

No. 26-336

IN THE
Supreme Court of the United States

JOHN C. EASTMAN, *Petitioner*,

v.

THE STATE BAR OF CALIFORNIA, *Respondent*.

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

**Brief *Amicus Curiae* of
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Free Speech Defense and Education Fund, Citizens
United, Citizens United Foundation, Gun Owners
of America, Gun Owners Foundation, Public
Advocate of the United States, Public Advocate
Foundation, Judicial Action Group, Judicial Action
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INTEREST OF THE *AMICI CURIAE*¹

Amici curiae America’s Future, Free Speech Coalition, Free Speech Defense and Education Fund, Citizens United, Citizens United Foundation, Gun Owners of America, Gun Owners Foundation, Public Advocate of the United States, Public Advocate Foundation, Judicial Action Group, Judicial Action Group Foundation, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income taxation under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code, which have filed hundreds of *amicus curiae* briefs in federal and state courts. Restoring Liberty Action Committee is an educational organization. Some of these *amici* filed an *amicus* letter supporting Dr. Eastman’s appeal to the Supreme Court of California. See Letter in Support of Petition for Review (Feb. 13, 2026).

STATEMENT OF THE CASE

In late 2021 and early 2022, two partisan advocacy groups, “States United Democracy Center” and “Lawyers Defending American Democracy,” filed bar complaints with the California State Bar against Petitioner here, Dr. John Eastman, the former dean at Chapman University School of Law. The activists

¹ It is hereby certified that counsel of record for all parties received timely notice of the intention to file this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

alleged that certain statements made by Dr. Eastman in the course of representation of and advocacy for President Donald Trump during the contest of the 2020 presidential election violated bar ethics rules as “false” statements. Petition for Certiorari (“Pet.”) at 7-8.

In January 2023, “the Bar’s Office of Chief Trial Counsel (OCTC) ... filed a Notice of Disciplinary Charges against Eastman, alleging eleven counts of ‘moral turpitude,’ failure to uphold the law and the Constitution, and other misconduct.” *Id.* at 8.

After a trial that lasted for portions of 34 days over a ten-week period, “[t]he Hearing Department of the Bar Court on March 27, 2024, found Eastman ‘culpable’ on ten of the eleven counts from the Notice of Disciplinary Charges and recommended disbarment.” *Id.* at 9. Count 11, the allegations that statements Eastman had made at a pro-Trump rally on January 6, 2021 had somehow provoked the subsequent protests at the Capitol, was dismissed as unproven. *Id.*

Of the remaining ten “culpable” counts, three involved public political statements made by Dr. Eastman. *Id.* at 9. Two counts involved federal court filings:

for which no court imposed sanctions or even issued an order to show cause: his motion to intervene in this Court on President Trump’s behalf in *Texas v. Pennsylvania*, No. 22O155, which adopted Texas’s allegations concerning

election irregularities;² and his verified complaint in *Trump v. Kemp*, 511 F. Supp. 3d 1325 (N.D. Ga. 2021), which incorporated allegations from a Georgia election challenge. [Pet. at 8-9.]

Two other counts involved “brainstorming memoranda concerning alleged dual slates of electors, the Electoral Count Act, and the Vice President’s asserted authority during the January 6 certification” of electors. *Id.* at 8. The final three counts involved “communications with Vice President Pence and Pence’s counsel, including his effort to persuade Pence to delay the electoral vote count based on his legal interpretation of vice-presidential authority.” *Id.* at 9.

Dr. Eastman then appealed the recommendation to the California Bar Court Review Department. On June 13, 2025, the Review Department affirmed the recommendation of disbarment. *Id.* at 10. While the Review Department conceded that “the applicable standard is one of strict scrutiny,” it nonetheless ruled that “[r]egardless, our focus remains on Eastman’s false statements and whether or not they violate the rules and statutes governing attorney conduct.” Pet. at 102a, n.92.

Dr. Eastman appealed to the California Supreme Court. On April 15, 2026, the court summarily affirmed the disbarment, thus adopting the Review Department’s reasoning as final. *Id.* at 11.

² See Section III, *infra*.

