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STATE BAR COURT
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Public Matter

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No. SBC-23-O-30029-YDR
	)	
JOHN CHARLES EASTMAN,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
State Bar No. 193726.	)	ENROLLMENT
	)	

Introduction

In this contested disciplinary proceeding, the Office of Chief Trial Counsel of the State Bar of California (OCTC) charged John Charles Eastman (Eastman) with 11 counts of misconduct arising from certain activities surrounding his representation of former president Donald J. Trump and the 2020 presidential election. Eastman is charged with one count of failing to support the Constitution and laws of the United States (Bus. & Prof. Code § 6068, subd. (a));[1] two counts of seeking to mislead a court (§ 6068, subd. (d)); six counts of moral turpitude by making various misrepresentations (§ 6106); and two additional counts of moral turpitude (§ 6106).

After full consideration of the record, the court finds that OCTC has satisfied its burden of proving all charges except for count eleven, which the court dismisses with prejudice.[2] In

[1] All further statutory references are to the Business and Professions Code, unless otherwise indicated.

[2] OCTC has the burden of proving the charges by clear and convincing evidence. Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the

view of the circumstances surrounding Eastman's misconduct and balancing the aggravation and mitigation, the court recommends that Eastman be disbarred.

Significant Procedural History

On January 26, 2023, OCTC initiated this proceeding by filing a Notice of Disciplinary Charges (NDC). Eastman filed a response to the NDC on February 15. Thereafter, the court held an initial status conference wherein the court set trial to commence on May 10.

On March 30, 2023, OCTC filed its motion in limine No. 1, to exclude the testimony of two witnesses. The court granted the motion on May 23.[3]

On April 12, 2023, the court granted the parties' joint motion to continue trial; continuing the trial to June 20.

Thereafter, the court made numerous rulings regarding various motions in limine, requests for judicial notice, and abatement of the proceedings, including: a June 16, 2023 ruling on motion in limine No. 2;[4] a June 16 ruling on motion in limine No. 3;[5] a June 16 ruling on

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unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.) This "standard of proof . . . which requires proof making the existence of a fact highly probable—falls between the 'more likely than not' standard commonly referred to as a preponderance of the evidence and the more rigorous standard of proof beyond a reasonable doubt." (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 995.)

[3] The court precluded Eastman from offering the testimony of the Honorable Janice Rogers Brown and Rebecca Roiphe regarding: (1) whether OCTC is entering "unchartered territory" in charging Eastman with ethical violations under the facts and circumstances presented in this case; and (2) whether Eastman's statements are constitutionally protected or if he may be disciplined for such statements.

[4] Eastman was precluded from offering expert testimony from Joseph Fried regarding whether it was proper to certify the 2020 election based on the professional standards for certified audits in certain states.

[5] Eastman was permitted to offer the expert testimony of Stanley Young.

motion in limine No. 4;[6] a June 20 ruling on motion in limine No. 5;[7] a June 21 ruling on request for judicial notice; an August 16 ruling on motion in limine No. 6;[8] an August 23 ruling on motion in limine No. 7;[9] and an August 25 ruling on Eastman's motion to abate the disciplinary proceeding.[10]

The parties filed a stipulation to undisputed facts on June 12, 2023. A 34-day, in-person trial commenced on June 20.[11] OCTC was represented by Supervising Attorney Duncan Carling, Deputy Trial Counsel Samuel Beckerman, and Deputy Trial Counsel Christina Wang. Eastman

[6] Eastman was precluded from offering expert testimony from John Valentine regarding his findings about voter registration anomalies he found while searching the voter rolls for numerous states and whether there was voter fraud in the 2020 election.

[7] Eastman was precluded from offering expert testimony from John Yoo regarding "whether it would be frivolous to assert that Vice President Pence had the authority to unilaterally adjourn the Joint Session of Congress" and "that [Eastman]'s argument that Pence could refuse to count certain electoral votes was non-frivolous."

[8] Eastman was precluded from offering the testimony of William M. Briggs, Anthony Cox, Jr., Mark Finchem, Heather Honey, Sandy Juno, Jeffrey O'Donnell, and Wendy Rogers. Joseph Fried and Bruce Patrick Colbeck were permitted to testify as percipient witnesses—excluding any expert opinion testimony. Kurt Olsen was permitted to testify as a percipient witness as specified on page 64 of the June 5, 2023 joint pretrial statement regarding his involvement with the *Texas v. Pennsylvania case*—excluding any expert opinion testimony. The court clarified its ruling on October 2. In a later October 12 order, the court precluded Joseph Fried's testimony as a percipient witness.

[9] OCTC was not precluded from offering evidence that Eastman conspired to create alternative slates of electors to those that certified the 2020 presidential election.

[10] Eastman sought to abate the case based on the August 1, 2023, federal indictment of former president Donald J. Trump for conspiracy to defraud the United States and other crimes. Eastman maintained that abatement is necessary because although currently unnamed, the potential exists that he may be charged as a co-conspirator and indicted in the criminal case against former president Trump. Eastman argued that abatement was necessary to protect his Fifth Amendment rights against self-incrimination. Subsequently, Eastman was indicted in Fulton County, Georgia on August 14. The court denied the abatement motion, finding that Eastman was aware of his possible criminal exposure and his right to plead the Fifth Amendment before he testified during the disciplinary proceeding, he waived his Fifth Amendment rights, and the factors outlined in rule 5.50 of the Rules of Procedure of the State Bar did not weigh in Eastman's favor.

[11] Trial took place on June 20 – 23; June 29 – 30; August 24 – 25; September 5 – 8; September 12 – 15; September 26 – 29; October 3 – 6; October 17 – 20; October 23 – 24; October 30; November 2 – 3; November 8; and November 13.

was represented by Randall A. Miller, Zachary Mayer, and Jeanette Chu of Miller Law Associates, APC.

On October 3, 2023, Eastman filed a request for judicial notice that was granted, in part, and denied, in part, on October 23. Both parties filed closing argument briefs on December 1 and the case was submitted for decision on the same date.

Thereafter, on December 26, 2023, OCTC filed a notice of errata seeking to correct an error in its closing brief. On December 28, Eastman filed a response to OCTC's notice of errata. As a result, on February 15, 2024, the court issued an order accepting for consideration OCTC's notice of errata and Eastman's response, vacating the December 1, 2023 submission for decision and taking the matter under submission for decision, nunc pro tunc, as of December 28.

Jurisdiction

Eastman was admitted to the practice of law in California on December 15, 1997, and has been a licensed attorney of the State Bar of California at all times since that date.

Findings of Fact[12]

The NDC alleges misconduct surrounding Eastman's involvement in the efforts to reject, delay and/or obstruct the electoral vote after the 2020 presidential election. Despite the depth, breadth, and complexity of the case law and historical context cited by the parties, this

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[12] The following findings of fact are based on the parties' stipulation to undisputed facts and the testimonial and documentary evidence admitted at trial.

Pursuant to the Rules of Procedure of the State Bar, "[a]ny relevant evidence must be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." (Rules Proc. of State Bar, rule 5.104(C).) It follows that even hearsay evidence must be admitted so long as it is relevant and reliable. However, it may only be "used for the purpose of supplementing or explaining other evidence, but over timely objection will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." (Rules Proc. of State Bar, rule 5.104(D).)

disciplinary proceeding boils down to an analysis of whether or not Eastman, in his role as the attorney for then-President Donald Trump (hereinafter referred to as President Trump) and his re-election campaign, acted dishonestly in his comments and advice given regarding the issue of whether then-Vice President Mike Pence (hereinafter referred to as Vice President Pence) had authority to unilaterally reject certain states' slate of electors and/or delay or recess the electoral count during the Joint Session of Congress on January 6, 2021, and the manner in which he pursued legal action aimed at obstructing the lawful electoral process.

Pertinent Background re Election Law and the Electoral Process[13]

Several provisions of the United States Constitution (Article II and the Twelfth Amendment), along with certain statutory provisions (including the Electoral Count Act), govern the election of the President of the United States, which involves numerous steps before, during, and after Election Day.

After Election Day, as determined by popular vote for a presidential candidate, electors are appointed by the States. As stated in the United States Constitution: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector." (U.S. Const. art. II, §1, cl. 2.)

[13] In the context of this disciplinary proceeding, the court only addresses some of the most significant constitutional issues relevant to the 2020 presidential election and the charges alleged against Eastman. The court does not set forth a detailed constitutional analysis of election law or election law-related issues.

The Electoral Count Act (ECA), which was enacted in 1887 and until 2022, had only minor revisions, further details the electoral process.[14] Section 7 of the ECA requires State electors to meet "the first Monday after the second Wednesday in December" to vote for the President and Vice President as determined by State law. (3 U.S.C. §7.) Furthermore, as set forth in Section 6, it is the duty of the Governor of each State, as the "executive of each State", to provide as soon as practicable after ascertainment, the final certificate of ascertainment of the electoral votes to the Archivist of the United States and the President of the Senate, among others. (3 U.S.C. § 6.)

Section 15 of the ECA, addresses the Joint Session of Congress, including the manner in which, on January 6, each state's governor-certified electoral votes contained in the certificate of ascertainment will be counted and how objections shall be resolved:

> Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; ***and the votes having been ascertained and counted according to the rules in this subchapter*** provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcements shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States…[If objections are raised as to any vote from a State], the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of

[14] See Consolidated Appropriations Act of 2023, Pub. L. No. 117-328 (December 29, 2022) 136 Stat. 4459, 5233-5241. Here, the court addresses the ECA as it existed at the time of Eastman's alleged misconduct.

> Representatives for its decision; and ***no electoral vote or votes from any State which shall have been regularly given[15] by electors whose appointment has been lawfully certified*** to according to section 6 of this title from which but one return has been received ***shall be rejected***, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. ***If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 5 of this title to have been appointed***…."

(3 U.S.C. § 15, italics and emphasis added.)

Section 15 of the ECA further details the procedures to be followed by each chamber in connection with its individual and joint consideration of objections to a State's votes and, the procedure to be followed if the two Houses disagree: "if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted." (3 U.S.C. § 15.) Significantly, section 15 of the ECA provides "[n]o votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of." (*Id.*)

Section 15 of the ECA is replete with references to electoral votes that must be "certified" and "ascertained" and clearly reflects that when electoral slates are disputed, those electoral votes contained within a certificate of ascertainment executed by the governor of a State, are to be prioritized in the counting and tabulating of votes for President of the United

[15] Eastman contends that the contested states' votes were not "regularly given" due to illegalities that resulted in the appointment of former Vice President Biden electors and under the ECA, that could include electoral votes certified after an election that was conducted in violation of state electoral law. (R.T. Vol. XI, pp.123-125.) However, as Congressional Record 52 reflects, in 1886, Representative Adams explained that "[r]egularly given" referred to actions of the elector, not the way in which the elector was appointed. (Exh. 34, p. 7.)

States. So, whether they are called alternate, contingent, or "dual" slates, those slates of electors that are not certified by the governor of the State they purport to represent, are constitutionally invalid and they are not to be counted when a State has final a slate certified by its governor.

Finally, as relevant here, the ECA specifically provided that either chamber could call a recess during the January 6 joint meeting of Congress but does not provide that the President of the Senate could "direct a recess." (3 U.S.C. §16.) Between 1789 and 2016, Congress initiated or controlled every recess or adjournment of an electoral count. (Exh. 179, p. 84.) Section 16 of the ECA also imposed restrictions on the period of each chamber's recess, limiting each House of Congress from recessing "beyond the next calendar day, Sunday excepted, at the hour of 10 o'clock," but "if the counting of the electoral votes and the declaration of the result shall not have been completed before the fifth calendar day next after such first meeting of the two Houses, no further or other recess shall be taken by either House."[16] (*Ibid.*) It also unequivocally stated that the "joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared." (*Ibid.*)

Importantly, the Twelfth Amendment contains the following language: "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted." (U.S. Const., 12th Amend.)[17]

[16] Limits were also imposed on the period of time to debate objections while each House of Congress was meeting in separate sessions; "each Senator and Representative may speak to such objection or question five minutes, and not more than once; but after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate." (3 U.S.C. §17.)

[17] The Twelfth Amendment, ratified in 1804, required that electors cast two sets of votes for President and Vice President, and changed the requirement previously set forth in Article II, section 1, clause 3, that allowed the candidate with the second most number of electoral votes to assume the role of Vice President, sometimes resulting in a President and Vice President who represented opposing parties. (See exh. 179, p. 11.)

Eastman's Relationship with President Trump and Trump's Re-Election Campaign

On September 3, 2020, Eastman was invited to join an Election Integrity Working Group, formed in anticipation of post-election litigation, in connection with the upcoming November 3 presidential election, and organized at President Trump's request. Eastman began his representation of President Trump, as a presidential candidate, and his campaign at or around that time.

On December 6, 2020, Eastman received a formal engagement letter for legal services, dated December 5, from President Trump's 2020 presidential re-election campaign committee (Trump's Campaign). The engagement letter was between Eastman and President Trump, in his capacity as a presidential candidate, and Trump's campaign. It defined the scope of the legal representation as follows: "[Eastman] agrees to represent [President Trump and Trump's Campaign], as its interests may appear, in connection with the 2020 presidential general election, including potential litigation matters and matters related to the Electoral College." (Exh. 1, p. 1.)

Eastman's Involvement in *Texas v. Pennsylvania* (filed December 7, 2020)

Subsequent to the 2020 presidential election, but prior to the deadline for the certification of the states' electors, Eastman participated in various election challenges which disputed the results of the 2020 presidential election, including a lawsuit filed by the State of Texas.

Texas v. Pennsylvania

On December 7, 2020, the State of Texas filed, in the United States Supreme Court, a motion for leave (Motion for Leave) to file a bill of complaint (Bill of Complaint) against defendant states Georgia, Michigan, Wisconsin and the Commonwealth of Pennsylvania (*Texas v. Pennsylvania*). Texas sought expedited consideration of its Motion for Leave on the grounds that "[a]bsent some form of relief, the defendants will appoint electors based on unconstitutional and deeply uncertain election results, and the House will count those votes on

January 6, tainting the election and the future of free elections." (Exh. 260, p. 96.) In its brief in support of the Motion for Leave, Texas asserted that the central question revolved around whether Georgia, Michigan, Wisconsin, and Pennsylvania (the Defendant States) violated the Electors Clause of the U.S. Constitution[18] by implementing non-legislative actions to alter their state election rules governing the appointment of 2020 presidential electors. (*Id*. at p. 60.)

Texas argued that the Defendant States used the COVID-19 pandemic as a ruse or justification to "[usurp] their legislatures' authority and unconstitutionally [revise] their state's election statutes" by "executive fiat or friendly lawsuits thereby weakening ballot integrity" while "flood[ing] the Defendant States with millions of ballots to be sent through the mails, or placed in drop boxes, with little or no chain of custody and, at the same time, weaken[ing] the strongest security measures protecting the integrity of the vote—signature verification and witness requirements." (*Id*. at pp. 8-9, footnote omitted.) Texas contended that there were significant grounds to question the legitimacy of the election outcomes in the Defendant States and urged the United States Supreme Court to extend the December 14, 2020 deadline for certification of presidential electors in those states to allow for thorough investigations to take place. Texas further argued that its citizens "have the right to demand that all other States abide by the constitutionally set rules in appointing presidential electors to the electoral college" (*id.*at p. 69) because "[i]f Defendant States' unconstitutionally appointed electors vote for a presidential candidate opposed by [Texas]'s electors, that operates to defeat [Texas]'s interests," (*id.* at p. 71)[19] the State of Texas and the citizens of Texas would suffer injury from the Defendant States' alleged unconstitutional non-legislative actions.

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[18] See United States Constitution, Article II, Section 1, Clause 2, discussed *supra*.

[19] For example, Texas argued that "[u]nlike Defendant States, [Texas] neither weakened nor allowed the weakening of its ballot-integrity statutes by non-legislative means." (*Id*. at p. 71, fn. 5.)

Factual Allegations in Support of Texas's Motion for Leave and Bill of Complaint

Texas's Bill of Complaint contained 127 paragraphs of factual allegations. The Motion for Leave and Bill of Complaint contained the following generalized allegations which are relevant in this disciplinary proceeding:

- "Rampant lawlessness arising out of Defendant States' unconstitutional acts" and irregularities in the electoral process that "[t]aken together, these flaws affect an outcome-determinative numbers (sic) of popular votes in a group of States that cast outcome-determinative numbers of electoral votes." (Exh. 260, pp. 4, 11.)

- "The probability of former Vice President Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently given President Trump's early lead in those States as of 3 a.m. on November 4, 2020, is less than one in a quadrillion, or 1 in 1,000,000,000,000,000. For former Vice President Biden to win these four States collectively, the odds of that event happening decrease to less than one in a quadrillion to the fourth power (i.e., 1 in $1,000,000,000,000,000^4$). [Citation]." (*Id.* at pp. 13-14.)

- "The same less than one in a quadrillion statistical improbability of Mr. Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently exists when Mr. Biden's performance in each of those Defendant States is compared to former Secretary of State Hilary Clinton's performance in the 2016 general election and President Trump's performance in the 2016 and 2020 general elections. Again, the statistical improbability of Mr. Biden winning the popular vote in these **four** States collectively is 1 in $1,000,000,000,000,000^5$. [Citation.]" (*Id.* at p. 14.)

- "Put simply, there is substantial reason to doubt the voting results in the Defendant States." (*Id.*)

- "The number of absentee and mail-in ballots that have been handled unconstitutionally in Defendant States greatly exceeds the difference between the vote totals of the two candidates for President of the United States in each Defendant State." (*Id.* at p. 15.)

Texas's Claims of Outcome-Determinative Fraud

Texas alleged "rampant lawlessness arising out of Defendant States' unconstitutional acts" described in unidentified, pending lawsuits filed in Defendant States, which included: "the physical blocking and kicking out of Republican poll challengers; thousands of the same ballots run multiple times through tabulators; mysterious late night dumps of thousands of ballots at

tabulation centers; illegally backdating thousands of ballots; signature verification procedures ignored; more than 173,000 ballots in the Wayne County, MI center that cannot be tied to a registered voter [footnote omitted]"; "[v]ideos of: poll workers erupting in cheers as poll challengers are removed from vote counting centers . . . [and] suitcases full of ballots being pulled out from underneath tables after poll watchers were told to leave"; and "a laptop and several USB drives, used to program Pennsylvania's Dominion voting machines, were mysteriously stolen from a warehouse in Philadelphia." (Exh. 260, pp. 11-12.) Texas did not offer any support for the factual claims of widespread lawlessness and failed to elucidate how the alleged unconstitutional actions of any Defendant State were connected to the alleged rampant lawlessness it identified.

According to Texas, Defendant States expanded absentee and mail-in voting opportunities for their voters and by so doing, "created a *massive opportunity* for fraud." (*Id.* at p. 20, italics added.) Citing to the Pew Research Center, Texas acknowledged that "in the 2020 general election, a record number of votes—about 65 million—were cast via mail compared to 33.5 million mail-in ballots cast in the 2016 general election—an increase of more than 94 percent." (*Id.* at p. 19.) Texas attributed that large increase in the number of mail-in ballots to the "public-health response to the COVID-19 pandemic [as well as] the urging of mail-in voting's proponents, and most especially executive branch officials in Defendant States." (*Ibid.*) Again, without support, Texas stated that "[s]ignificantly, in Defendant States, Democrat voters voted by mail at two to three times the rate of Republicans", which "unconstitutional usurpation of legislative authority, and the weakening of legislative mandated ballot security measures" greatly benefited former Vice President Biden. (*Id*. at p. 20.)

Texas tiptoed around the issue of fraud. Although it alleged actions in Defendant States that resembled fraud,[20] it left the door open, arguing: "While investigations into allegations of unlawful votes being counted and fraud continue, *even the appearance of fraud in a close election* would justify exercising the Court's discretion to grant the motion for leave to file. Regardless, Defendant States' violations of the Constitution would warrant this Court's review, *even if no election fraud had resulted*." (*Id* at p. 90, italics added.)

Texas's Claims Specific to Philadelphia and Allegheny Counties

In its Bill of Complaint, Texas included factual claims asserting that election officials at both state and local levels in Philadelphia and Allegheny counties—aiming to benefit former Vice President Biden in the 2020 election—allegedly violated Pennsylvania's election code by failing to adhere to Pennsylvania Statutes, title 25, section 3146.8, subdivision (b).[21] Texas asserted that Pennsylvania, by adhering to the guidance issued by Pennsylvania Secretary of the Commonwealth Kathy Boockvar on September 11, 2020,[22] neglected the signature verification requirements outlined in its election code.

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[20] E.g., according to Ethan J. Pease, who subcontracted with the United States Postal Service (USPS) to deliver mail-in ballots to the Madison, Wisconsin sorting center, employees in Wisconsin were allegedly backdating ballots received after November 3, 2020, as well as reporting that there were 100,000 missing ballots, which Texas stated would far exceed former Vice President Biden's margin of 20,565 votes over President Trump. (Exh. 260, pp. 42-43.)

[21] 25 P.A. § 3146.8, subd. (b) provides: "Watchers shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and recorded."

[22] Secretary Boockvar advised the county board of elections that it was responsible for approving ballots to be counted during pre-canvassing. She further advised that "[t]o promote consistency across the 67 counties, the county boards of elections should follow [certain] steps when processing returned absentee and mail-in ballots." (Exh. 125, p. 3) For returned absentee and mail-in ballots, the county board of elections was directed to examine the voter declaration on the envelope of the absentee or mail-in ballot return and "compare the information on the outer envelope, i.e., the voter's name and address, with the information contained in the 'Registered Absentee and Mail-in Voters File, the absentee voter's list and/or the Military Veterans' and Emergency Civilians Absentee Voters File.' [¶] If the Voter's Declaration on the

Without support, Texas further alleged "[a]pproximately 70 percent of the requests for absentee ballots were from Democrats and 25 percent from Republicans. Thus, this unconstitutional abrogation of state election law greatly inured to former Vice President Biden's benefit." (Exh. 260, p. 22.)

Texas also claimed that "[s]tatewide election officials and local election officials in Philadelphia and Allegheny Counties, aware of the historical Democrat advantage in those counties, violated Pennsylvania's election code and adopted differential standards favoring voters in Philadelphia and Allegheny Counties with the intent to favor former Vice President Biden. [Citation]" (*Id*. at p. 24.) Although Texas cited to its November 18, 2020 complaint in *Donald J. Trump for President, Inc. v. Boockvar* filing as support for some of these allegations, Texas did not reference the earlier Pennsylvania state and federal cases—all of which rejected those factual allegations outlined in the Bill of Complaint.

Notably, prior to the 2020 presidential election, Secretary Boockvar sought declaratory relief from the Supreme Court of Pennsylvania (Middle District) regarding the guidance she provided. On October 14, 2020, the Pennsylvania Supreme Court granted Secretary Boockvar's request for declaratory relief, allowing it to examine the question of whether the guidance provided by Secretary Boockvar on September 11, 2020, was in accordance with the Pennsylvania Elections Code—specifically, whether the Pennsylvania Election Code authorizes

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return envelope is blank, that ballot return envelope must be set aside and not counted. . . . If the Voter's Declaration on the return envelope is signed and the county board is satisfied that the declaration is sufficient, the mail-in or absentee ballot should be approved for canvassing unless challenged in accordance with the Pennsylvania Election Code. [¶] *The Pennsylvania Election Code does not authorize the county of board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections*." (*Ibid*, italics added.)

county election boards to reject voter absentee and/or mail-in ballots during the pre-canvassing[23] and canvassing[24] period based on an alleged or perceived signature match variance. (Exh. 233, pp. 1-2.) On October 23, 2020, the Pennsylvania Supreme Court determined that "the Election Code does not authorize or require county election boards to reject absentee or mail-in ballots during the canvassing process based on an analysis of a voter's signature on the 'declaration' [the pre-printed statement] contained on the official ballot return envelope for the absentee or mail-in ballot." (*Id.* at p. 2.) Accordingly, the Pennsylvania Supreme Court directed "the county boards of elections not to reject absentee or mail-in ballots for counting, computing, and tallying based on signature comparisons conducted by county elections officials or employees, or as the result of third-party challenges based on such comparisons." (*Ibid.*)

Thereafter, on November 21, 2020, the United States District Court, Middle District of Pennsylvania, in *Donald J. Trump For President, Incl., et al. v. Kathy Boockvar, et al.*, case No. 4:20-CV-02078, granted Secretary Boockvar and certain Pennsylvania counties' motions to dismiss the Trump Campaign's action that sought "to disenfranchise almost seven million voters" by presenting "strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence." (Exh. 222, p. 2.)

Six days later, on November 27, 2020, the United States Court of Appeals for the Third Circuit (Third Circuit) rejected the Trump Campaign's appeal from the Middle District of Pennsylvania., entitled *Trump for President, Inc. v. Secretary Commonwealth of Pennsylvania, et*

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[23] The Pennsylvania Elections Code defines "pre-canvassing" as the "'inspection and opening of all envelopes containing official absentee ballots or mail-in ballots, the removal of such ballots from the envelopes and the counting, computing and tallying of the votes reflected on the ballots. The term does not include the recording or publishing of the votes reflected on the ballots.' 25 P.S. § 2602." (Exh. 233, p. 1, fn. 3.)

[24] Pursuant to the Pennsylvania Elections Code, "canvassing" is the 'gathering of ballots after the final pre-canvass meeting and the counting, computing and tallying of the votes reflected on the ballots." (*Id.* at pp. 1-2, fn. 3.)

al. The Trump Campaign's appeal was based on the narrow argument that it should be allowed to amend its complaint a second time and it requested that the Third Circuit issue "an injunction to prevent the [Pennsylvania] certified vote totals from taking effect." (Exh. 223, p. 9.) The Third Circuit rejected the Trump Campaign's "claim that, '[u]pon information and belief, a substantial portion of the approximately 1.5 million absentee and mail votes in Defendant Counties should not have been counted.' [Citation.]" The court found that "'[u]pon information and belief' is a lawyerly way of saying that the [Trump] Campaign does not know that something is a fact but just suspects it or has heard it." (*Id.* at p. 12.) The Third Circuit further stated that "'While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.' *Iqbal*, 556 U.S. at 679. Yet the [Trump] Campaign offers no specific facts to back up these claims." (*Ibid.*) The Third Circuit's opinion also rejected other Trump Campaign claims regarding Pennsylvania as unfounded—stating, "[f]ree, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here." (*Id*. at p. 2.)

The Cicchetti Declarations Filed in Support of Texas's Motion for Leave

Texas filed two declarations by Charles J. Cicchetti, PhD,[25] in support of its Motion for Leave, on December 7 and 11, 2020, respectively. (Exhs. 260, pp. 115-122; 1034.)

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[25] In his declaration filed December 7, 2020, Dr. Cicchetti described himself as an *economist* with three years of Post Graduate Research in applied economics and econometrics who "was formally trained [sic] statistics and econometrics and accepted as an expert witness in civil proceedings. (Exh. 260, p. 115.) He further stated that he has "been engaged to design surveys, draw random samples and analyze and test data for significance, and [has] conducted epidemiology analysis using logit models to determine the significance of relative odds of outcomes and relative risk" and that he has "also been tasked with evaluating the work of other experts on the data and methods used and to detect and opine on bias, particularly missing variable bias." (*Ibid.*) Econometrics is defined as "the application of mathematical and statistical techniques to economic problems and theories." (*Merriam-Webster.com*, Merriam-

The December 7, 2020 Cicchetti Declaration was cited by Texas in support of several of its arguments, including the assertion that there was a one in a quadrillion statistical improbability of former Vice President Biden winning over President Trump in the Defendant States. (Exh. 260, pp. 13-14.) Texas did not argue that this statistical improbability was evidence of fraud, but instead advanced the statistical improbability argument on the assumption that in 2020, former Vice President Biden should have received the same vote share (or number of votes) that former Secretary of State Clinton received in 2016 and because former Vice President Joe Biden received more votes or vote share than former Secretary of State Clinton, the ballots that would have been invalid and rejected in 2020 were improperly handled and counted.[26] Dr. Cicchetti concluded: "There are many possible reasons why people vote for different candidates. However, I find the increase of Biden over Clinton is statistically incredible if the outcomes were based on similar populations of voters supporting the two Democrat candidates. The statistical differences are so great, this raises important questions about changes in how ballots were accepted in 2020 when they would be found to be invalid and rejected in prior elections." (*Id.* at p. 118.)

