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STATE BAR COURT
OF THE STATE OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of:) Case No. SBC-23-O-30029-YDR
)
JOHN CHARLES EASTMAN, ESQ.,)
)
Respondent.) VOLUME XXIII
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE YVETTE D. ROLAND
FRIDAY, OCTOBER 6, 2023
845 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017

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I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Kurt Olsen	XXIII- 7	XXIII- 97	--	--
John Charles Eastman	XXIII-150	--	--	--
<u>EXHIBITS</u>			<u>IDENTIFIED</u>	<u>RECEIVED</u>
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1 THE CLERK: Please come to order. The State Bar
2 Court is now in session. The Honorable Yvette Roland,
3 presiding.

4 We're on the record, your Honor.

5 THE COURT: Good morning, everyone. We're on the
6 record in the 21st day (sic) of the hearing of John Charles
7 Eastman in Case Number 23-O-30029.

8 Counsel, please make your appearance.

9 MR. CARLING: Duncan Carling for the State Bar.
10 Good morning.

11 THE COURT: Good morning, Mr. Carling.

12 MR. BECKERMAN: Good morning. Samuel Beckerman
13 for the State Bar.

14 THE COURT: Good morning, Mr. Beckerman.

15 MS. WANG: Good morning, your Honor. Christina
16 Wang for the State Bar.

17 THE COURT: Good morning, Ms. Wang.

18 MR. MILLER: Good morning, your Honor. Randy
19 Miller for Respondent, John Eastman.

20 THE COURT: Good morning, Mr. Miller.

21 DR. EASTMAN: Good morning, your Honor. John
22 Eastman, Respondent.

23 THE COURT: Good morning, Doctor Eastman.

24 MR. MAYER: Zachary Mayer for Respondent. Good
25 morning.

1 THE COURT: Good morning, Mr. Mayer.

2 Okay. I believe we're ready to start with the
3 continuation of the direct examination of Mr. Olsen, right?
4 Do you still intend to call Mr. Olsen this morning?

5 MR. MILLER: Yes, your Honor.

6 THE COURT: Okay. All righty. And do you still
7 intend to call Doctor Eastman when Mr. Olsen's testimony has
8 fully completed?

9 MR. MILLER: Yes, that's the order for today.

10 THE COURT: Okay. All righty. And we can talk a
11 bit about the order. We are not in session next week, but
12 the order of the witnesses for the week after that, which
13 I'll get the minute order out today on those dates.

14 MR. MILLER: Thank you.

15 THE COURT: What is your schedule for that week,
16 starting the -- that will be the 17th?

17 MR. MILLER: It's a little bit in flux, mostly
18 because of the witness' availability. I know we've got a
19 few witnesses left. I suspect, depending on when witnesses
20 are available, that I'll continue with Doctor Eastman in
21 some form starting on that Tuesday. But some of the
22 witnesses are only available at certain times, so we may
23 need to take them out of order.

24 THE COURT: Uh-huh.

25 MR. MILLER: But that's what I anticipate. So, I

1 think probably by about noon today we'll have a much better
2 idea where those --

3 THE COURT: Okay.

4 MR. MILLER: -- witnesses need to be placed --

5 THE COURT: All right. Well, we'll --

6 MR. MILLER: -- and we'll share that with the
7 Court and counsel.

8 THE COURT: Okay. Thank you. We'll revisit that
9 after lunch.

10 MR. MILLER: And then very quickly for today, your
11 Honor, is there a way that we could stop at about 4:45 or
12 so?

13 THE COURT: Yeah.

14 MR. MILLER: Thank you. I appreciate that.

15 THE COURT: Uh-huh. Okay.

16 Mr. Carling, is there -- do you want to be heard
17 about any issues or housekeeping matters?

18 MR. CARLING: No issues to bring up and no
19 objection to stopping at 4:45.

20 THE COURT: Okay. All right. Thank you.

21 MR. MILLER: I knew I had a vote there, so --

22 THE COURT: I was going to say --

23 MR. MILLER: -- given the travel.

24 THE COURT: -- at least three votes over there.
25 So, the first time that we all have a full consensus.

1 MR. MILLER: Yeah. I think maybe.

2 THE COURT: I'm glad to hear that. Very good.

3 All righty. Could someone from your office
4 contact Mr. Olsen?

5 MR. MILLER: Yeah. Thank you.

6 THE COURT: Thank you.

7 MR. MILLER: And real quickly, while we're
8 waiting, your Honor. We're having much better luck with the
9 certified transcript. Thank you for your assistance on
10 that. Whatever happened, we're now able to get the official
11 transcripts in much shorter order. So, I think we're --
12 we're almost caught up, I believe maybe this past week or
13 so. We don't have them yet, but we expect them in pretty
14 short order. So --

15 THE COURT: Okay. Good. Thank you for letting me
16 know. I did speak with folks about that. And if either
17 side encounters a situation where you still feel that you're
18 not getting the transcripts quickly enough, you can make
19 arrangements to get -- to use a different court reporter --

20 MR. MILLER: Okay.

21 THE COURT: -- if you need to.

22 MR. MILLER: Good to know.

23 THE COURT: And -- but I also understand that this
24 court reporter, having been made aware of the fact that
25 these transcripts are needed much faster than she was

1 providing them, that she's willing to commit to getting them
2 within three days, or approximately three days after the
3 request is made for the expedited.

4 MR. MILLER: That's what we've been told, your
5 Honor. So we'll keep the Court apprised as to where we are.
6 No problems with that new structure so far. So, we'll let
7 you know how it's going --

8 THE COURT: Okay.

9 MR. MILLER: -- but it's going to be a lot easier
10 to complete the record.

11 THE COURT: Okay. And you would go through the
12 same process of contacting the same individual -- you would
13 go through the process of contacting the same individual in
14 order to get the transcript?

15 MR. MILLER: Yeah. We're connected with them --

16 THE COURT: Okay.

17 MR. MILLER: -- so that we have regular
18 communication, tell what they -- we need. They're very
19 responsive, and so far so good.

20 THE COURT: Okay. Very good.

21 All righty. Is Mr. Olsen in the attendee pool?

22 THE CLERK: Yes, your Honor. How do you spell his
23 last name?

24 MR. MILLER: O-L-S-E-N.

25 THE CLERK: Thank you.

1 MR. MILLER: I see him now. That should be him.

2 THE CLERK: Kurt Olsen?

3 MR. MILLER: That's him. Yes.

4 THE CLERK: Okay.

5 Mr. Benveniste, also in the (indiscernible) again.

6 MR. BENVENISTE: Thank you.

7 THE CLERK: Good morning, Mr. Olsen. Can you hear
8 us and see us?

9 MR. OLSEN (via Zoom): Yes.

10 THE CLERK: Thank you.

11 THE COURT: Good morning, Mr. Olsen.

12 MR. OLSEN: Good morning, your Honor.

13 THE COURT: I'm going to ask Ms. Alvarez to re-
14 swear you as a witness, and then we'll continue with your
15 direct examination conduct by Mr. Miller.

16 MR. OLSEN: Yes, your Honor. One thing before we
17 begin.

18 THE COURT: Uh-huh.

19 MR. OLSEN: I informed counsel that I have a -- I
20 have to stop at 6:00 p.m. Eastern tonight, which is 3:00
21 p.m. Pacific.

22 THE COURT: Believe, I don't think we're going to
23 need you that long, but I could be wrong. We'll see.

24 MR. OLSEN: Okay. Well, I just -- I just wanted
25 to make sure --

1 THE COURT: But, thank you --

2 MR. OLSEN: -- no surprises.

3 THE COURT: Yes, thank you for apprising the Court
4 of that. Thanks. I'll make a note. So 6:00 p.m. Eastern's
5 going to be 3:00 p.m. our time. But like I said, I don't
6 think that's going to be an issue.

7 All righty. Elizabeth?

8 THE CLERK: Yes.

9 Okay. Mr. Olsen, can you go ahead and raise your
10 right hand?

11 KURT OLSEN - RESPONDENT'S WITNESS - SWORN

12 THE WITNESS: I do.

13 THE CLERK: Thank you. Can you go ahead and state
14 your first and last name, and also spell your first and last
15 for the record, please?

16 THE WITNESS: Kurt Olsen, K-U-R-T, last name, O-L-
17 S-E-N.

18 THE CLERK: Thank you.

19 THE COURT: Okay. Thank you, Mr. Olsen.

20 Mr. Miller.

21 MR. MILLER: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MR. MILLER:

24 Q Good morning -- or good afternoon, Mr. Olsen. Thanks
25 for rejoining us and thanks for your patience, too, on

1 allowing some other testimony to go first. And we have in
2 mind your deadline to -- for today, and we'll do the best we
3 can to honor that for yourself.

4 So I wanted to go back and pick up where we left off in
5 our last session, Mr. Olsen. Just to reset the timing, we
6 know from your testimony that the bill of complaint filed on
7 Monday, December 7th. Does that coincide with your memory
8 of this time period that we're looking at for the filing of
9 the bill of complaint?

10 A Yes.

11 Q Okay. And just to set a further framework, I don't
12 know if we went through this in detail in your last session,
13 but there an order from the Supreme Court on that Friday,
14 which would have been December 11, 2020. Is that your
15 recollection as well, Mr. Olsen?

16 A Yes.

17 Q Okay. So I'm going to focus on that week and some of
18 the other filings that were going on. First of all, did you
19 track your time in this -- in this time period?

20 A No.

21 Q Okay.

22 A But I pretty much know it because it was pretty much
23 24/7 the entire week.

24 Q Okay. All right. And the reason why you didn't track
25 your time was because it was pro bono?

1 MR. CARLING: Objection, leading.

2 THE WITNESS: Correct.

3 THE COURT: Sustained.

4 BY MR. MILLER:

5 Q Why didn't you track your time, Mr. Olsen?

6 A Because I wasn't charging for my time.

7 Q Okay. Okay. And I think we talked about the Bella
8 complaint in some detail so far. And you mentioned in one
9 of your earlier responses there were some other -- at least
10 one other motion that was filed. What else do you recall
11 was filed that week, Mr. Olsen, or -- let me put it
12 differently. Was filed on Monday, December 7th?

13 A So there was a motion for leave to file, and there was
14 also a motion for expedited review.

15 Q Okay. Was there a request for injunctive relief that
16 accompanied the paperwork that was filed with the Supreme
17 Court?

18 A That was in the relief set forth in the complaint, in
19 the bill of complaint.

20 Q Okay. Well, let's do this, because I had it as a
21 separate document, but let's make sure that we get it right.
22 I'm going to pull up on the screen, Mr. Olsen, a copy of
23 what we've marked as exhibit -- or what has been marked in
24 the case as Exhibit 261. I'll have Mr. Benveniste pull that
25 up for you.

1 A Okay. So my memory was incorrect.

2 Q Well, that's one of the reasons why we're doing this.
3 I'm going wait for a second until the Court has the hard
4 copy in hand from our exhibit binders. This is actually a
5 Bar exhibit.

6 THE COURT: Thank you. Okay.

7 MR. MILLER: May I proceed, your Honor?

8 THE COURT: Yes.

9 MR. MILLER: Thank you.

10 THE COURT: Thanks.

11 BY MR. MILLER:

12 Q So, can you identify what's been marked as Exhibit 261,
13 Mr. Olsen?

14 A It's the motion for preliminary injunction and a
15 temporary restraining order or, alternatively, for a stay,
16 an administrative stay.

17 Q Okay. This -- at least in the form it is in this case,
18 appeared to me as though this was a separate but concurrent
19 filing. Do I have that right?

20 A Yes.

21 Q Okay. And did you have some involvement in the
22 preliminary injunction and TRO paperwork as well, Mr. Olsen?

23 A I may have, but I don't recall specifically.

24 Q Okay. If you have a recollection, do you know who
25 amongst the group was working on the preliminary injunction,

1 as opposed to the bill of complaint?

2 A Well, Larry Joseph and I, along with members from AG
3 Paxton's office, were working on these papers. It could
4 have been any one of those individuals or, you know, several
5 probably.

6 Q Okay. As to the preliminary injunction and TRO
7 request, Mr. Olsen, can you describe generally what was the
8 basis for the Exhibit 261?

9 A Well, the basis for the preliminary injunction and the
10 alternative relief, which was to stay decertification coming
11 up on December 14th, what was set forth in the bill of
12 complaint. That the elections in the defendant states had
13 not been conducted in accordance with the Constitution.
14 That the changes to election law by non-legislative actors
15 violated the electors clause. There were equal protection
16 and due process claims.

17 And for that reason, the elections based on those --
18 the overall election certification to be held on December
19 14th, should be stayed. And then the results should go back
20 to the states for the legislature to select the electors in
21 a manner that they so had the constitutional authority to do
22 so.

23 Q Okay. And when you said December 14th was the
24 certification date, what do -- what was your understanding
25 of what December 14th was, or the significance of that in

1 the context of the preliminary injunction motion in December
2 of 2020?

3 A That's the date that the certified results from each
4 state setting forth the electors that were going to be
5 submitted, were -- was performed.

6 Q Okay. And we just went through a process with regard
7 to the preparation of the bill of complaint motion and other
8 requests that were tied to that. Was there a similar
9 drafting process, Mr. Olsen, with respect to the preliminary
10 injunction motion?

11 A Yes, I would say so. Although the bill of complaint
12 and the supporting motion that sought leave to file it, and
13 the request for expedited review, I know that I had a --
14 well, the bill of complaint I certainly had a significant
15 role in. I spent majority of my time on that, as well as on
16 the -- the motions for leave to file and the expedited
17 review. The preliminary injunction I may not have had much
18 involvement with actual drafting that.

19 Q Okay. But as far as your role within the team was --
20 or group of lawyers that were handling these various
21 efforts, was there a process where preliminary injunction
22 drafts were exchanged between the attorneys?

23 A I suspect there were --

24 MR. CARLING: Objection --

25 THE COURT: Okay. I'm going to --

1 THE WITNESS: -- but I'm (indiscernible). So --

2 THE COURT: Okay. Just a minute.

3 Mr. Carling?

4 MR. CARLING: Well, I was going to -- to move it
5 to strike it as speculation, but also object that Mr. Olsen
6 has already said he doesn't remember his involvement in
7 this. So he lacks foundation to answer questions about how
8 this was prepared.

9 THE COURT: Okay. Sustained.

10 BY MR. MILLER:

11 Q Were you aware of communications between the various
12 attorneys working on these initiatives as part of the
13 drafting process, Mr. Olsen?

14 A Yeah. I'm generally aware of communications, just not
15 -- I don't recall the specifics at this time.

16 Q Okay. And let me see if I can get at least this. Were
17 you aware of communications with respect to the drafting and
18 finalization of the preliminary injunction motion?

19 A I have a general recollection, yes.

20 Q Okay. And is your recollection, is that consistent
21 with your testimony with respect to the handling of the bill
22 of complaint, motion to expedite and motion to leave that
23 you testified about in your last session?

24 MR. CARLING: Objection, vague as to consistent.

25 THE COURT: Sustained.

1 THE WITNESS: So, I have a -- had more of a
2 recollection --

3 THE COURT: Just -- just a minute. Let's give Mr.
4 Miller an opportunity to address that objection.

5 MR. MILLER: Okay.

6 THE COURT: -- that I've sustained.

7 MR. MILLER: So -- thank you, your Honor. So, we
8 testified in some detail about the process that was
9 undertaken with respect to the preparation of some of this
10 paperwork.

11 BY MR. MILLER:

12 Q Let me go and maybe try it this way, Mr. Olsen,
13 foundationally. Do you know how many lawyers were involved
14 in the drafting process relative to the preliminary
15 injunction, if you know?

16 A Well, if by drafting process you mean who was receiving
17 the briefs --

18 Q Yes.

19 A -- or doing more work than others. But I believe there
20 were around four -- four or so attorneys from Texas, and
21 then myself and Larry Joseph, as certainly the primary at
22 this stage, reviewers of the various documents that were
23 being filed on December 7th.

24 Q And who were the four lawyers that you included in that
25 group, other than obviously yourself and Mr. Joseph?

1 A Well, there was Brent Webster, who's on the papers.
2 There was another attorney at the Texas AG's office. His
3 first name is Aaron (phonetic). I don't recall. And then I
4 just don't -- at this time, I just don't recall the names of
5 the other two members of the AG's -- Texas AG's Attorney's
6 Office.

7 Q Thank you, Mr. Olsen. And if you know, were changes
8 made to the preliminary injunction draft as it worked its
9 way through this handling?

10 MR. CARLING: Objection, asked and answered.

11 THE COURT: Overruled.

12 THE WITNESS: Yeah. I don't recall any specific
13 changes, but the process by which we operated involved
14 circulating drafts. So I would expect that there were edits
15 and changes made before the final product was filed.

16 BY MR. MILLER:

17 Q In term --

18 MR. CARLING: Objection. Move to strike that as
19 speculation.

20 THE COURT: The Court will strike the "I suspect,"
21 from "I suspect" on.

22 BY MR. MILLER:

23 Q So, Mr. Olsen, in terms of all this paperwork which we
24 have so far, Exhibit 260 and Exhibit 261, and the various
25 components of those, was there an awareness within the

1 handling lawyers with respect to some deadline to file the
2 various motions?

3 A Yes.

4 Q Okay. And what -- can you explain to the Court what
5 the perception was of that deadline?

6 A Well, there was a sense of urgency, that we needed to
7 get this filed as quickly as we could.

8 Q Okay. And what was the reason for that?

9 A One --

10 Q Was there some date or event that you were tying your
11 efforts to?

12 A December 14th was certainly one that I recall.

13 Q If you know, Mr. Olsen, were there others?

14 A There may have --

15 Q Other dates. I'm sorry to interrupt. Other dates, Mr.
16 Olsen?

17 A There may have been, I just don't recall at the moment
18 that we -- as we sit here. But there was a great sense of
19 urgency. I recall working through the night to get this
20 done by December 7th.

21 Q Now, let's focus on the motion for leave to file the
22 bill of complaint, and the bill of complaint and the motion
23 to expedite, as opposed to the preliminary injunction, for
24 these next series of questions, Mr. Olsen. Now, in terms of
25 these filings on December 7th of 2020, did you give

1 consideration as to whether the claims and the legal
2 contentions in -- set forth in the bill of complaint
3 documents were warranted by existing law?

4 MR. CARLING: Objection. That was asked and
5 answered when Mr. Olsen appeared last time.

6 THE COURT: Sustained.

7 BY MR. MILLER:

8 Q And what efforts, Mr. Olsen, did you do to come to that
9 conclusion?

10 MR. CARLING: Objection. That was also asked and
11 answered last time.

12 THE COURT: Sustained.

13 MR. MILLER: I don't believe that was, your Honor.

14 THE COURT: It was. I have -- I reviewed my notes
15 on this, so that we could move through this testimony. And
16 Mr. Olsen did testify about what he did to prepare for his
17 work on the motion for leave to file the bill of complaint.

18 MR. MILLER: Right. This is a little bit
19 different. The call of the question was, the process that
20 Mr. Olsen went through to determine that the legal
21 contentions and the claims in the bill of the complaint were
22 warranted by existing law. This is different than the
23 process that he and others went through to create the
24 documents.

25 MR. CARLING: He testified extensively about their

1 investigation process and the research that they did to
2 determine if these allegations were supported.

3 MR. MILLER: This is more specific. The question
4 is more specific.

5 THE COURT: What is this question specifically?

6 MR. MILLER: The question was whether Mr. Olsen
7 gave consideration to whether the claims and legal
8 contentions were warranted under existing law, is different
9 than a process question or research question.

10 (Pause.)

11 THE COURT: Okay. Just a minute. I'm looking
12 back --

13 MR. MILLER: Sure.

14 THE COURT: -- at my notes.

15 MR. MILLER: And while you're looking, your Honor,
16 I specifically chose the wording of this question, so that
17 it wouldn't rehash what we've already done in terms of
18 process and research and timing.

19 (Pause.)

20 THE COURT: Okay. I will -- rather than take up
21 more time looking for this, I'm going to overrule the
22 objection, and you can answer the question.

23 BY MR. MILLER:

24 Q Do you want me to repeat it, Mr. Olsen?

25 A Please.

1 Q Thank you. So the question was, did you give
2 consideration as to whether the claims and legal contentions
3 were warranted by existing law?

4 THE COURT: Okay. That -- if that's the question,
5 that has been asked and answered. I have it in my notes
6 that Mr. Olsen testified that he felt everything in the
7 complaint was supported in the law, and the same regarding
8 the facts. So let's move on.

9 BY MR. MILLER:

10 Q Well, let me -- let me ask it this way. Did others
11 share in your conclusion that the claims and legal
12 contentions were warranted by existing law?

13 MR. CARLING: Objection, vague as to others.

14 THE COURT: Sustained. Which others are you
15 referring to?

16 MR. MILLER: The others in the list of lawyers
17 that were part of these initiatives.

18 MR. CARLING: It would also --

19 MR. MILLER: The ones that you -- sorry.

20 MR. CARLING: Sorry.

21 BY MR. MILLER:

22 Q The ones that you were communicating with, the ones
23 that you were collaborating with, the ones that you were
24 sharing drafts with, the one's that you were e-mailing with
25 on the effort.

1 So, I think we have at least six as part of that. And
2 if I think that helps you, the question would be, did others
3 share your conclusion that the claims were warranted by
4 existing law?