SUMMARY OF ARGUMENT

The ethics charges against Dr. Eastman center on his legal work involving the hotly contested 2020 presidential election, including his representation of President Trump. The bar's action as well as the decision of the California Supreme Court presupposed that the 2020 election of Joe Biden was absolutely impeccable, and no aspect of the vote in any state supporting Biden could be challenged — except by a Republican lawyer operating unethically.

In truth, election irregularities are routine, and, as this Court noted in *Crawford* in 2008, the risk of voter fraud which could affect the outcome of a close election is real. The *Curling* decision in Georgia by district judge Totenberg, one of the few cases to address the vulnerability of computerized election systems found “unobserved injection of malware into computer systems” can occur. Thus, no election can be assumed to be flawless. Indeed the last quarter century has seen numerous instances of election irregularities, as well as efforts to make elections more honest and reliable. Democrat lawyers were allowed to claim that the 2016 election of “illegitimate president” Donald Trump was fraudulent without facing supposed ethics charges in Republican states.

One of those charges against Dr. Eastman involved his petition to intervene for President Trump in the *Texas v. Pennsylvania* in this Court. Now, the Bar and the California court seek to hold Eastman responsible for statements he did not make.

Across the country, a concerted effort by leftist organizations has sought to take Republican lawyers who dared to challenge election results in Democrat states off the field, so such challenges could never be made in the future. The effort to disbar Dr. Eastman is a particularly egregious example. If elections cannot continue to be challenged in Court by experienced counsel, the logical consequence is that they will become increasingly fraudulent and distrusted by the American People.

ARGUMENT

I. THE CALIFORNIA SUPREME COURT INCORRECTLY ASSUMED THAT THE 2020 PRESIDENTIAL ELECTION WAS FAIR AND UNIMPEDED.

The decision of the California Supreme Court denying John Eastman's petition for review and adopting the opinion of the Review Department of the State Bar Court of California as its own, was fundamentally erroneous from the outset. The first sentence of the opinion below assumes implicitly and incorrectly that the 2020 presidential election was indisputably "fair and unimpeded." The legitimacy of that election, however, has been and continues to be a matter of substantial and serious dispute.

The California Supreme Court's complete sentence referenced above reads: "In a democracy nothing can be more fundamental than the orderly transfer of power that occurs after a fair and unimpeded electoral process as established by law." That objective was

exactly what Dr. Eastman's advocacy and actions were designed to achieve. For that court to blithely assume that the 2020 election was conducted according to law, was an error of the first order, as it disregards this Court's warning that "the temptation to control elections by violence and by corruption is a constant source of danger. Such has been the history of all republics, and, ... no lover of his country can shut his eyes to the fear of future danger from both sources." *Ex Parte Yarbrough (Ku Klux Cases)*, 110 U.S. 651, 666-67 (1884).

The California Supreme Court had greater faith in the perfection of the 2020 election than even the nation's premier Democratic election lawyer, Marc Elias, who believed there had been outcome-determinative federal election irregularities in 2020:

[Elias] argued in a court filing [just weeks after the 2020 election] ... that **faulty voting machines may have misread thousands of votes** in a House election in upstate New York, a claim similar to the ... allegation some Republicans pushed regarding the 2020 presidential election.... Elias asserted that voting machines used in the district undercounted votes for [his client] Democrat Rep. Ted Brindisi.³

According to the standard which the California State

³ Chuck Ross, "Democratic Lawyer Marc Elias Claims Voting Machine 'Irregularities' In New York House Race," *Daily Caller* (Feb. 5, 2021) (emphasis added).

Bar applied to Eastman, should not Elias's allegations filed in court also constitute ethical violations?

Concern about the integrity of popular elections in the United States is hardly a recent development. As this Court noted in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008):

It remains true, however, that flagrant examples of such **[vote] fraud in other parts of the country have been documented** throughout the Nation's history by respected historians and journalists, that occasional examples have surfaced in recent years, and that Indiana's own experience with fraudulent voting in the 2003 Democratic primary for East Chicago Mayor — though perpetuated using absentee ballots and not in-person fraud — demonstrates that not only is **the risk of voter fraud real** but that it could affect the outcome of a close election. [*Id.* at 195-96 (footnotes omitted) (emphasis added).]