Dr. Cicchetti neither identified nor provided an analysis of what constituted the "similar populations of voters supporting the two Democrat candidates in 2016 and 2020" or why an anomaly would result if the two Democratic candidates did not have the same vote share. Dr. Cicchetti also failed to provide any support for that assumption (or null hypothesis). As

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Webster, 2024, March 19, 2024.) Dr. Cicchetti did not identify any expertise, education, or experience in the analysis of elections, election data, or political methodology, which involves the application and development of statistical methods for the purpose of studying political science questions.

[26] For example, Dr. Cicchetti compared the number of votes cast in Georgia for former Secretary of State Clinton in 2016 (1,877,963) and former Vice President Biden in 2020 (2,474,507) with President's Trump in 2016 (2,089,104) and President Trump in 2020 (2,461,837). (Exh. 260, p. 117.)

testified to by Dr. Justin Grimmer,[27] not only did Dr. Cicchetti fail to establish that the probability of former Vice President Biden winning the 2020 election was one in a quadrillion, Dr. Cicchetti's conclusions were based on erroneous assumptions and a null hypothesis methodological error.[28] (R.T. Vol. V, pp. 175-176.)

In an April 2022 article published in Academia Letters, Dr. Cicchetti criticized and disavowed the Texas Bill of Complaint arguments which were purportedly based on his declarations. (Exh. 1181.) Dr. Cicchetti noted that antithetical to "various critiques the Cicchetti Declarations did not claim Trump won or any evidence of fraud was found." (*Id.* at p. 2.) Rather, he noted that "[s]ome critics base their statements on the Texas Attorney General Ken Paxton's complaint which *erroneously* claimed the December 7, 2020 Declaration placed exceptional odds in favor of Trump winning"[29] and pointedly stated that "[t]he Declarations do

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[27] Dr. Grimmer, a tenured Stanford University professor in the Political Science Department and a Senior Fellow at the Hoover Institution thinktank at Stanford University, was designated as an expert by OCTC. Based on his educational experience as a Harvard University Department of Government graduate with master's and PhD degrees in political science; graduate coursework in American politics, political methodology and statistics; scholarly and peer-reviewed publications regarding statistical methods, statistical theory, election administration, congressional elections and claims of voter fraud, this court found Dr. Grimmer to be well-qualified to give and support the opinions he was offering. (R.T. Vol. V, pp. 117, 118-125.)

[28] As Dr. Grimmer explained: "[w]hat Cicchetti does in that analysis is he compares either the vote count or vote share between Biden and Clinton in 2020 and 2016, and flags it as anomalous that there's some difference, but a sort of basic logical assessment of that would say that there are lots of reasons we expect these things to be different across elections, and there's no established literature, empirical pattern, or even common knowledge that would say election results are the same in every state. *In fact, if we took these tests to a logical extreme, if we think about Cicchetti's test, that says, if an election is not anomalous, then the results should be the same, it would imply we could just run one election, once when a state is founded, and then every election would subsequently be the same*. Obviously, that's not the case. Things change. Times change. Voters' preferences may change. Conditions change that people are persuaded. And so that's a basic way we can make that sort of assessment." (R.T. Vol. VI, p. 50, italics added.)

[29] In an endnote, Dr. Cicchetti stated, "'Complaint 1 of the State of Texas aver, [T]he probability of former Vice President Biden winning . . . is less than one in a quadrillion. . . .' Texas cited Dr. Cicchetti without his knowledge of the filing or input to how Texas interpreted

not support what Paxton claimed about Trump winning or the odds of this were overwhelmingly [sic].” (*Ibid*, italics added.)

President Trump’s Motion to Intervene in Texas v. Pennsylvania

On December 9, 2020, two days before the United States Supreme Court denied Texas’s Motion for Leave, Eastman, as counsel of record for President Trump,[30] filed a Motion to Intervene and a Proposed Bill of Complaint in Intervention in *Texas v. Pennsylvania* (Motion to Intervene). President Trump sought the following relief in his proposed Bill of Complaint in Intervention: (1) a declaration that the Defendant States violated the Electors Clause; (2) a declaration that Electoral College votes cast by Defendant States’ electors would not be counted; (3) to enjoin Defendant States from using 2020 election results to appoint electors unless their legislatures approve the use of those results in a constitutional manner; (4) if they had already appointed electors using 2020 election results, Defendant States would be directed to appoint new electors or not to appoint electors at all; (5) award costs to President Trump as plaintiff in intervention; and (6) grant other relief the court deemed proper. (Exh. 262, pp. 17-18.)

Before filing the Motion to Intervene, Eastman reviewed the entire Texas Motion for Leave and Bill of Complaint, including the attached Cicchetti Declaration, which Eastman did not analyze or seek the assistance of an expert to evaluate. In fact, Eastman did not have any communication with Dr. Cicchetti before filing the Motion to Intervene. (R.T. Vol. XXV, pp. 208-209.) Instead, Eastman reviewed Dr. Cicchetti’s declaration, including the one in a

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his Declaration. The following discussion repeatedly demonstrates that Dr. Cicchetti did not reach such a conclusion in his statistical analyses, and he also states he found no evidence of fraud in the analysis he performed or reviewed.” (Exh. 1181, p. 4, endnote 7.)

[30] President Trump sought to intervene in his personal capacity as a candidate for re-election.

quadrillion statistical improbability reference and considered it to be sufficient as, in his view, the remark was "preliminary" and not particularly material to the main claims in the intervenor brief.[31] Eastman assumed that Dr. Cicchetti's declaration and the analysis therein was accurate because he considered the attorneys who drafted the Motion for Leave to be very competent and "very scrupulous in the evidence." (R.T. Vol. I, pp. 111-112.)

Despite his reliance on the work of other attorneys and Dr. Cicchetti, Eastman had conducted extensive reviews of factual information that related to what he considered election irregularities and created a spreadsheet on which he recorded and tracked 2020 election litigation challenges found in court documents available on Westlaw, PACER, and other databases.[32] The District Court for the Middle District of Pennsylvania opinion and the Pennsylvania Supreme Court opinions were specifically analyzed and placed in Eastman's spreadsheet. (Exh. 1055.) While Eastman acknowledged his responsibility to ensure the accuracy of statements presented in court, he refrained from verifying the validity or invalidity of the Texas arguments and the

[31] Eastman testified: "I think I have a duty to try and verify, given the time constraints and materiality, everything to the extent a reasonable lawyer would, and when I saw that clause there, and looked at Mr. Cicchetti's thing, on the quick 24-hour turnaround we had to do for this brief, it looked accurate on first blush, and because it wasn't more substantive for the allegations that were being made in the rest of the brief, it was more preliminary, setting the stage type of assessment. That was sufficient." (R.T. Vol. V, p. 20.) Nonetheless, Eastman agreed that he had an obligation to verify the substance of preliminary and all other material in his filings. (*Id.* at p. 21.)

[32] Eastman testified: "let me catalog the things that I have done, and see if I can think of anything that I—we haven't already talked about . . . And then the case law through Westlaw, the state case law through various state court dockets, to the extent they were available. They're disappointingly not as widely available or as easily available as federal court dockets. The federal court cases, I would look at those dockets, either via Pacer or most often, via CourtListener, which replicates the Pacer – the Pacer dockets and provides access, public access to the pleadings in the federal cases.… For the court cases that I was able to obtain access to, I frequently also pulled up the exhibits to look at the various sworn affidavits that were being submitted, or the expert reports that were being submitted in those cases, to try and make my best assessment of the validity of the claims that were being filed." (R.T. Vol. XXVII, pp. 172-173.)

purported supporting facts. Rather, with few modifications, the Motion to Intervene joined and adopted by reference the purported factual allegations and arguments asserted in the Texas Bill of Complaint. (Exh. 262, p. 13.)

Among the most notable difference between the Motion to Intervene and Texas's Motion for Leave, is Eastman's inclusion of additional facts and allegations regarding "non-legislative changes to State election law by executive-branch election officials of the State, or by judicial officials, in Defendant States . . . in violation of the Electors Clause." (*Id.* at pp. 16-17.) The additional facts stated that Georgia's Secretary of State entered into a settlement agreement with the Democratic Party of Georgia to materially alter Georgia's statutory requirements for signature verification. This allowed absentee ballots to be counted if the signature matched only the signature on the absentee ballot application rather than requiring the absentee ballot signature match the absentee ballot application and the voter registration card signature. Eastman argued that this change resulted in a drastically reduced number of invalid absentee ballots with an invalid rate reduction from three percent to .37 percent, resulting in the counting of about 40,000 ballots that based on historical rejection rates, should not have been counted. The additional facts also provided that Georgia's legislature did not ratify this material statutory change or the statutory change regarding the early opening of ballots. (*Id*. at pp. 15-16.) Eastman further argued that the constitutional issue was not whether voters committed fraud but whether state officials loosened ballot integrity so that fraud became undetectable. (*Id*. at p. 37.)

Without explanation or support for any partisan malfeasance regarding the Georgia absentee ballots, Eastman argued that an "unconstitutional change in Georgia law appeared to materially benefit Vice President Biden. According to the Secretary of State's office, Vice President Biden had almost double the number of absentee votes (849,729) as President Trump (451,157) and that the change in signature verification measures "made it more likely that ballots

without matching signatures would be counted, [and] had a material impact on the outcome of the election." (*Id.* at p. 16.)

Similar to Texas's Motion for Leave, Eastman attempted to finesse a discussion about fraud by pointing to the following examples of Defendant States allegedly weakening ballot security and integrity:

> Pennsylvania's Secretary of State issued guidance purporting to suspend the signature verification requirements, in direct violation of state law. In Michigan, the Secretary of State illegally flooded the state with absentee ballot applications mailed to every registered voter despite the fact that state law strictly limits the ballot application process. In Wisconsin, the largest cities all deployed hundreds of unmanned, unsecured absentee ballot drop boxes that were all invalid means of returning absentee votes under state law. In Georgia, the Secretary of State instituted a series of unlawful policies, including processing ballots weeks before election day and destructively revising signature and identity verification procedures.

(*Id.* at p. 11.)[33]

Although Eastman did not explicitly label any of these actions as fraud, he argued that these (and other) actions invited fraud or were "drastic and *fraud-inducing*." (Exh. 262, p. 12, italics added.) In general, Eastman argued that President Trump "did not have to prove that fraud occurred. . . it is only necessary to demonstrate that elections in the Defendant States materially deviated from the 'manner' of choosing electors established by their respective state Legislatures." (*Id.* at p. 13.) Eastman speculated that actions taken in Georgia "made it *more*

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[33] Contrary to Eastman's claims, in *Davis v. Secretary of State*, LC No. 20-000099-MM, Michigan's lower court, the Court of Claims, considered the issue of whether it was lawful for the Secretary of State to mail absentee ballot applications to all registered voters and in an August 25, 2020 decision, concluded that the Secretary of State had authority to do so. (Exh. 276, pp. 1-2.) By a decision filed September 16, 2020, the Court of Appeal affirmed the lower court's decision and, as Eastman acknowledged at trial, the Michigan Supreme Court denied review. (*Ibid.*; R.T. Vol. IX, pp. 88-90.)

likely that ballots without matching signatures would be counted, [sic] had a material impact on the outcome of the election." (*Id*. at p. 16.)

However, as Eastman confided in his long-time friend, attorney Cleta Mitchell, on November 29, 2020, Eastman knew that there was no actual evidence of outcome-determinative fraud in the 2020 presidential election in any of the Defendant States, even though the statistical analyses he was aware of (a number of which were cited in the *Texas v. Pennsylvania* briefs), may draw that conclusion.[34] Specifically, Eastman stated, in relevant part:

> Main thing, and extremely important, is that the legal/constitutional trigger for legislative action after the fact has to be a failure to conduct the election on Nov 3 in accord with the statutory requirements. Article II, in my view, just doesn't allow the Legislature to reclaim the power to choose electors after the fact if the election has been conducted in accord with the statutes.
>
> Second key issue is going to be political. I can't imagine a legislature, particularly one with enough never-Trump republicans to make a difference, taking this step—which would be viewed as rather extraordinary—absent pretty compelling evidence of fraud. The statistical analyses that have been done might get you there, *but it would be nice to have actually hard documented evidence of the fraud in the areas to which the analyses pointed.*

(Exh. 39, italics added.) At trial, Eastman explained that in this email he was conveying that he had seen "significant statistical evidence that there might be fraud" and that the "statistical evidence points to where to look." (R.T. Vol. X, p. 163.)

The United States Supreme Court Denies Leave in Texas v. Pennsylvania

The United States Supreme Court disagreed with Texas. Without addressing the alleged "facts" or the merits of Texas's Bill of Complaint, the United States Supreme Court, by order

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[34] Among other statistical analyses, the Texas brief cited the Ryan Report's findings which found a discrepancy of about 400,000 ballots based on a flawed analysis of mail-in ballots in Pennsylvania which Texas determined was outcome-determinative. (Exh. 260, pp. 25-27.) The only copy of the Ryan Report lodged with the court was exhibit 1156, a five-page American Thinker article which referenced the Ryan Report and its conclusions but provided no support or documentation regarding those conclusions.

dated December 11, 2020, denied the State of Texas leave to file the Bill of Complaint[35] and dismissed all other pending motions.[36] (Exhs. 356, 1376.)

Eastman's Involvement in Litigation Related to the 2020 Election Results in Georgia

Around the same time that *Texas v. Pennsylvania* was being litigated, Eastman got involved in several other election challenges to the 2020 presidential election results in Georgia.

Georgia's Presidential Election Results

Based on the machine tally of the 2020 presidential election votes cast in Georgia, Vice President Biden won in Georgia by a narrow margin.[37] By law, Georgia was required to conduct a statewide post-election risk limiting audit of the election results (Risk Limiting Audit). The Risk Limiting Audit ordered by Secretary of State Brad Raffensperger was a manual tally of votes cast and originally tabulated by machine count and was conducted from November 11-19, 2020. (Exhs. 86, 87.) While the Risk Limiting Audit did not confirm or correct the original stated margin of victory, it did confirm the original results; specifically, that former Vice President Biden won the 2020 presidential election in Georgia.

On November 20, 2023, Governor Brian Kemp certified Georgia's sixteen 2020 presidential state electors as former Vice President Biden electors (Biden electors). On November 21, 2023, Ray Smith III, counsel for President Trump, forwarded a vote recount

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[35] The denial provided, "The State of Texas's motion for *leave to file a bill of complaint is denied for lack of standing under Article III of the Constitution*. Texas has not demonstrated a judicially cognizable interest in the manner in which another State conducts its elections. All other pending motions are dismissed as moot." (Exh. 356, italics added.) Justices Alioto and Thomas dissented, stating "[i]n my view, we do not have discretion to deny the filing of a bill of complaint in a case that falls within our original jurisdiction. See *Arizona v. California*, 589 U. S. ____ (Feb. 24, 2020). . . . I would therefore grant the motion to file the bill of complaint but would not grant other relief, and I express no view on another issue." (*Id.*)

[36] The dismissal of the pending motions as moot included President Trump's Motion to Intervene and motions to intervene filed by Missouri, Arkansas, Louisiana, Mississippi, South Carolina and Utah. (R.T. Vol. XXV, p. 209.)

[37] The margin of victory in Georgia was 0.3%. (Exh. 87.)

demand to Secretary of State Raffensperger. (Exh. 1048, p. 65.) A statutory recount was conducted.

On December 7, 2020, Governor Kemp amended the original Certificate of Ascertainment and re-certified the Georgia Biden electors. (Exh. 11.)

Trump v. Raffensperger

Amid a flurry of Georgia election challenges, Eastman provided legal advice on *Trump v. Raffensperger*, which was filed on December 4, 2020, in Fulton County Superior Court.[38] (Exhs. 2, 1048.) In sum, President Trump alleged that "the November 3, 2020, Presidential Election in Georgia (the "Contested Election") was not conducted in accordance with the Election Code and that the named Respondents [election officials], deviated significantly and substantially from the Election Code." (Exh. 1048, p. 4.) Trump further alleged "[d]ue to significant systemic misconduct, fraud, and other irregularities occurring during the election process, many thousands of illegal votes were cast, counted, and included in the tabulations from the Contested Election for the Office of the President of the United States, thereby creating substantial doubt regarding the results of that election." (*Ibid*.)

Trump v. Raffensperger had a short but tortured procedural history before the parties reached a publicly filed settlement agreement[39] and *Trump v. Raffensperger* was voluntarily dismissed on January 7, 2021.

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[38] *Trump v. Raffensperger*, Fulton County Superior Court, case No. 2020cv343255, was an election contest challenge filed pursuant to O.C.G.A. §21-2-522.

[39] In the agreement, one of the defense counsel noted, on January 3, 2021, "we are still willing to cooperatively share information with you outside the pending litigation on the condition that all currently pending suits against the Governor, the Secretary of State and/or the members of the State Election Board be voluntarily dismissed. . . . The allegations and evidence in the Petition related to the November 3, 2020 Election have been thoroughly examined. That examination shows the claims: (1) are factually wrong; (2) are based on improper speculation and faulty data and data analysis; (3) lack substantive legal merit; (4) are moot; and (5) are procedurally deficient. As you know, even one of your 'experts,' Mr. Braynard, recanted many

Additional relevant *Trump v. Raffensperger* allegations are set forth below.

Trump v. Kemp

While *Trump v. Raffensperger* was pending, Georgia attorney Kurt Hilbert, on December 31, 2020, filed in the United States District Court, Northern District of Georgia, a Verified Complaint for Emergency Injunction and Declaratory Relief on behalf of President Trump (Verified Complaint) in *Trump v. Kemp*, Case No. 20-CV-5310. As Eastman's pro hac vice admission was pending at the time, Eastman signed the Verified Complaint as proposed co-counsel for President Trump. (Exh. 270.)

On December 31, 2020, Eastman's client, President Trump, signed a verification in support of the Verified Complaint.[40] By the Verified Complaint, President Trump sought a temporary restraining order and preliminary and permanent injunction directing defendants Governor Kemp and Secretary of State Raffensperger, to de-certify the November 3, 2020 election results. President Trump also sought declaratory relief stating that certification of the election results could not be deemed valid due primarily to November 3, 2020 election violations of the Georgia state law election code and, due to the failure of Georgia state courts to afford

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of the positions relied upon in your lawsuits in his testimony before the Georgia House of Representatives Government Affairs Committee. Your other main 'expert,' Mr. Geels admits his positions are speculative at best." (Exhs. 275, p. 3; 358, p. 2.) Defense counsel also noted that "[t]here have already been *three* state election challenges contesting the Presidential Election that have been finally dismissed by Georgia courts." (*Id*. at p. 2, italics in original.) Mr. Hilbert responded: "after speaking with all clients, and their respective counsel, we hereby accept the terms of your settlement proposal dated January 3, 2021" and stated that they would voluntary dismiss four of their election challenge lawsuits. (*Id*. at pp. 4-5.)

[40] The verification stated: "Personally appeared before me, a Notary Public, duly authorized by law to administer oaths, President Donald J. Trump, solely in his capacity as a candidate for President of the United States, who on oath says he has reviewed the Verified Complaint for Emergency Injunctive and Declaratory Relief and with regard to the facts contained therein, states that to the best of his knowledge and belief, and relying on the representations contained therein, the facts are true and correct where derived from his own knowledge and are believed to be true and correct where derived from the knowledge of others or from documents that are maintained in the course of business or are public records." (Exh. 270, pp. 33-34.)

Trump his statutory right to challenge the results of the election. (*Id.* at pp. 28-29.) The *Trump v. Kemp* Verified Complaint incorporated in its entirety, the *Trump v. Raffensperger* Verified Petition and its exhibits. (*Id*. at p. 13.)

Of the numerous factual allegations set forth in *Trump v. Kemp* (and the incorporated *Trump v. Raffensperger* allegations), the court addresses below only those factual allegations which relate to Eastman's alleged misconduct in this disciplinary proceeding.

a.) State Farm Arena Ballots Counted Without the Public's Open Viewing

One of the most serious factual allegations in the *Trump v. Kemp* Verified Complaint was the allegation that, late on November 3, 2020, Fulton County election officials at the State Farm Arena vote tabulation center stopped the ballot counting. The Verified Complaint alleged that after poll observers and members of the media had left, "several election officials then proceeded to remove suitcases full of ballots from under a table where they had been hidden, and processed those ballots without open viewing by the public in violation of O.C.G.A. §21-2-483. . . . This illegal activity was captured on video tape [sic]. This is but one example of such misconduct by election officials and corruption of the process." (Exh. 270, pp. 10-11.)

To provide transparency about the alleged illegal State Farm Arena activities, Secretary of State Raffensperger had the entire State Farm Arena video posted to the securevotega.com website for viewing by members of the public.

The Georgia Secretary of State conducted an investigation and on December 5, 2020, Frances Watson, Chief Investigator in the Office of the Georgia Secretary of State, executed a declaration under penalty of perjury setting forth the conclusions reached by the Georgia Secretary of State as a result of its investigation into the State Farm Arena vote tabulation center activities on November 3 (the State Farm Arena investigation).

The State Farm Arena investigation centered around the complaints Secretary of State Raffensperger received on November 3, 2020; specifically, "that Fulton County Board of Registrations and Elections directed clerks, public observers, and media personnel to leave the State Farm Arena location where ballots were being tabulated due to a water leak at the State Farm Arena, but Fulton County staff continued to scan ballots in the tabulation center at the State Farm Arena." (Exh. 98, p. 2.) Based on witness interviews and a thorough review of the State Farm Arena security footage, the investigators concluded that observers and media were not asked to leave. Rather, they left when they saw other workers depart who had completed their task of opening the envelopes. The investigators' review of the 24-hour security footage "revealed that there were no mystery ballots that were brought in from an unknown location and hidden under the tables as reported by some." (*Id*. at p. 3.) Around 10:00 p.m., in the presence of official monitors and the media, the videotape reflects that opened but not counted ballots were placed in the boxes, sealed, and stored under the table because employees thought they had finished for the night. (*Ibid*.) As of December 5, 2020, the Secretary of State investigators were continuing their inquiry.

On January 4, 2021, Robert Gabriel Sterling, Statewide Voting System Implementation Manager for the Secretary of State, held a press conference on C-Span that addressed the State Farm Arena election day activities. (Exh. 99.) According to Sterling, at around 9:45 p.m., "the cutters began putting their stuff away because everybody was under the impression they were going to get home" and "while the monitors and the press are still in the room" the opened absentee ballots were placed in the ballot carriers (not suitcases), the lids were placed on the carriers, and about 10:30 p.m. everyone was preparing to leave. (*Id.* at p. 3.) However, the Elections Director of Fulton County vetoed their request to finish for the evening because others were going to work through the night. After that directive, the ballot carriers were removed from

under the table and those who remained were told "we've got to keep on scanning" and they did. (*Id*. at p. 4.)

Before filing *Trump v. Kemp* on December 31, 2020, Eastman had watched only portions of the State Farm Arena security footage. (R.T. Vol. V, p. 77.) Eastman believed "that people were sent home, and then that boxes of ballots or suitcases of ballots were then pulled out and continued to be processing [sic] outside of public view." (R.T. Vol. XI, p. 108.) However, as Eastman acknowledged, "[the Georgia Election Code] statute gives people the *opportunity* to be there for public [viewership]—for the canvassing. *It doesn't mandate that people be there*." (*Id.* at p. 109, italics added.)

Eastman read information from the Office of Georgia's Secretary of State about the State Farm Arena video before filing the *Trump v. Kemp* complaint and at some point (but he didn't recall when), Eastman saw Frances Watson's December 5, 2020 declaration. (*Id.* at pp. 79-80.) During December 2020, Eastman recalled watching a Georgia Secretary of State press conference or press release which discussed the State Farm Arena.

b.) Georgia Election Officials Allowed Unqualified Individuals to Register and Vote

In *Trump v. Kemp*, President Trump also alleged that the Georgia election officials violated the State's Election Code by allowing unqualified voters to register and vote, resulting in "more than 11,779 'illegal' votes to be counted in the State of Georgia which is sufficient to change the outcome of the election or place the outcome in doubt as determined by the Legislature and set forth in the Election Code." (Exh. 270, pp. 5-6.) Some alleged Election Code violations included: (1) convicted felons still serving their sentence were allowed to vote in violation of O.C.G.A. §21-2-216(b); (2) "allowing underage individuals to register and then vote in violation of O.C.G.A. §21-2-216(c)"; (3) unregistered or late-registered individuals voted in violation of O.C.G.A. §21-2-224 (a); (4) voting in Georgia by out-of-state registered individuals

(some of whom voted in another state as well), in violation of O.C.G.A. §21-2-217; (5) voting by individuals who had moved across county lines, in violation of O.C.G.A. §21-2-218 (b); (6) voting by individuals registered with a domicile at a post office box, church, or courthouse, in violation of O.C.G.A. §21-2-217 (a)(1); and (7) accepting votes cast by individuals who were deceased, in violation of O.C.G.A. §21-2-23 (a)-(b) and (d). (*Id.* at p. 5.)

At trial, Eastman did not recall the basis for each of these *Trump v. Kemp* allegations but contended they were supported by certain *Trump v. Raffensperger* allegations and the affidavits of retained experts Bryan Geels,[41] Matthew Braynard,[42] and Mark Davis, which were filed in support of the *Trump v. Raffensperger* Verified Complaint. (R.T. Vol. V, pp. 65-66, 74-77.)

Eastman received the Geels affidavit around December 3, 2020. (R.T. Vol. I, p. 99.) Between the time Eastman received the Geels affidavit and December 31, 2020, when Eastman caused the *Trump v. Kemp* complaint to be filed, Eastman reviewed the Geels affidavit, and decided that it looked credible to him, based on what he knew about voter rolls "and things like

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[41] Geels prepared two expert reports which were filed in support of the *Trump v. Raffensperger* and *Trump v. Kemp* verified petitions. (Exh. 1048, pp. 545, 613.) Geels described himself as "a licensed CPA, and I own a data analytics consultancy firm, Geels Consulting, based in Seattle, Washington. Before starting Geels Consulting, I worked for 9 years in public accounting at a large CPA firm. Based on my experience as an auditor working as a Senior Manager at a large CPA firm, I am an established data analytics and risk assessment expert." (*Id.* at p. 549.) Geels identified no experience or education involving the analysis of election data.

[42] According to Braynard's resume attached to his affidavit, he earned a Bachelor of Business Administration degree from George Washington University in 2000 and graduated from Columbia University with a Master of Fine Arts in 2018. His most recent employment included working as the Senior Analyst with Election Data Services, Inc. from 2001-2005; Director of the Data Division of Donald J. Trump for President, Inc. from October 2015 to March 2016; President of Look Ahead America, Inc. from March 2017 to the December 2020 and Principal of External Affairs, Inc. (Exh. 1048, p. 84). Braynard stated that he has "worked to build and deploy voter databases for the Republican National Committee, five Presidential campaigns and no less than 100 campaigns and election-related organizations." (*Id.* at p. 71.) Braynard had not authored any publications within the 10-year period before his affidavit was filed and he had not provided expert testimony at trial or in deposition between 2016 and 2020. (*Ibid.*)

that." (R.T. Vol. I, pp.100-101.) Eastman took no affirmative measures to determine the reliability of the information in the Geels affidavit. Rather, Eastman assumed the *Trump v. Raffensperger* attorneys had assessed and determined that the information in Geels' affidavit was reliable since he believed the *Trump v. Raffensperger* lawyers to be "competent and adamant about not submitting anything they could not verify." (*Id.* at pp. 100-101.)

The declaration of Charles Stewart III,[43] the expert retained by the Georgia election official respondents, was filed on January 4, 2021. (Exh. 202.) Stewart's declaration critiqued the analysis of each *Trump v. Raffensperger* retained expert and his summary of certain relevant specific shortcomings in each "expert" analysis is set forth below. Stewart stated that all of the Trump "experts" lacked training and professional experience in database matching and election administration and failed to acknowledge election science literature and the inherent limitations in the analyses they performed. Eastman read Stewart's declaration by December 30 or December 31, before the filing of *Trump v. Kemp*. (R.T. Vol. I, p. 102.)

