

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 OF AMICUS CURIAE ARTICLE III
PROJECT IN SUPPORT OF PETITIONER

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INTERESTS OF AMICUS CURIAE¹

The Article III Project (“A3P”) is a nonprofit organization focused on advocating for constitutionalist judicial reform and fighting against the politicization and weaponization of the justice system. Since it was founded in 2019, A3P has been a leader in defending the separation of powers and the Constitution while opposing lawfare and efforts to undermine the lawful prerogatives of the Executive Branch.

Amicus curiae has an interest in this case because it concerns a clear weaponization of state bar ethics rules against John Eastman for his work representing the President of the United States. Amicus curiae files this brief to explain why this Court must step in and curb the political weaponization of bar discipline.

INTRODUCTION

John Eastman is an able lawyer of sound character who rendered service to the President of the United States. These facts were so evident that not even the tribunal recommending Eastman’s disbarment could deny them. But that did not stop the California State Bar’s Hearing Department from recommending Eastman’s law license be revoked nor did it stop the Review Department and California Supreme Court from affirming.

¹ No party’s counsel authored this brief in whole or in part, and no person or entity other than amici curiae, their counsel, or their members made a monetary contribution intended to fund the brief’s preparation or submission. Amicus provided timely written notice of this brief.

That's because Eastman's disciplinary proceedings were never about character or fitness to practice law; they were part of a growing trend of using state bar ethics rules to punish political opponents. Politically motivated actors file ethics complaints against their opponents and radicalized bar associations follow through, bringing disciplinary proceedings based on an attorney's disfavored ideology.

This practice is an offense to the Constitution and a danger to the health of the legal profession. This Court should put a stop to it. Whatever anyone may think of the merits of John Eastman's legal advocacy during the 2020 presidential election, only the willfully blind could deny that Eastman is before this Court because of his political allegiances.

The Court should grant certiorari to make clear that the Constitution forbids ideological purity tests in the form of ethics proceedings against an attorney. Such a clarification is necessary to stop the weaponization of state bar ethics rules and to prevent the harm that weaponization will bring to the practice of law in the United States.

SUMMARY OF ARGUMENT

This Court has consistently held that states may not impose an ideological test for bar membership. No matter how disfavored an ideology may be, targeting bar membership, and hence the license to practice law, offends the Constitution, including the First Amendment. Despite this longstanding precedent, the proceedings against Eastman bear all the hallmarks of an ideological purge. California ignored Eastman's good character, placed great reliance on his

refusal to recant his beliefs, and ginned up pretextual and baseless accusations of criminal conduct in order to justify punitive disbarment.

This Court must step in now to avert a coming crisis in the legal profession over bar licensure. The use of ethics complaints and proceedings to punish political opponents has greatly increased in recent years and there is no reason to believe it will stop. This Court should stop it here and now—and save the legal profession from greater political fracture—by granting certiorari and confirming what it has always recognized: the bar is not the place for ideological warfare.

ARGUMENT

I. This Court Has Consistently Rejected Ideological Tests for Bar Membership Like What California Applied Here.

California is attempting to disbar John Eastman because of the legal arguments he made and the client's cause he advanced, a tactic this Court has consistently rejected under numerous constitutional provisions. The sin of compelling ideological purity is not new. Throughout American history, ideologically motivated legislators and bar associations have sought to disqualify attorneys who held disfavored or unpopular beliefs. This Court has never countenanced such efforts before and it shouldn't do so now.

Everyone invested in American constitutional order should be seriously concerned. “[A]ll the interests of man that are comprised under the constitutional guarantees given to ‘life, liberty and property’ are in the professional keeping of lawyers.” *Schwartz*

v. Bd. of Bar Exam. of State of N.M., 353 U.S. 232, 247 (1957) (Frankfurter, J., concurring). And it is a critical issue for the courts in particular because “[a]n informed, independent judiciary presumes an informed, independent bar.” *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 545 (2001). A State that punishes attorneys for the arguments they make not only injures the lawyer; it “distorts the legal system by altering the traditional role of the attorneys.” *Id.* at 544. The Court must reject California’s attempt to distort the role of attorneys by imposing an ideological litmus test on bar membership.

A. Ideological Tests for Bar Membership Are Unconstitutional.

A state bar association may not disbar or refuse to license an attorney because of what that attorney believes or because of the causes that attorney has advocated. This principle is black-letter law, laid down by this Court in cases that bear a striking similarity to this one. To the extent any state bar association attempts to disbar an attorney for their beliefs, that association violates the United States Constitution.