Undergirding the entire decision of the California Supreme Court was the assumption that the election of the Biden-Harris ticket should not, and indeed must not, be closely examined. Accordingly, any effort by Eastman to question those results was, by definition, done in bad faith and in violation of his duty as a licensed attorney. If it were true, the California Supreme Court's assumption that there was no possibility of election irregularity in 2020 would have made that election a rare outlier. However, a brief review of the past quarter-century of problems with

election integrity completely undermines the predicate of that court's decision.

A. The 2000 Presidential Election.

At least since the turn of the century, election integrity has been a significant concern for a substantial number of Americans due to their experience with the 2000 presidential election. Post-election litigation between George W. Bush and Al Gore and issues including “hanging chads” were the subject of contentious debates across the country. Litigation in Florida state courts and federal courts led to a decision by this Court in *Bush v. Gore*, 531 U.S. 98 (2000), which effectively concluded or at least signaled the end of the post-election dispute. The perceived problems brought to light in the 2000 election involving ballot design, punch card voting machines, and other aspects of the voting systems used in the United States prompted a nationwide debate about, and public support for, election reform. One proposed solution was utilizing electronic voting machines.

In 2002, concerns about the 2000 election led Congress, to enact the Help America Vote Act (“HAVA”), 116 Stat. 1686 (Oct. 29, 2002), which mandated that every State and its localities upgrade their voting procedures, voting systems, registration processes, and poll worker training. It also required States to submit plans in order to qualify for federal funding detailing the proposed use of federal funds, voter education and poll worker training, adoption of voting system guidelines, performance measures, and administrative complaint procedures. HAVA requires

each State to develop a statewide, computerized voter registration list. It provides that first-time voters must present a form of identification, which could be a valid photo identification, a copy of a recent utility bill, a bank statement, a government check, a paycheck, or a government document showing the voter's name and address. (Surprisingly, HAVA does not require new voters to provide proof of U.S. citizenship, despite citizenship being required for voting in federal elections.) The Act established the Election Assistance Commission to serve as a clearinghouse and to adopt a voluntary testing and certification program for voting systems. An important provision of HAVA requires all voting systems to be auditable and produce a permanent paper trail with a manual audit capacity available as an official record for any recount conducted.

B. The Carter-Baker Commission.

In 2004, a private, bipartisan commission, the Commission on Federal Election Reform, was established by former President Jimmy Carter and James A. Baker, III, a former official in the Reagan and George H. W. Bush administrations. In its 2005 report,⁴ the Commission recommended measures to restore public confidence in elections. Among the recommendations were a universal voting registration system, a uniform photo identification requirement for voting, the use of electronic voting machines, and four regional primaries. The report concluded that fraud

⁴ "Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform" (Sept. 2005).

and other types of irregularities occur.

- “There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election.” *Id.* at 18.
- “[C]itizens should identify themselves as the correct person on the registration list when they vote.” *Id.*
- “Absentee ballots remain the largest source of potential voter fraud.” *Id.* at 46.
- “All states should consider passing legislation that attempts to minimize the fraud that has resulted from ‘payment by the piece’ to anyone in exchange for their efforts in voter registration, absentee ballot, or signature collection.” *Id.* at 47.
- “Building confidence in U.S. elections is central to our nation’s democracy.” *Id.* at 69.

C. The 2005 GAO Report.

In 2005, the Government Accountability Office reported that **electronic voting systems had inherent security problems**. See GAO, “Federal Efforts to Improve Security and Reliability of Electronic Voting Systems Are Under Way, but Key Activities Need to Be Completed,” GAO-05-956 (Sept. 21, 2005) at 26.

D. The 2016 Presidential Election.

The 2016 presidential election deserves special attention, as it was the inverse of the 2020

presidential election at the center of this case. In 2016, Donald Trump defeated Hillary Clinton, but lawyers who challenged Trump's election were not subject to disbarment. Just 10 years ago, it was considered normal for lawyers to question election results. Indeed, the 2016 presidential election generated an even more intense debate about election irregularities than 2020 due to the claim by Democrats that the election had been rigged by Russian actors who favored Trump. **Hillary Clinton** refused to concede, and substantial numbers of prominent Democrats, including former President **Jimmy Carter** and former Vice President **Joe Biden**, also questioned the legitimacy of that election.