In a December 31, 2020 email to co-counsel Hilbert, Eastman acknowledged that some of the evidence cited in the *Trump v. Raffensperger* complaint was inaccurate: "Here's the issue. The complaint incorporates by reference the state court challenge [*Trump v. Raffensperger*]. Although the President signed a verification for that back on December 1, he has since been made aware *that some of the allegations (and evidence proffered by experts) has been inaccurate*. For him to sign a new verification with that knowledge (and incorporated by

[43] According to Stewart's declaration, he is a Distinguished Professor of Political Science at the Massachusetts Institute of Technology (MIT), where he had been on the faculty since 1985. During that time, he has "done research and taught classes at the graduate and undergraduate levels in the fields of American politics, research methodology, elections, and legislative politics." (Exh. 202, p. 1.) In January 2016, he became the founding director of the MIT Election Data and Science Lab which was "devoted to impartial, scientific analysis of elections and election administration" in the United States. (*Id.* at p. 2.) Stewart also authored and co-authored numerous peer-reviewed publications and books on election administration and election science and has served as an expert witness in three federal district court cases.

reference) would not be accurate." (Exh. 51, italics added.) Even though Eastman knew that some of the *Trump v. Raffensperger* allegations and evidence proffered by experts in support of those allegations were incorrect, he failed to identify the inaccurate accusations or evidence for the Northern District of Georgia court in his *Trump v. Kemp* filing. Nor did Eastman object to co-counsel Hilbert's attempt to camouflage the inaccurate and misleading information that formed the basis of the outcome-determinative vote allegations: "I took out numbers from the complaint, left them in the memorandum [of law]." (Exh. 52, p. 5.)

Instead of candidly addressing the erroneous evidence, Eastman and co-counsel Hilbert inserted an ambiguous and disingenuous footnote in the *Trump v. Kemp* complaint seeking to distance President Trump from the allegations and evidence which Eastman knew contained false and inaccurate statements.[44] (Exh. 270, p. 6.)

c.) Convicted Felons Still Serving a Sentence Were Allowed to Vote

According to the Geels Declaration, Geels compared the Inmates File and Georgia's November 3, 2020 voter database and determined "there could have been up to 2,560 individuals who cast ballots that were accepted and counted but who were inmates." (Exh. 1048, pp. 556, 570.) Geels stated that those 2,560 individuals in the Active Inmate File, identified by First

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[44] The footnote read: "The facts and figures set forth in the [*Trump v. Raffensperger*]'s Verified Petition was presented to Plaintiff through the affidavits and expert opinions/reports attached to the Verified Petition and such information was presented to that lower court in affidavit form based on information publicly available to said experts, and without having access to the actual information being withheld and kept private by the Georgia Secretary of State and other governmental entities. Open Records requests have been timely submitted to attempt to obtain such information, but no records have been timely produced or made available. Accordingly, as a state court election contest is required to be verified, the facts and figures submitted by affidavits and experts reports/opinions in the lower court and incorporated herein by reference, have been relied upon by Plaintiff only to the extent that such information has been provided to Plaintiff, and which are subject to amendment, adjustment, and cure through expert opinion and final reports based on actual data and completion of ongoing government investigations (which the Secretary of State and other agencies are currently conducting). Plaintiff has not sworn to any facts under oath for which he does not have personal knowledge or belief." (Exh. 270, pp. 6-7, fn. 4.)

Name, Last Name, and Birth Year, matched exactly to the Georgia Voter History File. However, Geels acknowledged that there may have been imperfect matches resulting in false positives because only the Birth Year was available in Georgia's voter record files. Stewart confirmed that Geels's matching methodology was "guaranteed to produce a result in which the number of false positives vastly exceeds the number of true positives." (Exh. 202, p. 22.) Stewart explained that a lack of unique identifiers across large databases creates a greater likelihood of false positive matches.[45] Geels did not state that he had created unique identifiers that would avoid the likelihood of false positive matches or utilized a more reliable matching method. Geels's calculations regarding the number of convicted felons who voted in the November 3, 2020 election were not reliable.

d.) Underaged Individuals Register and Then Vote

The *Trump v. Kemp* complaint alleged that Georgia election officials "allowed underage individuals to register and then vote, in violation of O.C.G.A. §21-2-216 (c)."[46] (Exh. 270, p. 5.) Similarly, in *Trump v. Raffensperger*, the parties alleged that "[i]n violation of O.C.G.A. §21-2-216(c), Respondents, jointly and severally, allowed at least 66,247 underage—and therefore ineligible—people to illegally register to vote, *and subsequently illegally vote*." (Exh. 1048, p. 17, italics added.) It was further alleged that "[i]n violation of Georgia law, Respondents, jointly and severally, counted these illegal votes in the Contested Election." (*Id.* at p. 18.) According to Eastman, each 66,247 "underage individual" registration and voter allegation was based on and

[45] Stewart illustrated this concept by stating that "[i]n September 2020, I purchased a copy of the Georgia voter file from the Secretary of State, to use in my academic research. That file, dated September 9, 2020, contains 7,346,219 records. Of these, 7,280,948 are unique name + birth year combinations, leaving the remaining 65,271 registrants sharing a first name, middle name, last name, and birth year with *at least one* other voter." (Exh. 202, p. 8.)

[46] According to Eastman, Georgia allows an individual to register to vote when they reach the age of 17 ½. (R.T. Vol V, p. 67.)

supported by the same Geels expert report filed as an affidavit in *Trump v. Raffensperger*. (R.T. Vol. V, pp. 65-66.)

However, Geels's expert report was flawed. Although Geels initially stated in his report that he compared Registration Dates and Birthdates in Georgia's Voter Registration File and Absentee Early Votes and concluded that 66,247 underaged individuals were allowed to register to vote, that was not true. As Eastman acknowledged, Geels *actually* compared data from the Georgia Voter Data "Date Added" field instead of using the "Registration Date" field in performing his analysis. (*Id*. at pp. 73-74.)

Moreover, as Geels subsequently admitted, his use of the wrong data field in his December 1, 2020, declaration resulted in a gross miscalculation. (Exh. 1271.) Instead of 66,247 underaged individuals who allegedly registered to vote in Georgia, Geels determined that the correct number should have been much lower—2,047. Later, after an additional reassessment of his analysis, Geels, using the "Registration Date" field instead of the "Date Added" field, further lowered the number of underage individuals he contended to have registered in Georgia to 778. (*Ibid*.)

However, as Eastman knew when *Trump v. Kemp* was filed on December 31, 2020, Geels neither analyzed data for, nor quantified, the number of purported underage individuals who actually voted in the 2020 presidential election.[47] (R.T. Vol. V. 68; see also Exh. 1048, pp. 565-

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[47] "Court: Is it your understanding that the Geels analysis included underage individuals who were not only registered to vote, but who did vote? Is that your understanding?

Eastman: No. The Geels analysis never asserts that underage people voted."

(R.T. Vol. V., p. 68.)

It is Eastman's view that if an underage person registered to vote and if, by the time s/he voted, that individual is legal voting age, that individual's vote would be illegal (but not fraudulent), due to that individual's underage registration and his/her post-registration vote would continue to be an illegal vote until that individual re-registered. (*Id*. at p. 69.) Eastman had no information from Geels and identified no other source which identified the number of

566.) Therefore, the allegation of any underaged individuals that registered and voted in the 2020 presidential election was unsupported and false.

e.) Unregistered or Late Registered Individuals Vote

Geels stated that 98 absentee and early voters registered to vote in Georgia after October 5, 2020, the last date to legally register and to vote in the November 3, 2020 election. (Exh. 1048, p. 562.) Geels applied a general filter to an unidentified database and concluded that the 98 voters registered after the October 5, 2020 deadline to legally register to vote.

f.) Individuals Allowed to Vote Across County Lines

Eastman incorporated into *Trump v. Kemp*, the *Trump v. Raffensperger* the allegation that 40,279 individuals voted who had moved across county lines at least 30 days prior to November 3, 2020, and voted in their old county without re-registering to vote in their new county. (Exh. 1048, p. 22.) President Trump supported that allegation with the affidavit of Mark Alan Davis. According to Davis, Georgia allows a 30-day grace period for an individual who has relocated to a new county to vote in the old county of residence. Davis stated that based on his review of the USPS National Change of Address (NCOA) records, 312,971 Georgians moved within the state during an undefined time frame. Davis did not clearly explain how he reached the 40,279 cross-county relocation figure but speculated: "[I]t appears to me we *probably* had tens of thousands of illegal votes cast in our last election. Worse, that has *probably* been happening for many, many years." (*Id.* at p. 580, italics added.)

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these purported underage individuals who may have re-registered to vote. (*Id*. at p. 74 ["My understanding is that Mr. Geels never identified people who were underage when they voted"].)

g.) Individuals Registered to Vote with Non-Residential Addresses

Based on his review of Georgia's Voter Absentee Files and the USPS Owned and Leased Facilities Reports, Braynard stated that 1,043 early and absentee ballots were cast by voters who registered their primary residential address as a post office box. (Exh. 1048, pp. 79, 81.)

However, as Stewart opined, Braynard's analysis is unreliable because some voters do actually live in commercial facilities that conform to local building codes; other voters may have been uncertain about how to properly fill out the voter registration materials and "Braynard relies on unreliable algorithms to conduct the matching and provides no information about how he confirmed that his matches were precise enough to warrant his conclusions." (Exh. 202, p. 13.)

h.) Acceptance of Votes of Deceased Individuals

Geels opined that as many as 10,315 individuals cast ballots but were deceased prior to the November 3, 2020 presidential election and 8,718 of those individuals passed prior to the date Georgia accepted their ballot. Geels pointed out that "only the Birth Year is available for records of voters in the [Georgia] database" and "[b]ecause only a Birth Year is provided, there may indeed be false positives in the population—for example, due to the match of multiple people with a common name who were also born in the same year or to the omission of a suffix." (Exh. 1048, p. 556.)

Stewart agreed that there was a likelihood of false positive matches, noting that "1,091,659 Georgia voters share an exact match on first name, last name, and birth year" and by applying Georgia's 1.06% death rate to the number of Georgians with first and last name and birth year matches, he "would expect 11,572 registered voters in Georgia to share the same first and last name of another voter in the state who died." (Exh. 202, p. 21.)

Grimmer also agreed that Geels's faulty methodology rendered many false positives, which would seem to render Geels's analysis unreliable. (R.T. Vol. VI, pp. 26-27.)

Eastman's Testimony Regarding Outcome-Determinative Fraud in Georgia

On several occasions, Eastman stated that there was outcome-determinative absentee ballot fraud in Georgia. When asked, at trial, about evidence he had of outcome-determinative absentee ballot fraud that he was aware of as of January 2, 2021, Eastman responded that he had evidence that "the weakening of signature verification in Georgia and Pennsylvania caused a dramatic decline in the disqualification of ballots" and "the declined disqualification rates in both of those states was significant enough to have affected the outcome of the election." (R.T. Vol. X, p. 79.) Eastman also contended "[w]hen a ballot comes in and the signature does not even remotely look like the signature on file, that's evidence of potential voter fraud." (*Ibid*.) In other words, in Georgia, Eastman equated absentee ballot fraud with lax signature verification and lax signature matching by election officials in the 2020 presidential election.

According to Eastman, the evidence of outcome-determinative fraud in Georgia could also be established by the number of "people voting after they had moved out of the jurisdiction,"[48] and the failure to perform signature verification when "absentee ballot applications were brought in." (R.T. Vol. XXXI, p. 89.) He also speculated that "if the signature on the absentee ballot application or on the absentee ballot bears no resemblance to the signature on file in the registration card, that's a pretty good indication of fraud." (*Ibid*.) Eastman pointed to a forensic audit performed by Garland Favorito[49] supposedly showing "about 5,000 votes fraudulently counted multiple times—and the vote flipping that went on in Ware County" which

[48] Eastman characterized this as evidence of fraud and illegality. (R.T. Vol. XXXI, p. 89.)

[49] Garland Favorito is an IT consultant who formed his consulting company in the 1980s and by 2002, he began to focus on voting machines. He co-founded VoterGA (Voters Organized for Trusted Election Results in Georgia) in 2006. (R.T. Vol. XIV, p. 50.) VoterGA is comprised of volunteers who are involved in giving legislative advice, addressing election integrity issues surrounding "verifiability" and "auditability." (*Id*. at pp. 51-52.) It also filed several lawsuits involving the 2020 general election.

taken together he believed were "outcome-determinative." (*Ibid.*) However, Favorito's "multiple counting" and "vote flipping" conclusions were debunked by Halderman and Harry Hursti and Dr. Phillip Stark, and other computer scientists and election security experts who stated on November 16, 2020, that claims regarding technical vulnerabilities were unsubstantiated. (Exh. 187.)

As further evidence of outcome-determinative fraud in the 2020 Georgia presidential election, Eastman relied on the absentee ballot analyses performed by Geels, Braynard, and Dr. Cicchetti—none of which actually concluded that there was outcome-determinative fraud in the Georgia 2020 presidential election. Eastman nonetheless believed fraud was evidenced by a decline in the disqualification rate of 2020 absentee ballots as compared to the 2016 presidential election. (R.T. Vol. X, pp. 80-82.) Eastman didn't recall whether any of these analyses addressed the disqualification rate based on category or reason for disqualification. Nor did Eastman recall whether, in Georgia, the reason for rejection of an absentee ballot was publicly available information in the absentee voter file. (*Id.* at pp. 79-82.)

Eastman's conclusion that there had been a notable change in the absentee rejection rate in Georgia was correct, as there was a 3.1 percentage point decline from 2018 to 2020. (R.T. Vol. XXXI, p. 226.) However, that decline was a decline in overall ballot rejections—not just a decline in the signature verification or signature match rejection rate and it did not equate to absentee ballot fraud. Based on information publicly available in 2020, the decline in Georgia rejected absentee ballots was not primarily due to signature match issues as about 90 percent of this decline resulted from both a decrease in the percentage of ballots arriving after the deadline and a decrease in the percentage of ballots rejected due to issues with the oath envelope. (*Ibid.*)

Eastman's Dual Slate of Electors Theory

Alongside the aforementioned legal challenges, from at least early December 2020 through December 14, 2020, Eastman worked mightily (meeting and conferencing with contested state legislators and various individuals and groups, speaking publicly and forwarding emails to Eric Herschmann, President Trump's White House advisor), to encourage Republicans in the seven "contested states" to meet and vote on Trump electors by December 14, 2020, and then to transmit those non-certified slates to Vice President Pence and the Archivist of the United States. (Exhs. 40, 42, 44, 45; R.T. Vol. X, pp. 165-169.) Eastman believed that by creating a non-certified "contingent" slate of electors on December 14, and with pending election challenge lawsuits (many of which he coordinated or filed), uncertainty would be created in some states as to both the certified and "contingent" slates of electors. Eastman also believed that he may then have time to expose illegality that might prompt legislatures to act. (*Id.* at p. 168.)

Eastman asserted that his belief was rooted in historical precedent in the 1960 presidential election in Hawaii, which involved competing slates of electors for John F. Kennedy and Vice President Richard Nixon when the State of Hawaii forwarded three slates of electors to then President of the Senate, Vice President Nixon.[50] However, Eastman ignored the fact that

[50] The first slate of electors for Hawaii were electors for Vice President Nixon that were certified as electors by the acting Governor of the State on November 28, 1960. They met on the date designated by Congress, cast their votes, and transmitted those votes to the President of the Senate. The group of Kennedy electors from Hawaii also met on the designated date and, without having been certified by any authority in the State, the Kennedy electors from Hawaii cast votes and transmitted those votes to the President of the Senate. (Exhibit 1011.) A recount of Hawaii's votes, ordered by a Hawaii court in response to a petition filed by 30 Hawaii voters, was pending at the time the Nixon and Kennedy electors met and cast votes. On December 28, 1960, the recount concluded, and the state court determined that Kennedy won the State of Hawaii, instead of Vice President Nixon. On January 4, 1961, the newly-elected Democratic Governor of Hawaii, based on the results of the recount conducted pursuant to the court order, certified the Kennedy electors and the Governor of Hawaii transmitted his certification of ascertainment, along with the Kennedy elector votes, to the President of the Senate.

the 1960 Hawaii presidential election involved competing slates of electors, two certified by the Governor of Hawaii and one non-certified, which resulted in the counting of the more recent *certified* slate of electors, which was certified by the Governor of Hawaii due to a recount. Moreover, no member of Congress objected to the counting of the second certified slate of electors and Vice President Nixon expressly stated that his actions were not intended to establish any precedent outside of this particular set of circumstances.

Eastman, as a constitutional scholar, understood that alternate, contingent or "dual" slates of *non-certified* electors would carry no import on January 6 during the counting of electoral votes. Eastman knew that there was no constitutionally mandated provision allowing for any non-certified, non-ascertained "dual" or "contingent" slates to be considered in conjunction with the voting or counting of presidential electoral votes. As Eastman stated in his email of December 19, 2020, to Bruce Colbert, "[a]s for the Legislatures—not a one has acted. *Electors* did in 7 states, but unless those electors get a certification from their State Legislators, they will be dead on arrival in Congress. With such a certification, we will have a deadline that will invoke sec. 15, but the textual claim that the 'executive' certification would prevail in such an instance over the legislature-certified slate is contrary to Article II. And at that point, we might

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On January 6, 1961, Vice President Nixon, in his capacity as President of the Senate, stated; "The Chair has received three certificates from persons claiming to be the duly appointed electors from the State of Hawaii. The Chair will hand these certificates one at a time to the tellers who will read the certificates and the attached papers in full." (Exh. 1012, p. 3.) After consideration of the certificates by the tellers, Vice President Nixon stated, "[t]he Chair has knowledge, and is convinced that he is supported by the facts, that [the Kennedy certificate issued by the Governor, dated January 4, 1961,] properly and legally portrays the facts with respect to the electors chosen by the people of Hawaii. (*Id.* at p. 4.) He then stated, "[i]n order not to delay the further count of the electoral vote here, the Chair, *without the intent of establishing a precedent*, suggests that the electors named in the certificate of the Governor of Hawaii dated January 4, 1961, be considered as the lawful electors from the State of Hawaii. (*Ibid.*) Vice President Nixon continued: "If there be no objection in this joint convention, the Chair will instruct the tellers—and he now does—to count the votes of those electors named in the certificate of the Governor of Hawaii dated January 4, 1961." (*Ibid.*) No objection being registered, the votes were counted.

well have the opportunity for a Supreme Court resolution without the need to trigger the Pelosi scenario." (Exh. 380, p. 2; see also exh. 6, p. 30.)[51]

Eastman's view on this issue did not change. In his January 10, 2021 response to Valerie Moon's emailed inquiry—"[t]ell us in layman's language, what the heck happened with the dual electors? Please?" (Exh. 61.) Eastman reiterated his view that "[*n]o legislature certified them (because governors refused to call them into session), so they had no authority. Alas*." (*Ibid.*, italics added.)

Eastman's trial constitutional expert, Dr. John Yoo,[52] agreed with the characterization that the Trump Campaign's dispute over the 2020 presidential electors, specifically, the appointment of Trump electors, was "a made-up dispute, rather than a real one" (R.T. Vol. XVIII, p. 62), reasoning that each contested state had only one certified set of electors, "[n]o branch of any state government challenged its electors in 2020," and "[n]o state or federal court and no legislature or executive had found fraud"; as such, there was no "factual predicate" to trigger Vice President Pence's dispute resolution role with regard to the elector slates. (*Id.* at pp. 63-64). Dr. Yoo concluded that not only did Vice President Pence not have authority to reject elector votes on January 6 on the grounds that the elector appointments were invalid but,

[51] According to Eastman, "Section 15 of the same Title [3 of the U.S. Code] provides in part that, in the case of a disagreement between the House and Senate as to which slate of electors to count if two or more have been received, then 'the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted,' *even if the alternate slate was certified by the Legislature of the State*." (*Id*., italics added.)

[52] Dr. Yoo is a Harvard University graduate who earned a Juris Doctor degree from Yale Law School in 1992. As an Acting Professor (1993-1999), Professor of Law (1999-2013) and in his present role as Emanuel S. Heller Chair in Law & Distinguished Professor of Law, he has taught Constitutional Law at the University of California at Berkeley School of Law since 1993. Dr. Yoo has been a Visiting Scholar (2003-2021) and Nonresident Senior Fellow (2021-present) at American Enterprise Institute. He has been a Visiting Fellow at Stanford University Hoover Institute from 2018 to the present. Dr. Yoo has authored or co-authored about 100 scholarly articles and 10-12 books on Constitutional Law.

under the circumstances present, Vice President Pence was on "unassailable" grounds for not overturning the electoral results of the 2020 presidential election. (R.T. Vol. XVIII, p. 47:17; p. 66:20-25.)

Eastman's Two-Page and Six-Page Memos Detailing January 6 Scenarios

On December 23, 2020, Eastman drafted and sent a two-page legal memorandum to Boris Epshteyn and Kenneth Chesebro, attorneys and strategic advisors to President Trump and the Trump Campaign (two-page memo). (Exh. 6, p. 26; R.T. Vol. X, p. 69.) The two-page memo outlined Eastman's suggested "January 6 scenario," detailing a strategy and plan of action for Vice President Pence to declare President Trump as the re-elected president. (Exh. 3.)

Central to Eastman's new two-page memo strategy was his belief that it was "hugely important" for Republican electors in the "contested states"—Arizona, Georgia, Michigan, Nevada, Pennsylvania, New Mexico and Wisconsin to meet and to vote for a Trump slate of electors on the constitutionally set date of December 14 and then transmit those slates of Trump electors in accordance with federal law. (Exh. 40; R.T. Vol. X, p. 165-166.)

The first sentence of the two-page memo states, "7 states have transmitted *dual* slates of electors to the President of the Senate." (Exh. 3, p. 1, italics added.) The seven states are referring to Arizona, Georgia, Michigan, Nevada, Pennsylvania, New Mexico and Wisconsin (the contested states). Before December 23, 2020, the date Eastman forwarded the two-page memo, Eastman was aware that Arizona, Georgia, Michigan, Nevada, Pennsylvania, New Mexico and Wisconsin had each forwarded as required, at least one official Certificate of Ascertainment[53] referencing presidential electors who had been certified by the governor of that state. (Exhs. 10-17.)

[53] The states of Arizona (exh. 10, p. 6), Nevada (exh. 14, p. 3), and Wisconsin (exh. 17, p. 3), stated in their respective final Certificates of Ascertainment, that an election challenge had

The major premise underlying Eastman's two-page memo was that under the Twelfth Amendment, Vice President Pence in his role as President of the Senate, had the authority to not only open and count each state's elector certificates of ascertainment but he also had the authority to unilaterally resolve "disputed" or "contested" electoral votes. Essentially, the two-page memo provided that on January 6, Pence would proceed as follows:

1) beginning with Alabama, Pence would begin to open and count the ballots;
2) when Arizona was called, Pence would announce that he had multiple slates of electors so he would "defer decision" on Arizona until he finished calling the other States;
3) declare that due to the "ongoing disputes in the 7 States," none of their electors would be deemed validly appointed, **resulting in none of the 7 States' electors' votes being counted** (according to Eastman's calculation, President Trump would prevail with 232 elector-appointed votes and Vice President Biden would only have 222 so "Pence then gavels Trump as re-elected";
4) after Democrats complain, Pence declares that no candidate has the required majority, sending the matter to the House "where 'the votes shall be taken by the states,'" and Trump would win under this scenario as well because Republicans controlled 26 of the state delegations; the bare majority needed to win;
5) if the ECA protocol was followed and there were objections to the Arizona slates, the two chambers convene separately and a senator would demand normal rules, creating a stalemate that might give sufficient time for the state legislatures to generate support for the alternate slate of electors; and
6) Vice President Pence should not ask for permission from members of the Joint Session of Congress or from the court since his position is "that the Constitution assigns this power to the Vice President as the ultimate arbiter." Eastman acknowledged that several steps in this two-page memo scenario represent a violation of the Electoral Count Act, e.g. deferring Arizona's electoral count until the end of the electoral count and refusing to adhere to the ECA time constraint on debating objections.

(Exh. 3, p. 2.)

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been filed in their state and judicially rejected before December 23, 2020. Arizona filed a supplemental Certificate of Final determination of Presidential Electors on January 6, 2021, which stated that a final determination of an election challenge regarding Arizona's electors had been resolved in *Burk v. Ducy*, case No. CV-20-0349-AP-EL, on January 5, 2021, and that case upheld the previously certified list of electors filed with the Archivist. (Exh. 10, p. 7.)

However, Eastman has not always supported this position. For example, in November 2000, when Eastman testified before the Florida state legislature in connection with the *Bush v. Gore* presidential election, Eastman explained that *Congress* counts the votes, *Congress* is the ultimate arbiter as to any disputes regarding the count and, *Congress* answers to no one on this issue. (R.T. Vol. IX, p. 27; Exh. 25.)

Twenty years later, in a mid-October 2020 exchange between Eastman and Colbert discussing their post-election recommendations to President Trump, Eastman emphatically supported this position when Colbert suggested "[t]hat the President of the Senate decides authoritatively what 'certificates' from the states to 'open' and what electoral votes are 'counted,' under the 12th Amendment and the Electoral Count Act of 1887, 3 U.S.C. §15." (Exh. 38, p.1.) Eastman replied, "*I don't agree with this. The 12th Amendment only says that the President of the Senate opens the ballots in the joint session and then, in the passive voice, that the votes shall then be counted.* 3 U.S.C. §12 says merely that he is the presiding officer, and then it spells out specific procedures, presumptions, and default rules for which slates will be counted. *Nowhere does it suggest that the President of the Senate gets to make the determination on his own. §15 doesn't either*." (Exh. 38, pp. 1-2, italics added.)

Eastman also disagreed with Colbert's interpretation of Article II regarding two or more conflicting slates of electoral votes authorizing the Legislature, not the governor or the popular vote to determine the appointment of the electors, stating: *"I don't agree with this either.* Article II says the electors are to be appointed 'in such manner as the Legislature thereof may direct,' but I don't think that entitles the Legislature to change the rules after the election and appoint a different slate of electors in a manner different than what was in place on election day. And 3 U.S.C. §15 gives dispositive weight to the slate of electors that was certified by the Governor in accord with 3 U.S.C. §5." (*Id*. at p. 2, italics added.)

Acknowledging that these were positions Eastman held for over 20 years, positions which were contrary to the two-page memo scenario which stated Vice President Pence had unilateral authority to count and resolve disputed votes, Eastman claimed that his change of position between October 2020 and December 2020 was due to a significant amount of additional research.[54] (R.T. Vol. IX, pp. 23-25, 27.)

Approximately 11 days later, on January 3, 2021, Eastman drafted and sent a six-page legal memorandum to Epshteyn, an attorney and strategic advisor to Trump's campaign (six-page memo). Eastman composed this memo to outline a range of scenarios or options he was recommending to President Trump and the Trump campaign regarding the January 6th strategy they should pursue. It delineated the course of action Vice President Pence should take in relation to the electoral vote during the Joint Session of Congress on January 6, 2021.

As with the two-page memo, this six-page memo sets forth Eastman's proposed "January 6 scenario," which Eastman summarized in four sections: (1) a sampling of illegal conduct by election officials in Georgia, Pennsylvania, Wisconsin, Michigan, Arizona and Nevada; (2) a brief analysis of the 12th Amendment and Electoral Count Act of 1887 relating to the constitutional and statutory process of opening and counting electoral votes; (3) discussion of a proposed strategy and course of action (framed as War Gaming the Alternatives), for Vice President Pence to one way or the other, declare President Trump as re-elected president; and (4) justification for taking the BOLD action he recommended in the six-page memo. (Exh. 4.)

Eastman also claimed in the six-page memo that "**this Election was Stolen by a strategic Democrat plan to systemically flout existing election laws for partisan advantage;**

[54] The Court does not find that explanation credible as this new position seems to correlate more closely with the time frame of Eastman's representation of President Trump and the Trump Campaign than it does with time frame of the published research that Eastman relied upon, almost all of which pre-dated Eastman's newly articulated view by several years.

we're no longer playing by Queensbury Rules, therefore." (*Id*. at pp. 3, 5, emphasis in original.)