This principle was most clearly enunciated in a line of cases beginning with *Schwartz v. Board of Bar Examiners of State of New Mexico*, 353 U.S. 232 (1957). In *Schwartz*, the Court recognized that while a state may require “good moral character” and legal competence as conditions of bar admission, any qualifications for membership must bear a rational relationship to the applicant’s ability to practice law. 353 U.S. at 238–39. The petitioner in that case, Schwartz, was denied a bar license by New Mexico on the grounds that he lacked good moral character. However, the only basis for that determination was

Schware's membership in the Communist Party. *Id.* at 243. The New Mexico Supreme Court held that Schware's membership disqualified him from bar membership because the Communist Party was "dedicated to the violent overthrow of the Government." *Id.* at 244. These beliefs were disfavored. This Court emphatically rejected this rationale, citing *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), and holding that Schware's beliefs "may have been unorthodox" but that "[m]ere unorthodoxy (in the field of political and social ideas) does not as a matter of fair and logical inference, negative good moral character." *Id.*

Unfortunately, *Schware* did not put the issue to bed, and the Court was forced to take it up again twice in 1971. In *Baird v. State Bar of Arizona*, 401 U.S. 1, 4 (1971), and *Application of Stolar*, 401 U.S. 23 (1971), decided on the same day, the Court again emphasized that the Constitution does not tolerate ideological tests for bar membership. Attorney Sara Baird's application for bar membership was rejected by the Arizona Bar Committee after she refused to answer a question asking whether she had "ever been a member of the Communist Party or any organization that advocates overthrow of the United States Government by force or violence." *Baird*, 401 U.S. at 4. Though there was no "single mark against her moral character" and she passed the bar, her bar application was rejected. In a plurality opinion, the Court held that this decision violated the First Amendment. Justice Stewart's controlling concurrence puts the relevant principle simply: "the First and Fourteenth Amendments bar a State from acting against any person merely because of his beliefs." *Id.* at 10.

Stolar was much the same: Attorney Martin Stolar's application to take the Ohio Bar was denied after he refused to answer a series of questions inquiring into his organizational membership and asking if he had ever been a member of an organization "which advocates the overthrow of the government of the United States by force." *Stolar*, 401 U.S. at 27. Justice Stewart's controlling concurrence noted that Ohio's questions regarding organizational membership were "plainly unconstitutional" and that its question regarding overthrow of the government "suffers from the same constitutional deficiency" as the questions in *Baird*. *Id.* at 31.

The efforts to disbar communists were not the first time the Court dealt with the political use of disbarment. Long before the Cold War, Reconstruction Republicans in Congress passed a law barring any former member of the Confederate government from being admitted to the bar of any federal court. See *Ex parte Garland*, 71 U.S. (4 Wall.) 333 (1866). The law acted as "a legislative decree of perpetual exclusion" from the bar for former Confederates. *Id.* at 377. Again, attorneys were targeted because of their presumably disfavored beliefs. The *Garland* Court held that the Act was an impermissible bill of attainder because "exclusion from any of the professions or any of the ordinary avocations of life for past conduct can be regarded in no other light than as punishment for such conduct." *Id.*

And contemporaneously with *Schwartz*, *Baird*, and *Stolar*, the Court dealt with an even more brazen political targeting of bar licenses. Following *Brown v. Board of Education*, 347 U.S. 483 (1954), a series of southern states passed "anti-barratry" statutes. See

Susan Carle, *From Buchanan to Button: Legal Ethics and the NAACP (Part II)*, U. Chi. L. Sch. Roundtable 281, 296 (2001). Barratry was the offense of “[v]exatious incitement to litigation, esp. by soliciting potential legal clients.” BARRATRY, *Black’s Law Dictionary* (12th ed. 2024). Southern states passed statutes to expand the definition of barratry to include any efforts by an organization to solicit pro-bono legal business in which they had no direct interest. *See Nat’l Ass’n for Advancement of Colored People v. Button*, 371 U.S. 415, 423 n.7 (1963). Virginia’s law, which was the subject of *NAACP v. Button*, was the most famous of these anti-barratry statutes. Violation of the statutes was a misdemeanor but could also lead to the revocation of the violator’s license to practice law. *See id.* at 423 n.7 (citing Va Code §§ 54-74, 54-78, 54-79 (1950), as amended by Acts of 1956, Ex Sess, c 33 (Repl Vol 1958)). Under Virginia’s statute, the legal activities of the NAACP constituted barratry and were unlawful, meaning NAACP attorneys regularly risked disbarment proceedings. *Id.* at 426, 435.