A year after losing the election, Hillary Clinton stated, "I think that there are lots of questions about its legitimacy."⁵ She "accus[ed] Republicans of voter suppression tactics in swing states and Russians of influencing votes through a 'disinformation campaign.'" *Id.* Perhaps most notably, **Hillary Clinton called for making election challenges easier**. She "lamented how 'we don't have a method for contesting' the election in the United States and called for an independent commission to 'get to the bottom of what happened.'"

Representative **John Lewis** (D-GA) said: "he does not believe Donald Trump is a 'legitimate president,'

⁵ Alex Pappas, "Hillary Clinton questions 'legitimacy' of Trump's victory in 2016 election," *Fox News* (Nov. 17, 2017).

citing Russian interference in last year's election.”⁶ *New York Times* columnist **Paul Krugman** called Lewis' election denial “an act of patriotism, continuing.”⁷

[S]aying that the election was tainted isn't a smear or a wild conspiracy theory; it's simply the truth. Now, anyone questioning Mr. Trump's legitimacy will be accused of being unpatriotic.... But patriotism means standing up for your country's values, not pledging personal allegiance to Dear Leader. No, we shouldn't get into the habit of delegitimizing election results we don't like. But this time really is exceptional, and needs to be treated that way. [*Id.*]

In 2019, former President **Jimmy Carter** stated, “I think a full investigation would show that Trump didn't actually win the election in 2016. He lost the election, and he was put into office because the Russians interfered on his behalf.”⁸ Responding to a campaign trail comment that Trump was an “illegitimate President,” former Vice President **Joe**

⁶ Chuck Todd, Sally Bronson & Matt Rivera, “Rep. John Lewis: ‘I Don’t See Trump as a Legitimate President,’” *NBC News* (Jan. 13, 2017).

⁷ Paul Krugman, “With All Due Disrespect,” *New York Times* (Jan. 16, 2017).

⁸ Sarah Cammarata, “Jimmy Carter says a full investigation would show Trump lost in 2016,” *Politico* (June 28, 2019).

Biden stated, “I absolutely agree.”⁹

In February 2018, House Minority Leader **Hakeem Jeffries** tweeted, “The more we learn about 2016 election the more ILLEGITIMATE it becomes.”¹⁰ In 2018, California Senator **Kamala Harris** responded to a comment by radio host “Charlamagne tha God,” “I think he’s an illegitimate President who didn’t really win.” Harris replied, “You are absolutely right.... We should believe exactly what the intelligence community has told us, which is Russia did interfere in the election of the President of the United States in 2016.”¹¹

In 2017, **Rebecca Solnit** wrote for *The Guardian*, “The 2016 US presidential election was so corrupted in so many ways, small and large, that there is no reason to respect its outcome or regard Donald J Trump as the legitimate president of the United States.”¹² Former Democratic National Committee chairwoman **Donna Brazile** opined, “My personal view is that it

⁹ Nicole Einbinder, “Former Vice President Joe Biden says he ‘absolutely agrees’ with comment that Trump is an ‘illegitimate president,’” *Business Insider* (May 15, 2019).

¹⁰ See Hakeem Jeffries @RepJeffries post, *Twitter* (Feb. 16, 2018).

¹¹ “Kamala Harris Talks Gender Pay Gap, Climate Control, Russian Interference + More” at 10:49, *Breakfast Club Power 105.1 FM* (July 12, 2019).

¹² Rebecca Solnit, “One year on, Donald Trump is still an illegitimate president,” *The Guardian* (Nov. 8, 2017).

was not a legitimate election.”¹³

Numerous lawyers questioned the legitimacy of the 2016 election long after it ended, but none were disbarred.

E. The 2018 NAS Report.

In 2018, the National Academy of Sciences published its assessment of the risk of fraudulent manipulation of electronic voting systems based on numerous reported cases of such irregularities. See NAS, Securing the Vote: Protecting American Democracy at 9. *See also* Charlotte Jee, “How to hack an election — and what states should do to prevent fake votes,” *MIT Technology Review* (Sept. 13, 2018).