Eastman's sampling of alleged illegalities set forth in the six-page memo contained one which Eastman acknowledged to be false—his statement that Michigan mailed out absentee ballots to every registered voter contrary to statutory requirements. This statement was false because Michigan's Secretary of State had mailed absentee ballot *applications,* not absentee ballots, to Michigan's registered voters.[55] (R.T. Vol. IX, pp. 87-88.) Despite acknowledging the falsehood of the statement, Eastman tried to justify it by stating that the Michigan Supreme Court's review of the *Davis* decision, discussed *supra*, had been denied amidst "significant dissent" and pointing out that members of the Michigan legislature vigorously contested the validity of those court decisions. (*Id*. at pp. 89-90.)

Although Eastman described the six-page memo as a compilation of nine January 6 scenarios that had been publicly discussed and intended for internal deliberation among Trump strategists, he disavows that it includes any explicit recommendations. (R.T. Vol. XXXI, pp. 40-41.) However, Eastman made several recommendations in reference to the action(s) called for by the scenarios which he labeled as "**BOLD, certainly**." (Exh. 4, p. 5, bold in original.) Eastman recommended that, for the purpose of counting the electors, Vice President Pence should, among other actions, unilaterally consider the validity (or invalidity) of certain ballots and adjourn the Joint Session of Congress, "determining that the time restrictions in the Electoral County [sic] Act are contrary to his [Vice President Pence's] authority under the 12th

[55] "Q: You had mentioned three violations of state law in the six-page memo regarding Michigan. The first one is that: 'Michigan mailed out absentee ballots to, every registered voter, contrary to statutory requirement that voter apply for absentee ballots. Do you recall that? Eastman: Yes. Q: And you have subsequently acknowledged that that statement is incorrect. Is that right? Q: Yes. They didn't mail out absentee ballots. They mailed out absentee applications for ballots." (R.T. Vol. IX, pp. 87-88.)

Amendment and therefore void." (*Ibid.*) Moreover, Eastman directed, "[t]he main thing here is that VP Pence *should* exercise his 12th Amendment authority without asking for permission—either from a vote of the joint session or from the Court." (*Ibid.*, italics added.)

In both the two-page and six-page memos, Eastman stated that the ECA was "likely unconstitutional" because contrary to the 12th Amendment, which provides for a Joint Session of Congress, the ECA states that the two chambers of Congress, "acting separately" will decide the question of which votes of the electors shall be counted. (Exh. 3, p. 1.) As Eastman stated, "there is no court case holding either that the Electoral Count Act is constitutional or unconstitutional." (Exh. 6, p. 29, fn. 29.)

In the memos, Eastman also stated, falsely, that *"[t]here is very solid legal authority and historical precedent*, for the view that the President of the Senate does the counting, including the resolution of disputed electoral votes (as Adams and Jefferson did while Vice President, regarding their own election as President), and all the Members of Congress can do is watch." (*Id.* at p. 3, italics added.) However, as Eastman knew before, during and subsequent to the time that he drafted and advocated implementation of certain of the January 6th scenarios, there was no *solid* legal authority regarding this issue and the only legal authority upon which he relied in drafting the memo consisted of four law review articles.[56] (R.T. Vol. IX, p. 159:8-161.)

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[56] The "solid legal authority" Eastman relied upon in the six page memo included the following law review articles: 1) Bruce Ackerman and David Fontana, *Thomas Jefferson Counts Himself Into the Presidency*, 90 Va. L. Rev. 551 (2004); 2) Vasan Kesavan, *Is the Electoral Count Act Unconstitutional*, 80 N.C. L. Rev. 1653 (2002); 3) Edward B. Foley, *Preparing for A Disputed Presidential Election: An Exercise in Election Risk Assessment and Manaaement*, 51 Loyola Chi. L. J. 309(2019); and 4) Nathan Colvin and Edward B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb* (2010). (Exh. 6, pp. 5-6; see also exhs. 1014, 1019, 1020, 1212.) Eastman testified that he also considered the Jack Beermann and Gary Lewis article, *The Electoral Count Mess: The Electoral Count Act of 1887 Is Unconstitutional, and Other Fun Facts (Plus a Few Random Academic Speculations) About Counting Electoral Votes.* However, the Beermann and Lewis article was published March 1, 2021—almost 2 months after the January 3, 2021 six-page memo was circulated. The Robert Delahunty and John Yoo article,

Moreover, Eastman contended that the question as to whether Vice President Pence had unilateral authority to resolve disputed electoral votes or to delay the electoral counting, was an "open question" and he knew there was no real judicial or primary legal authority, much less controlling legal authority on the issue.[57] (Exh. 31, p. 6.) During a January 4, 2021 meeting in the Oval Office, Eastman discussed and provided candid advice regarding the six-page memo scenarios to his client, President Trump. (R.T. Vol. XXXI, pp. 40-41.) President Trump was aware of the scenarios as early as December 2020.

Eastman's Appearance on the Bannon's War Room

Just before drafting and sending the six-page memo, on January 2, 2021, Eastman appeared as a guest on the "Bannon's War Room" radio program. Eastman was introduced as "one of the great thinkers about the Constitution" and repeatedly referred to by Steven Bannon as "the President's constitutional lawyer." (Exh. 28, pp. 1, 4.) Eastman spoke regarding the "failed" and "illegally conducted" 2020 presidential election, where, "in a number of state [sic] and most egregiously in Georgia, and Pennsylvania and Wisconsin, partisan elected officials, and in some cases partisan judicial officials, ignored or altered those legislative commands [regarding election laws requiring signature verification on absentee ballots and voter ID

Who Counts?: The Twelfth Amendment, the Vice President, and the Electoral Count, 73 Case W. Rsrv. L. Rev., 27 was published in 2022. Dr. Yoo and Delahunty's article, *What Happens If No One Wins?* published in American Mind on October 17, 2020, was not a law review article.

[57] Many constitutional scholars will agree with Eastman's constitutional law expert, Dr. Yoo, that there are no Supreme Court cases that directly address whether Congress, the President of the Senate, the United States Supreme Court, or any other entity has authority to resolve a dispute arising over electoral votes – although, as Dr. Yoo noted, in *Bush v. Gore* the Supreme Court did discuss the Electoral College. (R.T. Vol. XIII, p. 46.) The dearth of judicial and legal authority on this issue has not impeded its vigorous discussion among constitutional scholars who debated it in a handful of law review articles that Eastman read and, for some reason considered not only as solid scholarship but also as precedent supporting the view that the President of the Senate does the counting, including the resolution of disputed electoral votes.

requirements] and conducted the election in violation of the manner that the legislature had set out." (*Id*. at p. 4.)

Eastman urged listeners to put pressure on their respective state legislators (especially in Georgia, Pennsylvania, Wisconsin and Arizona) to demand that they convene a session to "either decertify the existing slate of [Biden] electors if there's just too much uncertainty about the results of the election, or *certify the correct slate of electors if the number of ballots that are shifted if you get rid of the illegal ones are enough to effect the outcome, as we believe they are*." (*Id*. at p. 5, italics added.) Eastman proposed that listeners pressure their state legislators because "there was illegal conduct, and that likely opened the door for voter fraud that may have affected the outcome of the election." (R.T. Vol. X, p. 84.)

In discussing the power that the Constitution affords to state legislatures in the electoral process, Eastman stated that state legislators needed to act *promptly* because "what we have here is *massive evidence* that this election was at least conducted illegally. In violation of the state statutes. But, lots of evidence, as well, that as a result of that illegal conduct, removing checks against fraud in the absentee ballot process that *we have absentee fraud. More than enough to have affected the outcome of the election*. And, I think the duty of these legislators to fix this egregious conduct and make sure that we're not putting in the White House some guy that didn't get elected." (Exh. 28, p. 2, italics added.)

Although Eastman stated that illegality opened the door for fraud, Eastman acknowledged at trial that he did not know the extent to which there was any outcome-determinative fraud in the 2020 presidential election in Arizona, Michigan, Nevada, New

Mexico or Wisconsin. (R.T. Vol. XXXI, pp. 87 [Wisconsin];[58] 88 [Nevada];[59] 90 [Arizona];[60] 93 [New Mexico and Michigan][61].)

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[58] Eastman initially testified that the report prepared by Justice Gableman regarding the Wisconsin election confirmed the illegality of steps taken by the Secretary of State that "opened the door for fraud," in a manner which affected as many of 200,000 ballots, (R.T. Vol. XXXI, p. 86.) Eastman then acknowledged that Justice Gableman did not make a determination as to how many ballots were fraudulently cast, and Eastman agreed with Gableman's view that there was more than an outcome-determinative number of ballots cast as a result of illegality even though Eastman could not quantify that number of fraudulent votes:

Q: "What is your view as to whether there was outcome-determinative fraud? Not asking about Justice Gableman.

Eastman: Well, you know, as I've said, I think, a number of times, once the ballots are separated from the envelopes it's hard to determine with proof—dispositive proof how much fraud was. That's why I've focused pretty regularly on the question of illegality. *I don't know the extent to which fraud affected the outcome*." (R.T. Vol. XXXI, p. 87, italics added.)

[59] Q: "But I didn't hear you say that you believe there was outcome-determinative fraud in Nevada. Is it fair to stay you don't know whether there was outcome-determinative fraud in Nevada?

Eastman: I don't know the extent of the fraud versus the illegality. I've not looked at that detail—and I said several times now. The illegality is sufficient in my view. To the extent that that actually produced fraudulent votes rather than illegal votes, I don't know, and it's a very hard thing to assess after the fact." (*Id.* at pp. 88-89.)

[60] Q: "I'm asking if you believe whether there was, in fact, outcome-determinative voter fraud in Arizona in the 2020 presidential election.

Eastman: Well, in Arizona, I had seen evidence—and again, I didn't have any involvement with Arizona, so I don't know the detail of that particularly. But I had seen evidence of a 35,000 vote injection at the third-party processor of votes. That's greater than the margin. *If that occurred*, that is evidence of fraud greater than the margin.

Q: If that occurred. *But do you know whether that occurred or not?*

Eastman: *I don't.*" (*Id.* at p. 90, italics added.)

[61] Q: "What about New Mexico? Do you believe there was outcome-determinative fraud in New Mexico in the 2020 election?

Eastman: I hadn't looked at New Mexico at all." (*Id.* at p. 93.)

Q: "What about Michigan?

Eastman: I don't know. There's a lot of evidence of—there's a lot of evidence of fraud in Michigan. I've not put together a spreadsheet identifying how many votes in Michigan may have been affected by fraud as opposed to illegality. I just don't know the answer to that." (*Ibid.*)

Nevertheless, up to the date of trial, Eastman adhered to his false belief that "lots of evidence" of outcome-determinative fraud existed in the Pennsylvania 2020 presidential election, as he had emphatically stated during the Bannon radio program on January 2, 2021:

> Q: Were you alleging that there had been outcome-determinative absentee voter fraud to suggest that the election results were illegitimate?" [Objection overruled.]
>
> Eastman: I was alleging primarily there was illegal conduct, and that that likely opened the door for voter fraud that may have affected the outcome of the election.
>
> Q: But you didn't say that it may have affected the outcome of the election. You said that there was lots of evidence of fraud, and that there was more than enough to have affected the outcome of the election, right?
>
> Eastman: That's correct.
>
> Q: Okay. And that was your belief at the time, correct?
>
> Eastman: That was my belief at the time.
>
> Q: And is that still your belief?
>
> Eastman: Yes, it is.

(R.T. Vol. X, pp. 84-85.)

He characterized those "illegalities" as including the Pennsylvania Supreme Court's decision, *In re November 2, 2020 General Election*, which he said allowed removal of signature verification, the use of drop boxes and changing the deadline for mail-in ballots, providing advance notice of disqualified ballots in the pre-canvassing phase to "undermine" the Pennsylvania election law. (R.T. Vol. XXIX, p. 51.) Citing to the Pennsylvania State Representative Ryan's December 4, 2020 letter (the Ryan Report), Eastman contended that 58,200 absentee ballots were returned only one day after the mail date which was "near impossible." (*Id*. at p. 53; Exh. 1155.)

Yet, there was no massive evidence of outcome-determinative fraud related to these alleged "illegalities" or any absentee voter fraud in connection with the Pennsylvania 2020 presidential election. The Ryan Report did not reference or set forth the data that supported its inaccurate claims, some of which seemed to be based on a misunderstanding of the publicly available data.[62] (*Id.*; R.T. Vol. III, pp. 121-123.)

None of the counties in Pennsylvania opened and counted mail-in or absentee ballots during the pre-canvassing period (before 7:00 a.m. on election day) or disclosed the vote totals prior to 8:00 p.m. on election day, contrary to Pennsylvania election laws.[63] (R.T. Vol. III, pp. 175, 151-153.) As the Pennsylvania Deputy Secretary of Elections and Commissions stated, there was no systemic insecurity or inaccuracy regarding Pennsylvania's 2020 presidential election based on the publicly available information posted by the county elections boards, the two-percent statistical sampling performed by each county three weeks after election day, and the statewide risk-limiting audit performed after the counties had certified their results of the November 2020 presidential election. (*Id.* at pp. 112-114.)

Moreover, pursuant to the Pennsylvania Election Code, the county boards of election and county district attorneys investigated 2020 presidential election-related complaints and claims of

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[62] Among other allegations, the Ryan Report calculated 400,000 missing votes, based on an erroneous analysis of the publicly available mail-in ballot data and a discrepancy between the number of ballots issued and the number of ballots received, which seemed to be based on a misunderstanding of Pennsylvania Act 77, enacted in 2019 regarding traditional absentee ballot voting and mail-in voting. (R.T. Vol. III, pp. 121-122.)

[63] As clarified by Pennsylvania's Deputy Secretary of Elections and Commissions, a 20 plus year employee whose duties included overseeing election administration at the Pennsylvania Department of State, the pre-canvassing of absentee and mail-in ballots refers to the handling of ballots "no earlier than 7:00 a.m. on election day, up to 8:00 p.m. on election day, there's canvassing of absentee and mail-in ballots that occurs after 8:00 p.m., and then there's the official canvass, which actually, pursuant to state law, begins on Friday after election day, when the county basically starts to accumulate all of the vote totals and adjudicate provisional ballots, et cetera." (R.T. Vol. III, pp. 146-147.)

fraud and subsequently reported the outcome to the Elections and Commissions office with the Department of State, which learned of "individual cases of fraud prosecuted in various counties, but no indication that there was widespread fraud." (*Id*. at p. 117.)

January 4, 2021 Oval Office Meeting

On January 4, 2021, an Oval Office meeting at the White House was convened, with Eastman present as President Trump's counsel,[64] alongside President Trump, Greg Jacob, and Vice President Pence's Chief of Staff, Marc Short (the Oval Office meeting). (R.T. Vol. X, p. 86.) The purpose of the Oval Office meeting was to discuss Vice President Pence's role during the electoral count and Joint Session of Congress on January 6, 2021.

Starting from early December 2020, Vice President Pence had maintained the stance that he lacked the authority to reject electors on January 6th. By the time he attended the Oval Office meeting, Vice President Pence had participated in numerous discussions with Jacob, his White House Counsel,[65] reviewed a memo prepared by Jacob which analyzed constitutional and historical authority on the topic; read law review articles; obtained information from the parliamentarian; and sought and obtained the advice of constitutional scholar, Dr. Yoo, on the issue of whether Vice President Pence had the authority to unilaterally delay the electoral count or to disregard and/or reject electoral votes. (R.T. Vol. II, pp. 41-44; exh. 71.) Neither Dr. Yoo, nor any of these other sources, supported the view that Vice President Pence had the authority to delay the electoral count, disregard or reject the electoral votes under the circumstances present in January 2021, as the contested states had each provided a single set of executive-certified slate

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[64] This Court concludes that Eastman did not attend the Oval Office meeting as a private citizen petitioning for redress of a grievance. The meeting was scheduled at President Trump's request and during the meeting, President Trump asked and Eastman provided legal advice regarding the constitutionality of Vice President Pence rejecting certain elector votes.

[65] At the time, Jacob was serving as Counsel to the Vice President and Deputy Assistant to the President.

of electors and no state legislature had challenged them. Vice President Pence also came to the conclusion that he lacked the authority to preside over the Joint Session of Congress in the manner Eastman and President Trump were pressuring him to because Vice President Pence believed his role as President of the Senate was a ministerial role that did not involve rejecting, delaying or counting electoral votes.

Eastman recalled that during the Oval Office meeting, President Trump asked whether Eastman agreed that Vice President Pence could "simply reject electors if he [Pence] had information that they were not legally certified" and Eastman responded, "[i]t's more nuanced than that" and "it's an open question in these circumstances that, namely, [with] only one set of certified electors—whether you have that power." (R.T. Vol X, p. 86-87.) Eastman suggested that even if Vice President Pence had that power, that he should refrain from exercising it, since the state legislatures had not provided an alternative certified elector slate. (*Id*. at pp. 86-87.) During the Oval Office meeting, Eastman stated that Vice President Pence "had unilateral authority to determine the validity of the electoral vote certificates" but proposed that Vice President Pence exercise the option to "delay" the electoral count for 10 days, rather than to reject certain electoral votes. (*Ibid*.) The meeting ended with President Trump requesting, and Vice President Pence agreeing, that Jacob would meet with Eastman again the next day however, Vice President Pence and Jacob thought that President Trump and Eastman were no longer pressuring Vice President Pence to reject electoral votes.

Events of January 5, 2021

On January 5, 2021 at 8:06 am., President Trump tweeted, "The Vice President has the power to reject fraudulently chosen electors." (Exh. 297.)

That same day, Jacob sent Vice President Pence a memo Jacob had prepared which outlined and analyzed some of Eastman's January 6 proposals that had been discussed during the

January 4 Oval Office meeting (Jacob's Jan. 5 Memo). (Exh. 71; R.T. Vol. II, p. 80.) In the memo, Jacob characterized Eastman's proposals as requiring Vice President Pence to "skip opening and reading the electoral certificates for any state for which an alternate but uncertified slate of electors has been submitted"; open and read the Arizona, Georgia, New Mexico, Nevada and Pennsylvania electoral certificates at the end of the Joint Session rather than reading the certificates for those states in alphabetical order; and to refrain from counting the electoral certificates for these states until their state legislature determines whether to certify a competing slate of electors. (Exh. 71, p. 1.) Jacob outlined how each proposed step violated the Electoral Count Act and was also in conflict with *Wisconsin Voters Alliance*, a Washington D. C. district court decision filed the day before. Jacob noted that *Wisconsin Voters Alliance* held that "'[p]laintiffs' theory that [the Electoral Count Act is] unconstitutional and that the Court should instead require state legislatures themselves to certify every Presidential election lies somewhere between a willful misreading of the Constitution and fantasy.'"[66] (*Id*. at p. 3.)

Meeting Between Eastman, Jacob, and Short

Later that day, Jacob and Short met with Eastman in Short's office between 11:00 and 11:30 a.m. (January 5 meeting). However, Eastman's "ask" during the January 5 meeting differed from his "ask" at the end of the day before. Initially, during the January 5 meeting, Eastman asked that Vice President Pence *reject* the electoral votes from Arizona, Georgia, Wisconsin, Michigan, Pennsylvania and, possibly Nevada and New Mexico as well.[67] That

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[66] The court notes that the District Court's denial of preliminary injunction was also based on plaintiffs' failure to demonstrate standing, personal jurisdiction, or service on defendant Vice President Pence. In sum, plaintiffs did not establish a likelihood of success on the merits. (See *Wisconsin Voters Alliance, et al. v. Pence et al.* (2021) 514 F.Supp. 3d 117, 120-122). The notice of errata filed by OCTC on December 26, 2023 and Eastman's December 28 response, addressed the District Court's January 4, 2021 decision in *Wisconsin Voters Alliance.*

[67] Eastman contends that during the January 5 meeting, he did not propose that Vice President Pence should reject the elector slates from the contested slates. However, that is not

request precipitated a robust, almost 2 hour discussion regarding historical precedent, the fact that no vice president in the entire history of the country ever actually exercised authority to reject electoral vote certificates and, how courts would likely deny Eastman's rejection theory. (R.T. Vol. X, pp. 57-58.)

During the January 5 meeting, Jacob and Eastman discussed a number of law review articles regarding the authority of a vice president, including a 2004 law review article entitled "Thomas Jefferson Counts Himself into the Presidency" by Bruce Ackerman and David Fontana which addressed actions taken by Vice Presidents John Adams in connection with the election of 1796;[68] and Thomas Jefferson in connection with the election of 1800.[69] Eastman agreed with

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credible as during the January 5 meeting Jacob made handwritten notes, indicating "John Eastman meeting 1/5/21… Requesting VP reject…" (Exh. 65.) Moreover, certain January 6 emails (4:29 p.m. by Jacob) and Eastman (6:09 p.m.) acknowledge that elector rejection the "most aggressive position (the elector rejection option) had been raised and not "retreated to" until the night of January 5. Therefore, this court finds Jacob's testimony credible that Eastman did initially, during the January 5 meeting, request that Vice President Pence reject electoral votes from the contested states rather than delay the counting until it became apparent that Eastman's rejection request didn't gain traction with Jacob; then Eastman changed his request to a delay of the electoral count. (R.T. Vol. X, pp.77-78.)

[68] The election of 1796 was the first contested presidential election in the United States. The leading candidates were John Adams (the sitting Vice President) and Thomas Jefferson. Adams presided over the electoral count on February 8, 1797. Vermont was a pivotal state in the 1796 election and although contemporaneous sources rumored that Vermont's electors were appointed in violation of state law, the *Annals of Congress* reflect that Adams handed the certificate with the four Vermont votes cast for Adams to the teller for counting, and, hearing no objection, Adams sat down for a moment and then stood up and announced that in obedience to the commands of Congress and pursuant to the joint resolutions—John Adams was elected President of the United States. (Exhs. 179, pp. 32-35; 1358, pp. 72-73.)

However, as Dr. Yoo pointed out, the Vermont electoral votes were the only votes certified by Vermont and for that reason, Vice President Adams may have thought he was required to count them and that he had no authority to look past the certification he had received in order to identify possible irregularities. (Exh. 1358, p. 74.)

[69] The electoral count for the 1800 presidential election was held on February 11, 1801 and lasted almost a week. The leading presidential candidates were President John Adams who was seeking re-election and Thomas Jefferson. There were technical deficiencies in Georgia's certificate for four electors which could have supported rejection and that potentially could have been outcome determinative, even though the deficiencies did not affect the validity of the

Jacob that the actions taken by Jefferson, basically ignoring defects in Georgia's certificate, crediting Georgia with its three electoral votes and proceeding with the electoral count, did not give rise to a rejection of electors or represent an incident where a vice president asserted any authority involving a substantive determination about an electoral certificate. (R.T. Vol. II, p. 63-65.) After further discussion about the 1796 incident involving Adams, Eastman agreed that neither the Adams nor Jefferson examples reflected that either vice president had rejected electoral vote certificates, claimed any authority to do so or claimed they had authority to make any substantive decisions about electoral vote certificates. (*Id.* at pp. 65-67.) Jacob concluded that neither Congress nor a vice president has authority to reject electors and, as Vice President Pence stated all along and articulated clearly in his Dear Colleague letter the next day, Vice President Pence had reached the same conclusion.

Jacob and Eastman had a further discussion about whether the United States Supreme Court would agree with Eastman's view that a vice president could reject electoral votes and they subsequently agreed that although there may be one or two dissenting opinions, a majority of the justices would likely vote against it. (*Id.* p. 70.)

Eastman and Jacob ultimately agreed that during the 130 years that the Electoral Count Act had been in effect, there was never a departure from its procedures, not even when Nixon, as President of the Senate on January 6, 1961, announced that with no objections, the third slate, which was the last slate certified and ascertained by the Governor of Hawaii, was the operative slate of electors for Hawaii. (*Id.* at p. 61.)

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appointment of the electors. Yet, the Georgia votes were counted and neither the *Annals of Congress*, the House Journal nor the Senate Journal reflect any dispute, resolution of a dispute by the President of the Senate or others during or after the electoral count. Although Eastman contends that Jefferson exercised unilateral authority to resolve a Georgia electoral vote dispute, the historical records do not support that contention. (Exh. 179, pp. 37-42; see also exh. 1358, pp. 75-77.)

Following that hearty discussion during the January 5 meeting, Eastman requested that Vice President Pence delay rather than reject the contested state electors, based in part, on requests made for a delay by some individual state legislators. (*Id*. at pp. 72-73.) However, as Jacob noted, "[t]here was no dual slates of electors where there was an imprimatur of state authority that would cause them to have legal status under the Electoral Count Act that would trigger its procedures," no state legislature had sought a delay of the electoral count and no state legislative majorities indicated an intent to do so. (*Id*. at p. 76; exh. 71, p. 3.)

Eastman's Discussions with Trump and Jacob After the Jan. 5th Meeting

After Eastman met with Jacob and Short in Short's office, Jacob and Eastman had two more phone calls that day – the first of which took place at 5:00 or 5:30 p.m. and included President Trump, Eastman, and another attorney. During that call, they acknowledged that Vice President Pence was not going to agree to reject electors so they asked whether Vice President Pence "would reconsider the possibility of the procedural option of sending it back to the states" – in other words, to opt for an adjournment, recess, or delay for some period of time. (R.T. Vol. II, p. 169.)

The second phone call Jacob had with Eastman on the evening of January 5th involved a renewed discussion about a delay for further consideration by the state legislatures and that while some individual Republican state legislators forwarded letters seeking a delay of the electoral count, numerous state legislature leaders stated they had no interest in taking further action and that "no legislative body in any of the states where a majority of that body had indicated that that they were interested in revisiting the question of who had won that state in the [2020 presidential] election." (R.T. Vol. II, pp. 74, 169-170.)

Neither the January 5 meeting nor the subsequent two phone calls caused Jacob or Vice President Pence to alter their position that as President of the Senate, Vice President Pence did not have authority to reject electoral votes, to recess or delay the electoral count.

Eastman emailed Jacob at 9:32 p.m. that night, stating: "This is huge, as it looks like PA legislature will vote to recertify its electors if Vice President Pence implements the plan we discussed. Give me a call once you've had your sit-down with the VP and let me know where we stand." (Exh. 66, p. 2) Jacob and Vice President Pence were not swayed.

According to the White House Presidential Call Log, Eastman and President Trump spoke from 9:54 p.m. to about 9:58 p.m. on January 5. (Exh. 386, p. 3) Two minutes later, at 10:00 p.m., President Trump tweeted "If Vice President@Mike Pence comes through for us, we will win the Presidency. Many States want to decertify the mistake they made in certifying incorrect & fraudulent numbers in a process NOT approved by their State Legislatures (which it must be). Mike can send it back!" (Exh. 298.) Eastman knew that contrary to the statements he made in his email about Pennsylvania, no state legislature was going to certify a Trump slate of electors.

The White House Presidential Call Log further reflects that from 11:23 to 11:37 p.m. and then from 11:39-11:50 p.m., President Trump spoke with Giuliani. (Exh. 386, p. 5.)

Eastman's Discussions with Russell Ramsland and Joe Oltmann

Also on January 5, 2021, Eastman had conversations with a few people among the Willard Hotel Save America rally organizers whom he believed had varying levels of technical expertise and who had been involved with analyses of the systems, among them Russell Ramsland and Joe Oltmann. Eastman met Ramsland and Oltmann for the first time the evening of January 5, 2020. (*Id*. at pp. 52-5.) During a reception, they discussed a single page chart compiled by Ramsland and Oltmann (Ramsland/Oltmann diagram). (R.T. Vol. XI, pp. 93-94;

see also exh. 1217.) The Ramsland/Oltmann diagram was a flow chart suggesting that phantom and fake ballots[70] were introduced into the voted stream of ballots at multiple points by manipulating Dominion voting machine vulnerabilities. (*Id*.; R. T. Vol. XI, pp. 91-92.)[71]

Eastman had never heard of Oltman, and he did not conduct any background Internet or other research regarding either Ramsland or Oltman.[72] (*Id*. at pp. 55, 99.) As a matter of fact, Eastman did not recall inquiring about Oltmann's credentials, e.g., educational or professional background or professional experience, that would qualify Oltmann to competently render the analysis of the Dominion voting machine vulnerabilities set forth in the Oltmann diagram. (*Id*. at pp. 88-89, 96.) Eastman did not recall Oltmann providing any support for the purported Dominion machine vulnerabilities or quantifying the number of pre-loaded ballots/suspense folder ballots that were allegedly counted due to Dominion machine vulnerabilities.