As with the other attempts to disbar the state’s political opponents, the Court rejected Virginia’s law and anti-barratry laws across the South. “Free trade in ideas means free trade in the opportunity to persuade to action, not merely to describe facts.” *Id.* at 437 (internal quotation marks omitted). The Court held that the NAACP’s actions were constitutionally protected and that Virginia’s interest in regulating the legal profession did not permit it to punish attorneys for their advocacy work. “[R]egulatory measures ... no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights.” *Id.* at 439

(quoting *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293, 297 (1961)).

Schware, Baird, Stolar, Garland, and Button are unified in their outcome under numerous constitutional protections: the Constitution does not brook ideological tests for bar membership. States are free to impose reasonable character and fitness requirements, but those requirements cannot be keyed to the beliefs or advocacy of the attorney in question.

B. California’s Decision Against Eastman Has the Hallmarks of an Ideological Purity Test.

California is attempting to disbar John Eastman based on his refusal to conform to the authorized account of a well-known political and constitutional dispute. The record of the Hearing and Review Departments’ decisions in this case shows that the driving force behind its decision was ideology, not a concern for John Eastman’s actual fitness to practice law. Despite Eastman’s obvious fitness to practice, California ginned up misconduct allegations based on partisan complaints about Eastman’s conduct.

John Eastman is an able lawyer of good character; even the opinion recommending his disbarment could not dispute it. The opinion below recognizes that Eastman had no prior discipline, cooperated with California’s investigation, and was of good character. *See* Pet. App. 286a–90a. Eastman presented California with fourteen witness declarations and five live witnesses to attest to his integrity and character. Pet. App. 289a–90a. Among them were former judicial officers, a former Attorney General of the United States, academics, and practitioners. *Id.* According to the

Hearing Department, these witnesses “consistently and uniformly attested” to Eastman’s fitness to practice law, including his “professionalism, integrity, honesty, fairness, and respect.” Pet. App. 290a. The Hearing Department concluded that this provided “strong evidence” of Eastman’s good character. *Id.* It said it would give this evidence “substantial weight.” The Review Department affirmed this mitigation for “extraordinary good character,” Pet. App. 114a, but both departments’ analysis shows that they ignored Eastman’s undeniable character to focus on his beliefs.

California’s theory of misconduct relies on disagreement with Eastman’s legal advocacy and then treating his continued adherence to his own positions as proof of bad faith and misrepresentation. The hallmarks of ideological motivation can be found throughout the Hearing and Review Departments’ opinions. Both opinions repeatedly acknowledge that the disciplinary proceedings hinged on the merits of Eastman’s legal analysis regarding the 2020 election. *See, e.g.*, Pet. App. 44a, 138a, 191a. On a number of counts, both departments explicitly pinned their analysis on conclusions regarding the merits of Eastman’s constitutional advice to the President. *See* Pet. App. 77a–78a, 83a–84a, 98a, 271a. Simply put, the State’s preferred orthodoxy picks sides on a question of legal advocacy. They do this even while acknowledging that Eastman’s analysis was not without some legal support. *See* Pet. App. 194a n.56.

When Eastman argued that he genuinely believed what he wrote in the memo underlying Count Six against him, the Hearing Department did not respond with proof that Eastman’s belief was fabricated. It

simply wrote that it did not “consider Eastman’s beliefs to be sincere, honest, or credible.” Pet. App. 263a. In other words, the State wished to enforce its own orthodox views. Both Departments refused to give Eastman any credit for good faith. Pet. App. 107a–117a, 287a–88a.

To underline the point, both bodies brazenly faulted Eastman for not recanting his personal beliefs. The Hearing Department wrote that it was “concerning” that Eastman “continues to hold the view that his statements were factually and legally justified.” Pet. App. 284a. What is this if not enforcement of favored ideological orthodoxy? The Review Department doubled down, writing that Eastman’s refusal to conform to California’s account of the law and facts was “defiance and pugnacity and a refusal to consider the propriety of his actions as an attorney.” Pet. App. 111a. Eastman’s refusal to conform to California’s orthodoxy featured heavily in each opinion, appearing dozens of times in each. *See* Pet. App. 109a–111a, 116a–124a, 284a–288a, 294a–296a. So complete was the Hearing Department’s enforcement of political orthodoxy that it refused to even give Eastman credit for good faith. *See* Pet. App. 287a.