A December 6, 2019 letter from U.S. Senator **Amy Klobuchar** and several of her congressional colleagues to investors in the three major U.S. election technology vendors echoed the conclusion of the NAS Report:

Election security experts have noted for years that our nation’s election systems and infrastructure are under serious threat.... [R]esearchers recently uncovered previously undisclosed vulnerabilities ... These problems threaten the integrity of our elections and

¹³ Paul Crookston, “Brazile Sides With Hillary Clinton: 2016 ‘Was Not a Legitimate Election,’” *Washington Free Beacon* (Nov. 21, 2017).

demonstrate the importance of election systems that are strong, durable, and not vulnerable to attack.¹⁴

F. The 2018 Georgia Gubernatorial Election.

The California Supreme Court faulted Eastman for challenging the results of the 2020 election in Georgia. However, just two years before, Stacey Abrams vigorously questioned the legitimacy of the election, initiated an unsuccessful lawsuit by Fair Fight Action that challenged election procedures, and launched an aggressive public relations effort to persuade Georgians and Americans at large that, as a result of alleged voter suppression, the election result was altered in favor of her opponent, Brian Kemp.¹⁵

G. The 2020 Presidential Election.

As the 2020 presidential election results were announced, the claims of election irregularities in several States were especially widespread and intense. In only a single State — Georgia — have the claims of election irregularities been exhaustively reviewed by a court. Even before the 2020 election, the federal district court for the Northern District of Georgia in *Curling v. Raffensperger* concluded in an October 2020

¹⁴ Letter from Sen. Amy Klobuchar, Sen. Elizabeth Warren, Sen. Ron Wyden, and Rep. Mark Pocan to Michael McCarthy, Chairman of The McCarthy Group (Dec. 6, 2019).

¹⁵ Kate Brumback, “Lawsuit challenging Georgia Election process filed by Stacey Abrams-backed group,” *PBS News* (Nov. 27, 2018).

order on plaintiffs’ motion for preliminary injunction that “a broad consensus now exists among the nation’s cybersecurity experts recognizing the capacity for the **unobserved injection of malware into computer systems to circumvent and access key codes and hash values** to generate fraudulent codes and data.” *Curling v. Raffensperger*, 493 F. Supp. 3d 1264, 1280 (N.D. Ga. Oct. 11, 2020) (emphasis added). The court stated that the likelihood of future election interference “is not a question of ‘might this actually ever happen?’ — but ‘when it will happen.’” *Id.* at 1342.

The Clerk of Williamson County, Tennessee discovered an anomaly in the software used in the 2020 election in that county. The Tennessee Secretary of State and the U.S. Election Assistance Commission then conducted an investigation in which the supplier of the software acknowledged that it had caused the inaccurate vote tally.¹⁶

The Clerk and Recorder of Arapahoe County, Colorado posted an announcement on her website acknowledging that the County’s Election Department had intentionally altered the County’s official 2020 Cast Vote Record.

In 2021, the Biden Administration declared that those persons who questioned the outcome of the 2020 election in which he was elected — presumably

¹⁶ “EAC Issues Report on Tennessee Voting System Anomaly,” U.S. Election Assistance Commission (Apr. 1, 2022).

including Eastman — were “domestic terrorists.”¹⁷ The Biden Administration then undertook a campaign to enlist social media companies to censor content purporting to question the legitimacy of the 2020 election. *See Murthy v. Missouri*, 603 U.S. 43, 50-52 (2024).

This brief review of contests to the outcome of elections demonstrates the accuracy of what has been termed Miles’s Law: “Where you stand depends on where you sit.” Republican victories are followed by Democrat challenges, and Democrat victories are followed by Republican challenges. If the decision of the California Supreme Court is allowed to stand, then we will have abandoned the rule of law for elections, and grafted in a new rule for lawyers involved in election challenges — first make sure you are not admitted to practice in a state controlled by the opposing political party. If this type of lawfare against lawyers is to become the norm, one day the shoe will be on the other foot, and likely sooner rather than later.

H. Election Challenges Must Be Permitted if We Are to Remain a Free Country.

The widespread concern about the reliability of the election processes detailed *supra*, illustrate the error of the decisions below to disbar Dr. Eastman. Those decisions ignored the fact that election manipulation

¹⁷ Attorney General Merrick B. Garland Remarks: Domestic Terrorism Policy Address (June 15, 2021).

can occur through the “unobserved injection of malware into computer systems.” *Curling* at 1280. It is virtually impossible for challengers to provide evidence of such manipulation until a thorough investigation of the election system in question has occurred. Without whatever judicial action is required to enable such an investigation to occur, challenges to election results cannot be a legitimate basis for disciplinary action.