Eastman did recall, however, that none of the individuals with whom he discussed this issue provided any documentation, research or data regarding the credibility of the alleged Dominion machine vulnerabilities set forth in the Ramsland/Oltmann diagram. And Eastman did not make any effort to obtain information from Dominion regarding the Ramsland claims about the Dominion voting machines. (*Id*. at p. 59.)

Nevertheless, Eastman found the Ramsland/Oltmann diagram to be credible because some unnamed individuals who he believed had technical expertise, told him that there were

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[70] Eastman was told that phantom ballots were ballot images copied/replicated within the system and fake ballots were ballots pre-loaded into the system. Both phantom and fake ballots would have occurred after the initial processing of verified paper ballots. (R.T. Vol. XI, pp. 91-92.)

[71] A credible study of Dominion voting machines concluded that there was no evidence to suggest that Biden exceeded voting expectations in counties where these machines were utilized. (Exh. 174, p. 4.)

[72] Eastman did recall learning that Ramsland was consulted by Texas at some point when it was trying to determine which voting machines to purchase.

vulnerabilities in the system and, because he believed he saw the diagram predictions play out as he was watched the Georgia Senate runoff election returns on January 5, 2021.[73] (R.T. Vol. XI, pp. 95-96.) The Ramsland/Oltmann prediction was that as a share of the counted votes would no longer increase, the estimated vote total would continue to increase. However, on January 5, 2021, the Ramsland/Oltmann prediction did not occur.[74] (*Id.* at pp. 255-256, 259-260.)

Events of January 6, 2021

Trump's Early Morning Tweet

At 8:17 a.m., President Trump tweeted that "States want to correct their votes . . . . All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage." (Exh. 299, p. 1.)

Vice President Pence's January 6, 2021 Letter

On January 6, 2021, shortly before the Joint Session of Congress, Vice President Pence forwarded a public letter to Congress (Dear Colleague Letter), which stated in pertinent part:

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[73] Specifically, Eastman believes he saw the number of votes cast (the denominator in the vote total estimates) change unexpectedly and then the counting or the reporting of the counting of ballots shutting down for an hour or two. (R.T. Vol. XI, p. 98.) When Eastman observed this phenomenon during the Georgia Senate race, he believed that as the reported vote totals reached 100%, that number would not change but more ballots were reported because pre-loaded ballots were being withdrawn from the suspense folders in the Dominion machines and were added into the vote tally. (Resp's closing brief – incorrectly cited p. 31.) Eastman was mistaken.

By October 2021, Eastman came to understand that the Associated Press characterized the fractional number to which Eastman referred, was actually an estimate which the Associated Press adjusted as they learned more during vote tabulation. (*Id*. at p. 101.) However, even after learning of that explanation, Eastman still believed the results were disputed, indicative of fraud and warranted further review since he was told by statistician Eric Quinnell that it was unlikely that the Associated Press estimate was so far off the actual figure.

[74] "The estimated vote count is just that, an estimate. It's going to change over the course of the evening. And there's no literature that indicates that movement in the estimated vote count from media companies like Edison is an indication that fraud of any kind or illegality of any kind is happening, let alone that there's machine manipulation occurring." (R.T. Vol. XXXI, p. 260.) Moreover, a gap in the reporting of votes did not mean that the counting of votes stopped. (*Id*. at p. 261.)

> Dear Colleague:
>
> Today, for the 59th time in our Nation's history, Congress will convene in Joint Session to count the electoral votes for President of the United States. Under our Constitution, it will be my duty as Vice President and as President of the Senate to serve as the presiding officer.
>
> After an election with significant allegations of voting irregularities and numerous instances of officials setting aside state election law, I share the concerns of millions of Americans about the integrity of this election. . . . [¶]
>
> During the 130 years since the Electoral Count Act was passed, Congress has, without exception, used these formal procedures to count the electoral votes every four years. . . .
>
> Some believe that as Vice President, I should be able to accept or reject electoral votes unilaterally. Others believe that electoral votes should never be challenged in a Joint Session of Congress.
>
> After a careful study of our Constitution, our laws, and our history, I believe neither view is correct. [¶]. . . [¶]
>
> *[I]t is my considered judgment that my oath to support and defend the Constitution constrains me from claiming unilateral authority to determine which electoral votes should be counted and which should not.*

(Exh. 64, pp. 2-3, italics added.)[75]

Eastman's Speech at the Ellipse

On January 6, 2021, Eastman spoke to a crowd on the National Mall Ellipse at a televised "Save America" rally, better known as the "Stop the Steal" rally. Eastman estimated that there were between 250,000 and 500,000 people in attendance. (Eastman's Answer, pp. 38-39.) During the rally, speakers and attendees protested the results of the 2020 presidential election, which most of them characterized as having been stolen from President Trump.

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[75] Jacob did not believe that these allegations of voting irregularities or election law officials setting aside state election law gave Vice President Pence authority to unilaterally reject any electors. (R.T. Vol. II, p. 84.)

Before he spoke, Eastman was introduced to the crowd by Rudy Giuliani, one of President Trump's lawyers, who stated, "I have Professor Eastman here with me to say a few words about that [everything outlined for the day being perfectly legal]. He's one of the preeminent constitutional scholars in the United States. . . ." (Exh. 30, p.1.) Giuliani contended that given the "questionable constitutionality" of the Electoral Count Act of 1887 (ECA), Vice President Pence could "cast it aside" and "can send it" back to the legislatures to give them five to ten days to find proof that the 2020 election was stolen—"over the next 10 days, we get to see the machines that are crooked. The ballots that were fraudulent." (*Ibid.*) Giuliani stated "let's have trial by combat," noting that Giuliani was willing to stake his reputation and "the President is willing to stake his reputation on the fact we're gonna find criminality there." (*Ibid.*) Giuliani went on to rail about his proof that the 2020 presidential election had been stolen;[76] "last night, one of the experts that has examined these crooked Dominion machines has absolutely what he believes is conclusive proof that in the 10%, 15% of the vote counted, the votes were deliberately changed by the same algorithm that was used in cheating President Trump and Vice President Pence. . . . You noticed they were ahead until the very end, right?" (*Id.* at p. 2.) Giuliani then asked Eastman to explain how "they" cheated in the January 5, 2021 Georgia Senate run-off and the November 3, 2020 [presidential] elections.

Eastman picked-up where Giuliani left off, alleging illegalities, election fraud, fraud involving Dominion voting machines[77] and demanding that Vice President Pence unilaterally delay the 1:00 p.m. electoral count to allow state legislatures to investigate these issues:

> Look, we've got petitions pending before the Supreme Court that identify it, chapter and verse, the number of times state election

[76] According to Giuliani, the 2020 presidential election had been stolen in seven states with "crooked Democratic cities where they could push everybody around." (*Id.* at p. 2.)

[77] Eastman's comments regarding the purported vulnerabilities of the Dominion voting machines were based in large part on his discussions with Ramsland and Oltmann.

> officials ignored or violated the state law in order to put Vice President Biden over the finish line. *We know there was fraud*. Traditional fraud that occurred. *We know that dead people voted.* But, we now know because we caught it live last time in real time how the machines contributed to that fraud.
>
> And, let me, as simply as I can, explain it. . . . They put those ballots in a secret folder in the machines. Sitting there waiting until they know how many they need. And then, the machine, after the close of polls, we now know whose [sic] voted and we know who hasn't. And, I can now, in that machine, match those unvoted ballots with an unvoted voter and put them together in the machine.
>
> And, how do we know that happened last night [January 5, 2021] in real time? You saw when it got to 99% of the vote total, and then it stopped. The percentage stopped, but the votes didn't stop. What happened, and you don't see this on Fox or any of the other stations, but the data shows that the denominator, how many ballots remain to be counted. How else do you figure out the percentage that you have? How many remain to be counted? That number started moving up. That means they were unloading the ballots from that secret folder, matching them to the unvoted voter, and voila. We have enough votes to barely get over the finish line.
>
> We saw it happen in real time last night, and it happened on November 3rd, as well. *And, all we are demanding of Vice President Pence is this afternoon at 1:00, he let the legislators of the state look into this so we get to the bottom of it*, and the American people know whether we have control of the direction of our government or not. We no longer live in a self-governing Republic if we can't get the answer to this question.
>
> This is bigger than President Trump. It is the very essence of our Republican form of government, and it has to be done. *And, anybody that is not willing to stand up to do it does not deserve to be in the office. It is that simple.*

(Exh. 30, pp. 2-3, italics added.)

Eastman knew that any votes cast in the name of a deceased person were not outcome-determinative in any state. (R.T. Vol. XI, pp. 49-50.) Eastman knew that his statements made during his January 6th speech on the Ellipse implied that there was fraud related to electronic voting. (R.T. Vol. XXXI, p. 84 ["Q: And you don't believe that your statements on January 6th

at the Ellipse implied that there had been fraud related to electronic voting? A: It's quite possible it implied that"].) Eastman gave no consideration to the effect that his statements would have on the crowd. (*Id*. at p.85 [Q: Did you give any consideration to the effect that your statements would have on the crowd? A: I did not. I think I've testified earlier I was asked at the last minute to speak, and I spoke a lot less than three minutes"].)

Eastman made the damning statements at the Ellipse regarding purported Dominion voting machine vulnerabilities even though he had not seen conclusive proof that Dominion voting machines were used to fraudulently flip votes in the 2020 presidential election. (R.T. Vol. XI, pp. 33-34.)

Significantly, about two months before Eastman made the damning Dominion voting machine vulnerabilities remarks on the Ellipse, Eastman had become aware that the Cybersecurity and Infrastructure Security Agency (CISA) stated on November 12, 2020, "[t]he November 3rd election was the most secure in American history," notwithstanding the "many unfounded claims and opportunities for misinformation about the process of our elections." (Exh. 201.) CISA further stated "[w]e can assure you we have the utmost confidence in the security and integrity of our elections and you should, too. When you have questions, turn to the elections officials as trusted voices, as they administer elections." (*Ibid*.) Eastman found the CISA statement to be "rather implausible" and did not reach out to any election officials regarding the Dominion voting machines or the reliability of the election in their state. (R.T. Vol. X, pp. 121-124.) Eastman was also aware of the Election Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees, bipartisan groups which prepared a November 16, 2020 statement by 59 computer

scientists and election security experts[78] which stated there was no credible evidence that supports claims that the 2020 election outcome in any state was altered through technical compromise.[79] (Exh. 187.)

President Trump's Speech at the Ellipse

President Trump was the last speaker during the Stop The Steal rally. He complimented Giuliani[80] and thanked Eastman for a fantastic job, commenting that Eastman "is one of the most brilliant lawyers in the country and he looked at this and he said, what an absolute disgrace that this could be happening to our Constitution." (Exh. 322, p. 3.) Stating that "[w]e will never give up. We will never concede", President Trump for almost an hour railed about illegalities, election fraud in the contested states, "overwhelming evidence about a fake election", how he had won the 2020 presidential election by a "landslide" and numerous other false election denier troupes. (*Id.* at p. 2.) During his speech, President Trump repeatedly pressured Vice President Pence to act unilaterally to reject the electoral votes by sending them back to the states to re-certify their votes.[81]

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[78] Notably, Eastman found credible the work of J. Alex Halderman, who Eastman mistakenly claims supported Eastman's views on election irregularities (particularly with regard to the election in Antrim County, Michigan), and who was one of the computer scientists and election security experts who signed the November 16, 2020 statement. (Exhs. 206, p. 3; 187.) (See also discussion *infra*, re Antrim County and Halderman's forensic conclusions re its election.) Halderman commented that Ramsland's report on Antrim County "contain[ed] an extraordinary number of false, inaccurate or unsubstantiated statements and conclusions, the most serious of which I refute below." (Exh. 1062, p. 40; see also R.T. Vol. XI, pp. 56-58.)

[79] On January 11, 2021, Eastman sent an email to Giuliani, requesting to be included on President Trump's pardon list. This request stemmed from Eastman's apprehension that some individuals perceived his remarks at the Ellipse during the Save America rally as potentially influencing the events of the January 6 riots at the Capitol. (Exh. 62; R.T. Vol. XI, pp. 106-107.)

[80] "And Rudy, you did a great job. He's got guts." (Exh. 322, p. 3.)

[81] "And he [Eastman] looked at Mike Pence, and I hope Mike is going to do the right thing. I hope so. I hope so, because if Mike Pence does the right thing, we win the election. All he has to do, all—this is—this is from the number one or certainly one of the top Constitutional

Trump encouraged his supporters to march down Pennsylvania Avenue to the Capitol and concluded by urging them to "fight like hell" to save the country. (*Id.*)

After the speeches at the Ellipse, at 2:24 p.m., President Trump tweeted that "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!" (Exh. 300.)

Assault On The Capitol

Toward the end of the Stop The Steal rally on the Ellipse, some members of the crowd, protestors, rioters, and members of militia groups marched to the Capitol and began to riot around 2:00 p.m. EST; overwhelming the 800 deployed Metropolitan police, attacking the Capitol police, breaching the Capitol, breaking windows, entering and damaging Capitol offices and the chambers of Congress. Vice President Pence, members of Congress and their staff had to be evacuated to other locations for their safety. (R.T. Vol. II, pp. 86-89; exh. 165, pp. 31-33.)

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lawyers [Eastman] in our country. He [Pence] has the absolute right to do it. . . . States want to revote." (Exh. 322, p. 3)

"The states got defrauded…. Now they want to recertify. They want it back. All Vice President Pence has to do is send it back to the states to recertify, and we become president. . . . I just spoke to Mike. I said, Mike, that doesn't take courage. What takes courage is to do nothing. That takes courage, and then we're stuck with a president who lost the election by a lot. . . . We're just not going to let that happen." (*Ibid.*)

"And Mike Pence is going to have to come through for us, and if he doesn't, that will be a sad day for our country, because you're sworn to uphold our Constitution. Now it is up to Congress to confront this egregious assault on our democracy, and after this, we're going to walk down, and I'll be there with you." (*Id.* at p. 6.)

"And they want to recertify their votes. They want to recertify, but the only way that can happen is if Mike Pence agrees to send it back. Mike Pence has to agree to send it back." (*Id.* at p. 14.) [The crowd chanting, "Send it back!"] (*Id.* at p. 14.).

"And Mike Pence, I hope you're going to stand up for the good of our Constitution and for the good of our country, and if you're not, I'm going to be very disappointed in you, I will tell you right now." (*Id.* at p. 18.)

"When you catch somebody in a fraud, you're allowed to go by very different rules. So, I hope Mike has the courage to do what he has to do." (*Id.* at p. 22.)

The violence and turmoil at the Capitol resulted in a cessation of the electoral count, which had started when the Joint Session of Congress convened at 1:00 p.m. Congress eventually reconvened and began to continue with the electoral count around 8:30 p.m. Eastern time.

Communications Between Jacob and Eastman

During the morning of January 6th and the violent attack on the Capitol, Jacob and Eastman continued to argue regarding the scope of Vice President Pence's unilateral authority as raised in the six-page memo, during the meetings and calls with President Trump and others. At 10:44 a.m., Jacob responded to Eastman's January 5th email sent at 9:32 p.m. by inquiring whether Eastman's proposal was constitutional in light of the ECA constitutional imperative regarding the process for addressing objections. (Exh. 66, p. 1.) Eastman's 1:33 p.m. email was dismissive: "I'm sorry Greg, but this is small-minded. You're sticking with minor procedural statutes while the Constitution is being shredded." (*Ibid.*)

Jacob retorted by pointing out that he did not believe a single Justice on the United States Supreme Court of a Courts of Appeal would be as "broad minded" as Eastman "when it comes to the irrelevance of statutes enacted by the United States Congress, and followed without exception for more than 130 years. They cannot be set aside except when in direct conflict with the Constitution . . . . I want election integrity fixed. But I have run down every legal trail placed before me to its conclusion, and I respectfully conclude that as a legal framework, it is a results oriented position that you would never support if attempted by the opposition and essentially entirely made up. And, thanks to your bullshit, we are now under siege." (Exh. 66, p. 1.)

A few minutes later Eastman pushed back—"My 'bullshit' ---seriously? You think you can't adjourn the session because the ECA says no adjournment, while the compelling evidence that the election was stolen continues to build and is already overwhelming. The 'siege' is

because YOU and your boss did not do what was necessary to allow this to be aired in a public way so the American people can see for themselves what happened." (Exh. 67, p. 1.)

Jacob's 1:05 p.m. email was pointedly but accurately critical of Eastman and his advice to President Trump:

> Respectfully, it was gravely, gravely irresponsible for you to entice the President with an academic theory that had no legal viability, and that you well know we would lose before any judge who heard and decided the case. And if the courts decline to hear it, I suppose it could only be decided in the streets. The knowing amplification of that theory through numerous surrogates, whipping large numbers of people into a frenzy over something with no chance of ever attaining legal force through actual process of law, has led us to where we are.
> I do not begrudge academics debating the most far-flung theories. I love doing it myself, and I view the ferment of ideas as a good and helpful thing. But advising the President of the United States, in an incredibly constitutionally fraught moment, requires a seriousness of purpose, an understanding of the difference between abstract theory and legal reality, and an appreciation of the power of both the office and the bully pulpit that, in my judgment, was entirely absent here.

(Exh. 69, pp. 2-3.)

Between 4:29 p.m. and 4:45 p.m., Eastman and Jacob exchanged emails regarding the nature of the advice that Eastman gave to President Trump; specifically, whether Eastman had advised President Trump that "Vice President Pence 'DOES NOT have the power to decide things unilaterally? Because that was pushed publicly, repeatedly, by the President and by his surrogates this week. And without apparent legal correction." (Exh. 68, emphasis in original.) Eastman confirmed that he had given Trump that advice when Jacob was on the phone presumably, the evening of January 5th. (*Ibid.*)

Eastman emailed Jacob again at 6:09 p.m., advocating for an adjournment and criticizing Vice President Pence's Dear Colleague statement regarding his unilateral authority to accept or reject electoral votes as "the most aggressive position that was discussed and rejected." (Exhs.

68, p. 1; 69, p. 2.) Eastman noted that "*we* had given a much more limited option, merely to adjourn to allow state legislatures to continue their work. I remain of the view not only would that have been the most prudent course as it would have allowed for the opportunity for this thing to be heard out, but also had a fair chance of being approved (or at least not enjoined) by the Courts. Alas." (*Id*. at p. 2, italics added.)

At 9:44 p.m., after the electoral count had resumed, Eastman again emailed Jacob, stating that the ECA had been violated that evening by both the Senate and House by debating the Arizona objections longer than the 3 U.S.C. §17 period of two hours and Vice President Pence had allowed debate after the question had been voted upon. Relentlessly, Eastman stated that with these purported ECA violations, "I implore you to consider one more relatively minor violation and adjourn for 10 days to allow the legislatures to finish their investigations, as well as to allow a full forensic audit of the massive amount of illegal activity that has occurred here." (*Id.*)

The American Mind Article

On January 18, 2021, the American Mind, an online publication of the Claremont Institute, published an article written by Eastman regarding the November 3, 2020, presidential election, entitled "Setting the Record Straight on the POTUS 'Ask'." Eastman wrote this article to dispute statements made by Vice President Pence in his January 6 "Dear Colleague" letter regarding President Trump's requests that Vice President Pence exercise unilateral authority to accept, reject, dispute, count and/or not count certain electoral votes during the Joint Session of Congress. Eastman contended that "when all was said and done" President Trump had not asked Vice President Pence to take these actions regarding the electoral count. (Exh. 31, p. 2.) Rather, according to Eastman, Vice President Pence was asked by both President Trump and by Eastman to merely "pause" the proceedings long enough to give the few states whose legislators had

asked for more time to assess whether there was illegal conduct by their state election officials sufficient to warrant revoking the certified election results. (*Id*. at p. 7.) However, this Court notes, that the 10-day "pause" Eastman sought from Vice President Pence would, in and of itself, violate the Electoral Count Act and the evening of January 6, and Eastman himself acknowledged that fact.[82] (Exh. 69, p. 2.)

In the January 18, 2021 American Mind article, Eastman set forth a brief constitutional analysis of a hypothetical scenario, 3 U.S.C. §15 of the Electoral Act, the 12th Amendment and the vice president's role vis-a-vis Congress in the opening and counting of electoral votes, as analyzed by certain constitutional scholars. Amazingly, and contrary to statements made in his two-page and six-page memos and all of his post mid-October 2020 public statements, Eastman concluded "[a]ll this by way of background to show that *whether or not Vice President Pence had the constitutional authority to determine that certain slates of electors were invalid remains an open question.*" (Exh. 31 p. 6, italics added.)

In the January 18, 2021 American Mind article Eastman further proclaimed:

> A large portion of the American citizenry believes the illegal actions by partisan election officials in a few states have thrown the election. They saw it with their own eyes—in Fulton County, Georgia, where suitcases of ballots were pulled from under the table after election observers had been sent home for the night; in parts of Wayne County (Detroit), Michigan, where there are more absentee votes cast than had been requested; . . . in Antrim County, Michigan, where votes were electronically flipped from Trump to Biden.

(Exh. 31, pp. 9-10.) These statements were false.

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[82] After claiming that the Senate, the House, and Vice President Pence had violated the Electoral Count Act during the night of January 6 by extending the debate after Congress resumed its session following the assault on the Capitol, Eastman emailed Jacob: "I implore you to consider one more relatively minor violation and adjourn for 10 days to allow the legislatures to finish their investigations. . . ." (Exh. 69, p. 2.) This would have been a violation of the ECA that would have been unprecedented in American history.

According to Jonathan Brater, Director of the Michigan Bureau of Elections,[83] the voter turnout in Detroit for the 2020 presidential election was about 4 percent higher in 2020 than it was in 2016 but, it was still less than the overall voter turnout which was about 15 percent higher. (R.T., Vol. VI, p. 169.)

As discussed previously, Eastman and others erroneously stated that the Michigan Secretary of State mailed absentee ballots to all registered voters. Moreover, absentee ballot applications were widely available in Michigan and could even be downloaded from the Michigan Department of State website. (*Id.* at p. 180.) In fact, according to Michigan Secretary of State Benson, over 174,000 absentee ballots were cast in Detroit in the 2020 presidential election. (Exh. 112, p. 20.) However, the Wayne County Absentee Voting Counting Boards displayed the data on a spreadsheet that reflected that there were *no* absentee ballots; and the City of Detroit reported a tally of zero absentee ballots, creating the impression that 100 percent of the absentee ballots cast were illegally or fraudulently cast. (R.T. Vol. XXXII, pp. 69-71.)

Although Eastman stated in the American Mind article that in parts of Wayne County, Michigan, more absentee votes were cast than had been requested, at trial Eastman stated he was unsure about the origin of this "information." Furthermore, because he was unable to retrace the information, he did not know if it was true. (R.T. Vol. XI, pp. 110-111.)

Secretary of State Benson congratulated the 1,600 local and county election officials who helped with Michigan's 2020 presidential election record-breaking turnout of 5.5 million voters. From October 2020 through mid-January 2021, Secretary of State Benson and her staff

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[83] Mr. Brater supervised the Bureau of Elections which supports Michigan's chief election official, the Secretary of State, in administrating Michigan's election laws and supervising election city and local clerks.

publicized numerous and ongoing statements regarding various election-related issues surrounding the 2020 presidential election in Michigan.[84]

In an effort to be transparent, Secretary Benson's November 11, 2020 press release acknowledged that there had been an "erroneous reporting of *unofficial* results from Antrim County [which] was a result of accidental error on the part of the Antrim County Clerk. The equipment and software did not malfunction, and all ballots were properly tabulated. However, the clerk accidently failed to update the software used to collect voting machine data and report unofficial results." (Exh. 100, p. 1, italics added.) Secretary Benson explained that "even though the tabulators counted all the ballots correctly, those accurate results were not combined properly when the clerk reported unofficial results" and "this was an honest mistake and did not affect any actual vote totals." (*Ibid*.)

In a December 17, 2020 press release, Secretary Benson stated that Michigan had conducted a full hand count audit of Antrim County 2020 presidential electoral votes and found that the Dominion vote tabulation machines accurately calculated the final votes: 9,759 for Trump and 5,959 for Biden. (Exhs. 109, 110.) According to the audit, the net difference between the hand-tallied audited votes and the Dominion tabulated votes was 12 votes—12 votes out of 15,718 total votes.

Eastman learned by November or December 2020, that Michigan state officials had analyzed the Antrim County software issue and determined that it was human error. (R.T. Vol. X, pp. 112-113.)[85] Nonetheless, Eastman stated in the American Mind article in mid-January 2021, that during the 2020 presidential election, Antrim County, Michigan votes for

[84] See exhs. 100-112.

[85] Eastman incorrectly commented that expert Alex Halderman's March 26, 2021 Analysis of the Antrim County, Michigan report supported his statement lacks merit, given the publication date of the report. (*Id*. at pp. 112-115.)

Trump had been electronically flipped to Biden. At trial, Eastman shied away from stating that any of those "electronically flipped" unofficial votes had been improperly counted for Biden. (R.T. Vol. XI, pp. 111-112.) But, Eastman affirmed his belief that his statement was true, noting that "experts" on both sides confirmed the statement[86] but there was a dispute as to whether this happened due to machine software. Eastman equivocated by stating that in the article he did not mean that Antrim County votes had been counted for Biden, but rather that he "was simply

[86] Eastman commented that the report prepared by one of the experts, Alex Halderman, supported his statement. But, as Halderman's report, Analysis of the Antrim County, Michigan November 2020 Election Incident, predated Eastman's January 18, 2021 American Mind article by about two months, Eastman was incorrect. (See exh. 1062.) Moreover, Halderman summarized his findings as follows: "the Antrim County incident was not caused by a security breach. There is also no credible evidence that it was caused deliberately. . . . The major discrepancies in Antrim's results have been fully corrected. The final results match the poll tapes printed by the individual ballot scanners, and there is no evidence that the poll tapes are inaccurate, except for in specific precincts where particular circumstances I explain affected small numbers of votes, mainly in down-ballot races. . . . In Antrim, several layers of protections that were supposed to ensure accuracy broke down *due to human errors* on multiple levels…." (Exh. 1062, pp. 3-4, italics added.)

The other "expert" who prepared a declaration that addressed the use of the Dominion voting machines in Michigan was Russell Ramsland—one of the two individuals that Eastman collaborated with the evening of January 5 when Eastman, Ramsland and Oltmann fabricated the Dominion allegations (and Oltmann provided the one page diagram) that Eastman based some of Dominion-related remarks the next day at the Ellipse. Ramsland clearly lacked any election-related expertise and his declaration filed in the *King v. Whitmer* lawsuit erroneously stated that in two counties in Michigan, the Dominion machines were not functioning properly. Ramsland's analysis was actually based on election results from Minnesota, not Michigan and the Michigan counties that he referenced did not even utilize Dominion voting machines in the 2020 presidential election. (See R.T. Vol. VI, pp. 162-165.)

As to Antrim County, Ramsland prepared the "Antrim Michigan Forensics Report" (exh. 1047), which concluded that the Antrim County results should not have been certified and "that the Dominion Voting System is intentionally and purposefully designed with inherent errors to create systemic fraud and influence election results. The system intentionally generates an enormously high number of ballot errors. The electronic ballot errors are then transferred for adjudication" with no oversight, no transparency and no audit trail. (*Id.* at p. 1.) Ramsland's claims were not credible and reflected a fundamental misunderstanding of Michigan election administration. (R.T. Vol. VI, pp. 172-173.)

After an extensive analysis using "rigorous specifications," election expert, Grimmer did not find that Vice President Biden outperformed expectations in counties where Dominion voting machines were used. (Exh. 174, p. 4.)

stating there was fact, that votes that had been case [sic] for Trump were recorded for Biden." (*Ibid*.) Eastman testified that he did not think that any flipped votes or that the missed Dominion machine software upgrade was deliberate or fraudulent. (R.T. Vol. X, pp. 119-120.)