Truly, the Court need look no farther than the concluding section of the Hearing Department’s opinion to see California’s ideology at work. The Hearing Department admitted that it “could not find any controlling case law directly on point or substantially analogous to the facts of this case” but decided the closest case on point was *Segretti v. State Bar*, 15 Cal. 3d 878 (1976). *Segretti* was close, the Hearing Department determined, but “[t]he scale and egregiousness

of Eastman's unethical actions far surpasses the misconduct at issue in Segretti." Pet. App. 293a.

Donald Segretti was an attorney who worked with Richard Nixon's Committee to Re-elect the President and pleaded guilty to three federal crimes. 15 Cal. 3d at 883. Segretti forged and distributed fake campaign materials, including false allegations of "sexual improprieties" by candidates for president. *See id.* In other words, Segretti was actually convicted of multiple offenses involving fraud or dishonesty; he served six months in prison for his crimes. California disciplined Segretti by suspending his license for two years.

Comparing John Eastman to Segretti is coherent only if one sees Eastman's beliefs and advocacy as sanctionable. John Eastman committed no crimes, much less crimes of fraud or forgery. Segretti was convicted of three crimes of dishonesty; Eastman hasn't been convicted of any. And while Segretti was sentenced by a federal court to six months in prison, the only body to determine that John Eastman's conduct was sanctionable is the California State Bar.

Despite this, the Hearing Department determined that the "scale and egregiousness" of Eastman's conduct "far surpasses" that of Segretti and, while it only suspended Segretti's license, revoked Eastman's. Let that sink in. To make this determination appear less unreasonable, the Hearing Department took it upon itself to declare that Eastman's conduct was criminal. Absent any actual conviction, the Hearing Department concluded that Eastman violated his ethical duties "by violating 18 U.S.C. § 371." No federal prosecutor has charged Eastman with a violation of Section 371 (conspiracy to commit offense or defraud the

United States)—he was never indicted for any federal crime.

These are all clear indicia that California’s proceedings against John Eastman are a prohibited attempt to impose an ideological filter on bar membership. Indeed, the Court need not even delve into the particulars of the decision here. Every party to this case knows that John Eastman’s law license was revoked because of his politics and his client. The Court is not required to blind itself to what every person in America knows: this case exists because Eastman said what he said and did what he did in the service of President Donald Trump in the hotly contested 2020 election. Putting aside the merits of the accusations against Eastman, any reasonable person would recognize that if Eastman had made comparable statements in the service of a non-political client, there would be no proceeding against him.

II. The Court Should Grant Review to Curb the Weaponization of Bar Membership.

In addition to the merits of Eastman’s First Amendment rights, this Court should grant certiorari because if it does not, state bars will continue to attack the law licenses of their political opponents. Wholly apart from the legal issues in this case, the Court should step in to clarify that bar licensure is not an ideological battlefield. If certiorari is denied here, the results will be predictable and ugly.

Denying certiorari to Eastman is tacit permission for further ethics purges like the one here. While this case is a stark example of ideological opposites—a lawyer for President Trump licensed in the State of California—it is hardly *sui generis*. California, New

York, and Illinois are no doubt home to thousands of hardline conservative lawyers, just as Texas, Florida, and Wyoming are doubtless home to countless liberal ones. To state the obvious, it would be bad if those States began regularly instituting disciplinary proceedings against attorneys who take aggressive litigation stances in cases disfavored by the State's political majority. Doing so under the Eastman model would be easy. A state need merely cast the attorney's factual representations as false and their legal arguments as baseless. This would not be difficult in today's world; high-profile cases regularly make their way to this Court with basic factual questions hotly contested. *See, e.g., United States v. Skrmetti*, 605 U.S. 495, 524 (2025); *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 377 (2024). And lawyers need no assistance when it comes to accusing their opponents of baseless legal theories.

Lawyers who are able to easily move their law license would be forced to house their license in a friendly state. Reliably red states would be home to the licenses of conservative lawyers across the nation, while blue ones would become the safe harbors of liberal attorneys. That sort of Balkanization is necessarily unhealthy.