5 MR. CARLING: And I'll also object to it lacked
6 foundation as to their understanding and would be hearsay.

7 THE COURT: Okay.

8 BY MR. MILLER:

9 Q Well, if you know?

10 THE COURT: Overruled. You can answer the
11 question, if you know.

12 THE WITNESS: Yes, there was significant
13 discussion of prior Supreme Court case law. Not only among
14 the four or so lawyers from the Texas AG's office and myself
15 and Larry, but as I also mentioned, we also consulted with
16 Constitution -- recognized constitutional scholars, such as
17 Jay Sekulow, Michael Farris, Judge Ken Starr, on the legal
18 basis for asserting the claims herein, both on the assertion
19 of claims and on the issue of standing.

20 BY MR. MILLER:

21 Q Okay. We did talk about this, so I don't want to go
22 back to it too much, Mr. Olsen. But when you say the legal
23 basis for the claims, do you mean -- well, let me ask you to
24 explain what you meant by the legal basis for the claims in
25 terms of the discussions with Mr. Sekulow and Mr. Farris and

1 Mr. Starr?

2 A Whether or not actions by non-legislative actors to
3 abrogate change, modify, disregard state election laws gave
4 rise to a violation of the Constitution under Article II,
5 also including within that Article I, and also due process
6 and equal protection violations.

7 Q Mr. Olsen, did you give consideration as to whether the
8 factual contentions in the bill of complaint had evidentiary
9 support?

10 MR. CARLING: Objection, that was asked and
11 answered last time.

12 THE COURT: Sustained.

13 MR. MILLER: Well, it wasn't asked in this way,
14 your Honor. And again, I'm choosing my words --

15 THE COURT: Well, then maybe you need to ask a
16 follow-up question, but that was asked. That's why I have
17 it in my notes.

18 MR. MILLER: Okay.

19 BY MR. MILLER:

20 Q And what did you conclude, Mr. Olsen, with respect to
21 whether the bill of complaint and supporting motions had
22 factual contentions that had evidentiary support?

23 MR. CARLING: Objection. That was asked and
24 answered.

25 THE COURT: You can -- overruled. You can respond

1 to the question.

2 THE WITNESS: I'm sorry. Could you repeat the
3 question, please?

4 BY MR. MILLER:

5 Q Sure, Mr. Olsen. I want to you tell us what the basis
6 was for your conclusion that the bill of complaint and the
7 other motions that were part of that, the basis for your
8 conclusion that the factual contentions had evidentiary
9 support.

10 A So the basis of the factual contentions in the bill of
11 complaint is my own investigation, as well as others, but
12 everything that was in that complaint for the factual
13 underpinning of the claim, I reviewed, I analyzed, I
14 approved. And for things that were not in there, I also
15 would have been the attorney that eliminated allegations.
16 And including such as against the states -- claims against
17 the States of Arizona and Nevada.

18 And that it was my own investigation, working with
19 others on the team as well, but I personally looked at every
20 single factual allegation and made sure and satisfied to
21 myself that they were made in good faith, that those claims
22 were made in good faith. That there was supporting evidence
23 for those claims. And it was a wide variety.

24 It could be as simple as looking at the public record
25 to see whether Michigan Secretary of State was mailing out

1 ballot application en masse to every voter in Michigan. To
2 getting a declaration from a Wayne County election worker,
3 Jesse Jacobs (phonetic), under oath, testifying that she had
4 been instructed not to review signatures. To talking with
5 the board of canvassers -- two members of the board of --
6 Wayne County Board of Canvassers, and when they initially
7 declined to certify the election there. So, it was -- it
8 was varied process, but I personally approved every -- that
9 the facts pled in the bill of complaint were made in good
10 faith.

11 MR. MILLER: Your Honor, I'd like to move into
12 evidence Exhibit 261.

13 THE COURT: Okay. Just one minute.

14 Any objection?

15 MR. CARLING: No objection.

16 THE COURT: Exhibit 261 is received into evidence.

17 BY MR. MILLER:

18 Q Just to put some bookends on the week. Mr. Olsen, do
19 you recall being notified in -- well, strike that.

20 How were you notified of the Supreme Court's decision
21 or order with respect to the bill of complaint and other
22 paperwork that was filed on the 7th?

23 A I don't recall specifically. It may have been through
24 the news, somebody may have called me up. I just don't
25 recall.

1 Q Okay.

2 MR. MILLER: Your Honor, I'd like to have Mr.
3 Benveniste call up for Mr. Olsen Exhibit 1376.

4 Okay.

5 THE COURT: Okay?

6 MR. MILLER: You can blow that up maybe a little
7 bit bigger for Mr. Olsen.

8 BY MR. MILLER:

9 Q But while we're doing that, Mr. Olsen, I've put up on
10 the screen what we've marked as Exhibit 1376. Do you
11 recognize -- it's entitled "order in pending case." Do you
12 recognize this?

13 A I do.

14 Q Okay. And was this the copy of the order containing
15 the Supreme Court's action with respect to the motion for
16 leave to file a bill of complaint?

17 A Yes.

18 Q Okay. And to put it bluntly, did this put an end to
19 the -- that initiative of the various motions filed before
20 the Supreme Court that week?

21 A Yes.

22 Q Okay. And I think we talked about this a little bit.
23 There was a dissent by Justice Thomas with respect to the
24 court order?

25 A Thomas and Alito, I believe are joined.

1 Q I -- thank you. I -- so two Justices, Justice Alito
2 and Justice Thomas. What was your understanding of what
3 they found?

4 A That they -- they would have --

5 THE COURT: Well, just to be clear. Wait just a
6 minute. Just to be clear, what was the finding of the
7 majority with regard to this order?

8 THE WITNESS: That there was no standing -- that
9 Texas had no standing to bring this complaint --

10 THE COURT: Okay. And so --

11 THE WITNESS: -- in sum.

12 THE COURT: I'm sorry?

13 THE WITNESS: In sum.

14 THE COURT: Okay. And Mr. Miller was asking you
15 about Justices Alito and Thomas?

16 THE WITNESS: Two Justices, Justice Alito and
17 Justice Thomas would have voted to review the complaint --
18 or to allow it to be filed.

19 BY MR. MILLER:

20 Q Are you familiar with the concept of original
21 jurisdiction in the Supreme Court?

22 MR. CARLING: Objection. Mr. Olsen's not
23 testifying as a legal expert, so it's on relevance and
24 foundation grounds.

25 THE COURT: Sustained.

1 BY MR. MILLER:

2 Q In the motion for bill of complaint, was an argument
3 advanced that the Supreme Court had original jurisdiction?

4 MR. CARLING: Objection, relevance. And I will
5 also point that nowhere in the notice of disciplinary
6 charges is Doctor Eastman charged with anything relating to
7 standing or a basis for bringing this, the Texas v.
8 Pennsylvania case.

9 THE COURT: So what's the relevance of going down
10 this road, Mr. Miller?

11 MR. MILLER: Well, paragraph 37 speaks to this,
12 your Honor. I'm sorry. This is in the NDC.

13 THE COURT: Right. But what does paragraph 37 say
14 about Texas v. Pennsylvania and any alleged misconduct with
15 regard to Doctor Eastman?

16 MR. MILLER: Well, in paragraph 37, this relates
17 to president -- candidate Trump's motion to intervene filed
18 by Doctor Eastman on his behalf. And the allegation is,
19 Respondent expressly adopted the allegations contained in
20 the motion for leave to file a bill of complaint filed by
21 Texas on December 7th. That doesn't seem to exclude any
22 material in the bill of complaint.

23 THE COURT: How does that go to the issue of
24 originalism, or the theory --

25 MR. MILLER: Well --

1 THE COURT: -- of originalism?

2 MR. MILLER: It's not originalism, your Honor.

3 There's original jurisdiction on the Supreme Court for
4 certain actions. So if my question was not clear, that's
5 what I'm getting at. It's not an --

6 THE COURT: Well, it's not -- you asked whether or
7 not Mr. Olsen was familiar with the theory of originalism.
8 That was my understanding.

9 MR. MILLER: No, no, no, your Honor.

10 THE COURT: Okay. Then what is your question?

11 MR. MILLER: Yeah. The question was, are you
12 familiar with a concept original jurisdiction in the United
13 States Supreme Court for certain actions, not originalism.

14 THE COURT: Okay. I thought you said originalism.

15 MR. MILLER: No. We are -- in fact, it's good to
16 clarify.

17 THE COURT: Okay. Original jurisdiction. And
18 that is going to be relevant to what?

19 MR. MILLER: Well, the allegation is that Doctor
20 Eastman was some -- irresponsible in some way for adopting
21 the allegations of the bill of the complaint. It doesn't
22 exclude any actions. If the Bar's going to concede or amend
23 the notice of disciplinary charges to exclude --

24 THE COURT: How does -- what is the connection
25 that you're drawing between original jurisdiction and the

1 allegations in paragraph 37, that Doctor Eastman knew that
2 certain alleged facts in the Trump v. -- I'm sorry, Texas v.
3 Pennsylvania matter were false?

4 MR. MILLER: That's part of it and -- but this is
5 different.

6 THE COURT: What is your --

7 MR. MILLER: Because my -- sorry.

8 THE COURT: -- what is your question regarding
9 original jurisdiction that relates to the allegations in the
10 notice of disciplinary charges?

11 MR. MILLER: The allegation is that Doctor Eastman
12 was irresponsible in adopting wholesale the allegations of
13 the bill of complaint. One of the assertions and the
14 positions that was advanced in the bill of complaint was
15 that he --

16 THE COURT: Okay. I'm going to allow Mr. Olsen to
17 answer your question regarding original jurisdiction. And
18 if doesn't -- I don't see how this is going to be relevant
19 to the allegations in paragraph 37, count two of the notice
20 of disciplinary charges. And if it isn't, then I'm going to
21 strike his testimony on this.

22 MR. MILLER: And if it's not, then because the
23 Bar --

24 THE COURT: If it's not, then I'm going to strike
25 his testimony on this --

1 MR. MILLER: No, I'm -- sorry, your Honor.

2 THE COURT: -- issue of original jurisdiction as
3 it relates to the allegations -- or as you're trying to
4 relate it to these allegations.

5 Go ahead and ask your question.

6 MR. MILLER: Sure.

7 BY MR. MILLER:

8 Q Are you familiar with the -- with the principle of
9 original jurisdiction in the United supreme -- States
10 Supreme Court for certain actions or complaints?

11 A I am.

12 Q Okay. And what is your understanding of original
13 jurisdiction as it related to the Texas v. Pennsylvania
14 case?

15 A Under our Constitution, a dispute between the states is
16 to be filed in the U.S. Supreme Court under original
17 jurisdiction.

18 Q Okay. And was it your belief, Mr. Olsen, that the
19 Texas v. Pennsylvania case as framed was subject to the
20 Supreme Court's original jurisdiction?

21 MR. CARLING: Objection, relevance. Lacks
22 foundation. Calls for an expert conclusion. There's no
23 allegation in the NDC regarding whether the Supreme Court
24 had jurisdiction to hear this case.

25 THE COURT: That's my concern. I don't hear you

1 asking a question that's relevant, because this issue of
2 original jurisdiction -- there is not an issue of
3 jurisdiction as it relates to the allegations against Doctor
4 Eastman. The allegations against Doctor Eastman that you've
5 pointed to relate to a factual dispute, not a jurisdictional
6 issue.

7 (Pause.)

8 MR. MILLER: Okay. Okay.

9 Okay, your Honor. I don't read count two quite as
10 narrowly as your Honor does. It doesn't seem to me to --

11 THE COURT: Direct me to -- I'm asking you.
12 Direct me to the allegation in the notice of disciplinary
13 charges, not even just limited to count two, that goes to
14 the issue of alleged misconduct relating to original
15 jurisdiction.

16 MR. MILLER: It's really -- it -- here's the
17 wording that I'm being careful about here, and that is in
18 his motion -- in Doctor Eastman's motion, Doctor Eastman
19 expressly adopted the allegations contained in the motion
20 for leave to file bill of complaint.

21 We now know that the bill of complaint had to
22 advance a jurisdictional basis to have the case filed before
23 the Supreme Court. They kept the essence of where this
24 dispute went with the Supreme Court.

25 It's not clear to me that Doctor Eastman is not

1 being prosecuted in this case for something having to do
2 with his erroneous adoption of the jurisdictional basis --

3 THE COURT: Then the person to ask about that --
4 this is not the witness to inquire about that issue with.
5 The person to ask about that is your client, Doctor Eastman,
6 and you've already indicated you plan to call him at some
7 point today or else when we resume on the -- during the next
8 session.

9 MR. MILLER: Okay. But that's not how this is --
10 that's why I'm being careful about this, your Honor. That's
11 not how the allegation is framed. Of course I'll ask Doctor
12 Eastman about it, but --

13 THE COURT: Okay. So let's move on. Let me just
14 make sure. I'm going to wrap this up.

15 Mr. Olsen, did you communicate with Doctor Eastman
16 during the period where you were drafting the Texas v.
17 Pennsylvania pleading? Did you communicate with him about
18 the issue of original jurisdiction?

19 THE WITNESS: So I testified when I was up before,
20 I do recall one or two phone calls with Doctor Eastman. I
21 believe they --

22 THE COURT: You didn't testify regarding the issue
23 of the original jurisdiction.

24 THE WITNESS: And I'm saying I don't recall --

25 THE COURT: All right.

1 THE WITNESS: -- is the short.

2 THE COURT: All right. Then let's move on.

3 MR. MILLER: Okay, your Honor.

4 And I'd like to move into evidence Exhibit 1376.

5 THE COURT: Any objection?

6 MR. CARLING: It's -- I believe it's the same as
7 State Bar Exhibit 356, but if Respondent wants to make it a
8 separate exhibit we have no objection.

9 THE COURT: Okay. Exhibit 10 -- Exhibit 1376 is
10 received into evidence.

11 MR. MILLER: Good. THE COURT: You think it's the
12 same as which other exhibit?

13 MR. CARLING: State Bar 356.

14 MR. MILLER: Your Honor, at a break I'll take a
15 look at that, and if it's similar -- I don't know if 356 is
16 in evidence.

17 THE COURT: Okay. We -- yes. We don't take the
18 time to look at it now, but --

19 MR. MILLER: Yeah, I don't -- no. No.

20 THE COURT: -- we can all check during the break.

21 MR. MILLER: Thank you, your Honor.

22 THE COURT: Uh-huh.

23 MR. MILLER: I'll move on.

24 BY MR. MILLER:

25 Q Now we started --

1 MR. MILLER: You can take that down, Mr.
2 Benveniste.

3 BY MR. MILLER:

4 Q Mr. Olsen, we started last week to discuss oppositions
5 that were filed in response to the various motions filed by
6 yourself and the other lawyers. What was your role with
7 respect to the oppositions, Mr. Olsen? Let's start with
8 that.

9 A My role was drafting the responses to those
10 oppositions.

11 Q Okay. And were those responses filed in the form of
12 reply to the -- for defendant states' oppositions?

13 A Yes.

14 Q Okay. And did each of the states file an opposition to
15 the various motions --

16 A Yes.

17 Q -- filed on behalf of the State of Texas?

18 A Yes.

19 Q And were you also the primary draft person, Mr. Olsen,
20 with respect to the replies that were filed in response to
21 the oppositions?

22 A I was one of them.

23 Q Okay. And who else would have worked on replies to the
24 oppositions amongst the attorneys that you have identified
25 that were part of this initiative?

1 A Well, certainly Larry and I took the -- I think as to
2 my recollection, the lion's share of the work. And then
3 were circulating drafts.

4 Q And was there a similar process in terms of sharing
5 drafts of the reply between the various lawyers that were
6 working on this initiative?

7 A That's my general recollection.

8 Q Okay. I'm going to have Mr. Benveniste pull on the
9 screen for you, Mr. Olsen, Exhibit 1377.

10 MR. MILLER: And for the record, this is a new
11 exhibit, and we had provided it both by e-mail and in hard
12 copy to Mr. Carling and his team this morning. I have
13 copies --

14 THE COURT: Do you want to give a copy to the
15 Court?

16 MR. MILLER: I have a copy for the Court and a
17 copy for Ms. Alvarez.

18 THE COURT: For the record, would you identify
19 Exhibit 1377?

20 MR. MILLER: I will.

21 THE COURT: Okay.

22 THE WITNESS: Do you want me to identify it, your
23 Honor?

24 THE COURT: No, no, no, no.

25 MR. MILLER: I can take it, your Honor.

1 THE COURT: What?

2 MR. MILLER: For the record, Exhibit 1377 is the
3 reply in support of the motion for leave to file the bill of
4 complaint.

5 That's on the screen, Mr. Olsen, but for the
6 record here, let me identify what it is that we're inquiring
7 about.

8 THE WITNESS: I'm sorry. Did you want me to
9 identify it?

10 MR. MILLER: No. No, no, no. I -- we've got it.
11 I'm just going to take a second here while we get that
12 paperwork.

13 Ms. Alvarez and your Honor, you should also have a
14 copy of Exhibit 1378 in there, which will (indiscernible)
15 next in line.

16 THE COURT: Yes. Thank you. I do.

17 MR. MILLER: And then that was provided to Mr.
18 Carling and his team. When you're ready I'll take those one
19 at a time with Mr. Olsen.

20 THE COURT: Okay. You can go ahead.

21 BY MR. MILLER:

22 Q All right, Mr. Olsen. We've pulled a copy of the
23 Exhibit 1377 on the screen for you. Mr. Olsen, can you tell
24 us, does this look familiar to you?

25 A Yes.

1 Q And is this a copy of -- or tell us what it is.

2 A Well, the cover page for the response briefs to the
3 oppositions for our motion to -- for leave to file the bill
4 of complaint by the four defendant states.

5 Q Okay. And I've got another exhibit coming, 1378, that
6 deals with the motion for a preliminary injunction reply.
7 So I'm making that distinction now because we have different
8 motions that we're dealing with.

9 1377, that just is the reply relative to the filing for
10 leave to file a bill of complaint, do I have that right?

11 A Yes.

12 Q Okay. And you appeared as counsel of record on the
13 reply?

14 A Yes.

15 Q Okay. Let's go to page --

16 THE COURT: Just a minute. Which reply are you
17 referring to?

18 MR. MILLER: Well, I don't -- right now we have on
19 the screen --

20 THE COURT: 1377?

21 MR. MILLER: -- 1377. So, thank you.

22 THE COURT: Okay.

23 MR. MILLER: I'll -- it's with respect to 1377.

24 THE COURT: All righty. Thank you.

25 MR. MILLER: Uh-huh.

1 BY MR. MILLER:

2 Q So let's go to page three, so that we can confirm, Mr.
3 Olsen. And do you see where your name is listed there on
4 page three of Exhibit 1377, the reply to the bill of
5 complaint opposition?

6 A I do.

7 Q Okay. And is that your correct title, that you were
8 special counsel to the Attorney General of Texas?

9 A Yes.

10 Q Okay. And the other lawyers that are listed on there,
11 we don't need to go through them, but did they all to your
12 understanding have a role with respect the creation and
13 filing of the reply?

14 A Yes.

15 Q Okay. And if you know or recall, Mr. Olsen, were the
16 other lawyers that you mentioned that the attorneys were
17 consulting with, Mr. Sekulow, Mr. Farris and Mr. Starr, for
18 example, were they consulted with respect to the preparation
19 and finalization of the reply with respect to the bill of
20 complaint?

21 A I don't recall. I don't -- I just don't recall. They
22 have been, they may not. I just --

23 Q And we talked a little bit about Mr. Cicchetti. I
24 think I've been calling him Mr. Cicchetti, but I heard you
25 say Cicchetti, so I'm going to use Cicchetti.

1 A I think I've used Cicchetti, but I --

2 Q Okay. All right. So, one of those variations. But we
3 talked a little bit about Mr. Cicchetti's declaration that
4 accompanied the materials on the bill of complaint. And did
5 Mr. Cicchetti provide a supplemental declaration with
6 respect to the reply to the bill of complaint?

7 A He did.

8 Q And why is it that Mr. Cicchetti was still involved
9 with respect to the motion for the leave to file a bill of
10 complaint?

11 A Because several of the states made -- in their
12 oppositions made statements regarding his declaration that
13 was filed with the bill of complaint. And he was responding
14 to some inaccuracies in those opposition briefs.

15 Q Okay. And did you work with Mr. Cicchetti with respect
16 to dealing with the oppositions that the state had filed in
17 preparation of a responsive reply?

18 A I did.

19 Q Were there others that worked with Cicchetti on that --
20 on that task?

21 A I was the primary person.

22 Q Was Mr. Sketti -- Cicchetti provided with copies of the
23 oppositions by the states and -- with respect to the bill of
24 complaint?

25 A I believe he was, yes.

1 Q Okay. Do you recall, Mr. Olsen, whether or not there
2 was an opposing expert declaration attached by any of the
3 states in support of their oppositions?

4 A I don't recall there being one.

5 Q Okay.

6 A I -- as we sit here today.

7 Q Okay. I'm sorry. I can't recall your exact wording.
8 I think when I asked you why it was that Mr. Cicchetti was
9 still involved, you said because there was some mention in
10 the opposition papers about Mr. Cicchetti's declaration. Do
11 I have your testimony right on that?

12 A Yes.

13 Q Okay. And if I could have you -- well, I'll have Mr.
14 Benveniste turn to page 13 -- Exhibit 1377, page 31. And do
15 you recognize page 31, Mr. Olsen?