Eastman's statement about "electronically flipped" Trump to Biden votes was a misrepresentation of the facts because, as Eastman knew, what he characterized as "electronically flipped" votes were not votes that were counted in the final results.[87]

Conclusions of Law

Eastman's First Amendment Defense

During these proceedings, Eastman has consistently asserted that his statements, specifically his interview at the Bannon War Room (count 5), his public statements at the Ellipse on January 6 (counts 1 and 7), his article in the American Mind (count 9), and his statements to Vice President Pence (counts 8 and 10), are protected expressions of his rights under the First Amendment, including freedom of speech and the right to petition the government for a redress of grievances. As such, he contends that these statements cannot be used as grounds for professional disciplinary action. The court disagrees.

The First Amendment provides, in relevant part, that "Congress shall make no law . . . abridging the freedom of speech, or . . . to petition the Government for a redress of grievances." It is well-established that the "First Amendment protects the freedom of expression of all citizens, including lawyers." (*Jacoby v. State Bar* (1977) 19 Cal.3d 359, 368; *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775, 781 ["Like all other citizens, attorneys are entitled to the protection of the First Amendment, even as participants in the administration of justice"].) Therefore, this court cannot discipline an attorney for speech that is

[87] Moreover, although the mistake had been disclosed and any presidential candidate could have requested a recount of the Antrim County votes, no recount was requested. (Exh. 105.)

protected by the First Amendment. (*In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23, 30 ["Disciplinary rules governing the legal profession cannot punish activity protected by the First Amendment"].)

At the same time, the First Amendment rights of attorneys are linked to the critical role that they perform within the judicial system. While these rights are fundamental, they must be calibrated to align with the unique role attorneys play in the administration of justice. As the Review Department has stated, "attorneys occupy a special status and perform an essential function in the administration of justice. Because attorneys are officers of the court with a special responsibility to protect the administration of justice, courts have recognized the need for the imposition of reasonable speech restrictions upon them." (*In the Matter of Anderson, supra,* 3 Cal. State Bar Ct. Rptr. at p. 781, citing to *Goldfarb v. Virginia State Bar* (1975) 421 U.S. 773, 792.) Even the United States Supreme Court has emphasized that "'States have a compelling interest in the practice of professions within their boundaries, and . . . as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions.'" (*Florida Bar v. Went For It, Inc.* (1995) 515 U.S. 618, 625, citations omitted.) "The interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the courts.'" (*Goldfarb v. Virginia State Bar, supra,* 421 U.S. at p. 792.)

For these reasons, "speech otherwise entitled to full constitutional protection may nonetheless be sanctioned if it obstructs or prejudices the administration of justice." (*Standing Comm. on Discipline v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1442, citing *Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030, 1074-1075.) Because lawyers are "an intimate and trusted and essential part of the machinery of justice, an officer of the court in the most compelling sense,"

(*id.* at p. 1072, citations and internal quotations omitted), it is contemplated that a lawyer's right to free speech is especially limited in the courtroom. (*Id*. at p. 1071 ["It is unquestionable that in the courtroom itself, during a judicial proceeding, whatever right to 'free speech' an attorney has is extremely circumscribed"].) Even beyond the confines of the courtroom or the pendency of a case, attorneys are not necessarily "protected by the First Amendment to the same extent as those engaged in other businesses." (*Id.* at p. 1073.) For example, in evaluating restrictions on attorney solicitation or advertising, the Supreme Court has typically "engaged in a balancing process, weighing the State's interest in the regulation of a specialized profession against a lawyer's First Amendment interest in the kind of speech at issue." (*Ibid*.)

Eastman is charged with making false and misleading public statements in his capacity as an attorney in violation of section 6106 (moral turpitude, dishonesty, or corruption), as charged in counts 5, 7, and 9. It has been established that the provisions of section 6106 satisfy *Gentile's* balancing test. (See *Canatella v. Stovitz* (N.D. Cal. 2005) 365 F.Supp.2d 1064, 1072-1073 [applying *Gentile's* balancing test for in-court and out-of-court attorney speech charged as violation of section 6106].)[88] There is little doubt that the State's interest in section 6106, i.e., to protect the public, maintain the highest professional standards by attorneys, and preserve public confidence in the legal system, outweighs any potential free speech rights attorneys may assert in making false and misleading statements. It follows then that Eastman does not have a First Amendment right to make statements that violate the provisions of section 6106.

[88] Attorney speech under the First Amendment can be understood as speech made by an attorney in the course of their professional duties. (See *Jacobson v. Schwarzenegger* (C.D. Cal. 2009) 650 F.Supp.2d 1032, 1054 [attorney's pursuit of administrative remedies, cross-examinations, and letters to state officials were part of his duties as appointed counsel for parolees and were not protected by the First Amendment as they were not made in his capacity as a private citizen but rather in his professional role].)

Separately, the protections of the First Amendment are not absolute and certain categories of speech are subject to less constitutional protection. For example, false statements made knowingly or with reckless disregard of the truth are not protected speech. (*Garrison v. State of Louisiana* (1964) 379 U.S. 64, 75 ["the knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection"]; [89] *In the Matter of Anderson, supra*, 3 Cal. State Bar Ct. Rptr. at p. 782 ["Neither a false statement made knowingly nor a false statement made with reckless disregard of the truth enjoys constitutional protection because there is no constitutional value in such false statement of fact"].)[90] To evaluate whether an attorney's false speech involves reckless disregard for the truth, the court applies an objective standard; it must determine "what the reasonable attorney, considered in light of all his professional functions, would do in the same or similar

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[89] Eastman cites to *United States v. Alvarez* (2012) 567 U.S. 709, for the proposition that even if his statements were false (which he disputes), they are protected by the First Amendment. The court disagrees. In *Alvarez*, a majority of the Justices agreed that the Stolen Valor Act, which criminalized false claims of military honors, violated the First Amendment. A shared theme by the opinions was that the Act in question prohibited false statements only because of their falsity, stating that falsity alone is not sufficient to bring the speech outside the First Amendment. *Alvarez* does not hold that false statements are always protected speech, it merely holds that false speech is not, as a bright line rule, unprotected by the First Amendment. (*Id*. at p. 722 [rejecting the notion that "false speech should be in a general category that is presumptively unprotected"].) At the same time, the Court acknowledged that certain false speech could be restricted under the First Amendment and emphasized that its ruling did not suggest vulnerability in targeted prohibitions on such speech; "there are instances in which the falsity of speech bears upon whether it is protected," and "[t]his opinion does not imply that any of these targeted prohibitions are somehow vulnerable." (*Id*. at p. 721.) One such recognized exception to the First Amendment is making knowingly false statements and false statements made with reckless disregard of the truth. (*Garrison v. State of Louisiana, supra*, 379 U.S. at p. 75.) Further, Eastman's reliance on *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, is equally misguided. There, the court also acknowledged a specific restriction on speech that was knowingly false or made with reckless disregard of the truth. (See *id*. at p. 280 [prohibiting recovery of damages for defamation unless the statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not"].)

[90] In the attorney discipline context, OCTC bears the burden of proving the falsehood of any statement that serves as basis for culpability. (*In the Matter of Anderson, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 778, 786.)

circumstances." (*U.S. Dist. Court v. Sandlin* (9th Cir. 1993) 12 F.3d 861, 867.) "The inquiry focuses on whether the attorney had a reasonable factual basis for making the statements, considering their nature and the context in which there were made." (*Standing Committee v. Yagman, supra,* 55 F.3d at p. 1437.) In assessing reckless disregard for the truth, the court "may take into account whether the attorney pursued readily available avenues of investigation." (*Id.* at p. 1437, fn 13; *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370, 375.)

In sum, attorneys have a First Amendment right to make statements in public in the course of their professional duties. However, this right does not extend to making knowing or reckless false statements of fact or law. Here, as shown below, Eastman made multiple false and misleading statements in his professional capacity as attorney for President Trump in court filings and other written statements, as well as in conversations with others and in public remarks. As further shown below, Eastman knowingly made these false statements or had no reasonable factual or legal basis for making them. Hence, Eastman's First Amendment defense fails.

Likewise, the First Amendment does not protect speech that is employed as a tool in the commission of a crime. (See *United States v. Hansen* (2023) 599 U.S. 762, 783 [the First Amendment does not protect "speech integral to unlawful conduct"]; *United States v. Williams* (2008) 553 U.S. 285, 298 ["Many long established criminal proscriptions—such as laws against conspiracy, incitement, and solicitation—criminalize speech (commercial or not) that is intended to induce or commence illegal activities"].) Count 1 of the NDC charges Eastman with conduct and statements made in furtherance of a criminal scheme, i.e., conspiring to promote and assist President Trump in executing a strategy to overturn the legitimate results of the 2020 presidential election by obstructing the count of electoral votes of certain states, in violation of 18 U.S.C.

§ 371. Attorneys do not have a constitutional right to collaborate with clients for purposes that are unlawful, criminal, or fraudulent. (Cf. Rules Prof. Conduct, rule 1.2.1 [prohibiting an attorney from advising or assisting the violation of law].) It follows then that Eastman can face disciplinary action for his speech in assisting and advising President Trump in illegal, criminal, or fraudulent activities.[91]

Finally, although the First Amendment protects the right "to petition the Government for a redress of grievances," which includes the right of access to the courts as with freedom of speech, the right to petition for redress of grievances has never been absolute. (*Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174, 195 ["The right to petition for redress of grievances includes the right to sue . . . private as well as governmental entities. . . . However, 'the right to petition has never been absolute'. . . . [C]onstitutional rights to petition have been subjected to reasonable restrictions to prevent abuse of the right, and narrowly drawn restrictions on that right can be valid"].) In fact, it is "generally subject to the same constitutional analysis" as the right to free speech. (*Wayte v. United States* (1985) 470 U.S. 598, 610, fn. 11 ["Although the right to petition and the right to free speech are separate guarantees, they are related and generally subject to the same constitutional analysis"]; see also *Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151, 162 ["Restrictions on the right to petition generally are subject to the same analysis as restrictions on the right of free speech"].) Since the court finds that Eastman's free speech argument fails, so must his petition clause argument. (See *Canatella v. Stovitz, supra*, 365 F.Supp.3d at pp. 1077-1078.)

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[91] A separate category of speech subject to no constitutional protection is "advocacy of the use of force" where it is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." (*Brandenburg v. Ohio* (1969) 395 U.S. 444, 447.) Although Eastman asserts that OCTC must prove that he intended to incite lawless action and his statements were likely to incite lawlessness, OCTC did not charge Eastman with inciting lawlessness except for count 11, which for the reasons stated below, this court has dismissed. Thus, the *Brandenburg* analysis does not apply in this case.

What is more, because the right to petition the government for redress of grievances is a personal right, an attorney does not have the right to claim a personal right to petition based on the representation of a client. (*DePaoli v. Carlton* (E.D. Cal. 1995) 878 F. Supp. 1351, 1355 ["In the context of a court proceeding the right to petition is the client's, not the attorney's. An attorney may not claim a right to petition based upon representation of a client"].) So, Eastman cannot claim this right as part of his representation of President Trump or the Trump Campaign.

Based on the foregoing, the court rejects Eastman's First Amendment defense, and now turns to assessing the charges of professional misconduct brought against him.

Count Two – Seeking to Mislead a Court (§ 6068, subd. (d))[92]

OCTC charged Eastman with willfully violating section 6068, subdivision (d), by seeking to mislead the United States Supreme Court when he knowingly adopted certain false and misleading factual allegations contained in the Bill of Complaint filed in *Texas v. Pennsylvania*.

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with the truth and never to seek to mislead a judge or any judicial officer by an artifice or false statement of fact or law. "The statute requires an attorney to refrain from misleading and deceptive acts *without qualification*." (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 315, italics added.) Moreover, "[c]oncealment of a material fact misleads a judge just as effectively as a false statement." (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174.) "No distinction can therefore be drawn among concealment, half-truth, and false statement of fact." (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.)

The Supreme Court has explained that whether an attorney has violated section 6068, subdivision (d), "depends first upon whether his representation to the . . . court was in fact

[92] The court will address Count One last due to its extensive overlap with some of the allegations in the other counts.

untrue, and secondly, whether he knew that his statement was false and he intended thereby to deceive the court." (*Vickers v. State Bar* (1948) 32 Cal.2d 247, 252-253; accord, *In the Matter of Chestnut, supra,* 4 Cal. State Bar Ct. Rptr. at p. 174.) Willful blindness is equivalent to actual knowledge. (See *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427, 433.) "The conduct denounced by [section 6068, subdivision (d)] is not the act of an attorney by which he successfully misleads the court, but the presentation of a statement of fact, known by him to be false, which tends to do so. It is the endeavor to secure an advantage by means of falsity which is denounced." (*Pickering v. State Bar* (1944) 24 Cal.2d 141, 144-145.)

OCTC contends that Eastman knew that the factual allegations in Texas's Bill of Complaint were false and misleading, in violation of section 6068, subdivision (d). These allegations are separately considered below.

Allegation of Outcome-Determinative Voting Irregularities

OCTC argues that Eastman misled the court by adopting, in his Motion to Intervene, the following factual allegation contained in Texas's Bill of Complaint: "Citing 'rampant lawlessness arising out of Defendant States' unconstitutional acts,' the lawsuit asserted that '[t]aken together, these flaws affect an outcome-determinative numbers of popular votes in a group of States that cast outcome-determinative numbers of electoral votes.'" (NDC, p. 17.) OCTC alleges that Eastman knew there "was no evidence upon which a reasonable attorney would rely of fraud in any state election in sufficient numbers that could have affected the outcome of the election." (*Id.* at p. 18.)

Eastman's allegation of "outcome-determinative" voting irregularities was false and misleading. At the time Eastman filed the Motion to Intervene, it was evident, and known to Eastman, that federal courts had already considered and dismissed claims of outcome-determinative irregularities affecting the 2020 presidential election. The District Court for the

Middle District of Pennsylvania had specifically ruled that these claims were "unsupported by evidence." (Exh. 222, p. 2.) Furthermore, the Third Circuit had concluded that the allegations lacked both specificity and proof of unfairness in the election.

Eastman knew about the federal court decisions because, at the time Eastman filed the Motion to Intervene, he had already undertaken a comprehensive examination of cases and factual information pertaining to what he perceived as election irregularities. He compiled this information into a spreadsheet, where he documented and monitored 2020 election litigation challenges he found in court documents. (Exh. 1055.) The Pennsylvania District Court case was included in his database, proving he was aware of the court's "unsupported by evidence" finding. Yet, although prior courts considered and rejected the claims of outcome-determinative irregularities, he continued to raise them in the Supreme Court.

Eastman's convenient failure to acknowledge the federal court cases that had already considered and rejected the factual allegations regarding outcome-determinative voting irregularities in his Motion to Intervene is evidence of his intent to mislead the court. Attorneys have a duty to provide courts with complete information, which includes prior adverse rulings, and to identify adverse authorities. (See *Ainsworth v. State Bar* (1988) 46 Cal.3d 1218, 1224-1225, 1233 [attorney violated § 6068, subd. (d), after filing complaint that cited Supreme Court decision as authority without disclosing the grant of a rehearing—rendering the opinion invalid]; see also *Perry v. Kia Motors of America, Inc*. (2023) 91 Cal.App.5th 1088, 1095-1096 [citing § 6068, subd. (d), plaintiff lost opportunity for appellate review because appellate counsel made misleading claim in her brief—incorrectly asserting that trial court found defendant improperly concealed evidence while, in truth, the court stated no concealment occurred]; *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, 172 [attorney violated section 6068, subd. (d), by concealing from commissioner who granted client's bail that bail had twice been previously denied]; *In the*

Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 219 [attorney had duty to disclose death of client to court, especially considering court's inquiries that should have prompted attorney to reveal information].) This duty is part of an attorney's overarching ethical obligation to utilize methods that employ only such means as are consistent with the truth.

Eastman's omission of relevant case decisions was misleading as it excluded vital information about prior court rulings rejecting the unfounded outcome-determinative claims—creating the false impression that such matters had not been considered and decided. As the court in *Perry v. Kia Motors of America, Inc.* states: "'Counsel should not forget that they are officers of the court, and while it is their duty to protect and defend the interests of their clients, the obligation is equally imperative to aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice.' [Citations.]" (*Perry v. Kia Motors Am., Inc., supra*, 91 Cal. App.5th at p. 1096.)

Additionally, Eastman's contemporaneous email to Cleta Mitchell is further proof of his intent to mislead the court. He told Mitchell there was no documented evidence of fraud that existed but expressed optimism in the potential discovery of such evidence. His repeated claims of fraud with the knowledge that such assertions lacked support serve as compelling proof of Eastman's intent to mislead the court.

In his defense, Eastman claims he cannot be found culpable of this charge unless he was sanctioned under Rule 11 of the Federal Rule of Civil Procedure, which he was not. The court rejects this argument. There is no requirement that an attorney be sanctioned by the civil court for this court to find the attorney violated ethical standards. (Cf. *Franklin v. State Bar* (1986) 41 Cal.3d 700, 709 [violation of § 6068, subd. (d), without imposition of sanctions]; see also *Di Sabatino v. State Bar, supra*, 27 Cal.3d at pp. 162-164.)

Based on the foregoing, the court finds Eastman willfully violated section 6068, subdivision (d), with respect to this allegation.

Allegations of Election Code Violations in Pennsylvania

Next, OCTC argues that Eastman misled the court when he adopted the following factual allegation in his Motion to Intervene: "Statewide election officials and local election officials in Philadelphia and Allegheny Counties, aware of the historical Democrat advantage in those counties, violated Pennsylvania's election code and adopted the differential standards favoring voters in Philadelphia and Allegheny Counties with the intent to favor former Vice President Biden." (NDC, p. 17.) OCTC maintains that Eastman knew the factual allegations in the Bill of Complaint were false and misleading and "[t]here was no evidence upon which a reasonable attorney would rely that the election officials in Philadelphia and Allegheny Counties had acted with the intent to favor Biden in the election through the alleged violations of election codes or adoptions of differential standards, or that the alleged violations of election codes or adoptions of differential standards 'affect[ed] an outcome-determinative numbers [sic] of popular votes.'" (*Id.* at p. 18.)

When the Bill of Complaint was filed, the Pennsylvania Supreme Court had considered and already rejected the argument that the Pennsylvania Secretary of State's guidance regarding the prohibition against rejecting absentee or mail-in ballots violated Pennsylvania election laws. Yet, Eastman adopted those false statements contained in the Bill of Complaint. Moreover, as stated above, when Eastman filed the Motion to Intervene, he created a matrix where he recorded and tracked legal challenges related to the 2020 election that he had identified in court documents. The matrix contained an analysis of the Pennsylvania Supreme Court's opinion—demonstrating that Eastman knew what the court had considered and decided. The contentions

asserting non-legislative modifications to state election regulations by election officials within the executive branch were both material and false.

Eastman's failure to disclose, in his Motion to Intervene, the Pennsylvania Supreme Court opinion is strong evidence of his intent to mislead the court. A duty existed to reveal that the Pennsylvania Supreme Court had already determined that Pennsylvania's election laws had not been violated, but Eastman purposely omitted this information. (Cf. *Di Sabatino v. State Bar, supra,* 27 Cal.3d at p. 172.) Once again, Eastman left the impression that no court had resolved an important issue in the Bill of Complaint when that was not accurate.

So, Eastman's culpability for willfully violating section 6068, subdivision (d), has been clearly and convincingly established with respect to this allegation as well.

Allegation of Statistical Probability of Vice President Biden Winning the Popular Vote

Finally, OCTC argues that Eastman violated section 6068, subdivision (d), by adopting the factual allegation in the Bill of Complaint that the odds of Biden winning the popular vote in the Defendant States was less than 1 in 1,000,000,000,000,000 (one quadrillion)—an allegation that was false.[93] As there is no clear and convincing evidence that Eastman knew the statements were false, the court does not find Eastman culpable of violating section 6068, subdivision (d),

[93] Specifically, OCTC alleged that the following statements were false: "'The probability of former Vice President Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently given President Trump's early lead in those States as of 3 a.m. on November 4, 2020, is less than one in a quadrillion, or 1 in 1,000,000,000,000,000. For former Vice President Biden to win these four States collectively, the odds of that event happening decrease to less than one in a quadrillion to the fourth power (i.e., 1 in $1{,}000{,}000{,}000{,}000{,}000^4$)"; and "The same less than one in a quadrillion statistical improbability of Mr. Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin— independently exists when Mr. Biden's performance in each of those Defendant States is compared to former Secretary of State Hilary Clinton's performance in the 2016 general election and President Trump's performance in the 2016 and 2020 general elections. Again, the statistical improbability of Mr. Biden winning the popular vote in these four States collectively is 1 in $1{,}000{,}000{,}000{,}000{,}000^4$." (NDC, pp. 17-18.)

by adopting the statements regarding the statistical probability of former Vice President Biden winning the popular vote in the Defendant States.

The statistical analysis in the Bill of Complaint was supported by the declaration of Dr. Cicchetti. Eastman reviewed Dr. Cicchetti's declaration but never questioned him about his methodology or analysis—believing the information to be accurate.

OCTC presented evidence during the trial from its expert, Dr. Grimmer, who pointed out flaws in Dr. Cicchetti's analysis and methodology. And Dr. Cicchetti later criticized the utilization of his declaration to bolster the filing, noting it did not effectively support the argument that President Trump's odds of winning were significantly high. Dr. Cicchetti contested the interpretation of his declaration, which arguably suggests that the assertions regarding the likelihood of Biden winning the popular vote in the Defendant States were false. Nonetheless, OCTC has not furnished any proof indicating that Eastman was aware of the inaccuracy or falsehood of the statements when he endorsed them, nor has it demonstrated any intent on Eastman's part to mislead or deceive. Once it was established that the statements were untrue, the Bill of Complaint had already been dismissed. Thus, the court does not find Eastman violated section 6068, subdivision (d), by adopting the statements regarding the probability of former Vice President Biden winning popular vote in the Defendant States.

In sum, the court finds clear and convincing evidence that Eastman violated section 6068, subdivision (d), by adopting the false and misleading allegations and contentions in the Bill of Complaint with the intent to mislead the Supreme Court, as stated above.

Count Three – Moral Turpitude [Misrepresentation] (§ 6106)

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Broadly, any act contrary to honesty and good morals involves moral turpitude. (See *Stanford v. State Bar* (1940)

15 Cal.2d 721, 727.) Acts of moral turpitude include an attorney's concealment as well as affirmative misrepresentations. (See *Grove v. State Bar,* supra, 63 Cal.2d at p. 315.) Indeed, as stated previously "[n]o distinction can . . . be drawn among concealment, half-truth, and false statement of fact." (*Ibid;* see also *In the Matter of Chesnut, supra,* 4 Cal. State Bar Ct. Rptr. at p. 174.) While neither evil intent nor injury to a client is necessary for moral turpitude, some level of guilty knowledge or at least gross negligence is required. (See *Fitzsimmons v. State Bar* (1983) 34 Cal.3d 327, 331; see also *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 241.) Furthermore, an attorney's knowledge or intent can be established by direct or circumstantial evidence. (See *Zitney v. State Bar* (1966) 64 Cal.2d 787, 792.) Finally, willful blindness is tantamount to actual knowledge. (See *In the Matter of Carver, supra*, 5 Cal. State Bar Ct. Rptr. At pp. 432-433.)

In count three, OCTC charged Eastman with willfully violating section 6106 by drafting a two-page memo dated December 23, 2020, which falsely stated that seven states (Arizona, Georgia, Michigan, Pennsylvania, Nevada, New Mexico, and Wisconsin) "have transmitted dual slates of electors to the President of the Senate." (NDC, p. 19.) The court agrees and finds Eastman is culpable as charged.

The evidence shows that Eastman's "dual slates of electors" statement was false and misleading. Eastman knew that there were no legitimate dual slates of electors in the seven contested states because the Trump electors lacked certification and could not be legally considered on January 6, 2021. Moreover, Eastman was aware that Vice President Pence lacked the authority to decide which slate of electors would be counted because his sole responsibility was simply to open the ballots. Yet, Eastman used the false assertion concerning dual slates of electors to provide an alternative strategy for Vice President Pence to declare President Trump as

the winner of the 2020 presidential election. The two-page memo was designed to provide legal support and convince Vice President Pence to carry out that strategy.

Eastman's claims, in this proceeding, that he believed "the slates were legitimate as a matter of historical precedent" are unbelievable and not supported by the record. (Eastman's Closing Brief, p. 56.) Likewise, the court finds no support for Eastman's purported belief, at the time, that the supposed Trump electors qualified for recognition by Vice President Pence under the ECA because it directs the Vice President to open and acknowledge all "papers purporting to be certificates of the electoral votes." (*Ibid*.)

As a constitutional expert, Eastman knew that the only slates of electors which Vice President Pence could lawfully consider, were those included in the certificates of ascertainment executed by the governor of each state. Eastman understood that the so-called dual electors lacked legitimacy and would not be tallied on January 6, 2021, and he also knew that there was no constitutional provision permitting counting of uncertified, unascertained dual slates of electors. None of the contested states' officials had submitted a certificate of ascertainment naming Trump electors, thereby lacking any semblance of authority or official endorsement. In fact, Eastman conceded so much in his December 19, 2020 email to Colbert, acknowledging that, without certification from state legislatures, the Trump electors would not be recognized by Congress. Even Dr. Yoo, Eastman's constitutional expert and friend, affirmed that despite the ambiguity in language and scholarly opinions, the absence of certification by state executive officers meant there was no constitutional dilemma on January 6, 2021, necessitating any purported unilateral action from Vice President Pence.

In defending his actions, Eastman incorrectly attempts to draw an analogy between the events of the 2020 presidential election and the 1960 presidential election in Hawaii. Eastman misconstrues the circumstances regarding the Hawaii slates of electors by ignoring the fact that

the third and final slate of electors in Hawaii was certified by the Governor after a recount. It was that third certificate that Vice President Nixon considered without objection or dispute. Here, in the 2020 presidential election, each of the contested states had only one slate of electors certified by the governor of that state and, as Eastman knew, section 15 of Title 3 of the United States Code is clear—the officially certified slate is the one certified by the governor in the certificate of ascertainment.

Eastman also argues that he cannot be found culpable of moral turpitude because his statement amounted to no more than zealous advocacy in his representation of President Trump's interests. It is true that an attorney has a duty to engage in zealous advocacy on behalf of a client. (See Rules Prof. Conduct, rule 1.3 [duty to perform with diligence].) However, Eastman's inaccurate assertions were lies that cannot be justified as zealous advocacy. Eastman failed to uphold his primary duty of honesty and breached his ethical obligations by presenting falsehoods to bolster his legal arguments. Finally, the court notes that acts of moral turpitude are a departure from professional norms and are unequivocally outside the realm of protection afforded by the First Amendment and the obligation of vigorous advocacy. (*Lebbos v. State Bar* (1991) 53 Cal.3d 37, 45.)

In sum, Eastman's claim that there were dual slates of electors was knowingly false and made with the intent to deceive, given that Eastman knew the purported Trump electors lacked the proper certification and official approval mandated by law. As such, Eastman is culpable of willfully violating section 6106, as charged in count three.

Count Four – Seeking to Mislead a Court (§ 6068, subd. (d))

In count four, OCTC alleges that Eastman willfully sought to mislead the United States District Court for the Northern District of Georgia, by making statements in the Verified Complaint filed in *Trump v. Kemp* about the administration of Georgia's election, which

Eastman knew to be false and misleading. Specifically, OCTC charges Eastman with making the following false statements: "Georgia election officials allowed unqualified individuals to register and vote, allowed convicted felons still serving their sentence to vote, allowed underaged individuals to register and then vote, allowed unregistered or late registered individuals to vote, allowed individuals to vote who had moved across county lines, allowed individuals to vote who had registered at a P.O. Box, church, or courthouse rather than their residence, and accepted votes cast by deceased individuals." (NDC, pp. 20-21.) The court agrees.