Deeply offended by efforts to target conservative lawyers questioning election results, liberal attorney Alan Dershowitz reminded us:

It was only 22 years ago when lawyers like me sought to block the election of President George W. Bush, believing as we did that Al Gore actually received more votes than Bush in Florida and was the rightful winner. We lost in court. But back then no one suggested going after the hundreds of lawyers who tried to prevent Bush’s certification.¹⁸

Dershowitz called attacks on Trump’s lawyers “McCarthyite.” *Id.* To punish Eastman for his speech about an issue that is hotly debated to this day, Defendants must set themselves up as the arbiters of what is “true” and “false,” ignoring the caution of Justice Robert Jackson:

¹⁸ Alan Dershowitz, “Dershowitz: I Will Defend Any Lawyer Targeted by McCarthyist ‘65 Project,” *Breitbart* (Mar. 10, 2022).

The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us. [*Thomas v. Collins*, 323 U.S. 516, 545 (1945) (Jackson, J., concurring).]

Justice Jackson echoed that view five years later:

The priceless heritage of our society is the unrestricted constitutional right of each member to think as he will. Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error. [*American Communications Association v. Douds*, 339 U.S. 382, 442-43 (1950) (Jackson, J., concurring and dissenting).]

What the California Bar and the California Supreme Court have done here is profoundly threatening to the integrity of elections and the freedom of Americans, requiring review by this Court.

II. THE CALIFORNIA SUPREME COURT MANUFACTURED A MISREPRESENTATION BY EASTMAN IN *TEXAS V. PENNSYLVANIA*.

Count Two of the charges against Eastman alleged a violation of Cal. Bus. & Prof. Code § 6068 subdivision (d), which imposes a duty upon attorneys not to seek to mislead a judge “by an artifice or false statement of fact or law.” The California court found that Eastman intentionally sought to mislead this Court in filing a motion to intervene and complaint on behalf of President Trump in *Texas v. Pennsylvania*, No. 155, Original. *See* Pet. 21a-24a; 27a-37a.

Texas filed its original complaint against Pennsylvania on the theory that the rules for voting by mail and absentee ballots established by the Pennsylvania legislature had been altered in an unconstitutional manner by Pennsylvania courts and election officials to remove safeguards against fraud involving signature verification, drop boxes, and other ways. According to the “independent state legislature” theory,¹⁹ these changes to the legislatively prescribed rules violated Article II, sec. 1, cl. 2, the electors clause.²⁰

¹⁹ Eastman’s motion to intervene was filed before *Moore v. Harper*, 600 U.S. 1 (2023), which rejected the “independent state legislature” theory.

²⁰ The Texas complaint was supported by numerous *amicus* briefs, including one by 126 Members of Congress. Justices Alito and Thomas dissented from denial of the motion.

The California court's ruling against Eastman apparently is that he sought to intentionally mislead this Court using the most convoluted artifice imaginable, which appears to operate as follows.

First, although the California court identified no fault in Eastman's 17-page complaint, it found fault in one paragraph of Texas' 40-page complaint which Eastman had "incorporated by reference" via ¶ 8 of his complaint.

Second, the California court focused on ¶ 7 of Texas' complaint, which stated: "The **rampant lawlessness** arising out of Defendant States' unconstitutional acts is described in a number of currently pending lawsuits in Defendant States or in public view including...." *See* Pet. at 24a, n.19 (emphasis added) (illustrations omitted). This statement alone was not said to constitute an effort to mislead, but fault was found by coupling this statement from the Texas complaint with **another statement which was neither in the Texas complaint nor incorporated by Eastman.**

Third, the California court stapled ¶ 7 of Texas' complaint (which had been incorporated) together with the concluding request for relief at the end of the Texas' motion for leave (which was not incorporated) — which stated: "these flaws affect an outcome-determinative numbers of popular votes in a group of States that cast outcome-determinative numbers of electoral votes." *See* Pet. at 29a-30a. In this manner, it appears the California court was able to manufacture a supposed misrepresentation from a

statement that was never made or incorporated by Eastman.