16 A Yes.

17 Q And can you tell us what this is -- or at least this
18 one page, and we'll go from there.

19 A Well, it's the first page related to the supplemental
20 declaration of Mr. Cicchetti.

21 Q And did you approve the language in Mr. Cicchetti's
22 supplemental declaration, the one that we're looking at
23 here?

24 A Yes.

25 Q Did the receipt of the oppositions to the motion for

1 leave to file a bill of complaint, as it related to Mr.
2 Cicchetti's declaration, did that give you any concern about
3 the reliability of the information set forth in his
4 declaration?

5 A None whatsoever.

6 MR. MILLER: Your Honor, I'd like to move Exhibit
7 1377 into evidence.

8 THE COURT: Any objection?

9 MR. CARLING: Well, we just received it this
10 morning, and I'm trying to understand whether it's complete
11 or not, because it appears that from page 24 to page 31
12 of the exhibit there's a significant gap. Page 30 appears
13 to be page 24, and it's -- of the filing. And then page 31
14 of the exhibit to be page 152a. So --

15 THE COURT: I see.

16 MR. CARLING: But --

17 THE COURT: All right. I'll take the request for
18 admission of Exhibit 1377 under submission until we figure
19 out the --

20 MR. CARLING: I also believe, just for the record,
21 so this doesn't become unclear later, that Mr. Cicchetti's
22 second declaration is also in Exhibit 1034. So, I think
23 Respondent has already attached a copy of Cicchetti's
24 supplemental declaration, which appears in this exhibit, as
25 his Exhibit 1034. But if we could just --

1 THE COURT: 1034 was identified on June the 20th,
2 which means there's already been some testimony about it
3 apparently. So, at least as Exhibit 1377 includes the
4 supplemental declaration, I would suggest that we use 1034
5 to keep the record clear.

6 MR. MILLER: Well, may I respond, your Honor?

7 THE COURT: Yes.

8 MR. MILLER: 1034 I know was identified. It's not
9 in evidence. I'm going to be pulling it up now.

10 THE COURT: Well, neither is 1377.

11 MR. MILLER: I understand. And so 1034 is just a
12 copy of the Cicchetti declaration. My intent would be to
13 use 1377 because it contains the reply and the attached
14 Cicchetti declaration. I can certainly say that 1034
15 Cicchetti declaration is the exact same as the declaration
16 that's part of 1377.

17 So, to have a more complete record and everything
18 in one place, it would be my intention to focus on 1377. If
19 we need to withdraw 1034, then we will do so, but --

20 THE COURT: Well, my point is that I'm not going
21 to rule on the admissibility of 1377 at this point because
22 there does appear to be a gap. And to the extent that it is
23 supposed to be a authentic or true and correct copy of the
24 document that you have identified it to be, then that gap of
25 over 100 and -- what would be, seems to be 130 pages or so

1 to be explained. So, I'm going to take your request for
2 admissibility of 1377 under submission until that's sorted
3 out.

4 MR. CARLING: And, your Honor, while we're on this
5 topic, we've already the witnesses questions about Exhibit
6 1034. So, I don't think that should be withdrawn because we
7 have testimony about that exhibit.

8 MR. MILLER: That's fair. If there were questions
9 on it, then we'll leave the record as-is, but it's not in
10 evidence. And again, it would be my intention to use 1377
11 as a complete copy. I know the Court's taken it under
12 consideration, so --

13 THE COURT: Okay. It's your exhibit, so you
14 should figure out whether or not it's a complete copy. I
15 note that it does seem to skip from -- if you look at the
16 numbered pages at the top, from page 24 to page 152a. And
17 then it goes through 178. So, at some point you can take a
18 look at that, and then we'll come back to it.

19 Okay. So let's move on.

20 BY MR. MILLER:

21 Q Let me just briefly inquire of Mr. Olsen. Mr. Olsen,
22 do you know why page 31 of Exhibit 1377 has at the top the
23 number 152a?

24 A I believe that's the reference to the appendix.

25 Q I'm sorry. I missed the last word. To the?

1 A Appendix.

2 Q "Appendix."

3 THE COURT: So that means the other pages in this
4 exhibit that are numbered at the top sequentially, are
5 referring to the appendix as well? In other words, if you
6 look from page -- if you go back, Mr. Benveniste, maybe you
7 can show him what I'm referring to.

8 If you look at -- from the table of contents on --
9 actually from the page seven of 1377, from there on, if you
10 go to the next page, page eight in the exhibit at the top is
11 numbered "two." And it continues on through, sequentially
12 through page 24. So I'm not sure that that refers to the
13 appendix.

14 Either way, we'll sort this out. We're taking up
15 too much time to deal with this. Let's move on --

16 MR. MILLER: You're right, your Honor.

17 THE COURT: -- and we'll come back to it.

18 MR. MILLER: I think I have -- I'm sorry, your
19 Honor. I didn't mean to interrupt. I think I have an
20 answer. It's not -- there's no gap in there. It's the
21 continuation of Cicchetti of the declaration that was filed
22 as part of the original motion. And so the numbering is
23 now --

24 THE COURT: This is a supplemental declaration.

25 MR. MILLER: Yes. And --

1 THE COURT: All right. Let's keep going.

2 MR. MILLER: Anyway.

3 THE COURT: We'll come back to this.

4 MR. MILLER: And I think that's why they did it,
5 if that's helpful. But we'll perhaps go back and take a
6 look at the original motion to make sure that makes sense.

7 THE COURT: Yes. Okay. Thank you.

8 MR. MILLER: Thank you, your Honor. We'll clear
9 it up.

10 BY MR. MILLER:

11 Q All right.

12 A Just to be clear, if I can add, the "a," I believe is a
13 reference to the appendix.

14 Q Okay.

15 A That's the convention you use.

16 Q Right. Well, since you offer that. Thank you, Mr.
17 Olsen. Was this -- the page we're looking at right now, was
18 this a continuation in terms of the numbering of the
19 declaration filed by Mr. Cicchetti as part of the moving
20 papers?

21 A Yes.

22 Q Okay. All right.

23 A I believe that's correct.

24 Q Okay. Thank you. All right. So let's move on. Let's
25 go to Exhibit 1378.

1 MR. MILLER: Mr. Benveniste, if you could pull up
2 the first page of that, I'd like to inquire.

3 BY MR. MILLER:

4 Q All right. MR. Olsen, I'll pulled and have on the
5 screen for you what we've marked as Exhibit 1378. This is a
6 reply -- I'll summarize it. It's a reply in support of the
7 motion for preliminary injunction. Tell me if this document
8 looks familiar to you.

9 A In a general sense, yes.

10 Q Okay. And did you participate, Mr. Olsen, in the
11 preparation and finalization of the reply with respect to
12 the preliminary injunction?

13 A I don't have a specific recollection, but I believe
14 generally, yes.

15 Q Okay. Can I ask a structure question? Was there only
16 one reply that responded to all of the state oppositions
17 with respect to the various motions we're talking about?

18 A Yes.

19 Q All right. Thank you. And on 1378 -- well, let's go
20 to page 17 of 1378. And I'm pulling that up because this is
21 sort of what qualifies as a signature page in Supreme Court.
22 Is your -- appear as counsel of record on this reply, Mr.
23 Olsen?

24 A Yes.

25 Q Okay.

1 MR. MILLER: Your Honor, I'd like to move Exhibit
2 1378 into evidence.

3 THE COURT: Any objection?

4 MR. CARLING: No objection. I'll note for the
5 record we just received these today. But this is further
6 briefing in a case related to exhibits that we already have,
7 and I'd like to ask Mr. Olsen some questions about these
8 exhibits. So, we won't object to these exhibits coming in,
9 even though we just received them today for the first time.

10 THE COURT: Okay. Exhibit 1378 is received into
11 evidence.

12 BY MR. MILLER:

13 Q Now you mentioned --

14 MR. MILLER: You can take that down, Mr.
15 Benveniste.

16 BY MR. MILLER:

17 Q Mr. Olsen, that you had -- you had a recollection of
18 one or two conversations with Doctor Eastman in this time
19 period, and we'll take it as leading up to the Supreme Court
20 order on December 11, 2020. Do I have that right?

21 A Yes.

22 Q Okay. And at some point did you speak with Doctor
23 Eastman about the preparation and filing of a motion to
24 intervene?

25 A I have a general recollection of -- I believe so, yes.

1 Q Is there somebody else on the group of lawyers that
2 were working on these various motions, these initiatives,
3 that would have had additional conversation with Doctor
4 Eastman around a motion to intervene?

5 A I don't know about additional conversations, but I
6 believe Larry Joseph participated in those discussions.
7 Mark -- former Chief Justice Mark Martin may have, but I'm
8 not sure. And there may have been others participating on
9 those calls. But the calls that I recollect with Doctor
10 Eastman, I was not alone. Larry, I know that -- I recall
11 Larry being -- at least participating on those calls, and
12 there may have been others.

13 Q Okay.

14 MR. CARLING: Objection, move to strike just the
15 portions that where Mr. Olsen was speculating and said there
16 may have been. He didn't know.

17 THE COURT: Okay. Sustained.

18 BY MR. MILLER:

19 Q And at least in terms of -- well, can I at least
20 understand the structure here. Was it the lawyers that
21 you've identified so far as being part of this initiative,
22 drafting and sharing drafts and collaborating on the various
23 filings in this time period, was it that group discussing
24 with Doctor Eastman something about these motions?

25 A So, discussions with Doctor Eastman were not a primary

1 focus. We were trying to get this work done, so it was more
2 tangential. I don't have really specific recollections of
3 the details of any conversations with Doctor Eastman.

4 Q Okay. At some point, Mr. Olsen, did you learn that
5 mister -- that Doctor Eastman had filed a motion to
6 intervene on behalf of candidate Trump?

7 A Yes.

8 Q Let's put up on the screen Exhibit 262. This is the
9 document that the record should reflect is in evidence. And
10 I'm just going to show you this briefly, Mr. Olsen. Do you
11 recognize Exhibit 262? This is a motion to intervene?

12 A I recall generally seeing this, yes.

13 Q And, Mr. Olsen, were you personally involved in any of
14 the drafting leading up to the filing of Exhibit 262?

15 A I don't believe so.

16 Q Okay. Were you aware from any source that the motion
17 to intervene was to be filed that week?

18 A I recall discussions about filing that motion. So, I
19 would say, yes.

20 Q I don't know that I've asked you this yet, Mr. Olsen,
21 but how did it turn out Texas was the sole plaintiff in the
22 various motions around filing the bill of complaint, as
23 opposed to some other plaintiff?

24 A Well, in my opinion Texas AG Paxton had the courage to
25 step forward when he recognized that something was seriously

1 wrong with the election.

2 THE COURT: What was the mean, Mr. Olsen? Does
3 that mean that you reached out to Mr. Paxton, or Mr. Paxton
4 reached out to you, specifically, what was that mean? And
5 you're offering an opinion --

6 THE WITNESS: So, I --

7 THE COURT: -- there about the facts.

8 THE WITNESS: Well, I -- well, your Honor, I
9 believe the -- if I answer the question correctly, is why it
10 was Texas that stepped forward and not somebody else.

11 THE COURT: No, the question was, why was Texas
12 the sole plaintiff? And so, that would mean that your
13 testimony should relate to the reasons. Not the overall
14 general reasons, but the factual reasons for that being the
15 case.

16 THE WITNESS: Well, there -- I do recollect
17 discussions with several AG's, and the only one that stepped
18 forward was Texas AG Paxton.

19 BY MR. MILLER:

20 Q Okay.

21 A And Paxton had -- of course after he filed, we had 18
22 states, including six of them it moved to intervene, but
23 filing supporting briefs or seek to file an amicus.

24 Q Okay. Well, we'll get to that in a few minutes or so.
25 Let me -- just to close this out, Mr. Olsen, let me ask you

1 this. Were other plaintiffs in the Texas v.
2 Pennsylvania case considered by you, Mr. Joseph or the team?

3 MR. CARLING: Well, I would object and ask that
4 Mr. Olsen's answer be limited to what he knows and what he
5 considered.

6 BY MR. MILLER:

7 Q It always is only based on your personal knowledge, Mr.
8 Olsen. So, to the extent that you have information about
9 others.

10 THE COURT: What is the relevance of whether or
11 not other states were considered?

12 MR. MILLER: Well, it's material that I'll
13 probably go into with Doctor Eastman with respect to the
14 discussions that were being had with the various
15 participants of this -- this effort. It goes to how the
16 case was -- how the Texas v. Pennsylvania was alleged --
17 structured in its final form.

18 THE COURT: That has nothing to do with the
19 allegations of the notice of disciplinary charges, so let's
20 move on.

21 MR. MILLER: Okay. All right.

22 BY MR. MILLER:

23 Q Okay. Well, I think we touched upon this already, Mr.
24 Olsen, so let's go into it now. Were there amicus briefs
25 filed on behalf of -- well, let me ask it more generally.

1 Were amicus briefs filed in the Texas v. Pennsylvania
2 action?

3 MR. CARLING: Objection, relevance.

4 THE COURT: Sustained.

5 MR. MILLER: Well, I would say it would be highly
6 relevant because the allegation is that Doctor Eastman was
7 -- somehow acted inappropriately in adopting the --

8 THE COURT: The facts.

9 MR. MILLER: "The facts" and the legal basis. The
10 facts and the legal basis. And so to the extent that
11 there's other parties, attorneys general or legislators --

12 THE COURT: Okay. The allegation is specifically
13 that Respondent knew that the factual allegations in the
14 motion filed by Texas were false and misleading. So the
15 allegation goes to the factual allegation. So, let's move
16 on. You've asked for more time. We're not going to waste
17 the time that we have.

18 MR. MILLER: Well, I don't think I'm wasting the
19 time, your Honor. I think this is --

20 THE COURT: It is. It is. This is not relevant.
21 Let's move on.

22 MR. MILLER: May I have a moment, your Honor --

23 THE COURT: Sure.

24 MR. MILLER: -- to just at count number two.
25 Because I don't think it's -- I didn't read it to be so

1 limited, but bear with me while I look at it.

2 Well, I'd refer the Court back to paragraph 37.
3 I've already made this argument, so I'll move on from there.
4 But I would like to address the relevancy of the fact that
5 other proponents of the action, the amicus briefs that were
6 filed, would have bearing with respect to the allegation
7 that Doctor Eastman in some way acting inappropriately in
8 adopting the factual allegations in the Texas v.
9 Pennsylvania case.

10 THE COURT: You know, this could be enlarged to
11 address what each and every single state -- how each and
12 every single state responded. How each and every single
13 state addressed the amicus brief. Any amicus briefs that
14 may have been filed are not relevant. And the road that
15 you're going down is a bottomless pit and it's not relevant.
16 This area of examination is not relevant. So let's move on.

17 MR. MILLER: Well, I'm not covering every other
18 state, your Honor, and I'm not covering any other --

19 THE COURT: I don't know what you're covering.

20 MR. MILLER: -- and --

21 THE COURT: Because it's very specific that these
22 allegations go to the allegation that Doctor Eastman engaged
23 in some form of misconduct by intervening and adopting the
24 factual allegations in -- not intervening, but adopting the
25 factual allegations in Texas v. Pennsylvania, which he knew

1 to be false. That's the allegation.

2 MR. MILLER: And --

3 THE COURT: So we don't need to know what every
4 other state, what every other entity may have -- how they
5 may have responded to Texas v. Pennsylvania.

6 MR. MILLER: Well, it's not every other entity,
7 it's those that filed amicus briefs, and their positions are
8 outlined in the briefs. And to the extent that the amicus
9 briefs, either directly or indirectly, were adopting the
10 same allegations, the bona fides of the Texas v.
11 Pennsylvania action, I think that would be highly relevant.

12 THE COURT: Okay. You and I disagree.

13 MR. MILLER: Your Honor is ultimately --

14 THE COURT: You and I disagree, so let's move on.

15 (Discussion held at counsel table.)

16 MR. MILLER: Okay.

17 DR. EASTMAN: And we'd already mentioned that,
18 so --

19 UNIDENTIFIED SPEAKER: Ask him about it.

20 DR. EASTMAN: is this the motion that you're
21 meaning by Missouri v. six dates?

22 MR. MILLER: We'll get to that in a minute. Okay.

23 BY MR. MILLER:

24 Q All right. Well, let me pursue it this way, Mr. Olsen.
25 Did -- were you aware of efforts by any state to intervene

1 in the Texas v. Pennsylvania action?

2 MR. CARLING: Same relevance objection.

3 THE COURT: Sustained.

4 MR. MILLER: Well, as an offer of proof, your
5 Honor, I would put into evidence in one of the exhibits,
6 that's the Missouri and other states amicus brief, that they
7 made efforts to intervene in the Texas v. Pennsylvania case,
8 the same efforts that Doctor Eastman made. So --

9 THE COURT: The issue with regard to the
10 allegation relating to --

11 MR. MILLER: Okay.

12 THE COURT: -- Doctor Eastman and Texas v.
13 Pennsylvania, is whether or not he knew that the factual
14 allegations in the motions filed by Texas were false.

15 So, getting into an inquiry about what other
16 states contended with regard to Texas v. Pennsylvania, and
17 those -- any factual allegations that they may have been
18 aware of is not relevant. What's relevant here is Doctor
19 Eastman.

20 MR. MILLER: If those other states --

21 THE COURT: And his knowledge and conduct --

22 MR. MILLER: Sorry, your Honor. I thought you
23 were done. Go ahead.

24 THE COURT: And his knowledge and conduct. So
25 let's move on.

1 MR. MILLER: In part, his --

2 THE COURT: Let's move on.

3 DR. EASTMAN: Read this as part of the record.

4 Read that as part of the record.

5 MR. MILLER: Okay.

6 Your Honor, here's a further offer of proof that
7 Missouri brief and several that were involved as part of
8 that action, that they specifically said:

9 "The intervening state plaintiffs
10 adopt by reference and join in the bill
11 of complaint submitted by the plaintiff
12 states of Texas as modified by President
13 Trump's bill of complaint."

14 So, there's -- they're talking about the same
15 subject matter, the same actions of adopting that complaint.
16 I think, and I would argue, that it's highly relevant to
17 this Court that other states did so, because that would
18 bearing on whether Doctor Eastman's actions were
19 irresponsible or compliant.

20 And to -- so I'd like the record to reflect those
21 states that had adopted the complaint in the same way that
22 Doctor Eastman did on behalf of candidate Trump in his
23 motion for intervention, because that's the essence of what
24 is being charged against him with respect to count number
25 two.

1 So, I strongly believe that those other actions by
2 other states or attorneys general or whoever those actors
3 were, by undertaking the same action in adopting the motion
4 for leave on the bill of complaint, would have direct
5 bearing on Doctor Eastman's actions, to the extent that they
6 were supported or repeated by other parties, attorneys,
7 attorney generals, state --

8 THE COURT: What had bearing on Doctor Eastman's
9 actions?

10 MR. MILLER: The fact that they did the -- they
11 took the exact same action as Doctor Eastman did on behalf
12 of his --

13 THE COURT: And when did they take that action?

14 MR. MILLER: It's in --

15 THE COURT: They intervened. You're saying that
16 they intervened. When did they intervene? You're saying
17 that that happened, and that Doctor Eastman in some way
18 benefitted from learning about the positions that they took,
19 these other entities, other states took?

20 MR. MILLER: Not benefitted. The argument was not
21 benefitted. It may be that Doctor --

22 THE COURT: Okay. Are you finished making your
23 record?

24 MR. MILLER: No. So it may be that Doctor Eastman
25 looked at that evidence and said, look, there's other people

1 that are adopting the complaint, and that I think that that
2 has some bearing on --

3 THE COURT: And who is the person to inquire with
4 about that? Who's the person to -- whose testimony do you
5 need in order to address that? It would be your client,
6 Doctor Eastman's testimony.

7 MR. MILLER: And --

8 THE COURT: Let's move on.

9 MR. MILLER: -- and the record that that was done.
10 What was done on the other states. Now is the opportunity
11 to do it because I have --

12 THE COURT: Try to bring that in with Doctor
13 Eastman. This is not relevant.

14 MR. MILLER: I'd like to inquire of Mr. Olsen
15 while I have him, as to the initiatives taken by the various
16 interveners -- the various interveners and the various parties
17 to those amicus briefs.

18 THE COURT: Okay. For the last time --

19 MR. MILLER: I would think that the Court would be
20 very interested in the fact that that was done.

21 THE COURT: The Court would be interested if it
22 was relevant, but it is not. So let's move on.

23 MR. MILLER: Well, it would be my plan in putting
24 through Mr. Olsen the various amicus briefs.

25 THE COURT: I don't want to know your plan, I want

1 you move on to your next question.

2 MR. MILLER: Well, I just was --

3 THE COURT: And, actually, I should have given Mr.
4 Carling an opportunity to be heard on the issue.

5 MR. MILLER: Well, I was only saying that, your
6 Honor, so that you knew how I would approach if I had been
7 allowed to do so. So, I think the record is clear, but I
8 have -- I think there's seven --

9 THE COURT: I thought that's what you've been
10 addressing the last 15 minutes or so?

11 MR. MILLER: I feel it's really important to make
12 a record about this point, your Honor. We disagree on it,
13 and I get it.