All of the statements above allege that individuals lacking the necessary qualifications were permitted to register and vote. However, at the time Eastman filed *Trump v. Kemp* on December 31, 2020—incorporating by reference the complaint and exhibits in *Trump v. Raffensperger*—Eastman knew these allegations were false because he was aware that the information upon which he relied in making these assertions, i.e., the declarations of Braynard and Geels, contained inaccurate and unreliable data. After the declarations were filed in *Trump v. Raffensperger*, and before *Trump v. Kemp* was filed, it was determined that the analysis and conclusions in the Braynard and Geels declarations contained inaccurate information and were unreliable. The Georgia official's expert, Stewart, scrutinized the evaluation conducted by Braynard and Geels, highlighting particular deficiencies found in the analysis of each expert and summarizing relevant shortcomings identified in their analyses. Eastman was aware that Stewart had undermined Braynard's and Geels's findings, causing Eastman to doubt the accuracy of the information they provided. This was evident from the filing of the *Trump v. Kemp* complaint, which omitted any mention of numerical values.

As further evidence that Eastman was aware of the inaccuracies in the allegations and evidence in support thereof, he consented to adding a footnote in the Verified Complaint and

amending President Trump's Verification, disclaiming personal knowledge regarding the facts and figures stated therein, while keeping the allegations unchanged.

Furthermore, regarding the specific assertion that underage individuals were allowed to register and vote, Eastman acknowledged that he understood Geels's declaration to support the claim that underage individuals had been permitted to register, but the analysis "never asserts that underage people voted." (R.T. Vol V, p. 68.) Eastman also acknowledged that if an underaged person registered to vote, but did not actually vote, that person's registration would not be outcome-determinative. By knowingly presenting false and misleading information in the pleadings of *Trump v. Kemp*, Eastman's intent to deceive is established. (See *Vickers v. State Bar, supra*, 32 Cal.2d 247 at pp. 252-253.)

In addition to the statements alleging that unqualified individuals were permitted to vote in Georgia, OCTC alleges that the following statement in the *Trump v. Kemp* complaint was false and misleading: "Fulton County election officials 'remove[d] suitcases of ballots from under a table where they had been hidden, and processed those ballots without open viewing by the public in violation of [state law].'" (NDC, p. 21.) This statement was also false.

The State Farm Arena investigation revealed, as early as December 5, 2020, that there were no ballots "hidden" under a table. Moreover, Eastman acknowledges that Georgia law did not require public viewing of ballot canvassing at the State Farm Arena. Rather, the law merely gives the public the opportunity to view the process. Eastman also acknowledged that he did not view the entire video of the activities in the State Farm Arena, and he could not recall if he read Investigator Watson's declaration providing that there were no mystery ballots hidden under a table. Nevertheless, the entire video was available for review, and Eastman read information from Georgia's Secretary of State about the legitimacy of the activities at the State Farm Arena before the complaint in *Trump v. Kemp* was filed.

Enough information existed which revealed that the statements about the activities at the State Farm Arena were false, but Eastman never actively sought out information that might challenge his narrative nor considered any available accurate information. Eastman cannot avoid culpability through his willful blindness—willful blindness that is tantamount to Eastman's actual knowledge that the allegations regarding hidden ballots were false. (See *In the Matter of Carver, supra,* 5 Cal. State Bar Ct. Rptr. at p. 433 [attorney's willful blindness to ineligibility to practice law culpable of moral turpitude for the unauthorized practice of law; willful blindness equivalent to having actual knowledge of his ineligibility].)

In his defense, Eastman argues that OCTC failed to prove he had actual knowledge that the allegations in *Trump v. Kemp* regarding outcome-determinative illegal votes were false and that he intended to deceive the District Court for the Northern District of Georgia. Eastman's argument fails. He knew there was no hard evidence of outcome-determinative fraud in the 2020 presidential election. He explained to Mitchell in November 2020 that the statistical analyses were not enough to demonstrate fraud and that he was hoping the statistical analyses would assist with uncovering hard documented evidence of fraud. Moreover, as stated above, Eastman knew that the supporting evidence offered by the experts was faulty and inaccurate. "'The presentation to a court [in a complaint] of a fact known to be false presumes an intent to secure a determination based upon it and is a clear violation of [§ 6068].'" (*Davis v. State Bar* (1983) 33 Cal. 3d 231, 239-40; see also *Pickering v. State Bar, supra,* 24 Cal.2d at p. 144.)

Next, Eastman argues that he had a reasonable and good faith belief, based on the evidence that the combined tally of votes impacted by violations of state election statutes exceeded the 11,779-vote margin of victory. As detailed earlier, the evidence in support of the alleged violations of state election laws was flawed and invalidated. The inclusion of the footnote distancing Trump from the allegations and supporting evidence did not make the

allegations in the complaint true, as Eastman asserts. Rather, it strongly demonstrates knowledge of the falsity of the allegations, otherwise such a footnote would not be needed.

Eastman also contends that he is not culpable of this charge because he relied on Hilbert, who was lead counsel, as well as credentialed, qualified experts. The argument fails because every attorney, including Eastman, bears an individual responsibility for their actions to ensure compliance with ethical obligations. Relying on the work of others, even attorneys, does not exempt a lawyer from discipline for a breach of ethics. Each attorney has a responsibility to uphold their professional duties and adhere to their ethical commitments, irrespective of the actions of others.

Finally, Eastman argues that the claims about the hidden ballots in the State Farm Arena were supported by witness affidavits and that he viewed a portion of the video during a Georgia Senate subcommittee hearing that occurred on December 3-4, 2020, thereby supporting his claims. Even if there was no information that the allegations regarding hidden ballots were false when *Trump v. Raffensperger* was filed, by the time *Trump v. Kemp* was initiated, evidence of the falsity of those allegations existed. Eastman chose to ignore that evidence.

Based on the foregoing, the court finds that the evidence clearly and convincingly establishes Eastman's violation of section 6068, subdivision (d), as charged in count four.

Count Five – Moral Turpitude [Misrepresentation] (§ 6106)

OCTC charged Eastman with willfully or gross negligently violating section 6106 – by aiming to foster doubt about the legitimacy of the election results in making statement on Bannon's War Room radio program that: (1) "there was massive evidence of fraud involving absentee ballots in the November 3, 2020 presidential election, 'most egregiously in Georgia and Pennsylvania and Wisconsin'"; and (2) "there had been more than enough absentee ballot fraud

'to have affected the outcome of the election.'" (NDC, p. 22.) The court finds that Eastman is culpable of this charge.

Despite Eastman's assertions, there was no credible evidence of widespread absentee ballot fraud that impacted the outcome of the 2020 presidential election, as affirmed by federal and state courts that dismissed related claims due to lack of proof. While Eastman claimed that various illegalities provided opportunities for fraud, he admitted to having uncertainty regarding the degree of outcome-determinative fraud in the 2020 presidential election in Arizona, Michigan, Nevada, New Mexico, or Wisconsin. Furthermore, none of the analyses by the individuals Eastman relied upon established the presence of outcome-determinative fraud in the 2020 presidential election.

Next, Eastman's allegations of widespread absentee voter fraud in Pennsylvania during the 2020 presidential election were baseless and contradicted by official investigations, audits, and court rulings. During Pennsylvania's 2020 presidential election, no counties opened, counted, or disclosed mail-in or absentee ballots before the pre-canvassing period or before 8:00 p.m. on Election Day. The Pennsylvania Deputy Secretary of Elections and Commissions affirmed that—according to publicly available data, county election board postings, statistical sampling, and a statewide risk-limiting audit—there was no systemic insecurity or inaccuracy in the election outcomes. Additionally, in accordance with the Pennsylvania Election Code, county boards of election and district attorneys investigated complaints and allegations of fraud related to the 2020 presidential election, reporting their findings to the Department of State's Elections and Commissions office, which found no indication of pervasive fraud. Eastman relied on a report that failed to cite or present the data backing its erroneous assertions, some of which appeared to stem from a misinterpretation of publicly accessible information. Also, the Third

Circuit rejected the claim that 1.5 million absentee and mail-in votes in Defendant Counties should not have been counted as there were no specific allegations of proof.

Eastman's claims of widespread absentee ballot fraud in Georgia during the 2020 election were also unfounded and contradicted by available data and analyses. Eastman's claims regarding signature matching did not equate to absentee ballot fraud. According to data accessible in 2020, the decrease in rejected absentee ballots in Georgia was not predominantly attributable to signature match discrepancies. Instead, approximately 90% of this decline stemmed from two main factors: a reduction in the proportion of ballots arriving after the deadline and a decrease in the percentage of ballots rejected due to problems with the oath envelope. As stated in count four, the various analyses Eastman relied upon were found to be inaccurate, and the individuals responsible for drafting the reports never actually concluded that fraud was established in the 2020 election in Georgia. Eastman himself acknowledged that he lacked evidence of outcome-determinative fraud, instead attributing any potential irregularities to illegalities that could enable fraud.

In sum, Eastman exhibited gross negligence by making false statements about the 2020 election without conducting any meaningful investigation or verification of the information he was relying upon. His interpretation of absentee ballot data was flawed; yet, had he sought the expertise of a professional to review his analysis, the inaccuracies could have been identified. Eastman made no inquiries into the studies, audits, or other information he received, which served as the foundation for his erroneous statements. He never verified the accuracy of the information received from others; rather, he simply accepted it as valid. In addition, Eastman never reached out to any Secretary of State in the contested states to inquire about or dispute their election findings. Once courts determined that there were no illegalities in the execution of the elections in the contested states, Eastman nevertheless continued to insist there was outcome-

determinative fraud. Eastman's false statements regarding absentee voter fraud were significant and material, as they were intended to sow doubt about the legitimacy of the 2020 presidential election. He urged Bannon's audience to exert pressure on their legislators to invalidate former Vice President Biden's victory due to alleged uncertainties surrounding the election outcome—uncertainties that he assisted with creating. Eastman aimed to instill doubt about the election, prompting listeners to advocate for certifying Trump's electors over Biden's as part of his strategy to delay the electoral count. Despite knowing that the methodologies and reports he relied on were flawed and inaccurate, and being aware that federal courts had concluded there was no evidence of outcome-altering voter fraud, Eastman chose to appear on Bannon's War Room and perpetuate these false claims, showing a disregard for the truth and a willingness to mislead the public.

Eastman argues that his speech was protected by the First Amendment. But, as discussed above, Eastman does not have a First Amendment right to make false and misleading statements that violate the provisions of section 6106. Eastman also claims that he did not engage in moral turpitude as his statements were not made with "'baseness, vileness or depravity' or intended to mislead anyone." (Eastman's Closing Brief, p. 76.) However, Eastman overlooks case law indicating that moral turpitude can also be established through gross negligence. (*Fitzsimmons v. State Bar*, *supra*, 34 Cal.3d at p. 331; *In the Matter of Respondent H*, *supra*, 2 Cal. State Bar Ct. Rptr.at p. 241.) Eastman also claims that his statements were based on his zealous advocacy of his client and his intent was to "try to identify problems with the conduct of the election and to try to investigate them and identify whether the problems and illegality may have affected the outcome of the election. . . ." (Eastman's Closing Brief, pp. 76, 77.) He ignored credible evidence that did not support his position of fraud, and as stated above, he failed to investigate or

challenge the secretaries of state regarding the election results in the contested states. He turned a blind eye to any information that would not support his position of election fraud.

Finally, Eastman maintains that he had an honest, sincere belief in his statements at the time he made them. A defense against an accusation of moral turpitude through gross negligence arises when an attorney genuinely, albeit unreasonably, believes their actions are justifiable. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9-11.) As the court found previously (count two) Eastman had no actual knowledge or hard evidence of outcome-determinative voter fraud and the analyses he relied on lacked credibility (count four). In addition, the day before and the morning of his appearance on the Bannon War Room, Eastman was still searching for but had no evidence of fraud in Michigan, Arizona, and Nevada—demonstrating that he knew that he had no basis to state that there was evidence of outcome-determinative fraud. Despite Eastman's claim of an honest belief in his statements, the evidence demonstrates that he knew he lacked a factual basis for making any claims of outcome-determinative fraud, and he recklessly made these false claims during the Bannon's War Room interview.

Therefore, the court finds Eastman culpable of willfully violating section 6106, as charged in count five.

Count Six – Moral Turpitude [Misrepresentation] (§ 6106)

OCTC charged Eastman with moral turpitude and willful violation of Business and Professions Code section 6106 by stating the following in his January 3, 2021, six-page memo:

- There had been "outright fraud" through "electronic manipulation of voting tabulation machines;"
- There were "dual slates of electors from 7 states," because the Trump electors in Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin had

met on December 14, 2020, cast their electoral votes for Trump, and transmitted those votes to Pence;[94]

- The State of Michigan "mailed out absentee ballots to every registered voter, contrary to statutory requirement that voter (sic) apply for absentee ballots"; and
- "This election was stolen by a strategic Democrat plan to systemically flout existing election laws for partisan advantage."

(NDC, p. 23.)

Despite the absence of substantiated evidence, Eastman knowingly made false claims of fraud in the 2020 presidential election, suggesting manipulation of electronic voting machines to bolster his case for Vice President Pence to adjourn the Joint Session of Congress. A thorough examination of the data using strict criteria revealed no evidence to suggest that former Vice President Biden did better than expected in counties where Dominion voting machines were used. In addition, the Election Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees found no credible evidence supporting claims that the 2020 election results in any state were changed due to technical compromise. In fact, CISA confirmed that the 2020 presidential election was the most secure in American history. Eastman was informed by November 2020, that CISA had determined the November 3 election to be the most secure in U.S. history, contradicting the numerous baseless claims and potential for misinformation surrounding the electoral process. Nevertheless, Eastman chose to ignore credible sources indicating there was no voting machine manipulation.

Eastman's assertion that every registered voter in Michigan received a ballot by mail was also untrue. As Eastman acknowledged, every registered voter was mailed an absentee ballot *application*, not the ballot itself. The fact that there was dissent regarding the Supreme Court's refusal to review the case establishing the Secretary of State's authority to send absentee ballot

[94] The court has already determined in count three that Eastman's statement that dual slates of electors had been transmitted to Vice President Pence was false.

applications to all registered voters and that the Michigan legislature disagreed with the decision, does not make Eastman's statement true. The misrepresentations about the manipulation of voting machines and Michigan absentee ballots were significant and material. Eastman used them to bolster the argument for Vice President Pence to reject electoral votes and/or delay or adjourn the Joint Session of Congress.

Regarding the fourth alleged false statement about the election being stolen by a "Democrat Plan", numerous facts related to this representation are detailed within or closely connected to the facts outlined in other counts, i.e., election officials across Pennsylvania, particularly in Philadelphia and Allegheny Counties (where Democrats historically hold an advantage) knowingly violated the state's election laws by implementing biased standards to favor voters in these counties, aiming to benefit former Vice President Biden (count two); and Fulton County officials removed ballots from under a table, where they were concealed, and processed them without public observation, breaking state law (count four). Nevertheless, the court finds that Eastman's fourth statement was a statement of opinion rather than a statement of fact. In context, his statement reflected his opinion on summarizing what the purported "facts" revealed.

As it relates to the allegations in the six-page memo, Eastman contends that he did not violate section 6106 because Kurt Olsen, an attorney who worked with Eastman, concluded that it was illegal for Michigan Secretary of State, Jocelyn Benson, to distribute ballot applications to all registered voters. The court dismisses this argument because Eastman was aware, as of December 28, 2020, that the Michigan Secretary of State had such authority. Furthermore, the crucial falsehood that Eastman stated was that the Secretary of State sent ballots, not ballot applications to all registered voters. As such, Olsen's opinion concerning ballot applications is immaterial.

Eastman next asserts that he held a sincere, honest good faith belief in the truth of his statements based on his knowledge and understanding at the time. The court does not consider Eastman's beliefs to be sincere, honest, or credible. He knowingly ignored any evidence contradicting the notion of voting machine manipulation; was aware that the Michigan Secretary of State had not distributed ballots to all registered voters; and as a constitutional scholar, understood that no conflicting dual slates of electors had been transmitted.

Finally, as determined above, the court rejects Eastman's claim that he was vigorously representing President Trump, as he exceeded ethical boundaries by transitioning from an impassioned advocate to engaging in deception.[95]

The evidence presented demonstrates that Eastman, despite claiming sincere belief, deliberately propagated false claims about the 2020 presidential election, thereby breaching his ethical duty as an attorney to prioritize honesty and integrity. With the exception of Eastman's opinion regarding the election being "stolen by a strategic Democrat plan," the court finds Eastman culpable of willfully violating section 6106 as alleged in count six.

Count Seven – Moral Turpitude [Misrepresentation] (§ 6106)

Eastman is charged with violating section 6106 by stating that "Dominion electronic voting machines had fraudulently manipulated the election results during the November 3, 2020, presidential election and during the January 5, 2021, run-off election in Georgia for its two Senate seats." (NDC, p. 25.)

During his speech on the Ellipse, Eastman was addressing a television audience and a live crowd that he estimated to include 250,000 to 500,00 individuals in his capacity as a lawyer. (R.T. Vol. XI, p. 49.) Giuliani introduced him as one of the preeminent constitutional scholars in

[95] Eastman employs the "zealous advocate" defense for counts seven through ten, all of which fail because, as stated above, zealous advocacy cannot excuse a section 6106 violation.

the United States, who intended to explain how the Dominion machines were manipulated. Eastman claimed that during the 2020 presidential and the Georgia runoff elections, ballots were allegedly placed in a hidden folder within voting machines until it was determined how many votes were needed and after the polls closed, these ballots were used to manipulate the election results in favor of former Vice President Biden and other Democratic candidates. Eastman stated that an analysis of vote percentages indicated that these ballots were unloaded from the secret folder and fraudulently matched with unvoted voters, thereby tipping the election outcome in favor of the Democrats.

Eastman's statements were false. The court has previously determined that there was no voting machine manipulation (count six) and that Eastman ignored readily available evidence demonstrating that his statements were false. As such, the record demonstrates that Eastman willfully violated section 6106 by making intentionally false statements on January 6, 2021, at the Save America rally at the Ellipse.

Even if Eastman's false representations were not intentional, at a minimum, he is culpable of violating section 6106 by gross negligence. Eastman's statements about the Dominion voting machines were based on the theories of Ramsland and Oltmann and others he met on January 5, 2021. Before making the misrepresentations on January 6, 2021, Eastman failed to vet Ramsland and Oltmann, their theories, and their credentials. He never determined the credibility of the Ramsland/Oltmann diagram but accepted its conclusions because certain individuals (whose names he could not recall and whom he perceived to possess technical expertise) informed him about alleged potential vulnerabilities in the Dominion voting machine system. He ignored CISA's unwavering confidence in the security and integrity of the 2020 election. Eastman recklessly relied on Ramsland, Oltmann, and others without verifying the validity of their findings.

Eastman maintains that he is not culpable of willfully violating section 6106 because he held a sincere, honest belief that his representations were true at the time. The court disagrees. Eastman deliberately disregarded information from credible sources confirming the security of the election and the absence of any credible evidence supporting allegations that the 2020 election results in any state were altered due to technical compromise. Eastman also claims his speech is protected by the First Amendment. The court has already determined Eastman did not have a constitutional right to make false and misleading statements in violation of section 6106.

The court finds that Eastman, at a minimum, acted with gross negligence amounting to moral turpitude by recklessly relying on unverified sources and unverified information while deliberately disregarding credible information about the security of the 2020 election, thereby violating section 6106. (See *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 155 [gross negligence amounting to moral turpitude where attorney filed verification that his clients were out of the county without first confirming that fact]; see also *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330 [culpability under section 6106 for act of moral turpitude where attorney was found to be grossly negligent in reporting her MCLE compliance without making any effort to confirm its accuracy].)

Count Eight – Moral Turpitude [Misrepresentation] (§ 6106)

In count eight, Eastman is charged with willfully violating section 6106 by sending an email to Greg Jacob on January 6, 2021, with the intent to pressure Vice President Pence to adjourn the Joint Session of Congress, wherein he wrote: "'You think you can't adjourn the session because the [Electoral Count Act] says no adjournment, while the compelling evidence that the election was stolen continues to build and is already overwhelming?'" The court finds Eastman culpable of willfully violating section 6106.

As previously established, there was no outcome-determinative fraud in the 2020 presidential election (counts four, five, six, and seven), and Eastman was aware or should have known that there was no affirmative proof of fraud (counts five, six, and seven). This lack of outcome-determinative fraud evidence indicates that there was no compelling or overwhelming evidence that the 2020 presidential election was stolen as Eastman claimed.

During the violent attack on the Capitol and while the electoral vote count remained unfinished, Eastman persisted in his attempts to persuade Vice President Pence to postpone the Joint Session of Congress, despite the ongoing crisis and the incomplete democratic process. Eastman continued to pressure Jacob and Vice President Pence even though Eastman, a constitutional scholar, knew that Vice President Pence had no authority to recess, delay, or adjourn the electoral count because as provided by 3 U.S.C. section 16, only the House or Senate may direct a recess—not a President of the Senate. Moreover, as the scholarship and history reflect and as Eastman, a constitutional scholar, had to know, from 1789 to 2016, all recesses and adjournments were initiated and controlled by Congress and "no President of the Senate has ever unilaterally declared a recess." (Exh. 179, p. 84.)

Once again, Eastman contends that his statements are protected by the First Amendment. As stated above, this defense fails because Eastman's false statements are not protected speech. Eastman also argues that he had a sincere, honest belief in his statements. Eastman's defense fails because a sincere, unreasonable belief in one's actions does not excuse intentional misconduct.

In sum, despite substantial evidence disproving his claims, Eastman made false statements in his January 6, 2021 email with the intent to deceive and pressure Vice President Pence to violate the ECA, thereby demonstrating his willful violation of section 6106.[96]

Count Nine – Moral Turpitude [Misrepresentation] (§ 6106)

In count nine, OCTC charged Eastman with making the following three statements in the January 18, 2021 "Setting the Record Straight on the POTUS 'Ask'" article, which Eastman knew were false and misleading:

- "[I]n Fulton County, Georgia, where suitcases of ballots were pulled from under the table after election observers had been sent home for the night;"
- "[I]n parts of Wayne County (Detroit) Michigan, where there were more absentee votes cast than had been requested;" and
- "[I]n Antrim County, Michigan, where votes were electronically flipped from Trump to Biden."

(NDC, p. 28.)

First, the court has previously determined that Eastman's statement regarding the alleged hidden "suitcases of ballots" was false and that Eastman ignored any evidence of its falsity (count four). Eastman cannot evade responsibility for his "ostrich-like" behavior once he was aware that information existed showing there were no hidden ballots or evidence of improper activity. (*In the Matter of Carver*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 432-433; see also *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, 388.)[97]

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[96] Although the facts that support culpability in count eight also support culpability in other counts, i.e., counts two and five, the court does not find the counts duplicative as Eastman made the misrepresentations to different individuals, in different situations, and at different timeframes.

[97] In both *Carver* and *Pierce*, the attorneys changed their official membership addresses to evade receiving notices from the State Bar and purposefully failed to retrieve or review mail from the State Bar. By avoiding the notices, each attorney remained willfully blind to their ineligible status to practice law.

Wayne County, Michigan

Eastman also intentionally misrepresented that votes in Michigan were electronically flipped from President Trump to former Vice President Biden. Eastman's half-truth assertion was deceptive and intellectually dishonest since he was well aware that any human error that occurred only affected the *initial unofficial* results and this error had been rectified before the final results were tallied. Furthermore, according to experts, and Eastman himself, there were no instances where Trump votes were flipped and tallied as Biden votes. Eastman became aware of the falsehood of the statement and acknowledged that he had learned about the comments made by Michigan election officials regarding this matter in November or December 2020. Eastman's false representations were significant and material. He persisted in misrepresenting the validity the 2020 presidential election to sow doubt among the public regarding the legitimacy of the results.

Eastman contends that he genuinely believed in the accuracy of his misrepresentations. As stated previously, Eastman's willful ignorance and refusal to consider evidence contrary to his assertions do not excuse him from responsibility for spreading falsehoods. The court also rejects Eastman's First Amendment defense since the court has already concluded that Eastman did not have a constitutional right to make false and misleading statements that violate section 6106.

Count Ten – Moral Turpitude (§ 6106)

In count ten, OCTC charges Eastman with moral turpitude in violation of section 6106, by repeatedly proposing and seeking to encourage Vice President Pence to exercise authority to disregard the electoral votes of certain states or delay the counting of electoral votes.

The evidence establishes that shortly before the counting of electoral votes on January 6, 2021, Eastman prepared a two-page memo and a six-page memo that falsely asserted that the

Vice President was the "ultimate arbiter" to resolve disputes regarding electoral votes, and claiming that the Vice President had the power to take various unilateral actions, including determining the validity of electoral votes and adjourning the Joint Session of Congress.

The court has already determined, in counts three and six, that Eastman's statements in his two memos regarding the powers of the Vice President were false. No law or provision in the Constitution confers on the Vice President the power to reject electoral votes or delay the counting of votes. Eastman knew this. He knew, but didn't disclose, that there were only a handful of law review articles, not historical or legal precedent (such as the ECA or the Twelfth Amendment), which supported his contention that such unilateral authority was vested in the Vice President as President of the Senate. As further discussed under count six, Eastman also knew that the factual assertions of fraud and dual slate of electors underpinning the need for his unsupported plan were false. Still, he promoted this wild theory for the benefit of his client's desire to retain the presidency. Notably, the course of action Eastman proposed for Vice President Pence to take on January 6, 2021, was directly contrary to what he told Colbert just a few months prior—that nowhere in the law does it say that the President of the Senate (i.e., the Vice President) has the power to determine what electoral votes are counted. Eastman's scheme also faced criticism from his own expert, Dr. Yoo, who testified that not only did Vice President Pence not have authority to reject elector votes on the grounds that the elector appointments were invalid but, under the circumstances present, Vice President Pence was on "unassailable" grounds for not overturning the electoral results of the 2020 presidential election. (R.T. Vol. XVIII, pp. 47, 66.)

Still, Eastman persisted with his plan. At the January 4, 2021 Oval Office meeting with President Trump, Vice President Pence, Jacob, and Short, Eastman discussed his unfounded theory outlined in his memos, and presented Vice President Pence two options: reject electors or

delay the count. He made the same request to Jacob and Short at another meeting the following day. In his conversations with Jacob, however, he conceded that his position would likely be unanimously rejected by the Supreme Court.

After attempts to convince Vice President Pence during the meetings failed, Eastman resorted to applying additional pressure on Vice President Pence through several emails sent to Jacob requesting that Vice President Pence follow his strategy. In a 6:09 p.m. email on January 6, 2021, Eastman told Jacob that "adjourn[ing] to allow state legislatures to continue their work" was the "most prudent course." (Exh. 68, p. 1.) Later that evening, at 9:44 p.m., Eastman insisted that the Vice President adjourn the counting of electoral votes, stating: "I implore you to consider one more relatively minor violation and adjourn for 10 days . . ." (Exh. 69, p. 2.).

Eastman was aware, or should have been aware, that the course of conduct he proposed in his memos was factually and legally unsupported. Eastman's dubious strategy to influence Vice President Pence to take unilateral action to determine the validity of slate of electors in the contested states or delay the Joint Session of Congress constitutes moral turpitude in violation of section 6106, as charged in count ten. No additional weight in discipline is assigned to this violation, however, because the same facts support culpability under count one below. (See *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520 [no dismissal of charge where same misconduct proves culpability for another charge but no additional weight assigned for discipline purposes].)

Count Eleven – Moral Turpitude (§ 6106)

In count eleven, Eastman is charged with violating section 6106 by telling the crowd of protesters at the Ellipse on January 6, 2021, "that fraud had occurred in the election, that dead people had voted, that electronic voting machines had been used to fraudulently alter the election

results, that Pence had authority to delay the counting of votes, and that [Vice President] Pence did not deserve to be in office if he did not delay the counting of votes." (NDC, p. 33.) OCTC alleged that these statements were false and misleading and "contributed to provoking the crowd to assault and breach the Capitol in an effort to intimidate [Vice President] Pence and prevent the electoral count from proceeding, when such harm was foreseeable." (*Ibid.*) The court does not find Eastman culpable of the misconduct alleged in this count.