If mitigation were needed in response to such a preposterous finding, it should be noted that the Texas complaint actually made a very different, unobjectionable claim about the scope of the problem with the Pennsylvania vote. It asserted that the “non-legislative modifications ... **appear to have generated** an outcome-determinative number of unlawful ballots....” Texas Complaint ¶ 63 (emphasis added). This “appear to” language is well short of a misrepresentation of any sort, but this language was entirely disregarded by the California court.

III. THE CALIFORNIA BAR’S ETHICS ENFORCEMENT ACTION MUST BE VIEWED IN THE BROADER CONTEXT OF LAWFARE AGAINST CONSERVATIVE ATTORNEYS.

The California Bar’s actions against Dr. Eastman are not an isolated incident, and they should not be viewed in isolation. Since the contested election of 2020, lawyers who took steps to support President Trump’s election have been targeted in a richly financed campaign to defame them, to encourage their law firms to fire them, their clients to discharge them, be stripped of their law licenses and generally be purged from polite society. With these efforts to punish conservative lawyers, the term “lawfare” entered political discourse.

Just three years ago, *Axios* reported: “High-powered group targets Trump lawyers’

livelihoods.” It highlighted the efforts of a group called Project 65, a brainchild of Melissa Moss, “a Democratic consultant and former senior Clinton administration official.”²¹ Project 65’s advisor, and apparent spokesman, is David Brock, described by *Time* magazine as “one of the most powerful players in Democratic politics” and “Hillary Clinton’s bulldog,” who “set up the group that create[d] all the federal Democratic opposition research for the 2016 campaigns” against President Trump and congressional Republicans.²²

The group’s asserted goal is to promote attacks on lawyers who advised Trump or handled election-related legal challenges for conservatives, attempting to create a “deterrent effect ... so that you can **kill the pool of available legal talent going forward.**” (Emphasis added.)²³ The group announced its plans to “spend millions ... **to expose and try to disbar more than 100 lawyers** who worked on Donald Trump’s post-election lawsuits.” *Id.* (emphasis added). Here, Defendant’s actions are minimizing the number of licensed attorneys who conservative, pro-Trump clients will be able to engage in the future. The strategy, Brock announced, was “not only bring the grievances in the bar complaints, but shame them and **make**

²¹ Lachlan Markay and Jonathan Swan, “Scoop: High-powered group targets Trump lawyers’ livelihoods,” *Axios* (Mar. 7, 2022).

²² Michael Scherer, “Meet Hillary Clinton’s Bulldog,” *Time* (Sept. 10, 2015).

²³ Markay, *supra*.

them toxic in their communities and in their firms.” *Id.* (emphasis added). “I think the littler fish are probably more vulnerable to what we’re doing,” he said. “You’re threatening their livelihood. And, you know, they’ve got reputations in their local communities.” *Id.*

The goal of Project 65 seems designed to drive conservative lawyers out of the profession entirely. The group announced its plans to “invest \$2.5 million in its first year and target 111 lawyers across 26 states”²⁴ for helping Trump’s legal defense. Project 65 even filed ethics complaints against many lawyers who signed on to briefs challenging election law violations by the Pennsylvania Supreme Court that affected the razor-thin race in that state between Trump and Joe Biden in 2020.²⁵

²⁴ Caleb Ecarma, “A New Legal Group Wants to Disbar the Lawyers Who Helped Sell Trump’s Big Lie,” *Vanity Fair* (Mar. 8, 2022).

²⁵ The 65 Project also filed complaints against one former Harvard Law School Professor, 15 state Attorneys General, and one U.S. Senator: Alan Dershowitz; Mississippi Attorney General Lynn Fitch; Alabama Attorney General Steven Marshall; West Virginia Attorney General (now Governor) Patrick Morrissey; Arkansas Attorney General Leslie Rutledge; Kansas Attorney General Derek Schmidt; Missouri Attorney General (now U.S. Senator) Eric Schmidt; Montana Attorney General Tim Fox; Utah Attorney General Sean Reyes; Tennessee Attorney General Herbert Slatery; Louisiana Attorney General (now Governor) Jeff Landry; Indiana Attorney General Curtis Hill, Oklahoma Attorney General Mike Hunter; Nebraska Attorney General Douglas Peterson; Florida Attorney General Ashley Moody; South Carolina Attorney General Alan Wilson; and U.S. Senator Ted