14 THE COURT: You've made it.

15 MR. MILLER: Okay. But if the Court would allow
16 this line of examination, I would want to want to move into
17 evidence and inquire of Mr. Olsen the amicus briefs that
18 talk about intervention, that talk about adopting the same
19 complaint that mister -- Doctor Eastman is being charged
20 with adopting irresponsibly in some way. I think that has
21 great bearing. But I understand the Court's position. I
22 think we're clear and I'm -- I think I have a record on
23 this. I just wanted you to know -- the Court to know what I
24 would do if I were allowed to pursue this.

25 THE COURT: Okay. And I don't know that I gave

1 Mr. Carling an opportunity to be heard on this, but you may
2 be heard as well.

3 MR. CARLING: Well, I don't know what page numbers
4 of what exhibit Mr. Miller is referring to, so it's
5 difficult to say whether statements are relevant or not.
6 But both Doctor Eastman and Mr. Olsen were involved in this
7 proceeding. I don't see why Doctor Eastman couldn't answer
8 questions about this when he's testifying. And I don't know
9 why Mr. Olsen is the right witness to be asking about these
10 questions.

11 THE COURT: Okay.

12 MR. MILLER: It may just be foundational --

13 THE COURT: Let's move on.

14 MR. MILLER: Sorry, your Honor. It may just be
15 foundational with Mr. Olsen, but he was the --

16 THE COURT: It may be a lot of things. Right now,
17 it's an undue consumption of time that making me rethink the
18 additional days that I was inclined to give the parties. So
19 let's move on.

20 (Pause.)

21 MR. MILLER: Got it. Okay. All right. I got it.
22 Okay. All right.

23 BY MR. MILLER:

24 Q All right, Mr. Olsen, we're going to change pathways
25 here.

1 MR. MILLER: You can take down this is exhibit,
2 Mr. Benveniste.

3 BY MR. MILLER:

4 Q And let's go back to exhibit -- the complaint -- the
5 bill of complaint, Exhibit 260. And I think we were
6 discussing Pennsylvania. And so now I'm going to move on to
7 the next state, Mr. Olsen.

8 MR. MILLER: So, this is on page 27, Mr.
9 Benveniste, of Exhibit 260. All right.

10 THE COURT: I'm sorry. Which exhibit is this
11 again?

12 MR. MILLER: It's 260, your Honor. It's in
13 evidence.

14 THE COURT: 260?

15 MR. MILLER: 260.

16 THE COURT: Okay. Thank you.

17 MR. MILLER: Thank you.

18 BY MR. MILLER:

19 Q All right. So we've got a section here in the bill of
20 complaint that relates to the State of Georgia. And just go
21 down a couple of paragraphs to paragraph 67. Is paragraph
22 67, is that where you discussed the Georgia state election
23 statutes that were at issue in the 2020 election?

24 A Were we began discussing them, yes.

25 Q Okay. And if I have your testimony in mind, Mr. Olsen,

1 these were the state election statutes which you personally
2 did research to locate and include into the bill of
3 complaint, do I have that right?

4 A Yes.

5 Q Now, at paragraph -- starting at paragraph 67, the one
6 Georgia state election statute that's discussed there deals
7 with absentee ballots. Can you describe for the Court what
8 it is that you were advancing in these paragraphs with
9 respect to the State of Georgia and absentee ballots?

10 A That relates to the curing process for ballots is my
11 recollection, and when that could begin.

12 Q Okay. What was the issue with respect to when curing
13 ballots -- when the process of curing ballots could begin at
14 it relates to Georgia of course?

15 A I believe under the statute it prohibited the opening
16 of ballots until after the polls open on Election Day --

17 Q Okay.

18 A -- as stated.

19 Q And in your research and work with respect to the State
20 of Georgia on this issue, what evidence did you locate --

21 A I may be -- I may be wrong about this. So, it may not
22 relate to the curing. It may relate to the counting of
23 ballots. So, I want to withdraw my response. I believe
24 that this is relating to understanding what the tally was
25 prior to Election Day.

1 Q Well, let's get you on the same page, Mr. Olsen, so you
2 can testify accurately here. So let's go to the next page,
3 page 28. We can focus on paragraph 68 and 69. And we'll
4 blow those up for you.

5 So I think you may have been correct --

6 A No, maybe I was right.

7 Q -- initially.

8 A Okay. Yeah.

9 Q Okay. So we don't to go through it again, but let me
10 just make sure we're -- since we have a withdrawn response
11 earlier, that you and I are on the same page in terms of you
12 determined to be the evidence of some violation with respect
13 to the codes that you put at issue in these paragraphs.

14 So, what did you find with respect to the violation
15 under Georgia law as it related to the time to cure absentee
16 ballots?

17 A Well, it was our belief that the curing process could
18 begin after the ballots were opened. The statute required
19 them to be opened only on Election Day after the polls
20 opened. That process began, I believe, three weeks earlier,
21 and that that was a violation of the statute by a non-
22 legislative actor.

23 Q Okay. And I think we'd covered this already. There's
24 -- I think we called it different things, but in paragraph
25 70 there's a number of allegations there with respect to the

1 settlement or the consent decree entered into earlier in
2 2020 by Secretary Raffensperger. Do you recall that
3 testimony in your earlier examination?

4 A Generally, yes.

5 Q Okay. All right. Let's go to paragraph 73, because
6 that captures an important concept here that I want to
7 examine you and --- so 73 talks about the change that had
8 been made under Georgia law with respect to the consent
9 decree. Tell us what you were describing here in paragraph
10 73 in terms of the consequence of that.

11 A Well, they -- the consequence of the consent decree
12 which made the signature verification process much more
13 onerous in that it required three clerks I believe to review
14 a signature to -- required to reject before it would be
15 rejected. Where the statute simply referred to one clerk or
16 "a clerk." And that particularly given the fact that mail-
17 in votes in 2020 were extraordinarily more than in previous
18 elections, created a situation where signatures just weren't
19 being reviewed because of an onerous process.

20 Q Okay. And I think that's described later on, so let's
21 go pretty quickly to paragraph 75 and 76. These --

22 THE COURT: Just -- just a second. Let me make
23 sure that I'm clear on your testimony --

24 MR. MILLER: Sure.

25 THE COURT: -- Mr. Olsen. Is it your testimony

1 that because there was a change in the number of clerks
2 required to review the absentee ballot signature, that that
3 in some way benefitted vice president -- then-Vice President
4 Biden?

5 THE WITNESS: It was the number of clerks
6 necessary to review and to reject a signature as not
7 matching. And, yes, that benefitted vice president -- then-
8 Vice President Biden. Because mail-in ballots with which
9 this applied were proportionally far higher for Democrats
10 than for Republicans.

11 And so with respect to signature verification, I
12 believe as stated later on, in the 2016 presidential
13 election, the rejection rate was approximately six-percent,
14 give or take, I believe. And then in 2020 when absentee
15 ballots increased, maybe almost double for Georgia, the
16 signature rejection rate went down by 17 times, to a
17 minuscule rejection rate.

18 And the allegation was that that was due to the
19 change in signature verification under the consent decree
20 that made it far more difficult -- it became a bottleneck to
21 review signatures. And so signatures were just not being
22 rejected or looked at, they were just being passed through,
23 ballots with signatures that did not match.

24 THE COURT: Regardless of political party
25 affiliation?

1 THE WITNESS: That would be correct, your Honor.
2 Yes. But because mail-in voting, particularly in absentee
3 voting for Democrats in Georgia, they were --
4 disproportionately favor Democrats in terms of the numbers
5 of mail-in ballots. So just the math would benefit former
6 Vice President Biden under that analysis.

7 THE COURT: How did the use of mail-in ballots
8 disproportionately favor Democrats?

9 THE WITNESS: So if you're rejecting less ballots
10 regardless --

11 THE COURT: No, I'm not asking about the
12 rejection, I'm asking the process of utilizing mail-in
13 ballots. How did that benefit Democrats? Mail-in ballots
14 were not just sent to Democrats, right?

15 THE WITNESS: That's correct. But Republican
16 voters, and the data supported this, traditionally voted
17 mail-in less than Democrat voters.

18 THE COURT: What's the basis or that statement
19 regarding what this traditional --

20 THE WITNESS: There was various public reports and
21 public data.

22 THE COURT: Such as?

23 THE WITNESS: I don't recall specifically. It may
24 be in the complaint, but I did research on this issue. I
25 believe I also spoke with Mr. Cicchetti at least on some

1 states on this issue. And there was a basis, a factual
2 basis in public reports and in data provided by, for
3 example, I believe Pennsylvania, and some of their post-
4 election reports reflected the same, that Democrat voters
5 tended to vote disproportionately higher than Republicans by
6 mail.

7 THE COURT: You're referring to Pennsylvania?

8 THE WITNESS: Well, I'm just using that by way of
9 example. As -- my recollection as we're sitting here, I
10 believe that there were Pennsylvania Secretary of State
11 records that show the proportion of mail-in ballots --

12 THE COURT: Okay. But just to be clear, because I
13 want to make sure that I'm clear about what you're stating
14 in this -- in this filing.

15 This filing, paragraph 73, refers to Georgia,
16 right?

17 THE WITNESS: That's correct, your Honor.

18 THE COURT: And absentee or mail-in ballots in
19 Georgia. So what was the basis of your -- the factual basis
20 for that statement?

21 THE WITNESS: So, the factual basis as I recollect
22 sitting here today, is public reports and data that Mr.
23 Cicchetti had.

24 THE COURT: Okay. And just to be clear, which
25 public reports are you referring to regarding --

1 THE WITNESS: These would be --

2 THE COURT: -- regarding Georgia? Regarding
3 Georgia?

4 THE WITNESS: News reports in widely circulated
5 business-oriented publications, or public reports from the
6 Secretary of State Office and the like, who are recognized
7 polling entities.

8 THE COURT: Okay. So you can identify any
9 specific news reports or public reports that you relied on
10 in making that statement?

11 THE WITNESS: As we sit here today, I cannot -- I
12 cannot recall the specific publication that we used. My
13 recollection with Georgia is that I relied on Mr.
14 Chicchetti's analysis of this issue, and possibly public
15 reports from the Georgia Secretary of State Office or other
16 recognized polling -- polling entities or widely-circulated
17 business-oriented publications.

18 THE COURT: Okay.

19 THE WITNESS: So basically a Google search as one
20 aspect of this.

21 THE COURT: I'm sorry. I missed what you said
22 about the Google search.

23 Thank you.

24 THE WITNESS: So, for example, one aspect would be
25 to search Google and look in Georgia for the proportion of

1 Democrat voters versus Republican via mail-in voting.

2 THE COURT: Did you do -- conduct that search?

3 THE WITNESS: I did.

4 THE COURT: Okay.

5 THE WITNESS: That was one of the areas -- that
6 was part of my investigation in terms of looking for factual
7 support for that allegation. It wasn't the only one, but
8 was one.

9 THE COURT: Okay.

10 MR. MILLER: Thank you, your Honor.

11 BY MR. MILLER:

12 Q So I think this may be helpful to you on this line of
13 examination, Mr. Olsen. We pulled up paragraph 73. And
14 there is some language there, at least with respect to 2020,
15 of the ratio of absentee votes --

16 THE COURT: What's the question?

17 MR. MILLER: Okay. Well, it does --

18 BY MR. MILLER:

19 Q Paragraph 73, is that responsive to the information
20 that you had -- about the information that you had with
21 respect to the allocation of absentee voters to parties --
22 or to --

23 A Yes.

24 Q -- a candidate? Okay. So just to make a clear record
25 here, the information that was used here was that 65.32-

1 percent of the absentee voting were in favor of president --
2 candidate Biden, and 34.68-percent were for candidate Trump,
3 is that -- do I have that right?

4 A Yes.

5 Q Okay. And was this the readily available information
6 in the December 2020 time period?

7 A So, that cites Mr. Cicchetti's declaration. He may
8 have had a proprietary database that underpins some of that
9 -- some of that data. I don't know if it was widely public
10 for that or a proprietary database.

11 MR. CARLING: Objection, move to strike as
12 speculation.

13 THE COURT: Sustained.

14 THE WITNESS: Well, I know that Mr. Cicchetti was
15 using proprietary databases for his analysis.

16 THE COURT: But I guess the point is, you don't
17 know -- according to your testimony, just to be clear,
18 you're testifying that you don't know whether or not Mr.
19 Cicchetti used these proprietary sources in connection with
20 the calculation of this -- of these percentage votes with
21 regard to absentee votes for Vice President Biden or Vice
22 President Trump (sic) -- I mean, I'm sorry, and President
23 Trump, is that right?

24 THE WITNESS: I don't know, your Honor, if it's a
25 proprietary source or a publicly-available source, but we'd

1 have to look at the declaration to be sure.

2 THE COURT: Okay. Thank you.

3 Mr. Miller.

4 MR. MILLER: Thank you, your Honor.

5 BY MR. MILLER:

6 Q So, we can pull up page 121 of Exhibit 260. This is
7 going to take up to paragraph 24 of Mr. Cicchetti's
8 declaration. And I'll have that blown up. And once you
9 have that before you, Mr. Olsen, I'm going to ask you
10 questions, but I'll start with.

11 Is this the paragraph that contained the information
12 from Mr. Cicchetti with respect to this issue we're talking
13 about, the allocation of absentee voters for candidate Trump
14 versus candidate Biden? And you can take your time to read
15 it.

16 A This relates to the rejection rate, but I don't see
17 that it relates to the proportion of -- I believe that's
18 paragraph -- the preceding paragraph, or maybe paragraph 25.
19 I'm not sure.

20 THE COURT: Paragraph 25 is found on pages 121
21 through 125.

22 BY MR. MILLER:

23 Q Right. Well, let's go to paragraph 25, which is the
24 next paragraph, and we'll blow that up for you. It starts
25 on page 121 of Exhibit 260, and goes over to the following

1 page.

2 MR. MILLER: Mr. Benveniste, if you could blow
3 that up for Mr. Olsen.

4 BY MR. MILLER:

5 Q I think this probably more accurately depicts the
6 information that we were talking about. But let me ask you,
7 Mr. Olsen, what is paragraph 25 depict with respect to the
8 issue of allocation of absentee votes in Georgia for 2020?

9 A Paragraph 25 applies the rejection rate that was
10 employed in 2016 as a basis to the number of absentee
11 ballots, and then calculates based on the proportion of
12 ballots for then-Vice President Biden and President Trump,
13 what the impact of the -- would be from applying the 2016
14 rejection rate.

15 Q Okay. And did you work with Mr. Cicchetti on the
16 language in paragraph 25?

17 A Yes.

18 Q Okay. And did you also do -- conduct your own research
19 with respect to whether those, what you called,
20 "proportions," those proportions were accurate relative to
21 2020 election in Georgia?

22 A I may have, but I don't recall specifically.

23 THE COURT: I'm sorry. You don't recall
24 specifically what now?

25 THE WITNESS: I don't recall specifically -- it

1 was my general practice to look for public data from the
2 Secretary of State Office through searching, you know,
3 Google, for widely oriented business -- widely circulated
4 business-oriented publications, as well as polling data for
5 this information. That was my general practice, but I don't
6 have a specific recollection of doing that for Georgia to --
7 in this instance.

8 BY MR. MILLER:

9 Q In filing the motion for bill of complaint, did you
10 rely on the research that Mr. Cicchetti had done with
11 respect to this issue?

12 A Yes.

13 Q Okay. And did you find that information to be
14 reliable?

15 A I did.

16 Q All right. Let's move on, Mr. Olsen. At the bottom of
17 page 30 of Exhibit 260, we're now at the State of Michigan.
18 And let's see if we can move through this material
19 efficiently. So, in paragraph 79 -- we can blow that up for
20 you. You had identified actions here taken by Michigan
21 Secretary of State Jocelyn Benson. Can you relate to us in
22 a general way what action you were referring to there, and
23 then I'll take it from there.

24 A So there were two actions that Secretary of State
25 Benson took that we alleged were violations of Article II

1 and due process. And that was she unilaterally decided to
2 mail out ballot applications to every Michigan resident, I
3 believe it was around 7,000,000. The statute does not
4 provide for that. We cited that in the complaint.

5 The second issue related to signature verification,
6 where she -- I believe the action she took was -- to not
7 have signature verification -- or an unmatching signature be
8 a basis to reject a ballot.

9 Q And if we look at paragraph 82, I just want to have you
10 identify the statutes that were -- existed in Michigan in
11 2020 that you felt there was some violation of. It cites to
12 Section 168.793. What is it, Mr. Olsen, that you thought
13 was violated as part of that statute by Secretary Benson's
14 actions?

15 MR. CARLING: Objection --

16 BY MR. MILLER:

17 Q -- as alleged here?

18 MR. CARLING: Objection, calls for a legal
19 conclusion as to whether Secretary Benson's actions violated
20 that statute. And I would move to strike Mr. Olsen's
21 opinion to that extent in his answer.

22 THE COURT: Overruled. He's being asked about his
23 view of this particular -- of the actions of Secretary
24 Benson in connection with this statute.

25 //

1 BY MR. MILLER:

2 Q If you have the question in mind, Mr. Olsen, you can
3 respond.

4 A So, I reviewed the statute and then applied to the
5 facts, just as any lawyer, and found that Secretary Benson's
6 actions were inconsistent with the express requirements of
7 the statute, which, by the way I want to add, a Michigan
8 court of claims later found in March of 2021, she did
9 violate that statute, and did not have authority to do that
10 action.

11 MR. CARLING: Objection, move to strike the last
12 testimony about what the court found. It lacks foundation
13 and calls for expert testimony.

14 THE COURT: Sustained.

15 BY MR. MILLER:

16 Q What was the name of the case that you just referred to
17 that -- where there was an order in March 2021 dealing with
18 this exact same issue?

19 MR. CARLING: Objection. Relevance, lacks
20 foundation. Mr. Olsen hasn't been called to testify about
21 that case. He's here to testify about the contentions in
22 the Texas bill of complaint.

23 THE COURT: Sustained.

24 BY MR. MILLER:

25 Q All right. So you talked about two actions that you

1 found violated Michigan law as part of your allegations here
2 in Exhibit 260. One related to the distribution of absentee
3 ballots. Can you summarize for us, Mr. Olsen, what it is
4 that you felt the actions that were taken had violated
5 Michigan law with respect to the distribution of absentee
6 ballots?

7 A It's absentee ballot applications --

8 Q Yeah. Thank you.

9 A -- not ballots. And the statute does not provide for
10 the Secretary of State to unilaterally send out ballot
11 applications to every voter.

12 Q Okay.

13 A It has to be done -- there's a written request as --
14 you can read in front of you, by the voter for that -- that
15 ballot --

16 Q Okay.

17 A -- application.

18 Q And what did you find based on your research and
19 investigation was done in Michigan with respect to the
20 distribution of absentee ballot applications?

21 A Well, it was publicly reported -- I mean, this was
22 action that the Secretary of State herself publicly reported
23 that they were doing. And the reports were that I believe
24 it was seven -- over 7,000,000 ballot applications were sent
25 throughout the state.

1 THE COURT: To registered voters, is that your
2 understanding?

3 THE WITNESS: Yes, I believe so, your Honor.

4 THE COURT: Okay.

5 BY MR. MILLER:

6 Q And what did Michigan law provide at the time with
7 respect to the process of a voter acquiring an absentee
8 ballot application?

9 A It required a request by the voter, and then also there
10 was an issue of signature matching. So registration roles
11 often have voters on there that -- that are -- no longer
12 live in the state, and either are inactive or just have not
13 been removed.

14 And so sending out ballot applications to every
15 registered voter would not necessarily mean that there was a
16 voter, registered voter still at that address or even living
17 in that state or even alive.

18 Q What did Michigan law provide according to your
19 research and investigation, Mr. Olsen, with respect to the
20 verification process in a voter obtaining a absentee
21 application, ballot application?

22 MR. CARLING: Objection, lacks foundation. Calls
23 for expert testimony.

24 BY MR. MILLER:

25 Q Only what you researched and found and allege --

1 THE COURT: Overruled as to your research. You
2 can testify as to your research on this.

3 THE WITNESS: My recollection is that with respect
4 to receiving a ballot, there is a -- an absentee ballot
5 pursuant to a ballot application, an absentee ballot
6 application, there is a reference or a cross-reference of
7 the voter record signature to make sure that they're still
8 the person that's requesting the ballot.

9 BY MR. MILLER:

10 Q Okay. So, for there to be compliance according to your
11 allegations with the absentee ballot application process,
12 there was a verification component of that?

13 A Yes.

14 MR. CARLING: It's the same objection. It lacks
15 foundation, call for expert testimony.

16 THE COURT: Overruled.

17 THE WITNESS: I believe it's set forth in the
18 complaint, perhaps afterwards. But, yes, there is a
19 signature verification component to receiving an absentee
20 ballot.

21 BY MR. MILLER:

22 Q Let's go to paragraph 86 and 87. I believe you may
23 have been referring to these, Mr. Olsen, but let me inquire.
24 And we can blow those up for you. Do paragraphs 86 and 87
25 describe what you determined to be Michigan law with respect

1 to the request for an absentee ballot application and the
2 signature verification process?

3 A Yes.

4 Q And did you based on your research and investigation,
5 Mr. Olsen, come to a conclusion that the violation of the
6 statute in Michigan was to such a degree that it was
7 sufficient to affect the outcome of the 2020 election?

8 MR. CARLING: Objection, lacks foundation. Calls
9 for expert testimony.

10 THE COURT: You can testify, if you know,

11 THE WITNESS: So, again, we looked at two issues.
12 Was there a clear constitutional violation of a statute
13 regarding signature verification, voter I.D., so forth, by a
14 non-legislative actor. So, on a constitutional claim, I
15 felt that this was a clear violation of that statute,
16 therefore, it gave rise to a claim under, say, Article II,
17 the electors clause.