The court has already determined that the following statements made by Eastman were false and deceptive: (1) that fraud occurred in the 2020 presidential election (count two); (2) that dead people voted (counts two and four); (3) that electronic voting machines were used fraudulently to alter the election results (count seven); and (4) that Vice President Pence had the authority to delay the vote counting (count ten). Regarding the fifth statement, Eastman did not expressly declare that Vice President Pence did not merit holding office if he refrained from delaying the vote counting but stated that "anybody" unwilling to postpone the vote tallying was unworthy of office. In the context of the speech, it suggests that Eastman was alluding to Vice President Pence. Nevertheless, a "'reasonable factfinder could [not] conclude that the contested statement implies an assertion of objective fact.' [Citation.]" (*Lieberman v. Fieger* (9th Cir. 2003) 338 F.3d 1076, 1079.) Therefore, the court finds that Eastman's statement regarding Vice President Pence is one of opinion and does not imply a factual assertion and it is thus protected by the First Amendment. (*Ibid*.)

Although four of the five statements made at the Ellipse were false and misleading, OCTC failed to provide any evidence that Eastman's statements "contributed to provoking the crowd to assault and breach the Capitol . . . when such harm was foreseeable." (NDC, p. 33.) Eastman's statements followed Giuliani's comments—"let's have trial by combat"—and preceded President Trump's comments—"fight like hell" to save the country—but OCTC

presented no evidence to show that Eastman's statements contributed to the assault on the Capitol.

As such, count eleven is dismissed with prejudice.

Count One – Failure to Support the Laws of The United States (§ 6068, subd. (a))

Section 6068, subdivision (a), places a duty on attorneys to support the Constitution and laws of the United States and of this state. OCTC is required to specifically identify the underlying provision of law allegedly violated. (See *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, 486.) "The requirement of specification of the underlying provision of law allegedly violated means that the Supreme Court interprets section 6068(a) as a conduit by which attorneys may be charged and disciplined for violations of other specific laws which are not otherwise made disciplinable under the State Bar Act." (*Id.* at p. 487.)

Here, OCTC charges Eastman in count one with failure to support the Constitution and the laws of the United States in violation of section 6068, subdivision (a), by violating three provisions of the law; (1) 3 U.S.C. § 15; (2) Article II, Section 1, Clause 2 and the Twelfth Amendment of the United States Constitution; and (3) 18 U.S.C. § 371.

The 3 U.S.C. § 15 of the ECA outlines the precise procedure for the counting of electoral votes in Congress on January 6 following every meeting of the electors. Related to this statute, Article II, Section 1, Clause 2 of the United States Constitution provides that each state shall appoint electors, and the Twelfth Amendment specifies that, on January 6, the votes submitted by the electors for each state shall be counted, with the President determined by the winner of a majority of electoral votes. OCTC fails to assert, let alone prove, that Eastman violated either 3 U.S.C. § 15; Article II, Section 1, Clause 2 of the United States Constitution; or the Twelfth Amendment. OCTC merely alleges that Eastman *intended* to violate these provisions, which falls short of establishing culpability under section 6068, subdivision (a). (See *In the Matter of*

Lilley, supra, 1 Cal. State Bar Ct. Rptr. at pp. 486-487 [section 6068, subd. (a), is a "a conduit by which attorneys may be charged and disciplined for *violations* of other specific laws" (italics added)].)

By contrast, OCTC has shown that Eastman conspired with President Trump to obstruct a lawful function of the government of the United States; specifically, by conspiring to disrupt the electoral count on January 6, 2021, in violation of 18 U.S.C. § 371. To prove a violation of 18 U.S.C. § 371, it must be established that: (1) at least two people entered into an agreement to obstruct a lawful function of the government; (2) by deceitful or dishonest means; and (3) there was at least one overt act in furtherance of the conspiracy. (See *United States v. Meredith* (9th Cir. 2012) 685 F.3d 814, 822.) "An agreement to commit a crime 'can be explicit or tacit, and can be proved by direct or circumstantial evidence, including inferences from circumstantial evidence.'" (*United States v. Kaplan* (9th Cir. 2016) 836 F.3d 1199, 1212.)

The evidence clearly and convincingly proves that Eastman and President Trump entered into an agreement to obstruct the Joint Session of Congress by unlawfully having Vice President Pence reject or delay the counting of electoral votes on January 6, 2021. Specifically, on December 23, 2020, and January 3, 2021, respectively, Eastman wrote two-page and six-page memos outlining a detailed plan of action for Vice President Pence to declare President Trump the re-elected president. On January 2, Eastman appeared on the Bannon War Room and publicly spoke about the illegal conduct of the 2020 presidential election and claimed that more than enough fraud had occurred to affect the outcome of the election.

On January 4, 2021, President Trump, Vice President Pence, Eastman, Jacob, and Short met at the Oval Office to discuss Eastman's memo, at which time Eastman presented Vice President Pence with two options: reject electors or delay the count. On January 5, Eastman met with Jacob and Short and asked again that Vice President Pence reject the electors and later, only

after Jacob (Vice President Pence's counsel) refused to capitulate to Eastman's requests, in an evening phone call with President Trump and Jacob on January 5th, Eastman proposed that the Vice President delay the count of electoral votes the following day. A second phone call Eastman had with Jacob on the evening of January 5th involved a renewed discussion about a delaying to allow for further consideration by the state legislatures, in which it was noted that while some individual Republican state legislators forwarded letters seeking delay of the electoral count, numerous state legislature leaders had stated they had no interest in taking further action and no legislative body in those states had indicated that they were interesting in revisiting the question of who had won the state in the 2020 presidential election.

On January 6, 2021, at 1:00 a.m., President Trump tweeted "If Vice President @Mike_Pence comes through for us, we will win the Presidency . . . Mike can send it back." (Exh. 298.) At 8:17 a.m., President Trump tweeted again that "States want to correct their votes . . . All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage." (Exh. 299, p. 2.) Later that day, Eastman gave his remarks at the Ellipse, where he made false claims about the conduct of the election to the large crowd of protestors that had gathered. Eastman also told the crowd that they were "demanding" that at 1:00 p.m. Vice President Pence delay the electoral count so states could investigate.

Eastman's speech was followed by President Trump, who not only made similarly false and misleading statements to the crowd but who made multiple statements about Vice President Pence "doing the right thing" by unilaterally delaying the electoral count. Then, at 2:24 p.m., President Trump tweeted that "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!" (Exh. 300.)

Later that day, while the Capitol was under attack, Jacob emailed Eastman stating, "thanks to your bullshit, we are now under siege." (Exh. 67.) Eastman responded to Jacob at 2:25 p.m.:

> My 'bullshit'—seriously? You think you can't adjourn the session because the ECA says no adjournment, while the compelling evidence that the election was stolen continues to build and is already overwhelming. The 'siege' is because YOU and your boss did not do what was necessary to allow this to be aired in a public way so the American people can see for themselves what happened.

(*Ibid.*)

In another email to Eastman that same day, Jacob highlighted the gravity of Eastman's conduct:

> Respectfully, it was gravely, gravely irresponsible for you to entice the President with an academic theory that had no legal viability, and that you well know we would lose before any judge who heard and decided the case. And if the courts decline to hear it, I suppose it could only be decided in the streets. The knowing amplification of that theory through numerous surrogates, whipping large numbers of people into a frenzy over something with no chance of ever attaining legal force through actual process of law, has led us to where we are. . . [A]dvising the President of the United States, in an incredibly constitutionally fraught moment, requires a seriousness of purpose, an understanding of the difference between abstract theory and legal reality, and an appreciation of the power of both the office and the bully pulpit that, in my judgment, was entirely absent here.

(Exh. 69, pp. 2-3.)

Eastman pressed on. He emailed Jacob again at 6:09 p.m., advocating for an adjournment and criticizing Vice President Pence's Dear Colleague letter. (Exhs. 68, p.1; 69, p. 2.) At 9:44 p.m., after the electoral count had resumed, Eastman again emailed Jacob, stating: "I implore you to consider one more relatively minor violation and adjourn for 10 days to allow the legislatures to finish their investigations, as well as to allow a full forensic audit of the massive amount of illegal activity that has occurred here." (*Id.*)

Upon consideration of the totality of the facts, the court finds weighty circumstantial evidence demonstrating a collaborative effort between Eastman and President Trump to impede the counting of elector votes on January 6, 2021, as articulated in Eastman's memos. (See *United States v. Kaplan, supra*, 836 F.3d at p. 1212 [an agreement to commit a crime "'can be explicit or tacit, and can be proved by direct or circumstantial evidence'"].) There is also extensive direct evidence demonstrating that each party involved in this plan actively participated in overt acts through in person meetings, communications with Vice President Pence and his counsel, and in public remarks to advance their shared objective—i.e., to have Vice President Pence reject or delay the counting of electoral votes on January 6. Furthermore, the court has previously determined, in the aforementioned counts, that Eastman's actions were carried out with deceit or dishonesty, as he was aware that his plan was unlawful and lacked any factual or legal support. Here, all elements of 18 U.S.C. § 371 are established.

Based on this evidence, the court finds that OCTC has met its burden of showing by clear and convincing evidence that Eastman violated section 6068, subdivision (a), by violating 18 U.S.C § 371 as charged in count one.

Aggravation and Mitigation

The parties must prove aggravating or mitigating factors by clear and convincing evidence. (Stds. 1.5 and 1.6.)[98]

Aggravating Circumstances

The court finds aggravation for three factors: multiple acts of wrongdoing, lack of candor and indifference.

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[98] All references to standards (std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Multiple acts of Wrongdoing (Std. 1.5(b)): Substantial Weight

Eastman is culpable of multiple acts of misconduct, including seeking to mislead the United States Supreme Court in *Texas v. Pennsylvania* and seeking to mislead the United States District Court for the Northern District of Georgia in *Trump v. Kemp*. Eastman has engaged in other misconduct including six counts of moral turpitude by making numerous false and misleading statements to the general public and others, as well as one count of moral turpitude by encouraging Vice President Pence to disregard properly certified electoral votes and delay or adjourn the electoral count. Eastman is also culpable of failing to support the laws of the United States by violating 18 U.S.C. § 371. Given the numerous and serious transgressions, the court affords this aggravating factor substantial weight. (See *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555 [multiple acts of misconduct as aggravation are not limited to the counts pleaded]; see also *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 [53 threatening and abusive messages made over an approximately 8-month period found to be multiple acts of wrongdoing in aggravation]; *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 317 [24 counts of misconduct assigned significant weight in aggravation].)

Intentional Misconduct, Bad Faith or Dishonesty (Std. 1.5(d)): No Weight

Standard 1.5(d) provides that aggravating circumstances may include intentional misconduct, bad faith, or dishonesty. OCTC argues that Eastman's actions were aggravated by his bad faith in pursuing a course of conduct to overturn the 2020 presidential election, which he knew lacked factual or legal merit. However, OCTC has not presented additional facts, separate and distinct from Eastman's misconduct leading to culpability, to support this aggravating circumstance. Therefore, the court assigns no aggravation as Eastman's alleged acts of bad faith were already considered in establishing culpability under sections 6068, subds. (a) and (d), and

6106. (*In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402, 409, fn. 13 [improper to consider in aggravation factual findings already used to determine culpability].)

Significant Harm (Std. 1.5(j)): No Weight

Standard 1.5(j) allows for aggravation when an attorney's actions result in "significant harm to the client, the public, or the administration of justice." OCTC contends that Eastman's misconduct contributed to the violent attack on the Capitol on January 6, 2021. Additionally, OCTC claims that documents and testimony from multiple current and former state election officials demonstrate the harm caused by Eastman's misconduct, including the expenditure of resources to counter election disinformation, increased security measures, wasteful audits of the 2020 presidential election results, erosion of trust in election integrity, turnover in election offices, and harassment and threats against officials and their offices.

While the court acknowledges that there has been significant harm to the general public as evidenced by ongoing distrust in some of our democratic institutions and the electoral process, OCTC has not presented specific evidence to establish that the alleged harm occurred as a result of Eastman's actions. OCTC did not provide any witness or other evidence showing that Eastman's statements or actions, such as his speech on January 6, contributed to the attack on the Capital or that Eastman's peddling of disinformation regarding the 2020 presidential election specifically caused the harm unfortunately experienced by election workers, state election officials or the institutions they serve. The court rejects OCTC's argument that it is exempt from proving that Eastman was the cause of the harm. Under standard 1.5, OCTC must show aggravating circumstances by clear and convincing evidence. Here, the connection between Eastman's actions and the alleged harm remains speculative. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 784-785 [significant harm to client was not appropriate factor in aggravation without evidence that client suffered harm attributable to the attorney's misconduct].)

OCTC's other argument that Eastman bears responsibility for the actions of others—presumably referring to then President Trump and Giuliani—based on a "concert of action" theory, is unpersuasive. OCTC cites to *Sindell v. Abbott Labs*. (1980) 26 Cal.3d 588, which examined the principle of group liability in tort when multiple parties collaboratively commit a tortious act. The court declines to adopt a theory of tort liability applied in civil cases under a different standard of proof than that required in a disciplinary proceeding. Extending such a theory of liability from tort law to this case would burden Eastman for the independent actions of others without OCTC meeting the requisite burden of proof for aggravation in disciplinary cases.

Based on this record, OCTC has not shown by clear and convincing evidence that Eastman caused the alleged harm. Therefore, the court assigns no aggravation under this factor.

Indifference (Std. 1.5(k)): Substantial Weight

"Indifference toward rectification or atonement for the consequences of the misconduct" is an aggravating circumstance. (Std. 1.5(k).) This case presents a clear instance of such indifference by Eastman. While the law does not require false penitence, it does require that an attorney accept responsibility for wrongful acts and come to grips with culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Eastman has failed to do so.

Despite the compelling evidence against him, as established in the culpability findings above, Eastman remains defiant, refusing to acknowledge any impropriety whatsoever in his actions surrounding his efforts to dispute the 2020 presidential election results. His lack of insight into the wrongfulness of his misconduct is deeply troubling. For instance, he testified he gave no consideration to the effect his televised statements made on January 6, 2021, at the Ellipse—implying electoral fraud from electronic voting—would have on the crowd, which he estimated to include one-half to a quarter million people. Eastman continues to hold the view

that his statements were factually and legally justified. He demonstrated distain for these proceedings by characterizing them as a political persecution, claiming that the disciplinary charges against him contained false and misleading statements, and that those who brought them should themselves be disbarred.

Eastman's complete denial of wrongdoing, coupled with his attempts to discredit legitimate disciplinary proceedings are concerning. While Eastman is entitled to defend himself, his conduct goes beyond this, revealing a complete failure to understand the wrongfulness of his actions. His unwillingness to consider the impropriety of his conduct goes "beyond tenacity to truculence." (*In re Morse* (1995) 11 Cal.4th 184, 209 [unwillingness to consider appropriateness of legal challenge or acknowledge its lack of merit is aggravating].) Accordingly, the court assigns substantial weight in aggravation under this factor. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380-381 [ongoing failure to acknowledge wrongdoing instills concern that attorney may commit future misconduct].)

Lack of Candor (Std. 1.5(l)): Limited Weight

Aggravating circumstances in disciplinary proceedings may include lack of candor to the State Bar or State Bar Court during disciplinary investigations or proceedings. OCTC argues that Eastman demonstrated a lack of candor at trial because his testimony was evasive, inconsistent, and untruthful with respect to numerous issues such as whether there was outcome-determinative fraud in the seven states he contested and whether he urged Vice President Pence to reject certified slates of electors.

The court, in determining culpability, has rejected certain aspects of Eastman's unconvincing testimony in favor of more compelling evidence in the overall record. Eastman's testimony seemed evasive and inconsistent at times and there is limited clear and convincing evidence to establish that Eastman was dishonest in his testimony. (See *In the Matter of*

Duxbury (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 67 [this factor must be supported by finding that testimony lacked candor or was dishonest].) Nonetheless, the court finds that Eastman lacked candor when he falsely testified that he did not exert pressure on Jacobs to reject the certified Biden electors. Jacob's records from January 5, 2021, revealed that Eastman urged Vice President Pence to reject the Biden electors, and Eastman's January 6, 2021 email acknowledged that the option of rejecting the electors had been discussed and dismissed the day before. Accordingly, the court affords limited weight in aggravation for this factor.

Mitigating Circumstances

The court finds mitigation for three factors; no prior discipline, cooperation, and good character.

No Prior Record of Discipline (Std. 1.6(a)): Moderate Weight

The absence of any prior record of discipline over many years of practice, coupled with present misconduct which is not likely to recur, is a mitigating circumstance. (Std. 1.6(a).)

Eastman was admitted to the State Bar of California in 1997. At the time of his misconduct, he had practiced law for approximately 23 years without discipline. This length of discipline-free practice satisfies the first prong of the standard—no prior record of discipline over many years of practice—and generally warrants substantial mitigation. (See, e.g., *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [significant weight for more than 10 years of practice].) However, the misconduct at issue is quite serious and, in consideration of his ongoing lack of insight or remorse, the facts of this case do not reflect aberrational misconduct, thus diminishing the mitigating weight of this factor. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, long-term discipline-free practice is most relevant where misconduct is aberrational].) Under these circumstances, the court affords moderate weight in mitigation for Eastman's lack of prior discipline.

Good Faith (Std. 1.6(b)): No Weight

Eastman may be entitled to mitigation if he can establish a "good faith belief that is honestly held and objectively reasonable." (Std. 1.6(b).) Eastman contends that he is entitled to mitigation for his good faith belief that his statements and conduct did not violate any ethical standards.

As discussed, *ante*, the court finds among other things that Eastman made multiple false and misleading statements regarding the conduct of the 2020 presidential election and Vice President Pence's powers to refuse to count or delay counting properly certified slates of electoral votes on January 6, 2021. Even if Eastman honestly believed he acted in good faith, it was not objectively reasonable for him to have such belief. The circumstances of this case preclude any finding of good faith mitigation. (*Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 331 [attorney's honest belief not mitigating because belief was unreasonable].) Therefore, the court assigns no weight in mitigation for Eastman's assertion of good faith belief.

Lack of Harm (Std. 1.6(c)): No Weight

Standard 1.6(c) provides for mitigation where lack of harm to clients, the public, or the administration of justice can be established.

Eastman argues that OCTC failed to present evidence demonstrating that his actions caused any harm; and by implication that there is no harm. This argument is fundamentally flawed. The absence of evidence of harm does not constitute evidence of lack of harm. Eastman bears the burden to show mitigating circumstances by clear and convincing evidence. (Std. 1.6). He cannot simply shift the burden of proof onto OCTC without providing any evidence to support his assertion that no harm occurred. While it is true that OCTC did not present evidence to establish that Eastman's actions caused significant harm, this does not absolve him of his

responsibility to demonstrate that his actions did not cause harm to his client, the public, or the administration of justice.

Without meeting this burden, his argument for mitigation on the grounds of a lack of harm fails. The court declines to assign any credit for this factor.

Cooperation (Std. 1.6(e)): Limited Weight

Mitigation may be assigned under standard 1.6(e) for cooperation with the State Bar. Eastman demonstrated cooperation with OCTC by entering into a stipulation as to facts. Eastman, however, did not admit culpability and "more extensive weight in mitigation is accorded those who, where appropriate, willingly admit their culpability as well as the facts." (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.) Also, the nature of the stipulation, which admitted facts that were easily proven, obviated very little in terms of OCTC's preparation for trial. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [stipulation to easily provable facts mitigating if facts assisted prosecution of case].) Thus, the court affords limited weight for Eastman's cooperation.

Extraordinary Good Character (Std. 1.6(f))—Substantial Weight

Eastman may obtain mitigation for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." (Std. 1.6(f).)

Eastman presented 14 witness declarations and five live witnesses (four of whom also provided declarations) in support of his good character from a wide range of references in the legal and general communities, including a priest, an attorney, a writer, the Director of Administration at Claremont Institute, an associate professor at Benedictine College, a senior fellow and member of the board of directors of the Claremont Institute and Professor Emeritus at Azusa Pacific University, a managing editor of a magazine, the Director of the Claremont

Institute, a retired attorney and former law clerk to former Supreme Court Justice Byron White, a former Attorney General of the United States, an Emeritus Dean and Professor at Michigan State University, a former justice of the California Supreme Court and United States Court of Appeals, a retired judge of the Los Angeles County Superior Court, a Professor Emeritus of Law at Cleveland State University and an attorney and adjunct professor at Trinity Law School. The court gives serious consideration to the attorney declarations in support of Eastman's character. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [attorneys and judges have "strong interest in maintaining the honest administration of justice"].)

Further, the court finds that the majority of these witnesses, who have known Eastman professionally for a period ranging from eight to 45 years, have shown understanding and familiarity with these disciplinary proceedings and the claims leveled against Eastman. Despite their awareness of the pending charges, the witnesses consistently and uniformly attested to Eastman's positive character traits, such as his professionalism, integrity, honesty, fairness, and respect. The court finds strong evidence of Eastman's good character and accords substantial weight in mitigation. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591–592 [significant mitigation for good character for three witnesses who had longstanding familiarity with attorney and broad knowledge of good character, work habits, and professional skills].)

Discussion

Professional discipline aims to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high standards for attorneys. (Std. 1.1.) In its analysis, the court first considers the standards, which are not binding but entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Although not mandatory, a

compelling, well-defined reason must be articulated for any deviation from the standards. (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.7 provides that any aggravating or mitigating circumstance should be considered alone and in balance with other factors. If two or more acts of misconduct are present, the sanction shall be the most severe applicable. (Std. 1.7(a).) Several standards apply here. Standard 2.11 provides that "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty . . . intentional or grossly negligent misrepresentation or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the [attorney's] practice of law." Standard 2.12(a) also applies, and similarly provides that disbarment or actual suspension is the presumed sanction for a violation of section 6068, subdivisions (a) and (d). OCTC argues that Eastman should be disbarred, while Eastman disputes all charges and seeks dismissal.

As an initial matter, the court rejects Eastman's contention that this disciplinary proceeding and Eastman's resultant discipline is motivated by his political views or his representation of President Trump or President Trump's Campaign. Rather, Eastman's wrongdoing constitutes exceptionally serious ethical violations warranting severe professional discipline. As stated by Earl C. and others, "there is no right way to do the wrong thing." As counsel for President Trump during a disputed presidential election, Eastman made multiple patently false and misleading statements in court filings, in public remarks heard by countless Americans and to others regarding the conduct of the 2020 presidential election and Vice President Pence's authority to refuse to count or delay counting properly certified slates of electoral votes on January 6, 2021. These statements, made with varying degrees of intent, were

improperly aimed at casting doubt on the legitimate election results and support for the baseless claim that the presidency was stolen from his client—all while relying on his credentials as an attorney and constitutional scholar to lend credibility to his unfounded claims.

Even after courts in key states authoritatively rejected unsupported allegations of outcome-determinative fraud in the election, Eastman persisted in proposing a legally unsustainable strategy. From November 2020 forward, as his many legal challenges failed, Eastman substantively advanced the false narrative that widespread fraud had tainted the election, and that Vice President Pence possessed the power to contravene the constitutional electoral process. His demonstrated intent was to foment loss of public confidence in the integrity of the 2020 election and persuade Vice President Pence to refuse to count or delay the counting of electoral votes on January 6. Most of his misconduct occurred squarely within the course and scope of Eastman's representation of President Trump and culminated with a shared plan to obstruct the lawful function of the government.

While attorneys have a duty to advocate zealously for their clients, they must do so within the bounds of ethical and legal constraints. Eastman's actions transgressed those ethical limits by advocating, participating in and pursuing a strategy to challenge the results of the 2020 presidential election that lacked evidentiary or legal support. Vigorous advocacy does not absolve Eastman of his professional responsibilities around honesty and upholding the rule of law. While his actions are mitigated by his many years of discipline-free practice, cooperation, and prior good character, his wrongdoing is substantially aggravated by his multiple offenses, lack of candor and indifference. Given the serious and extensive nature of Eastman's unethical actions, the most severe available professional sanction is warranted to protect the public and preserve the public confidence in the legal system.

After careful review, the court could not find any controlling case law directly on point or substantially analogous to the facts of this case. OCTC cites to *Segretti v. State Bar* (1976) 15 Cal.3d 878, and argues that, here, disbarment is warranted because the misconduct in this case exceeds that of *Segretti*—who received a two-year actual suspension. The court agrees.

In *Segretti*, the attorney pleaded guilty to two federal offenses related to his work on President Richard Nixon's 1972 reelection campaign, including violating 18 U.S.C. section 612 (publication or distribution of political statements) and 18 U.S.C section 371 (conspiracy). Among other things, Segretti distributed letters containing false accusations about other candidates for president in order to create confusion among the candidates. The court found Segretti's actions involved moral turpitude as he "repeatedly committed acts of deceit designed to subvert the free electoral process." (*Id.* at p. 887.) Segretti had significant mitigation. He was only 30 years old at the time of the misconduct and thought he was acting under the umbrella of the White House. The court emphasized that Segretti's misconduct "was not committed in his capacity as an attorney" and that he recognized the wrongfulness of his acts, expressed regret, and cooperated with the investigating agencies. (*Id.* at p. 888.) Segretti received a two-year actual suspension.

The scale and egregiousness of Eastman's unethical actions far surpasses the misconduct at issue in *Segretti*. Unlike Segretti whose offenses occurred outside his role as an attorney, Eastman's wrongdoing was committed directly in the course and scope of his representation of President Trump and the Trump Campaign. This is an important factor, as it constitutes a fundamental breach of an attorney's core ethical duties. Additionally, while the *Segretti* court found compelling mitigation based on his expressed remorse and recognition of his wrongdoing, no such mitigating factor is present with Eastman. To the contrary, Eastman has exhibited an unwillingness to acknowledge any ethical lapses regarding his actions, demonstrating an

apparent inability to accept responsibility. This lack of remorse and accountability presents a significant risk that Eastman may engage in further unethical conduct, compounding the threat to the public. Given the greater magnitude of Eastman's transgressions compared to *Segretti* and the heightened risk of future misconduct from his complete denial of wrongdoing, imposing greater discipline than in *Segretti* is appropriate to protect the public and uphold public confidence in the legal system.

Guided by the standards, case law, and the purposes of attorney discipline, the court recommends that Eastman be disbarred.

Monetary Sanctions are Warranted

As the NDC, filed after April 1, 2020, provided Eastman with notice that he could be subject to monetary sanctions, the court must make a recommendation to the Supreme Court regarding monetary sanctions. (See Rules Proc. of State Bar,[99] rule 5.137(E)(1), (H).) Here, the court recommends that Eastman pay $10,000 in monetary sanctions.

The court recognizes that the recommended amount is a deviation from rule 5.137(E)(2)(a), which provides for monetary sanctions up to $5,000 for disbarment. However, rule 5.137(E)(3) authorizes the court, in its discretion, to deviate from the range set forth in subdivision (E)(2)(a) "to a maximum of $5,000 *for each violation*, and $50,000 for each disciplinary order." (Rule 5.137(E)(3), italics added.) Here, a deviation from the range provided in subdivision (E)(2)(a) is appropriate under the facts and circumstances of this case given the gravity of Eastman's misconduct involving multiple acts of moral turpitude and the substantial aggravation, including his refusal to acknowledge any impropriety in his actions. Specifically, the court recommends that Eastman pay $5,000 in sanctions for his misconduct in connection with filing several pleadings seeking to mislead the courts. The court also recommends that

[99] Further references to rules are to this source, unless otherwise specified.

Eastman pay another $5,000, for a total of $10,000, for making numerous false and misleading statements regarding the conduct of the 2020 presidential election and Vice President Pence's authority to refuse to count or delay counting properly certified slates of electoral votes and for his collaborative efforts with President Trump to impede the counting of electoral votes.

RECOMMENDATIONS

It is recommended that John Charles Eastman, State Bar Number 193726, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

CALIFORNIA RULES OF COURT, RULE 9.20

It is recommended that John Charles Eastman be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed.[100] (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [the operative date for identification of clients being represented in pending matters and others to be notified is the filing date of the Supreme Court order imposing discipline].)

MONETARY SANCTIONS

It is further recommended that John Charles Eastman be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $10,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be

[100] John Charles Eastman is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

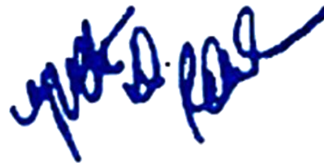
paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

COSTS

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of applying for reinstatement or return to active status.

INVOLUNTARY INACTIVE ENROLLMENT

John Charles Eastman is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). His inactive enrollment will be effective three calendar days after this order is served and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.



Dated: March 27, 2024

YVETTE D. ROLAND
Judge of the State Bar Court