**IV. THE CALIFORNIA BAR TOOK NO ACTION
AGAINST DEMOCRAT CALIFORNIA
LAWYER VINCENT BUGLIOSI FOR
STATEMENTS MUCH MORE AGGRESSIVE
THAN REPUBLICAN EASTMAN’S.**

While the California State Bar would no doubt resist any suggestion that it is pursuing a political agenda, consider statements made by former Los Angeles County Deputy District Attorney, Democrat Vincent Bugliosi about the 2000 presidential election.²⁶ Bugliosi wrote The Betrayal of America: How the Supreme Court Undermined the Constitution and Chose Our President (2001) in which he argued that this Court’s 5–4 decision in *Bush v. Gore* damaged the Constitution and democracy, and constituted criminal, near-treasonous conduct by the five justices in the majority. He maintained that the decision was partisan, legally indefensible, and that the justices deliberately handed the election to Bush.

The complaint against Eastman included charges about public statements made outside the context of litigation, not dissimilar to those by Bugliosi. *See* Pet.

Cruz. *See* Tom Ramstack, “State Attorneys General Face Ethics Complaint for Supporting Trump’s Election Fraud Claims,” *The Wall News* (Sept. 23, 2022). (Counsel of Record for these *amici* was among the many lawyers targeted by The 65 Project with a Bar Complaint (*see* Ethics Complaint Against William Olson (Aug. 4, 2022).)

²⁶ Bugliosi led the prosecution of Charles Manson, and later practiced privately in California while remaining a member of the California State Bar.

234a. It did not matter that no complaint was filed against Bugliosi, as California State Bar Rule 2402 authorizes the Bar's Office of Chief Trial Counsel to pursue a disciplinary action against a California lawyer without a complaint. Yet the Bar took no disciplinary action whatsoever against Bugliosi for statements such as the following:

It misses the point to argue that the five Justices stole the election only if it turns out that Gore overcame Bush's lead in the undervote recount. We're talking about the moral and ethical culpability of these justices, and when you do that, the bell was rung at the moment they engaged in their conduct.... Irrespective of the result reached by the newspapers, we know that more Floridians intended to vote for Al Gore than George Bush on November 7, 2000. [Bugliosi, *supra*. at 15.]

Again and again, Bugliosi referred to the election as "stolen" by this Court. "[T]he five justices had absolutely no regard, no respect, for 50 million Americans, whose votes for vice president Gore they knew they were erasing as if never cast." *Id.* at 28. He went so far as to accuse this Court of insurrection. The decision, he claimed, was a "judicial coup d'etat." *Id.* at 42. Bugliosi then went on to demand retribution against this Court. "You mean you can steal a presidential election and your only retribution is that some people don't have as much respect for you, as much confidence in you? That's all?" *Id.* at 48. He added,

In my mind's eye, these five Justices have gotten away with murder, and I want to do whatever I can to make sure that they pay dearly for their crime.... I want these five justices to know that because of this article ... there's the exponential possibility that when many Americans look at them in the future, they'll be saying, 'why are these people in robes seated above me? They all belong behind bars.' [*Id.* at 61.]

He even went so far as to discuss violence against this Court. "My liberal friends and most of my moderate ones ... want to hang these justices in the town square at noontime." *Id.* at 17. He continued: "While the conduct of the five conservative justices doesn't fall within the strict language of treason, the essence of treason, clearly, is an American citizen done doing grave and unjustifiable damage to this nation... *Id.* at 115.

Ironically, California lawyer Bugliosi proposed virtually the same remedy for the disputed Florida election for which the California Bar disbarred Eastman. He proposed that both candidates should send a proposed slate of Electors to Congress, and Congress decide who had actually won Florida:

The Twelfth Amendment ... expressly and explicitly delegates this nation's Congress, the responsibility of counting the electoral votes in all presidential elections, close or not close.... Necessarily implicit in this delegation of authority to Congress is that **Congress has to**

decide which electoral votes shall be counted. And 3 U.S.C. § 15, enacted by Congress, expressly says this and details the process.... Congress is set up to handle all types of intensely contested and combustible issues. And the law of the land is that the determination of who got the most valid electoral votes in the presidential election is one of them. [*Id.* at 157-59 (emphasis added).]

CONCLUSION

For the foregoing reasons, these *amici* urge the Court to grant the petition.

Respectfully submitted,

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