18 With respect to the number of ballots affected by
19 this, we believe that the number was sufficient to alter the
20 outcome as well. But they are two -- in my mind when we
21 were drafting, these were two distinct issues. And even
22 without the factual issues, the constitutional violation
23 still gave rise to a claim.

24 THE COURT: Okay. I don't think that's the
25 question that Mr. Miller was asking. His question, as I

1 understood it, went to the issue of whether you looked at
2 whether or not this -- these alleged violations were -- or
3 would have been outcome determinative in the election, 2020
4 election.

5 THE WITNESS: I believe -- yes, your Honor, we
6 did, based on a proportion of mail-in votes at issue on some
7 of these issues. So, if we had, for example, in Georgia
8 there was specific data that we could cite and apply to come
9 up with the number.

10 But I would -- you know, as we sit here today, a
11 precise number ballots that would be affected, I'm not sure
12 that we did it for this issue, but pled simply that given
13 the disproportionate number of ballots that were submitted
14 by mail by Democrats, that any violation of the law with
15 respect to that would disproportionately benefit former Vice
16 President Biden.

17 BY MR. MILLER:

18 Q Let's go to paragraph 89, Mr. Olsen. Let's see if that
19 help us with this line of inquiry. I'm going to have --

20 MR. MILLER: Thank you.

21 BY MR. MILLER:

22 Q So it's blown up for you there. Did this -- the
23 allegations in this paragraph, based on your investigation
24 and research, relate to whether the violation of state had
25 sufficiency to affect the outcome of the 2020 election?

1 A Yes.

2 Q All right. Okay. Were there also -- did you also
3 investigate the statutory requirements for poll watchers or
4 -- and inspectors in Michigan as part of the 2020 election
5 cycle?

6 A Yes --

7 Q Okay.

8 A -- I believe so.

9 Q And can you summarize for us based on your work, Mr.
10 Olsen, what Michigan law provided for in terms of poll
11 watchers and inspectors?

12 A My recollection is that poll watchers and inspectors
13 cannot be impeded from carrying out their function. And
14 that there was evidence in the form of sworn declarations of
15 witnesses and actual, you know, video of impeding observers,
16 and particularly Republican observers, in places like Wayne
17 County and at the TCF Center, I believe.

18 MR. CARLING: Objection, move to strike what the
19 video depicted.

20 THE COURT: Sustained.

21 BY MR. MILLER:

22 Q Well, what evidence did you reply upon to support your
23 allegation that poll watchers and inspectors, particularly
24 Republicans, were impeded?

25 A There were sworn declarations, and I believe it's

1 referred in the complaint, but that there is actual video of
2 -- in, I believe it's a TCF Center, actual video of large
3 cardboard paper being put up in the windows to block
4 viewing.

5 Q Okay. And did you find that that alleged violation of
6 Michigan law was sufficient to have affected the outcome of
7 the 2020 presidential election?

8 A So, again, our view was that the -- the violation of
9 state statutes by non-legislative actors by themselves gave
10 rise to a colorable claim. The issues of the specific, you
11 know, facts on whether it's signature verification, mail out
12 ballot applications, or impeding verification -- observers
13 or other poll watchers, those were violations that gave
14 context to those constitutional violations, including due
15 process. And that, yes, it did affect materially the
16 outcome of the election in each state that was named as a
17 defendant.

18 Q Okay. Thank you, Mr. Olsen.

19 MR. MILLER: Your Honor, I've got -- I'm starting
20 to get toward the end, maybe 20 minutes left. Do you want
21 to take a short break now? We've been going for a while,
22 but --

23 THE COURT: No. Let's go --

24 MR. MILLER: -- I'll leave that totally to the
25 Court.

1 THE COURT: -- for the next 20 minutes.

2 MR. MILLER: I'm sorry?

3 THE COURT: Do you need to take a break? If
4 you --

5 MR. MILLER: No. I'm happy to proceed.

6 THE COURT: Okay. Then let's keep going.

7 MR. MILLER: Okay. Let's get through it.

8 BY MR. MILLER:

9 Q All right. So the last state we're going to talk about
10 is State of Wisconsin, Mr. Olsen. Did you also identify a
11 statute or statutes in California (sic) that you had
12 asserted based on your investigation and research had been
13 violated by the actions of actors in 2020?

14 THE COURT: California? You said in California.

15 MR. MILLER: I'm sorry.

16 BY MR. MILLER:

17 Q In the State of Wisconsin.

18 A I'm sorry. Could you repeat --

19 Q Yeah. Let me -- let me start again. I definitely
20 misspoke. I had California on my mind. So, all right. So,
21 as part of research and investigation, Mr. Olsen, did you
22 also identify statutes in the State of Wisconsin that you
23 felt in some way were violated by actions of state actors as
24 part of the 2020 election cycle?

25 MR. CARLING: Your Honor, may I just have a

1 continuing objection to any conclusions by Mr. Olsen as to
2 whether any state laws were violated?

3 THE COURT: Yeah.

4 MR. CARLING: All right. Thank you.

5 THE COURT: By state non-legislative actors,
6 right? Was that your question?

7 MR. MILLER: Yeah, I said, "state actors," but
8 non-legislative actors would be more accurate, your Honor.
9 Yes. Thank you.

10 BY MR. MILLER:

11 Q Mr. Olsen, do you have the question in mind?

12 A The answer to your question is, yes.

13 Q Okay. And can you relate to the Court what statutes
14 that you had alleged were violated by non-legislative state
15 actors?

16 A I can't recall the specific designation, but it related
17 to the -- in Wisconsin, the classification -- or a voter
18 being able to declare that they indefinitely confined under
19 Wisconsin law, which negated the necessity for signature
20 verification and photo I.D. It involved the use of unmanned
21 drop boxes in -- particularly in large counties. And I
22 believe there was also a statute relating to curing that was
23 not properly followed that we alleged. But the primary ones
24 were the indefinite confinement and the use of unmanned drop
25 boxes, is my recollection.

1 Q Okay. Well, let's talk about the drop boxes first.
2 What do you recall, Mr. Olsen, with respect to the statutory
3 -- or the statutes that applied with respect to use of drop
4 boxes in Wisconsin in 2020?

5 A My recollection is that Wisconsin law only provides for
6 manned locations to receive ballots.

7 Q Okay. If we can go to paragraph 110, and we'll start
8 there and go from there.

9 A Yeah.

10 Q Yeah. Let me -- I'll get there in a second. Okay.
11 Well, let me see if I can zero -- zero in on it here. Let's
12 start with paragraph 109 of the complaint. This is on page
13 38 of Exhibit 260. And first of all, what were you
14 referring to there in terms of the U.S. district court
15 action filed in Wisconsin? What case were you referring to
16 there?

17 A I'm not sure, but I bet it's in that footnote 10.

18 Q If we get you down to footnote 10, I'll you'll find the
19 answer.

20 MR. MILLER: Let's go down to footnote 10, Mr.
21 Benveniste. Footnote 10 at the bottom of the page. There
22 it is.

23 BY MR. MILLER:

24 Q Okay. Do we now have the answer to that question, that
25 it's found in footnote 10?

1 A Yes.

2 Q Okay. And did you review the complaint in the Trump v.
3 Wisconsin -- well, WEC case?

4 A I did.

5 Q Okay. And to your understanding based on your review
6 of that complaint, did that also raise issues with respect
7 to the use of unmanned drop boxes in Wisconsin in 2020?

8 A That's my recollection, yes.

9 Q Okay. And let's go to paragraph 111, which is at the
10 bottom of page 38. It goes over to the following page as
11 well. Does this paragraph contain the statutory -- or the
12 statute that relates to the use of unmanned drop boxes in
13 Wisconsin? You can go over to the next page, if you --

14 A It relates to where an absentee ballot can be received
15 and sets forth the requirements.

16 Q Based on your research and investigation, Mr. Olsen,
17 did you allege that unmanned drop boxes was in contravention
18 of the statute cited in paragraph 111?

19 A Yes. Which I would mind -- say that the Wisconsin
20 Supreme Court ruled in Teigen v. Wisconsin Election
21 Commission --

22 THE COURT: Okay.

23 THE WITNESS: -- was in fact the case.

24 THE COURT: You are not testifying as an expert on
25 this issue. You're testifying about the measures that you

1 took and the basis for the various allegations contained in
2 the bill of complaint and the motion. Relief to file the
3 bill of complaint, as well as other pleadings that were
4 filed.

5 So, I'm going to strike that last answer. You can
6 move on.

7 BY MR. MILLER:

8 Q Just to round out this discussion of unmanned drop
9 boxes, let's go to paragraph 114. And I'll blow that up for
10 you. But while we're getting there, Mr. Olsen, was -- did
11 you find that there was -- did you find in your research and
12 investigation as to what the consequence was for not
13 complying with Wisconsin law with respect to the depositing
14 of absentee ballots?

15 A Yes.

16 Q Okay. And what did you find the violation was?

17 A The statute expressly provides that any results that
18 violate those provisions may not be included in the
19 certified results.

20 Q Okay. And did you calculate the number of votes
21 according to your research and investigation that had
22 violated the statutes with respect to restriction on where
23 to file an absentee ballot?

24 A I'm not sure if we had the actual data at this time for
25 the number of ballots cast by -- through -- or placed in

1 drop boxes. I believe we had the data for indefinite
2 confinement and, therefore, we could make an extrapolation
3 from that. But I think the issue was, is that there were
4 hundreds of thousands, if not millions of ballots cast in
5 Wisconsin through using drop boxes, and that that was a
6 material amount that violated the statute.

7 Q Did your investigation come up with data with respect
8 to votes deposited in unmanned drop boxes versus some form
9 of manned or supervised drop boxes in Wisconsin?

10 A I don't recall at this time. If it did, it would have
11 been included in the complaint.

12 Q But according to your research and investigation, it
13 wouldn't have mattered in terms of the legality of that vote
14 cast, whether it was manned or unmanned?

15 A That's what the statute says. It must be a -- you
16 cannot use drop boxes -- I believe the statute says you
17 have give the ballot to the clerk.

18 Q Okay. All right. So let's move on. You identified
19 this issue earlier, the indefinitely confined. Can you
20 relate to us, Mr. Olsen, generally what the law provided
21 according to your research and investigation in Wisconsin
22 about those voters that were classified as indefinitely
23 confined.

24 A So, my recollection on this, indefinitely confined
25 refers to a specific of voter who is -- who is, you know,

1 like a paraplegic or quadriplegic or some -- some reason why
2 they cannot say, sign a ballot. And --

3 THE COURT: I'm sorry. That they cannot what?

4 THE WITNESS: Sign, like sign the ballot -- sign a
5 ballot envelope --

6 THE COURT: Okay.

7 THE WITNESS: -- and as one example. But it's a
8 specific status that you are physically, you know, incapable
9 of complying with standard law in Wisconsin for casting a
10 ballot.

11 And due to covid, before the November 2020,
12 certain clerks, and I believe this is pled in the complaint,
13 took action to say, anybody can self-declare yourself as
14 indefinitely confined, as opposed to going through the
15 statutory process of being declared that. The consequence
16 of select -- declaring indefinitely confined removed
17 signature verification as one issue, and I believe voter
18 I.D. as well.

19 And there was some litigation prior to November
20 2020 that struck that down, that order from some election
21 clerks to go ahead and that is my recollection, and this
22 would be pled in the complaint. But as a consequence -- I
23 guess before that happened, in 2016 I believe approximately
24 60,000 or so voters were designated lawfully as indefinitely
25 confined. And as a consequence of those orders by non-

1 legislative actors saying, you can self-declare yourself as
2 indefinitely confined because of covid, the number went up
3 to around 220 or 240,000 ballots cast, that in our view, an
4 extraordinary increase, but that because of that, signature
5 verification and voter I.D. was not required for that four-
6 fold increase in ballots.

7 BY MR. MILLER:

8 Q Okay. So some of the language -- thank you. And just
9 one clarification, because you talked about 2016 and 2020.
10 Was it your testimony, Mr. Olsen, that in 2020 that there
11 were 240,000 voters according to your research and
12 investigation that voted as characterized as indefinitely
13 confined?

14 A That's my recollection, yes.

15 Q All right. Well, let's quickly look at some of the law
16 that identified here. Let's go to paragraph 118 and 119.
17 One-nineteen goes over the following page. This is on page
18 40 and 41. So, the language starts at 118, but rolls over
19 to paragraph 119. And this is where you were talking about
20 the Republican party of Wisconsin and the action that it
21 brought in early 2020 before the 2020 election. Do you
22 recall the name of that case, Mr. Olsen?

23 A I don't recall -- I don't recall the name of it.

24 Q And so, let's go on to the -- to the next paragraph on
25 the following page, paragraph 120. And what's this relate

1 to, Mr. Olsen, with respect to the issue relating to the
2 characterization of voters -- classification of voters as
3 indefinitely confined?

4 A That -- well, that issue, just as it says, that the
5 Wisconsin Election Commission issue -- for indefinite
6 confinement, it's not a status that exists forever. It must
7 be -- if they no longer have that status, and given this
8 unlawful -- well, what the Supreme Court, the Wisconsin
9 Supreme Court agreed was unlawful, there were many more
10 voters who had been self-declared as indefinitely confined
11 in our opinion in violation of Wisconsin law.

12 And then as this says, the WEC issued a directive not
13 remove voters who were not legitimately indefinitely
14 confined.

15 Q And at least in terms of Wisconsin, was that the action
16 by a non-legislative state actor that you are identifying
17 was violative of the Constitution as part of your filing
18 here in the bill of complaint?

19 A Yes.

20 Q Okay. Let's go to paragraph 122. And putting aside
21 this question for purposes of the consequence of the due
22 process violations that you had raised as part of the bill
23 of complaint, Mr. Olsen, did you undertake research and
24 investigation to determine whether the violations with
25 respect to indefinitely confined status were sufficient to

1 affect the outcome of the 2020 presidential election in
2 Wisconsin?

3 A Yes.

4 Q Okay. And then starting at paragraph 123 --

5 THE COURT: I'm sorry. You testified that it
6 affected the outcome. Did you testify that it was the
7 indefinite confinement -- what you considered to be
8 indefinite confinement violations were outcome
9 determinative?

10 THE WITNESS: In -- yes, your Honor, in the mix.
11 The substantial increase in voters declaring themselves as
12 indefinitely confined from 2016 to 2020, that the finding by
13 the Wisconsin Supreme Court, as noted in the complaint, that
14 that was not lawful. That those -- that increase, which by
15 doing that removes signature verification as a security
16 measure, as well as voter I.D., that that -- those number of
17 votes would affect the -- materially affect the outcome of
18 the election in Wisconsin.

19 BY MR. MILLER:

20 Q Okay. Let's go to paragraph 123. I think this relates
21 to -- or started to introduce another issue with respect to
22 Wisconsin. This is with respect to verification of absentee
23 signatures. Let me start by asking you this, Mr. Olsen.
24 Was there -- did you find a statute in Wisconsin that
25 related to the issue of the proper procedure to follow with

1 respect to verification of absentee voter signature?

2 A Yes.

3 Q Okay. And is that the statute that's identified in
4 paragraph 123?

5 A Yes.

6 Q And did you find that that statute in some way, shape
7 or form had not been complied with in Wisconsin as part of
8 your research and investigation?

9 A Yes.

10 Q And in what way was that not complied with according to
11 your work?

12 A My recollection was there were testimony --
13 declarations as to how ballots were being cured that was
14 inconsistent with the statutory requirements.

15 Q Okay. And do you recall in what way that those were
16 inconsistent?

17 A I believe it's in the complaint, but it had to do with
18 how the ballot could be cured. That the -- just as the
19 statute requires, that the clerk is to return the ballot to
20 the elector. My recollection is that ballots were being
21 cured like on site, just fixing it or disregarding the
22 requirement to cure the ballot at all.

23 MR. CARLING: Objection. Move to strike that
24 answer as lacking foundation. It calls for hearsay.

25 THE COURT: Sustained.

1 BY MR. MILLER:

2 Q What did you recall the law required in Wisconsin with
3 respect to a missing address as an example of a voter on an
4 absentee ballot application?

5 A Well, the clerk is instructed by statute to return the
6 ballot to the elector. And I think if it -- and if it's
7 missing the address and you can't cure it, then the ballot
8 may not be counted.

9 Q Okay. And according to Wisconsin law, how, if at all,
10 was that missing information to be cured under Wisconsin
11 law, if at all?

12 A It had to be cured by the voter themselves. Nobody
13 else could write in the address, for example.

14 Q And did you find that there were instances where there
15 was curing him Wisconsin that failed to comply with
16 Wisconsin law that you cited in the complaint?

17 A I believe we had declarations from witnesses with
18 personal knowledge that that in fact was the case.

19 MR. MILLER: Okay. Yeah. Can we pull up
20 paragraph 124, Mr. Benveniste?

21 BY MR. MILLER:

22 Q I want to make sure, Mr. Olsen, that this is what you
23 were referring to in your last response. So in paragraph
24 124 you set forth according to your research and
25 investigation some of the information -- or support of

1 factual information that you relied on in making the
2 allegations in this section of the complaint?

3 A Yes.

4 Q And on to paragraph 125, that contains some more
5 allegations with respect to that issue. We can blow that
6 up. Let me ask you first, Mr. Olsen, were the allegations in
7 paragraph 125 supported by affidavits or declarations from
8 those that witnessed --

9 THE COURT: Are you leading the witness?

10 MR. MILLER: No, how is -- probably.

11 BY MR. MILLER:

12 Q Let me ask you this, Mr. Olsen. How was this paragraph
13 supported factually?

14 A Well, it states that the complaint, that we called a
15 Wisconsin Trump complaint, did include allegations that were
16 supported by sworn affidavits of poll watchers and canvass
17 workers, et cetera.

18 Q And did you review that information?

19 A Yes.

20 Q Okay. And did you find it reliable?

21 A Yes.

22 (Pause.)

23 MR. MILLER: That's all the questions I have, Mr.
24 Olsen. Thanks for your time and appreciate your patience as
25 well in terms of scheduling.

1 THE WITNESS: Thank you.

2 THE COURT: Okay. About how much time do you
3 think you're going to need, Mr. Carling?

4 MR. CARLING: I would estimate two hours.

5 THE COURT: Okay. I understand that Mr. Olsen has
6 a hard stop at 3:00 p.m. Pacific time. So, we will take our
7 lunch hour. And it is unlikely that we're going to be able
8 to finish with the cross-examination today. So, Mr. Olsen,
9 I'm going to ask you during the lunch hour to communicate
10 with Mr. Miller, someone from Mr. Miller's office to
11 determine when you're going to be available to return after
12 today's testimony. All right?

13 THE WITNESS: Yes, your Honor.

14 THE COURT: Okay. Thank you.

15 All right. Let's go off the record. It's 1:40 --
16 I mean, 12:45. Let's return at 1:45.

17 THE CLERK: We're off the record, your Honor.

18 THE COURT: Thank you.

19 (Proceedings recessed to reconvene.)

20 //

21 //

22 //

23 //

24 //

25 //

AFTERNOON SESSION

--oOo--

1 THE CLERK: We're back on the record, your Honor.

2 THE COURT: We're back on the record in the
3 continued hearing of John Charles Eastman in Case Number 23-
4 O-30029.
5

6 Okay. Mr. Miller, would you contact Mr. Olsen,
7 please?
8

9 MR. MILLER: We will, your Honor. Thank you.

10 THE COURT: Thank you.

11 (Pause.)

12 THE CLERK: He's here, Judge. Want me to let him
13 in?

14 THE COURT: Sorry?

15 THE CLERK: He is in the attendee pool.

16 THE COURT: Okay. Great. Thank you.

17 THE CLERK: Ms. Wang, you're not here anymore.
18 Are you logged out?

19 MS. WANG: Yeah. Unfortunately, my computer
20 restarted over the lunch break --

21 THE CLERK: Okay. No problem.

22 MS. WANG: So I'll look in to rejoin.

23 THE CLERK: Let me -- let me find you.

24 Mr. Olsen, can you hear us and see us?

25 THE WITNESS: Yes. Can you hear me?

1 THE CLERK: Yes. Thank you.

2 THE COURT: Okay. Thank you.

3 All righty. So we will continue with Mr. Olsen.

4 Mr. Carling, we'll begin with your cross-
5 examination. Mr. Carling?

6 MR. CARLING: May I begin, your Honor?

7 THE COURT: Uh-huh.

8 MR. CARLING: All right. Thank you.

9 KURT OLSEN - RESPONDENT'S WITNESS - PREVIOUSLY SWORN

10 CROSS EXAMINATION

11 BY MR. CARLING:

12 Q Good afternoon, Mr. Olsen. As the Court indicated, my
13 name is Duncan Carling. I'm one of the lawyers for the
14 State Bar. I'll be handling your examination.

15 Before we get into the substance of your allegations in
16 the Texas v. Pennsylvania case, I want to ask you about the
17 recent sanction orders against you for making false claims
18 about elections. The first order I want to ask you about
19 was in a Arizona district court case, Lake v. Hobbs. And
20 you in that case were counsel for Keri Lake and Mark
21 Finchem, is that correct?

22 A Correct.

23 Q Okay. And that case was related to the 2022 midterm
24 election in Arizona, is that correct?

25 A Well it was related to whether or not the election

1 machines should be used, electronic voting machines should
2 be used in that election or any other.