But worse would be the implication for lawyers and clients who cannot relocate to friendly jurisdictions. Americans deserve zealous advocates for their cause no matter what the local bar association's political affiliation may be. While John Eastman's case is national news and he has been able to defend himself, that will not be the case for every attorney. Permitting politically motivated bar discipline of high-profile attorneys will suppress advocacy at the state and local

levels, too. Many lawyers will be forced to soften their advocacy in hot-button cases so as not to run afoul of “ethical” rules. Those caught up in ideologically charged disputes will be deprived of adequate representation because their attorneys fear reprisal. Eventually, “[t]he courts and the public would come to question the adequacy and fairness of professional representations” whenever counsel steers clear of arguments the State disfavors. *Velazquez*, 531 U.S. at 546.

This is not a hypothetical discussion; the process of weaponizing bar discipline is already well underway. While bar proceedings have occasionally been used for arguably political purposes throughout history, constitutional guardrails must be in place. President Nixon and members of his administration were disbarred following Watergate, *see, e.g., Matter of Nixon*, 53 A.D.2d 881 (N.Y. App. Div. 1976); *Attorney Grievance Commission v. Agnew*, 318 A.2d 811 (Md. 1974); *Matter of Colson*, 412 A.2d 1160, 1168 (D.C. 1979), and President Clinton’s law license was suspended in Arkansas following his testimony in the Paula Jones case, *see Comm. on Pro. Conduct v. Clinton*, No. CPC 2000-013 (Ark. Sup. Ct. Comm. on Prof’l Conduct Jan. 19, 2001).

Concerningly, the use of these ideological purity tactics has escalated dramatically in the last decade. Legal ethics complaints have been regularly used as a political weapon against members of the Trump Administration since at least 2019. *See* Brian Sheppard, *The Ethics Resistance*, 32 Geo. J. Legal Ethics 235 (2019); W. Bradley Wendel, *Government Lawyers in the Trump Administration*, 69 Hastings L.J. 275, 282 (2017). The volume of complaints was “so stunning

that it is almost certainly unprecedented.” Sheppard, *The Ethics Resistance*, 32 Geo. J. Legal Ethics at 267.

These complaints and the proceedings that have spawned from them are part of a dangerous weaponization of law licenses. Professor Brian Sheppard’s article, *The Ethics Resistance*, reviewed the tactic of making high-profile ethics complaints against President Trump’s attorneys, which he termed, “the Ethics Resistance.” Having exhaustively surveyed the complaints and the relevant law, he concluded that “[i]t is fair to view the Ethics Resistance complaints as merely the first move in a long game of politically motivated punishment.” 32 Geo. J. Legal Ethics at 295.

If the ethics complaints against officials in the first Trump Administration were the first move, politically motivated bar discipline has progressed into the midgame. Rather than merely filing ethics complaints, politically motivated actors are now attempting to revoke their opponents’ law licenses. And rather than praising the practice of ethics complaints as Professor Sheppard did, academics are calling for more aggressive use of ethics rules to crack down on their ideological opponents, even enjoining lawyers from practicing mid-case. See Scott L. Cummings, *Lawyers in Backsliding Democracy*, 112 Cal. L. Rev. 513, 605 (2024); see also Renee Knake Jefferson, *Lawyer Lies and Political Speech*, 131 Yale L.J. Forum 114 (2021).

Nor is this only an issue for attorneys dealing in national issues. Just last year, Montana’s Supreme Court considered an attempt by the Montana Commission on Practice to sanction the State’s Attorney General, Austin Knudsen, for his litigation positions. The Commission filed a complaint against Knudsen over the recommendation of an investigative special

counsel that included, among other things, allegations that Knudsen's litigation positions were "contemptuous, undignified, discourteous, and/or disrespectful." Complaint at 3, 15, 17, 19, 22, 25, 28, 31, *In re Knudsen*, No. PR 23-0496 (Mont. Comm'n on Prac. Sept. 5, 2023). The proceeding was transparently political, instituted because the Commission disliked Knudsen's positions.

The Court should step in and put a stop to all of this. The rights of representation and legal advocacy are too important to be political footballs. No matter how vociferously a state bar may disagree with an attorney's position, it is not right for it to institute discipline against that attorney on the basis of its disagreement. While the states are free to limit licensure to able lawyers of good character, "[m]ere unorthodoxy (in the field of political and social ideas) does not as a matter of fair and logical inference, negative good moral character." *Schwabe*, 353 U.S. at 244. The Court should grant certiorari in this case so it can reiterate the principles of *Schwabe* and emphasize that the Constitution does not tolerate ideological attacks on law licenses.

CONCLUSION

For the reasons stated herein, the Court should grant the Petition for Certiorari and reverse the judgment of the Supreme Court of California.

Respectfully submitted,

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