judiciary presumes an informed, independent bar,” one free to “present all the reasonable and well-grounded arguments necessary for proper resolution of the case.” *Velazquez*, 531 U.S. at 545.

Though a State may “regulate the practice of law within its borders,” it “cannot ignore the rights of individuals secured by the Constitution.” *Bhd. of R.R. Trainmen v. Virginia ex rel. Va. State Bar*, 377 U.S. 1, 6 (1964). And “[t]his Court’s precedents confirm that the Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes.” *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011). For better or for worse, many interactions between citizens and the government—in court and out—now practically require legal counsel.

So just as the Free Speech Clause protects the legal advocacy of counsel, the Petition Clause protects the citizen who needs counsel to make petitioning effective. And “meaningful access to the courts” and other government bodies “would be a hollow promise”

if attorneys could not offer legal advice outside mainstream views. *United Transp. Union v. State Bar of Mich.*, 401 U.S. 576, 585 (1971).

Threatening lawyers' licenses for controversial advocacy deters willing counsel and therefore burdens clients' right to petition. A lawyer deciding whether to undertake a controversial representation must account for whether regulators may later characterize his advocacy as unreasonable, false, or professionally forbidden. The prospect of professional exclusion therefore affects representation long before any bar proceeding begins. And the right to petition means little if the State may make attorneys fear professional ruin for representing unpopular clients or advancing controversial lawful arguments.

III. The decision below flouts this Court's precedents.

The Review Department's opinion recommending Dr. Eastman's disbarment gives short shrift to the First Amendment principles discussed above. Every charge against Dr. Eastman rested on speech—legal memoranda and communications, public speeches, and media commentary. Dr. Eastman's clients have not alleged that he committed malpractice or provided bad advice. The California Bar acted instead on complaints from third-party advocacy groups.

The decision below acknowledged that Dr. Eastman's "charged statements involved core political speech," making "strict scrutiny . . . the applicable standard." Pet. 102a. It even claimed to have "applied the strict scrutiny standard to the facts of this case." Pet. 104a. But one searches the decision in vain for

any analysis of whether the State’s punishment is “narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). “Under that test, it is rare that a regulation will ever be permissible.” *Chiles*, 607 U.S. at 640 (citation modified).

Instead of applying strict scrutiny, the Review Department said that “our focus remains on Eastman’s false statements and whether or not they violate the rules and statutes governing attorney conduct.” Pet. 102a n.92. The first half of the statement—suggesting that “false statements” are unprotected—is hard to square with this Court’s refusal to recognize “any general exception to the First Amendment for false statements.” *Alvarez*, 567 U.S. at 718 (plurality opinion); see *id.* at 730–32 (Breyer, J., concurring in judgment); *id.* at 751 (Alito, J., dissenting) (“[T]here are broad areas in which any attempt by the state to penalize purportedly false speech would present a grave and unacceptable danger of suppressing truthful speech.”).

The second half of the Review Department’s statement—its focus on “the rules and statutes governing attorney conduct”—misses the point of constitutional review. Invoking rules and statutes cannot justify a First Amendment violation. See U.S. Const. art. VI, cl. 2 (Supremacy Clause). “[T]his sort of circular defense” is not strict scrutiny, or any scrutiny at all. *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 120 (1991).

The decision below’s refusal to apply strict scrutiny demands this Court’s review. “Because First Amendment freedoms need breathing space to

survive, government may regulate in the area only with narrow specificity.” *Button*, 371 U.S. at 433. Yet even as the California Bar pursued an ideological crusade against what the decision below itself called “core political speech,” the Review Department never applied strict scrutiny. It never considered whether permanent disbarment was the narrowest means of furthering any compelling government interest. Instead, it treated Dr. Eastman’s “labeling of this disciplinary proceeding as a punitive political exercise” as an aggravating factor that only reinforced “concerns about his ethical abilities.” Pet. 110a.¹¹ But by the Review Department’s own account, Dr. Eastman was punished for his “core political speech.” Pet. 102a. The disregard of First Amendment protections for that speech warrants review.

* * *

“‘Free trade in ideas’ means free trade in the opportunity to persuade to action, not merely to describe facts.” *Button*, 371 U.S. at 437. Even as the Review Department refused to apply strict scrutiny to punishment for political speech, it offered tendentious findings that Dr. Eastman had “conspired to subvert the law,” in furtherance of a “criminal scheme.” Pet. 104a, 116a. Justice Black warned against this

¹¹ This treatment strongly suggests a lack of neutrality on the part of the Review Department. Cf. Arthur Koestler, *Darkness at Noon* 139 (Daphne Hardy trans., New Am. Libr. 1948) (“‘There is only one proof you can give,’ came Gletkin’s voice, ‘a complete confession. We have heard enough of your “oppositional attitude” and your lofty motives. What we need is a complete, public confession of your criminal activities, which were the necessary outcome of that attitude.’”).

substitution of epithet for analysis: “‘malicious,’ ‘seditious,’ and other such evil-sounding words often have been invoked to punish people for expressing their views on public affairs.” *Garrison*, 379 U.S. at 80 (concurring opinion). The First Amendment demands much more before the government may punish an advocate for speech.

CONCLUSION

For these reasons, this Court should grant certiorari.

Respectfully submitted,

GENE P. HAMILTON	CHRISTOPHER MILLS
REED D. RUBINSTEIN	<i>Counsel of Record</i>
America First Legal	Spero Law LLC
Foundation	557 East Bay St.
611 Pennsylvania Ave. SE	#22251
#231	Charleston, SC 29413
Washington, DC 20003	(843) 606-0640
	cmills@spero.law

Counsel for *Amici Curiae*

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