3 Q Okay. And you were presenting the plaintiffs, and they
4 were challenging procedures for administering elections in
5 Arizona and sought an injunction compelling the defendants,
6 who were election officials at state and county levels, to
7 follow alternate procedures for collecting, storing,
8 counting and tabulating votes in that election. Does that
9 correct?

10 MR. MILLER: Objection, relevance, your Honor.

11 THE COURT: Would you like to address the
12 relevance, Mr. Carling?

13 MR. CARLING: Yes. And I'm going to make this
14 court record an exhibit, but Mr. Olsen has been sanctioned
15 twice in the last year by courts for making false
16 allegations regarding elections. So it's directly relevant
17 to the purpose for which he's testifying here, which is the
18 allegations he made in Texas v. Pennsylvania.

19 THE COURT: Okay. The objection's overruled.
20 You can answer the question.

21 MR. MILLER: Sorry, your Honor. A point of
22 clarification. A continuing objection with respect to
23 relevance on this line of questioning.

24 THE COURT: Okay.

25 MR. MILLER: Thank you, your Honor.

1 THE COURT: Uh-huh.

2 MR. MILLER: I appreciate it.

3 BY MR. CARLING:

4 Q Why don't we go ahead and -- I don't know if I got an
5 answer to my last question, Mr. Olsen, but I think I was
6 asking you if my summary of the claim or posture in that
7 case was correct?

8 A I don't think it's accurate.

9 Q Okay. What is your summary of what the claim was in
10 the Lake v. Hobbs district court case?

11 A In that case the allegations were that electronic
12 voting machines are constitutionally infirm, and that they
13 cannot reliably provide for an accurate and -- an accurate
14 vote. And that was the claim. I don't believe the
15 sanctions were for making false statements in that case.

16 Q All right. I'd like to show you --

17 THE COURT: Just one second. Just to be clear,
18 you're saying that the issue, I guess the key issue was
19 whether or not electronic voting machines are, as you put
20 it, "infirm." Was that your testimony?

21 THE WITNESS: Constitutionally infirmed. That
22 they -- they're use violates the Constitution, 14th
23 Amendment among others, and the right to vote. The -- it
24 patterns after a case in the Northern District of Georgia
25 where that was -- that was an issue, and the motion to

1 dismiss was denied.

2 BY MR. CARLING:

3 Q All right. I'd like to show you the district court's
4 December 1st, 2022 order in that case, and we'll make that
5 State Bar Exhibit 374.

6 MR. CARLING: May I approach, your Honor?

7 THE COURT: Yes.

8 MR. CARLING: Two holes it is?

9 THE CLERK: Yes.

10 THE COURT: Thank you.

11 MR. CARLING: Sure. You can put it up.

12 THE COURT: So, would you identify Exhibit 374 for
13 the record? And I assume you gave a copy to Mr. Miller?

14 MR. MILLER: I have a copy, your Honor, yes.

15 THE COURT: Okay.

16 MR. MILLER: Thank you.

17 MR. CARLING: I did. And for the record, Exhibit
18 374 is an order filed December 1st of 2022 in Keri Lake v.
19 Katie Hobbs in the United States District Court for the
20 District of Arizona.

21 BY MR. CARLING:

22 Q Mr. Olsen, do you recognize the first page of the
23 pleading in front of you?

24 A It's cut off from where I am. I see the first half of
25 it, but it's -- I understand what it is.

1 Q Okay. And I'll show you the PACER line at the top.

2 Does that look like the filing information for this case?

3 A Yes.

4 Q Okay. And you said you don't believe were sanctioned
5 for making false statements, is that correct?

6 A It's not my -- that's my recollection, correct.

7 Q Right. You have read this order I assume, is that
8 true?

9 A I did read it many months ago, yes.

10 Q All right. What is your understanding of what you were
11 sanctioned for?

12 A That the allegations were -- I believe the court ruled
13 that they were baseless and without merit, such that they
14 merited sanctions.

15 Q The court specifically found that your claim that
16 Arizona voters do not vote by hand on paper ballots was a
17 false claim, do you recall that?

18 A I recall that being in there, but I don't think that
19 that was the allegation, but, okay. I think the court got
20 it wrong on that.

21 THE COURT: Is that what the court -- whether or
22 not you agree with the court, I think the question is, was
23 that the court's finding, or at least one of the findings?

24 THE WITNESS: It may -- I have no dispute with
25 what the order reads, but I don't have it memorized.

1 BY MR. CARLING:

2 Q All right.

3 MR. MILLER: If the line of questioning relates to
4 a particular part of the order, it might be best that we
5 have a page/line on that, and then counsel, myself, can take
6 a look at it and determine its accuracy.

7 THE COURT: That would be helpful.

8 MR. CARLING: Sure. Let's start with page seven.
9 And the section here is -- section one, "allegations
10 regarding the use of paper ballots." And the first line in
11 that section says:

12 "The Maricopa County defendants
13 argue that plaintiffs made false
14 allegations and representations that
15 Arizona voters do not vote by hand on
16 paper ballots."

17 And then directing your attention to the --
18 there's a block quote underneath that. It says:

19 "In short, it cannot be disputed
20 that Arizona already requires and uses
21 paper ballots. Allegations to the
22 contrary are simply false."

23 BY MR. CARLING:

24 Q Do you see that, Mr. Olsen?

25 A Yes.

1 Q So does that refresh your memory as to whether the
2 court found plaintiff's claims about Arizona use of paper
3 ballots to be false?

4 A Yes.

5 Q And -- okay. I want to direct your attention to page
6 22. The first full paragraph on page 22 reads:

7 "Plaintiffs sought to fill the gap
8 between their assertions about Arizona's
9 voting equipment and their speculative
10 conclusions about its vulnerability with
11 allegations that were false and
12 misleading."

13 Do you agree that the court found that your allegations
14 were false and misleading?

15 A I'm sorry. Could you read that portion again?

16 Q Sure. And I'm referring to the first sentence of the
17 first full paragraph. It starts at line three. It said:

18 "Plaintiffs sought to fill the gap
19 between their assertions about Arizona's
20 voting equipment and their speculative
21 conclusions about its vulnerability with
22 allegations that were false and
23 misleading, as the court discussed
24 above."

25 I didn't finish that part of it.

1 A That's what it says.

2 Q So, I understand that may disagree, but do you at least
3 agree that the district court in Arizona found that your
4 allegations in that case were false and misleading?

5 A I agree that's what the order says, yeah.

6 MR. MILLER: Your Honor, may I be heard further
7 with respect to the relevance objection? And thank you for
8 allowing it to be continuous. But I believe there's some --
9 there's a little bit more detail that might be helpful to
10 the Court.

11 And maybe it's obvious already, but the Arizona
12 action, and the court's order with respect to the Arizona
13 action, only has to do with Arizona voting equipment or
14 voting machines.

15 There's no allegations in the work that Mr. Olsen
16 did in the Texas v. PA case that involved anything having to
17 do with voting machines or voting equipment. Nowhere to be
18 found in there. There's no allegation, nor was he
19 questioned on any of that, nor did he have any testimony
20 with respect to investigation or research with respect to
21 those issues.

22 So, I can represent that that's not -- that was
23 not an issue in Texas v. Pennsylvania, nor is there an
24 allegation in the NDC there was something about the Texas v.
25 Pennsylvania that had something to do with voting machines.

1 So, taking an order or an action and an order
2 arising out of that action that Mr. Olsen was involved in
3 two years later involving an entirely different issue, has
4 no bearing on his credibility or bias or any other issue or
5 relevance in this case. The Court's been --

6 THE COURT: I understand -- well, no, I'm going to
7 interrupt you because --

8 MR. MILLER: Thank you.

9 THE COURT: I understand your argument, however,
10 this can go to the issue of credibility and for bias. So I
11 am going to -- and that was my reason for overruling the
12 objection on relevance grounds to begin with.

13 MR. MILLER: I appreciate that information, your
14 Honor. One very last point, and that is, the Court has been
15 very careful in the Court's judgment to make distinctions
16 between allegations that are being -- are subject of
17 examination of witnesses in this case. For example, the
18 difference between voting machine allegations and voting
19 machine allegations in the NDC.

20 So, I'm just sort of echoing the Court's treatment
21 of those issues as being very careful as to what remains
22 relevant and what's not relevant to a line of -- a line of
23 questioning. So, I think because there's no overlap at all
24 with anything --

25 THE COURT: Well, as I pointed out, this is -- the

1 Court is allowing this testimony not because it is
2 specifically relevant to the allegations in the notice of
3 disciplinary charges regarding Texas v. Pennsylvania, but
4 the Court is allowing the testimony because it, to me at
5 least at this point, sounds like it could be testimony
6 relating to and/or going to the issue of the witness'
7 credibility.

8 MR. MILLER: Well, in my view -- and I'll be done
9 in a second, your Honor -- it is entirely collateral and not
10 relevant to anything that Mr. Olsen has had to offer in this
11 case so far or any of the exhibits that he's been examined
12 on.

13 THE COURT: Okay. And sometimes credibility
14 evidence is, just as credibility evidence that I discussed
15 previously. So, have you finished making your record?

16 MR. MILLER: I did, your Honor. Thank you for the
17 opportunity.

18 THE COURT: Okay. Thank you.

19 To the extent that was an objection or a continued
20 objection, it's overruled.

21 MR. MILLER: Thank you.

22 THE COURT: Okay.

23 BY MR. CARLING:

24 Q And, Mr. Olsen, I just want to ask you about a couple
25 of -- the findings, and then we'll move on to something

1 else. But do you -- directing your attention to page 24,
2 the last -- at line 26, the very bottom of the page, the
3 court further found that:

4 "Plaintiffs had failed to conduct
5 the factual and legal pre-filing inquiry
6 that the circumstances of this case
7 reasonably permitted and required."

8 Do you see that?

9 A I do.

10 Q And do you agree that that was a finding of the court
11 in this case?

12 A That's what the order says.

13 Q Okay.

14 THE COURT: I'm sorry. Where are you on the order
15 again?

16 MR. CARLING: On page 24 --

17 THE COURT: "Page 24."

18 MR. CARLING: -- at line 26.

19 THE COURT: "Line 26." Okay. Thank you.

20 BY MR. CARLING:

21 Q And on page 27 the court further found that -- I don't
22 think that's -- that's 25. On page 27 the court further
23 found that sanctions were appropriate under 28 U.S.C.
24 Section 1927, because -- and I'll direct your attention to
25 the bottom of page 27 at line 23. It says:

1 "The remaining question under
2 Section 1927 is whether plaintiff's
3 counsel acted recklessly or in bad
4 faith, and the court concludes they
5 did."

6 Do you see that?

7 A At line 20 which?

8 Q At line 24 the court found that plaintiff's counsel
9 acted recklessly or in bad faith?

10 A Yes. Yes.

11 Q Okay. And --

12 A That's what the order says.

13 Q -- and do you agree that when the court says,
14 "plaintiff's counsel," the court was referring to you?

15 A Well, it's referring to plaintiff's counsel, and I was
16 one of the plaintiff's counsel, along with Alan Dershowitz
17 and Parker Daniels firm.

18 Q And do you recall that the court did not order
19 sanctions against the plaintiffs, but found that sanctions
20 are warranted only against plaintiff's counsel. Do you
21 agree with that?

22 A That's my recollection, yes.

23 Q Okay. All right.

24 MR. CARLING: Your Honor, I'd like to move State
25 Bar Exhibit 374 into evidence.

1 THE COURT: Any objection, Mr. Miller?

2 MR. MILLER: Yes, your Honor. It is not relevant,
3 and I don't believe that Mr. Olsen can lay an appropriate
4 foundation or authenticate this order, and I don't think
5 that's been done even if it could. So, those are the bases
6 for my objection.

7 THE COURT: Why do you contend that Mr. Olsen
8 could not lay a foundation? He -- well, he's already
9 testified he has seen it.

10 So, your objection's overruled. Exhibit 374 is
11 received into evidence.

12 BY MR. CARLING:

13 Q Now, Mr. Olsen, the other one I wanted to ask you about
14 was a May 4th, 2023 sanction order from the Supreme Court of
15 Arizona. And I'll show that to you know. It's going to be
16 State Bar Exhibit 375.

17 MR. MILLER: Thanks.

18 THE COURT: Thank you.

19 BY MR. CARLING:

20 Q And while that's coming up, I'll ask you, Mr. Olsen,
21 did you represent -- this is a -- not a district court case,
22 but a case that was before the Supreme Court of Arizona.
23 Keri Lake v. Katie Hobbs. This is a different case than the
24 one we were just talking about, correct?

25 A Correct.

1 Q All right. And in this case were you representing Keri
2 Lake in a challenge regarding the outcome of the Governor's
3 election in which Katie Hobbs had defeated Keri Lake for
4 that election, is that correct?

5 A It was an election contest is what it's called, but,
6 yes.

7 Q "An election contest." Thank you. Okay. And the --
8 well, first let me ask you. Have you seen this order from
9 the Supreme Court of Arizona dated May 4, 2023? We can
10 shrink it down or I can show you a few pages of it. But
11 does this look familiar to you?

12 A It's not the entire order, but it's familiar.

13 Q Okay. And if we were to scroll through, it's
14 approximately seven pages. Does it sound to you like if all
15 seven pages are here, that that's the entire order?

16 A Yes.

17 Q Okay. And in this case, the Arizona Supreme Court
18 sanctioned you regarding an assertion that -- let me make
19 sure I get this right. I'll direct your attention to page
20 two. And in the middle of page two there's a sentence that
21 starts, "the court of appeals should have considered," and
22 it goes on to say:

23 "The undisputed fact that 35,563
24 unaccounted for ballots were added to
25 the total number of ballots at a third-

1 party processing facility."

2 Do you agree, Mr. Olsen, that that's the factual
3 assertion that was at issue in this order?

4 A Yes.

5 Q Okay. And turning your --

6 THE COURT: Well, just a minute. I just want to
7 make sure that the record is clear, because I think you
8 started reading in the middle of the sentence?

9 MR. CARLING: I did. And --

10 THE COURT: The sentence begins with -- well,
11 we'll start with the paragraph so that there's some context:

12 "On the issue of whether votes were
13 improperly added by a third-party
14 vendor, we stated that, 'the record does
15 not reflect that 35,563 unaccounted
16 ballots were added to the total count.'
17 We instructed the parties to 'address'
18 as a basis for sanctions only
19 petitioner's factual claims in her
20 petition for review, i.e., that the
21 Court of Appeals should have considered
22 'the undisputed fact that 35,563
23 unaccounted for ballots were added to
24 the total number of ballots at a third-
25 party processing facility'."

1 So, I just want to make that the record -- we
2 don't start in the middle of the sentence. There weren't --
3 so that record's clear as to what you're asking -- or what
4 you asked Mr. Olsen.

5 MR. CARLING: Thank you. I appreciate that.

6 BY MR. CARLING:

7 Q And just to make sure Mr. Olsen and I are clearly
8 understanding each other, what I had meant to ask you, Mr.
9 Olsen, is the statement made by plaintiff in this case that
10 was at issue in the sanction order was a claim that:

11 "The undisputed fact that 35,563
12 unaccounted for ballots were added to
13 the total number of ballots at a third-
14 party processing facility."

15 Is that the statement by plaintiff that was at
16 issue in this order?

17 A That's what the order says, yes.

18 Q Okay. And directing your attention to page five, the
19 court wrote:

20 "Because Lake's attorney has made
21 false factual statements to the court,
22 we conclude that the extraordinary
23 remedy of a sanction under ARCAP 25 is
24 appropriate."

25 Is -- Mr. Olsen, when the court refers to Lake's

1 attorney, the court is referring to you, correct?

2 A Yes. I mean -- yeah, and there are other attorneys,
3 but I think they're referring to a brief that we filed.

4 Q Okay.

5 MR. CARLING: Your Honor, I'd like to move State
6 Bar Exhibit 375 into evidence.

7 THE COURT: Just a minute.

8 Any objection, Mr. Miller?

9 MR. MILLER: Relevance, your Honor.

10 THE COURT: Okay. The objection is overruled.
11 Exhibit 375 is received into evidence.

12 MR. MILLER: And just to be clear, your Honor,
13 hopefully the record reflects that the relevance -- the
14 continuing objection as to relevance applied to the new
15 Exhibit 375 as well.

16 THE COURT: Yes.

17 MR. MILLER: Thank you, your Honor. Appreciate
18 that.

19 BY MR. CARLING:

20 Q All right. Thank you, Mr. Olsen. I will now ask you
21 some questions about the Texas bill of complaint, which is
22 the primary think that I want to ask you about. And --
23 well, before we get to the specifics in that, are there any
24 allegations in that complaint which you no longer believe
25 are accurate?

1 A No.

2 Q Okay.

3 THE COURT: And just to be clear, when you refer
4 to "that complaint," which complaint are you referring to?

5 MR. CARLING: I'm referring to State Bar Exhibit
6 260, which is -- I believe it's called the bill of
7 complaint.

8 THE COURT: Right.

9 MR. CARLING: But State Bar Exhibit 260, which I
10 will now open it up on the screen and I'll ask Mr. Olsen
11 some questions --

12 THE COURT: Okay.

13 MR. CARLING: -- about it. The terminology of
14 some of those filings I -- well, I think I have already,
15 but --

16 BY MR. CARLING:

17 Q So, I want to start by asking you about some of your
18 allegations related to Pennsylvania. So I'm going to direct
19 your attention to page 25 of the bill of complaint -- or
20 motion for leave to file bill of complaint is the document I
21 was referring to.

22 A Okay.

23 Q And you have several allegations in here that are based
24 on a letter or report that was issued by Representative
25 Francis Ryan, which is sometimes known as the "Ryan report."

1 And I believe you refer to it as the "Ryan report" here in
2 paragraph 56. Do you see that?

3 A Yes.

4 Q Okay. So, if I refer to it as the "Ryan report" you'll
5 know what I'm talking about, right?

6 A Yes.

7 Q Okay. What did you do to verify the claims that
8 Representative Ryan made in that report?

9 A I don't recollect specifically. I may -- we may have
10 spoken with him. I believe I also spoke with Phil Kline,
11 who at the time was heading up the Thomas More Society and
12 the Amistad Project, who was -- he's the one that provided
13 me, initially provided me the report. And so I may have
14 spoken with him. I may have spoken with Ryan, but I'm not
15 certain as we stand here today.

16 THE COURT: I'm sorry. That person's name was
17 Phil Kline?

18 THE WITNESS: Phil Kline.

19 THE COURT: Okay. Thank you.

20 THE WITNESS: And some of the information we may
21 have cross-referenced with the SURE System, which is
22 Pennsylvania's database for election metrics.

23 BY MR. CARLING:

24 Q Did you contact anyone from the Pennsylvania Secretary
25 of State's Office to ask him about Ryan's allegations?

1 A No.

2 Q Did you do any research into Pennsylvania state
3 election law to determine if the allegations he was
4 describing violated Pennsylvania law?

5 A Well, there's a number of allegations in this report,
6 and I researched Pennsylvania election law extensively. So
7 it -- I mean, with respect to what are you referring to?

8 Q Well, I'll ask you about paragraph 57. And you report
9 -- you state that, "Ryan report's finding are startling,"
10 and then you list three bullet point items here regarding
11 ballots and mail dates. And then at the beginning of
12 paragraph 58 you characterize those numbers as nonsensical.

13 So, I'll ask you about the second bullet. You say,
14 "ballots returned on or before the mail date," and that
15 there were 58,221. Do you see that?

16 A I do.

17 Q Okay. Is there a problem with returning a ballot on
18 the mail date?

19 A It is noted in this report as a problem, and if you're
20 asking me, yes. Because a ballot is mailed out. These are
21 mail-out ballots is my understanding. So, to return it on
22 the same day it's mailed seems highly implausible, but
23 particularly if it is returned before it is mailed out.
24 That's really nonsensical.

25 Q Yeah. And of that 58,221, were most of those returned

1 on the mail date?

2 A I don't know the answer to that.

3 Q When you were doing your extensive research into
4 Pennsylvania state law, do you recall learning about
5 Pennsylvania Act 77, which the Legislature passed in October
6 of 2019?

7 A I do recall Act 77, yes.

8 Q All right. What is your recollection of -- well, let
9 me ask you this. Do you know if one of the provisions of
10 Act 77 was that people in Pennsylvania during the 2020
11 election could go into a local county election board and
12 apply for, receive, vote and return their ballot in one
13 visit? Did Act 77 allow them to do that?

14 A I don't recollect that.

15 Q If someone went into a local county election board and
16 applied for, received, voted and returned their ballot in
17 one visit, what would the mail date for that ballot appear
18 as?

19 A Well, a mail date must be postmarked. So, I think your
20 hypothetical is -- is just incorrect. I view that as a mail
21 date having a postmark. So that means --

22 Q What is the -- sorry.

23 A -- it has to go to the -- let me finish, please.

24 Q Yes.

25 A That means it has to go through the post office to get

1 a postmark. So, I don't think your hypothetical works.

2 Q What is the basis for your belief that the mail date
3 only applies or appears on ballots that went through the
4 U.S. Postal Mail?

5 A Common sense. Mail.

6 Q All right. Are you -- if some --

7 A Mailed by the U.S. Postal Service.

8 Q If someone under Act 77 goes into their local county
9 election board and a ballot is handed to that voter, doesn't
10 that ballot show a mail date of the date that the ballot was
11 handed to the voter?

12 A Not to my knowledge.

13 Q If the mail date is the date that the ballot was handed
14 to the voter, would you agree that there's nothing startling
15 or nonsensical about ballots being returned on the mail
16 date?

17 MR. MILLER: Objection, vague. Lacks foundation.
18 Incomplete hypothetical.

19 THE COURT: Overruled.

20 THE WITNESS: Depends what you mean by defined as
21 mail date. I'm defining mail date by the common
22 understanding that it has a postmark. I don't how you can
23 get a postmark because that means the post office had to
24 receive it, stamp it, and then get it back, or at the office
25 or what you're saying. So, I guess I just don't understand

1 your question.

2 BY MR. CARLING:

3 Q Sure. Did you confirm your common-sense understanding
4 of what mail date means with anyone who has expertise in
5 Pennsylvania election law?

6 A What do you mean by "expertise in Pennsylvania election
7 law"? Like who would -- who would that be?

8 Q Did you confirm your understanding of mail date with
9 anyone who had experience and knowledge of how Pennsylvania
10 records data in their voter database?

11 A I may have. I don't recall the specific times that I
12 spoke with, but there is a investigator by the name of
13 Heather Honey, and I -- she actually was testifying in the
14 lay trial, and I had been dealing with her for quite some
15 time. And I just don't recall if I spoke with her during
16 this time period or not. So I may have, I just don't know
17 when I started.

18 Q Do you recall the Pennsylvania Secretary of State
19 issuing a written response to Representative Ryan's report
20 which out some of the inaccuracies in his report?

21 A I have a general recollection that that occurred, but I
22 don't when or anything more than that.

23 Q All right. I'd like to switch and show you a different
24 exhibit. I'm going to show you State Bar Exhibit 129. And
25 this is a letter to Chairman Johnson and Ranking Member

1 Peters, Commonwealth of Pennsylvania, Department of State.
2 Does this look like a document you've seen before, Mr.
3 Olsen?

4 A I don't recall it, but I may have seen it.

5 Q All right. I'll direct your attention to the second
6 page. And there's some discussion of points that
7 Representative Ryan makes. I want to direct your attention
8 to the paragraph that starts with the word, "similarly." It
9 says:

10 "Similarly, Representative Ryan
11 cites an -- as anomalous a number of
12 ballots that show they were submitted on
13 or before the mail date. Again, as
14 Representative Ryan should know, Act 77
15 authorized eligible Pennsylvania voters
16 to vote earlier in person by mail ballot
17 at their county election offices, and
18 over 100,000 Pennsylvania voters availed
19 themselves of this option. Most of
20 these voters would be shown as having
21 been approved and provided their ballot
22 on the same date they cast it at their
23 county election office. Far from an
24 anomaly, the data Representative Ryan
25 cites is an obvious result of the

1 legislation that he himself supported."

2 Do you recall having seen this before, Mr. Olsen?

3 MR. MILLER: Objection, its relevance, your Honor.

4 And I'll explain that the date of this report, at least what
5 we're looking at right now on the screen, post-dates Mr.

6 Olsen's work and the -- in fact, the pendency of the Texas
7 v. Pennsylvania matter was over by December 11th. The court
8 had precluded Mr. Olsen from testifying about events that
9 took place after that time frame --

10 THE COURT: Well, I -- I'm going to stop you,
11 because your chronology doesn't quite make sense, given the
12 fact that it would appear that Mr. Olsen cited to Ryan
13 report and its finding in the pleadings that he filed in
14 conjunction with the bill of complaint.

15 MR. MILLER: He cited to the Ryan report in the
16 complaint, correct, as the Ryan report.

17 THE COURT: Exactly. So the issue -- so this
18 would be relevant because it addresses an aspect of the Ryan
19 report that he's already testified about.

20 MR. MILLER: As would any case or legal precedent
21 that post-dated Mr. Olsen's work as well. And I tried to
22 examine Mr. Olsen on cases that came after his work was
23 completed, that in my view would have substantiated the
24 allegations that he was making in the complaint. So -- and
25 the Court precluded Mr. Olsen from responding to those

1 questions based on relevance.

2 THE COURT: Are you referring to the amicus briefs
3 or the intervener?

4 MR. MILLER: No, not the amicus briefs.

5 THE COURT: Okay. What are you referring to?

6 MR. MILLER: They were received during the
7 pendency of the case of course.

8 THE COURT: Right.

9 MR. MILLER: I'm talking about --

10 THE COURT: But what you are referring to? I
11 mean --

12 MR. MILLER: Mr. Olsen referred to in his
13 testimony that there was a decision that took place in March
14 2021 that substantiated the allegations that were being made
15 in the Exhibit 260, the Texas v. Pennsylvania complaint.
16 And the Court ruled that that was not relevant because he
17 was only here to testify about the work that he did with
18 respect to the preparation and advancing of the Texas v.
19 Pennsylvania case. So --

20 THE COURT: And the Texas v. Pennsylvania filing
21 addresses the Ryan report.

22 MR. MILLER: It does.

23 THE COURT: Okay. All right. Your whatever --
24 that your objection is overruled. Let's move on.

25 //

1 BY MR. CARLING:

2 Q I don't recall if you answered my last question, Mr.
3 Olsen, and I will I'm not quite sure if I remember what my
4 last question was. I think I asked you if you recall having
5 seen that paragraph before?

6 A As I said, I may have seen this document, which came
7 out after the Supreme Court dismissed the case, but I don't
8 have a specific recollection of it.

9 Q Okay. Does this paragraph refresh your memory as to
10 whether under Act 77 someone could vote in person, and their
11 in-person ballot would be processed as a mail ballot, with
12 their mail date of the date that they received it?

13 A No. I don't think it says that. You used the
14 "process." It does say process. It does not say it was
15 processed by the post office, received with a postmark on
16 it. And that's what I was talking about with the Ryan
17 report, and that's the metric that was cited.

18 Q Okay. But you never contacted anyone at the Secretary
19 of State's Office to ask them about this, did you?

20 A Well, this came out on December 16th.

21 Q That's right. And you took a version of the Texas bill
22 of complaint after December 11th and sought to have the U.S.
23 Department of Justice file another version of that complaint
24 based on the same allegations, didn't you?

25 A Yes.

1 Q And you did that in late December, approximately
2 December 29th of 2020?

3 A I think I spoke with then acting AG Rosen, who I used
4 to work with, on December 27th, and then again on the 28th,
5 not the 29th.

6 Q And you sent Mr. Rosen a copy of a draft complaint that
7 you were suggesting the Department of Justice file, correct?

8 A Yes.

9 Q And that draft complaint was modeled on the Texas v.
10 Pennsylvania complaint, correct?

11 A Generally, yes.

12 Q Okay. And the complaint that you were suggesting to
13 the Department of Justice that they file also include the
14 same allegations about Representative Ryan's report, didn't
15 it?

16 A Generally, yes. And I just haven't looked -- I assume
17 that it -- I would not disagree with you that it did
18 unequivocally.

19 Q Okay. And between December 11 and December 27th, what
20 -- of 2020, what further steps did you take to verify the
21 allegations that Representative Ryan had made in his report?

22 A I mean at this point I don't recall. We update -- or I
23 updated --

24 THE COURT: I'm sorry. Just one second. What was
25 the time frame that you asked Mr. Olsen about, Mr. Carling?

1 MR. CARLING: Between December 11, 2020 and
2 December 27th, 2020.

3 THE COURT: Okay. Thank you.

4 I'm sorry. Go ahead, Mr. Olsen.

5 THE WITNESS: So, I would have reviewed all
6 available material to me before the allegations were
7 included in the complaint.

8 BY MR. CARLING:

9 Q But after December 11th and prior to giving Mr. Rosen a
10 draft version of the complaint with the same allegation, did
11 you -- during that time -- time period make any specific
12 efforts to verify the information in the Ryan report?

13 A No.

14 THE COURT: And when -- I'm sorry. When was the
15 draft complaint provided to Mr. Rosen?

16 THE WITNESS: December 27th, your Honor.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: I think -- I'm pretty sure of that
19 date.

20 MR. MILLER: Your Honor, may -- I believe I said
21 this, but I can't recall now. Since I objected to the
22 exhibit, may I have a continuing objection based on
23 relevance as to the line of questioning about this exhibit?

24 THE COURT: Exhibit 129?

25 MR. MILLER: I got it now. Yeah. 129, your

1 Honor. Thank you.

2 THE COURT: Okay. Uh-huh. Yes.

3 MR. MILLER: Thank you, your Honor. I appreciate
4 that.

5 BY MR. CARLING:

6 Q All right. But fair to say, Mr. Olsen, you disagree
7 with the Pennsylvania Secretary of State that Act 77
8 authorized the voting phenomenon that Representative Ryan
9 described in his report?

10 MR. MILLER: Objection, vague.

11 THE WITNESS: Yeah. I don't quite understand your
12 question.

13 THE COURT: Sustained.

14 BY MR. CARLING:

15 Q Well, returning to --

16 MR. CARLING: Let's put this one away.

17 BY MR. CARLING:

18 Q Going back to Exhibit 260. Do you -- you disagree with
19 the Pennsylvania Secretary of State that Act 77 authorized
20 Pennsylvania voters to return a ballot on the mailed date?

21 MR. MILLER: I'm sorry, vague. It's -- objection,
22 it's vague.

23 THE COURT: Overruled.

24 THE WITNESS: So, the problem I have is when you
25 say, "on the mail date." I'm saying, the mail date is a

1 postmark date. Standard processing. So, with that caveat,
2 yes. And I don't think that Secretary of State's letter in
3 there specifically addressed that. I think they're engaging
4 in sophistry.

5 BY MR. CARLING:

6 Q When you say they're engaging in "sophistry" -- well,
7 I'll withdraw that. Where have you seen any documentation
8 that under Pennsylvania voting records the mail date is
9 associated with the postmark?

10 A I'm sorry. Just say the beginning. Where have I seen
11 where?

12 Q Yeah. Where have you seen any information that in
13 Pennsylvania voting records the mail date is associated with
14 a postmark?

15 A I believe in the statute, for example. And this was
16 the issue in Republican Party v. Boockvar, where the
17 Pennsylvania Supreme Court ruled that ballots received after
18 the postmark date of November 3rd that that could be
19 extended to November 6.

20 And so, you know, you're seeing mail ballots, you're
21 seeing the association, and this was the whole issue up at
22 the Supreme Court, which split four-to-four on expedited
23 review that the postmark date -- ballots received after --
24 postmarked after November 3rd could still be counted through
25 November 6.

1 I might add, the Justice Alito found that Pennsylvania
2 State of Secretary or AG, who was ever arguing that motion,
3 misled them as to them segregating ballots out, which was a
4 promise made and not kept, so that the court could look back
5 and determine if there was an issue. And that was one of
6 the bases for the four-to-four split to -- on the expedited
7 review. And that's expressly pled in our --

8 THE COURT: I don't think you were asked about the
9 four-to-four split or the basis for the four-to-four split.

10 BY MR. CARLING:

11 Q So, I want to direct your attention back to the
12 Secretary of State's letter, which is State Bar Exhibit 129.
13 And do you agree that in paragraph that starts with the
14 word, "similarly," the Secretary of State is addressing
15 Representative Ryan's allegation that they were an anomalous
16 number of ballots that show they were submitted on or before
17 the mail date?

18 A That's what it says.

19 Q Okay. And the Secretary of State, after describing
20 what was authorized under Act 77 states:

21 "Most of these voters would be
22 shown as having been approved and
23 provided their ballot on the same date
24 they cast it at their county election
25 office."

1 So, are you are disagreeing with the Secretary of State
2 that most of those voters who voted early in person would be
3 shown as having been approved and provided their ballot on
4 the same date they cast it at their county election office?

5 A I mean, that's what it says.

6 Q And if they --

7 A So you're (indiscernible) do to you agree with
8 something. I disagree. I think that this description is
9 misleading. So, no, I don't agree, but that's what the
10 document says.

11 Q And if someone voted early in person, their ballot
12 wouldn't have a postmark, would it, on or after election
13 day?

14 MR. MILLER: Objection, vague. Incomplete
15 hypothetical. Lacks foundation.

16 THE COURT: Based on your understanding, Mr.
17 Olsen.

18 THE WITNESS: Could you repeat the question,
19 please?

20 BY MR. CARLING:

21 Q If they voted early in person and returned their
22 ballot, why do you believe that there would be a postmark on
23 it?

24 MR. MILLER: Same objection. It's vague, lacks
25 foundation. Incomplete hypothetical.

1 THE COURT: Overruled.

2 THE WITNESS: If they voted early in person with a
3 mail-in ballot, the ballot does not contain a postmark,
4 obviously, it's the outer envelope that does. So that I
5 would agree.

6 BY MR. CARLING:

7 Q All right. But fair to say, you didn't discuss this
8 allegation by Representative Ryan with anyone who has
9 experience with how Pennsylvania maintains its voter data?

10 MR. MILLER: Objection, asked and answered.

11 THE COURT: Sustained.

12 MR. CARLING: All right.

13 BY MR. CARLING:

14 Q Let's move on to a different part of the Pennsylvania
15 allegations. The -- turning back to Exhibit 260, and page
16 13. Directing your attention to the top full paragraph here
17 on paragraph eight. This has to do with something about
18 Pennsylvania changing its guidance regarding segregating
19 ballots, do you recall that?

20 A Yes.

21 Q All right. And you asserted, starting with the third
22 sentence here, it says:

23 "In a classic bait and switch,
24 Pennsylvania used guidance from its
25 Secretary of State to argue that this

1 court should not expedite review because
2 the state would segregate potentially
3 unlawful ballots."

4 You said the court could reasonably rely on that, and
5 then you said:

6 "Remarkably, before the ink was dry
7 on the court's four/four decision,
8 Pennsylvania changed that guidance,
9 breaking the state's promise to this
10 court."

11 Were you stating that Pennsylvania had changed its
12 guidance regarding segregating ballots?

13 A That's what it says.

14 Q Was that -- was that your belief at the time that you
15 wrote this?

16 A Yes.

17 Q What was that belief based on?

18 A That would have been a -- I mean, this would have been
19 something that we all discussed. We, being Larry, the other
20 folks on the team, and so forth, and reading the order that
21 was issued.

22 Q The order from Judge Alito?

23 A I believe so, yes.

24 Q Okay. So, would you agree that Pennsylvania -- the
25 guidance you're referring to was written guidance, wasn't

1 it?

2 A I don't recall.

3 Q How do you recall knowing what the guidance was that
4 Pennsylvania had issued on the question of segregating
5 ballots?

6 A Well I -- I mean my recollection, the most striking
7 thing that I remember is Judge Alito issuing an order, an
8 emergency order.

9 Q That's right. And you testified the last time you were
10 here that Judge Alito in his order directed the Pennsylvania
11 Secretary of State to live up to its promise. Do you recall
12 saying that?

13 A Something to that effect.

14 Q Is that your recollection of what Judge -- Justice
15 Alito said in his order?

16 A No, that may have been my interpretation of it.

17 Q Did Justice Alito say in his order that Pennsylvania
18 had changed its guidance on segregating ballots?

19 A I think my recollection is, the court was told that the
20 ballots would be segregated, so you don't need to worry
21 about this issue of ballots coming in that -- between --
22 after November 3rd at 8:00 p.m. through November 6. And
23 that was a representation that was made to the court, and
24 then they disregarded that and commingled the ballots. And
25 even Secretary of State Boockvar said, no big deal, it was

1 only about 10,000 ballots. With no basis to make that
2 assertion, but she tried to say it was only 10,000 ballots,
3 therefore, underneath -- under the margin of victory in
4 Pennsylvania, so nothing to see here.

5 Q All right. Looking at the very bottom of paragraph
6 eight, there's a quote to Justice Alito. And it says:

7 "This court was not informed that
8 the guidance issued on October 28th,
9 which had an important bearing on the
10 question of whether to order special
11 treatment of the ballots in question,
12 had been modified."

13 So do you agree that October 28th was Pennsylvania's
14 first guidance?

15 A I don't know if it was its first guidance or not.

16 Q All right. Well, I'll -- let me direct your attention
17 to an exhibit. This is State Bar Exhibit 127. And this is
18 dated November 1st of 2020. Do you recall having seen this
19 before?

20 A I may have, but I have no specific recollection.

21 Q All right. Directing your attention to the second
22 page. The paragraph begins:

23 "On October 28th, 2020 the
24 Department of State issued guidance
25 related to the segregation of mail in

1 and civilian absentee ballots received
2 by mail after 8:00 p.m. on Tuesday,
3 November 3rd, and before 5:00 p.m. on
4 Friday, November 6, 2020. In doing so
5 the Department of State indicated it
6 would update the county boards of
7 elections on how to canvass those
8 segregated ballots. That guidance
9 follows."

10 And then paragraph one goes on to say:

11 "All directions in the guidance
12 issued on October 28th of 2020
13 concerning the segregation and logging
14 of ballots received during this defined
15 post-election period continue to apply."

16 So, does this refresh your memory, Mr. Olsen? In it's
17 updated guidance, didn't the Pennsylvania Secretary of State
18 say that all the previous guidance regarding segregation of
19 ballots would continue to apply?

20 A Well, the document speaks for itself.

21 Q Well, the Pennsylvania Secretary of State --

22 THE COURT: I think the question was whether or
23 not the document refreshes your recollection with regard to
24 this issue.

25 THE WITNESS: I does not.

1 BY MR. CARLING:

2 Q Okay. Do you still believe that the Pennsylvania
3 Secretary of State changed it's guidance on segregating
4 ballots?

5 A Yes, and I believe Justice Alito thought the same
6 thing.

7 Q And that's based on your understanding of his order in
8 that case?

9 A That's one of the bases, yes.

10 Q All right. Would you agree that in this guidance, the
11 Pennsylvania Secretary of State is updating its guidance on
12 how to canvass segregated ballots, but it did not change its
13 guidance of segregating the ballots?

14 A I'm not sure I understand the question.

15 Q Do you recall ever seeing anything in writing from the
16 Department of Secretary of State where they changed their
17 guidance on segregating ballots?

18 A No, I don't recall seeing anything in writing where
19 they changed their guidance.

20 Q All right. And your belief that the Pennsylvania
21 Secretary of State changed their guidance on segregating
22 ballots is based on Justice Alito's order, is that correct?

23 A That's one aspect of it. It's whether or not the
24 guidance was being followed, and the Secretary of State knew
25 that it was being followed or did nothing to ensure that

1 that guidance was being followed.

2 Q Well, that's a separate issue. I'm asking you about
3 your allegation in the Texas v. Pennsylvania complaint that
4 the Secretary of State changed their guidance on segregating
5 ballots. And --

6 A My understanding is --

7 Q Okay.

8 A -- that they did not follow the representation made to
9 the Supreme Court at the hearing on October 28th. They
10 represented that they would segregate and they did not, and
11 Secretary of State Boockvar later admitted to that fact.

12 Q All right. But I just want to be clear, Mr. Olsen,
13 because there's two different allegations in the Texas v.
14 Pennsylvania complaint. One is that Pennsylvania changed
15 their guidance on segregating ballots. And the other is
16 that they failed to segregate the ballots.

17 And so would you agree those are two different issues,
18 whether they changed their guidance on segregating ballots
19 and on whether any such guidance was actually followed?

20 A I think that's pretty much a distinction without a
21 difference. You can change your guidance informally if you
22 don't follow it, knowingly don't follow it. If you're
23 looking for a written statement where the -- where there's a
24 written guidance, such as the exhibit you just showed me
25 where it says, no longer do it, I have no basis to dispute

1 that they issued written guidance that said, hey, we're
2 going to disobey the Supreme Court.

3 Q So, in paragraph eight when you say:

4 "Remarkably before the ink was dry
5 on the court's four/four decision,
6 Pennsylvania changed that guidance,
7 breaking the state's promise to this
8 court."

9 What guidance did they change?

10 A The -- the promise that they made to the court, that
11 they would segregate ballots. They admitted that they
12 didn't do it.

13 Q All right. We'll get to that in a moment. But, Mr.
14 Olsen, do you agree that when you testified here last week,
15 you testified that Justice Alito directed the Secretary of
16 State to live up to its promise to segregate the ballots?

17 A Those were may words, yes.

18 Q All right.

19 MR. CARLING: I'd like to mark a new exhibit next
20 in order. This will be State Bar Exhibit 376.

21 THE COURT: Thank you. Thank you.

22 Mr. Miller, do you have a copy of 376?

23 MR. MILLER: I do, your Honor. Thank you.

24 THE COURT: Okay. Uh-huh.

25 //

1 BY MR. CARLING:

2 Q Well, actually before we look at this, I just want to
3 go back to State Bar -- excuse me, yeah, State Bar Exhibit
4 260, to confirm that the order from Justice Alito that you
5 referred to in paragraph eight was an order dated November 6
6 of 2020. Do you see that after The Republican Party v.
7 Boockvar Lexis cite?

8 A Yes.

9 Q Okay. So, directing your attention to the new State
10 Bar Exhibit 376, is that right? Okay. This is a docket
11 from Republican Party of Pennsylvania, Petitioner v.
12 Veronica Degraffenreid, Acting Secretary of Pennsylvania, et
13 al. Scrolling down to November 6 of 2020, there's an order
14 issued by Justice Alito here. And I'll just give you a
15 moment to look this over, Mr. Olsen. I want to ask you if
16 this is the order that you were referring to.

17 A No. I'm referring -- well, it may be. I'm referring
18 to what was stated in the Lexis cite that is quoted in the
19 complaint, where the order says that that guidance was,
20 "modified."

21 Q Okay. Let's go back to your quote in State Bar Exhibit
22 260. And your quote is:

23 "This court was not informed that
24 the guidance issued on October 28th,
25 which had an important bearing on the

1 question of whether to order special
2 treatment of the ballots in question,
3 had been modified."

4 Do you see that?

5 A Yes.

6 Q All right. And then going back to the order in -- in
7 this case on November 6. Looking at the very bottom page
8 three, it says:

9 "Until today this court was not
10 informed that the guidance issued on
11 October 28th, which had an important
12 bearing on the question whether to order
13 special treatment of the ballots in
14 question, had been modified."

15 A I'm sorry. I'm trying to find -- to see where --

16 Q Sure. It's split over the end of --

17 A Okay. Here we go. Yeah.

18 Q -- page three and the top of page four.

19 A Yeah.

20 Q So that's the same quote that you had in your bill of
21 complaint, isn't it?

22 A It appears to be, yes. I --

23 Q Okay.

24 A -- did not take it from this document.

25 Q All right. And the date, November 6 of 2020, is the

1 same date as the issue -- as the order you cited in your
2 complaint for Justice Alito, is that correct?

3 A Yes.

4 Q All right. Well, putting aside where you got this
5 quote, just looking over this order, does this look like the
6 order you were referring to in the Texas bill of complaint?

7 A It would appear so.

8 Q Okay. And would you agree that nowhere in this order
9 does Justice Alito direct the Secretary of State to live up
10 to its promise, nor does he allege that they had failed to
11 segregate any ballots or change their guidance on ballots?

12 A No.

13 THE COURT: Just a minute. No, you do not agree
14 or?

15 THE WITNESS: No, I do not agree.

16 BY MR. CARLING:

17 Q Okay. So where in this order by Justice Alito does he
18 state that the Pennsylvania Secretary of State had changed
19 its guidance on segregating ballots?

20 A The quote you just read, where he talks about the
21 guidance issued on October 28, "had been modified."

22 Q Right. And we just read that change guidance, and they
23 modified their guidance on canvassing ballots, but they
24 explicitly wrote in it that their guidance on segregating
25 ballots was not changing. Do you recall that?

1 A No, but I don't think that's what modifying is referred
2 to. Because the issue was whether or not the ballots had
3 been segregated, and they had not.

4 Q Well, the issue is whether they changed their guidance
5 on segregating the ballots, isn't it?

6 A No. The issue is whether they promised the court that
7 they would segregate the ballots in question, which was a
8 basis for the court splitting four-to-four for expedited
9 review. Because that would allow them an opportunity to
10 revisit this issue after the election and determine if there
11 was an issue with the Pennsylvania election that could
12 change the outcome. They did not. They did not segregate.
13 They commingled those ballots, and that was the basis for
14 Justice Alito's November 6 order.

15 Q Would you agree that you have no evidence that the
16 Pennsylvania Secretary of State changed its guidance on
17 segregating ballots in any written order, either by the
18 Pennsylvania Secretary of State or the Supreme Court?

19 MR. MILLER: Objection, asked and answered.

20 THE COURT: Overruled.

21 THE WITNESS: I have not seen any written guidance
22 that changed the -- the other earlier guidance that you
23 talked about, correct.

24 BY MR. CARLING:

25 Q Okay.

1 THE COURT: I'm sorry. I missed the last part of
2 what you said. You've not seen any written guidance? I'm
3 sorry --

4 THE WITNESS: Yes.

5 THE COURT: Would you repeat your answer, please?

6 THE WITNESS: Yes, your Honor. The -- to be
7 clear, the counsel referred to written guidance, and my
8 answer is, I have not seen any written guidance that changed
9 that earlier guidance.

10 THE COURT: On the issue of segregating the ballot
11 that --

12 THE WITNESS: It's shown.

13 THE COURT: -- in Pennsylvania? Okay.

14 BY MR. CARLING:

15 Q All right. Returning to State Bar Exhibit 260 -- well,
16 actually before we go away from State Bar Exhibit 376. I --
17 Mr. Olsen, do you agree that this written order of Justice
18 Alito is the text of the order that you were referring to in
19 paragraph eight of Texas v. Pennsylvania?

20 A I don't know how to answer that. I'm referring -- I
21 referred to the Lexis opinion. That's what we cited. This
22 is the first time I've seen this document.

23 Q All right.

24 A So, I mean, it says what it says, but I -- you know, I
25 haven't sat and looked at it and thought about it, so.

1 Q Okay. Fair enough. Returning to State Bar Exhibit
2 260, I want to look at paragraph 55, which is on -- starts
3 on page 24 of the document. And it starts:

4 "In addition, a great number of
5 ballots were received after the
6 statutory deadline and yet were counted
7 by virtue of the fact that Pennsylvania
8 did not segregate all ballots received
9 after 8:00 p.m. on November 3rd, 2020.

10 Boockvar's claim that only about
11 10,000 ballots were received after this
12 deadline has no way of being proven,
13 since Pennsylvania broke its promise to
14 the court to segregate ballots and
15 commingled perhaps 10's or even 100's of
16 thousands of illegal, late ballots."

17 What is the evidence that you have to support that
18 claim in paragraph 55, that Pennsylvania commingled perhaps
19 10's or even 100's of thousands illegal, late ballots?

20 A Because there is no way to tell -- and as I recall from
21 the Ryan report, there was an issue of a discrepancy of
22 several hundred thousand ballots on the SURE System being
23 recorded. So that's one potential issue. But since there
24 was no way to tell how many ballots were received after
25 November 3rd, and given the other discrepancies, for

1 example, in the Ryan report on the SURE -- I believe there
2 was -- if you go back to the Ryan report, which is an
3 exhibit, there's an issue of, I think it's like 200,000
4 ballot discrepancy between what was reported on November
5 2nd, and then what was reported on November 4th as having
6 been sent. And was that because -- obviously, November 4th
7 is -- post-dates November 3rd. I think it's like a 200,000
8 ballot discrepancy.

9 There was more votes recorded as having being -- two-
10 hundred-thousand more votes as having been reported being
11 mailed out, appearing on the SURE System on November 4th,
12 than there was on, I think it was November 2nd. So that
13 would be one basis.

14 Q But is that information in the Ryan report the
15 evidentiary basis for your claim in paragraph 55 that
16 Pennsylvania commingled perhaps 10's or even 100's of
17 thousands of illegal, late ballots?

18 A Yeah, that would probably be one -- well, that would be
19 one basis. Because, again, we're talking about the issue
20 was ballots being recorded after 8:00 p.m. November 3rd.
21 The Ryan report notes a discrepancy in the number of mail-
22 out ballots between what was reported on the SURE on
23 November 2nd versus what was reported on the SURE System on
24 November 4th, the day after.

25 There were, I believe, about 200,000 more ballots

1 reported as having been mailed out on November 4th than what
2 they said on November 2nd, which makes no sense, because the
3 mail-out date for Pennsylvania, the last day to mail ballots
4 was, I believe, October 31st.

5 So, to have a discrepancy that straddled the November
6 3rd election of that magnitude, yes, that could be 200,000
7 more ballots could have been mailed out sometime between
8 November 2nd and November 4th, and which would not have been
9 segregated. Yeah, that's -- that was a big deal.

10 Q You write that, "Pennsylvania commingled perhaps 10's
11 or even 100's of thousands of illegal, late ballots."
12 You're speculating there, aren't you, as to what the number
13 was?

14 A No, I'm not.

15 Q So, what evidence do you have -- well, it is closer to
16 10's or is it closer to 100's of thousands?

17 A Well, as I said, you have no way to know.

18 Q Right. And if you have no way to know, then it could
19 be zero, couldn't it?

20 A No, because the Secretary of State admitted that 10,000
21 ballots were received. So, that's definitely not zero.

22 Q Well, it could be 10,000 ballots then, couldn't it?

23 A And given the basis that I just told you about the
24 discrepancy between what was recorded as having been mailed
25 out by Pennsylvania -- remember, October 31st, I believe, is

1 the last day to mail out votes, so you should know how many
2 you mailed out by that date. And they reported two
3 different numbers on November 2nd versus November 4. So,
4 the short answer is, as that -- or the allegation there, it
5 says, "perhaps 10's or even 100's of thousands." It says,
6 "perhaps." That's an issue.

7 Q Would you agree that you, in writing "or even 100's of
8 hundreds of thousands," you're speculating that it may have
9 been 100's of thousands?

10 A No.

11 Q All right. Let's --

12 A That's not -- well, it depends on what you mean by
13 speculation. I mean "perhaps" implies that we don't know.
14 But to -- it's not -- that number is not just being pulled
15 out of thin air is what I'm saying. So it depends on what
16 you mean by speculation. There is a basis for that
17 allegation.

18 Q And that basis that you've identified is the Ryan
19 report?

20 A That's one that I recall as we sit here today.

21 Q And do you have -- was there any expert -- expert
22 report or analysis that supported these numbers?

23 A By "these numbers," what do you mean?

24 Q The -- your allegation that Pennsylvania had commingled
25 perhaps 10's or even 100's of thousands of illegal, late

1 ballots.

2 A There was no expert report on this issue, no.

3 Q All right.

4 MR. CARLING: Just one moment.

5 BY MR. CARLING:

6 Q And your citation here is that Boockvar claimed that
7 only about 10,000 ballots were received after this deadline.
8 The -- what is your basis for knowing how many ballots were
9 counted that you believe may have been illegal, late
10 ballots?

11 A Well, the -- Boockvar's claim, that was publicly
12 reported, the 10,000 ballots. She publicly admitted that.

13 Q All right. I believe you said that the Ryan report was
14 one basis for these numbers. What is the other -- what
15 other evidentiary basis do you have for these figures?

16 A Well, as we sit here today, that's the only basis that
17 I can think of.

18 Q Okay. Mr. Olsen, I know you have a hard stop at 3:00
19 o'clock, and I want to find a good stopping point. So, let
20 me just check to see if I have any more on Pennsylvania, and
21 this may be a good place to stop.

22 A Okay.

23 Q Did you ever contact anyone from the Secretary of
24 State's Office about the SURE data that you referred to?

25 A No.

1 Q Do you recall whether the Secretary of State's Office
2 had addressed that issue of SURE data that Representative
3 Ryan raised?

4 A I don't know. They may have afterwards, but I don't
5 know. The short answer is, I don't recall.

6 Q Okay. But you don't have a recollection of what the
7 Secretary of State's statement was regarding Ryan's
8 allegation of the SURE data?

9 A I do not.

10 Q Okay.

11 MR. CARLING: Your Honor, I think that is a good
12 stopping point, and it is nearly 3:00 o'clock.

13 THE COURT: Okay. You have more cross-examination
14 for Mr. Olsen?

15 MR. CARLING: I do.

16 THE COURT: Obviously not today, but -- okay.
17 Just so -- then I'm going to ask you before -- Mr. Olsen, to
18 make sure you communicate with someone in Mr. Miller's
19 office to advise of your availability during the --

20 THE WITNESS: I did that, your Honor, and --

21 THE COURT: Okay. Very good.

22 THE WITNESS: -- I've confirmed every -- the next
23 dates.

24 THE COURT: Okay. Thank you, Mr. Olsen. Then
25 we'll resume with you on another date that you're available.

1 Have a good weekend.

2 THE WITNESS: Thank you, your Honor.

3 THE COURT: Uh-huh.

4 THE WITNESS: May I be dismissed?

5 THE COURT: Yes, you may. You're excused for
6 today.

7 MR. CARLING: Thank you, Mr. Olsen.

8 THE WITNESS: Thank you.

9 (The witness was excused.)

10 THE COURT: Okay. Mr. Miller, do you still intend
11 to call Doctor Eastman next?

12 MR. MILLER: I do, your Honor. Yes.

13 THE COURT: Okay. Let's take a 10-minute break,
14 and then we will resume at 10 after.

15 MR. MILLER: Thank you, your Honor.

16 THE COURT: Uh-huh.

17 THE CLERK: We're off the record, your Honor.

18 THE COURT: Thank you.

19 (Proceedings recessed briefly.)

20 THE CLERK: We're back on the record, your Honor.

21 THE COURT: Thank you.

22 We're back on the record in the continued hearing
23 of John Charles Eastman in Case Number 23-O-30029.

24 Okay. Mr. Miller, your next witness.

25 MR. MILLER: Thank you, your Honor. Respondent

1 would like to call Doctor Eastman to the stand.

2 THE CLERK: Doctor Eastman, remain standing.

3 Thank you.

4 JOHN CHARLES EASTMAN - RESPONDENT - SWORN

5 THE WITNESS: I do.

6 THE CLERK: Thank you. Go ahead and have a seat,
7 Doctor Eastman. And can you please state your first and
8 last name, and also spell your first and last name for the
9 record, please?

10 THE WITNESS: John Eastman, J-O-H-N, E-A-S-T-M-A-
11 N.

12 THE CLERK: Thank you.

13 UNIDENTIFIED SPEAKER: (Indiscernible.)

14 THE COURT: Uh-huh.

15 All righty. Mr. Miller.

16 MR. MILLER: Thank you, your Honor. I'll inquire.

17 DIRECT EXAMINATION

18 BY MR. MILLER:

19 Q Good afternoon, Doctor Eastman.

20 A Good afternoon.

21 Q I want to start by looking at the two- and six-page
22 memos. It might be easiest for you to look at a paper
23 version, which is behind you in the exhibit binders.

24 A Okay. I have those.

25 Q Okay. Let's start with the two

1 THE COURT: I'm sorry. Just to be clear, that
2 you're referring to Exhibits 3 and 4?

3 MR. MILLER: Yeah. I was just going to say that.
4 Thank you.

5 THE COURT: Yes. Uh-huh.

6 BY MR. MILLER:

7 Q Do you have Exhibit 3, Doctor Eastman?

8 A I do.

9 Q Okay. So I want to try to put some context on these
10 memos. I'll start with Exhibit 3, the two-page memo. Let
11 me start generally, Doctor Eastman. Where were you in the
12 process of the work that you had undertaken as of the date
13 that the two-page memo was prepared?

14 A I had been asked --

15 THE COURT: Well, just a minute.

16 What was the date that the two-page memo was
17 prepared?

18 MR. MILLER: Okay. Well, that's stipulated, your
19 Honor, but --

20 THE COURT: Okay.

21 MR. MILLER: -- so it's -- yeah, it's December
22 23rd, just to reacquaint the Court with the timeline here.

23 THE COURT: Thank you.

24 MR. MILLER: You bet. Yeah.

25 THE WITNESS: I had been asked by President Trump

1 to represent him in the original action that Texas has file
2 in the Texas v. Pennsylvania case. That would have been the
3 9th of December we filed that. After the Supreme Court
4 denied review of that case on standing grounds, the
5 President asked me to consider cert petitions from other
6 states where litigation was still pending.

7 And I was counsel of record in the cert petition
8 that we filed, about December 21st I'm thinking the date is,
9 in three different Pennsylvania Supreme Court cases. We
10 filed it as a single, consolidated cert petition.

11 And then I was also in discussion with the two
12 teams involved in Wisconsin in the state litigation and in
13 the federal litigation about them bringing cert petitions on
14 those cases as well.

15 THE COURT: I'm sorry. Which cases again?

16 THE WITNESS: Wisconsin.

17 THE COURT: Okay.

18 BY MR. MILLER:

19 Q Now, in terms of the work that is the subject matter of
20 the two-page memo, Exhibit 3, so sort of generally described
21 as the -- well, let me ask you, Doctor Eastman. How would
22 you describe the subject matter that you were -- captured in
23 the two-page memo?

24 A Well, it was the beginning of an effort to lay out all
25 of the scenarios that were being floated both internally in

1 the campaign, and externally in public presses about all the
2 scenarios that might play out on January 6th.

3 And as I recall, somebody on the campaign team asked me
4 to do that scenarios memo, but to begin with the most direct
5 -- a point that -- the most aggressive, if you will, of the
6 various scenarios. Depicting the vice president's role, and
7 the fact that a number of state legislators were advising
8 and passing -- or introducing resolutions in their state
9 legislatures that the elections should not have been
10 certified. How would that play out and what -- of all the
11 scenarios, start with the most aggressive one, and then
12 we'll work backward to fill in all the rest, and as we
13 internally discuss what our advice should be.

14 Q Okay. All right. That was a lot. I'll go into the --
15 who was asking what at that point in time in a few
16 questions. But can you relate to us, Doctor Eastman, sort
17 of the issue or legal issue that you were analyzing in the
18 two-page memo?

19 A So, the main issue that I was analyzing was what the
20 12th Amendment provides for who has authority to resolve
21 disputes of electoral votes. The language in the 12th
22 Amendment on this point is identical to the language in
23 article -- the original Article II of the Constitution.

24 And it, you know, begins unambiguously saying that the
25 vice president or the president of the Senate, who's the

1 vice president when there is a vice president, shall open
2 all the votes in the presence of the House and Senate, and
3 then they shall be counted. So it shifts from the active
4 voice to the passive voice, and there's been 200 years of
5 dispute over that -- what the constitutional interpretation
6 of that shift means.

7 Q All right. Well, we'll -- thank you. We'll get into
8 the -- into the details of your assessment and research that
9 -- in a few.

10 When in the timeline relatively to December 23rd, 2000
11 (sic), Doctor Eastman, did the framework for your analysis
12 of that issue sort of solidify?

13 A Well, you know --

14 THE COURT: I'm sorry. When did the framework?

15 BY MR. MILLER:

16 Q For the analysis of the issue that you just described
17 solidify?

18 A So I -- I had dealt with this issue before 20 years
19 earlier, but not directly with this issue. When I was
20 called as an expert to testify before the Florida
21 Legislature in the 2000 election, and then was subsequently
22 retained by the Florida Legislature to help them draft
23 legislation that would protect their electoral votes.

24 And at that time, I had reviewed the Electoral Count
25 Act of 1787, which nobody had really looked at much in 150

1 years or 130 years at that time. And I -- you know, without
2 having a need in 2000 to look at the constitutionality of
3 that Act, I had just presumed it was constitutional without
4 further review. And I think I -- in some exchange with a
5 correspondent in early October, I reiterated that view.

6 But then I saw John Yoo and Rob Delahunty's piece in
7 American Mind in October of 2022, that caused me to rethink
8 that and conduct further research into it. And their
9 argument there, that the vice president was the only one
10 that was assigned the role, that Congress was there to be
11 merely present, and then the explanation of why I discovered
12 in further research. That, you know, one thing that's clear
13 from the founding era in the debates and the ratification or
14 the -- I'm sorry, the Federal Convention, was that the
15 drafters of the Constitution explicitly chose not to give
16 any role to Congress, which I thought lent great support to
17 the Yoo/Delahunty position that I saw in American Mind.

18 And then as I further delved into the issue and looked
19 at further scholarship, I discovered that a lot of other
20 scholars had either come to that same conclusion or
21 recognized the viability of that conclusion as a credible
22 argument.

23 And so, that was the background as we get into this,
24 what's going to happen on January 6. And the focus needed
25 to be on the role of the President of the Senate, or the

1 vice president, and what that would mean and what that would
2 entail. And so that's -- that was kind of the origin of my
3 thinking on this.

4 Q Okay. So, the task is to research -- or research
5 further the scope of the of the 12th Amendment. Can we
6 agree on that characterization?

7 A I think that's right, yes.

8 Q Okay.

9 A And what it meant and who had the authority for
10 resolving disputes. Because there's some ambiguity in the
11 language. And what -- what was the historical precedent,
12 what was the views of the framers of that language of the --
13 of the original Article II. And what had been the
14 scholarship on that subject, that it occurred -- most of
15 which, had it occurred since 2000.

16 Q Okay. Not a new topic for you?

17 A Not a -- no. I -- I mean, I didn't look at that
18 precise -- the issue of whether the Electoral Count Act was
19 constitutional was not presented in the disputes that we
20 dealt with in Florida in 2000. It was just assumed, and we
21 didn't have to dig into it. But as I started digging into
22 it, I realized there was a very significant issue there.

23 Q All right. So I know you looked at a lot of scholarly
24 information. We'll get to that in a minute. Had you
25 reviewed any of the scholarly information that you looked at

1 with respect to your research that you were doing here
2 before, say, December 1st, 2020?

3 A Well, so I saw John Yoo and Robert Delahunty's article
4 when it first came out in October. I probably thought,
5 that's very interesting. I don't recall specifically when I
6 started looking further at the additional scholarship. It
7 may have been - it may have been sometime in November.

8 As I think I've testified early in the proceedings, I
9 came down with covid fairly shortly thereafter, so I was
10 having trouble keeping up with my day job, work and
11 teaching. But at some point, either late November or early
12 December, I started more vigorously looking at the
13 scholarship as well.

14 Q Okay. Well, let's get Exhibit 1017 on the screen for
15 you to look at, Doctor Eastman, just so we have a point of
16 reference. And it will come up in a moment, but Exhibit
17 1017 is a copy of the American Mind article that you just
18 referred to.

19 MR. MILLER: Yes. That's perfect. Yeah. Thanks.

20 BY MR. MILLER:

21 Q Okay. On the screen, or at least part of the screen,
22 Doctor Eastman, we have the -- is this a copy of the
23 American Mind article by Professor Yoo and Professor
24 Delahunty?

25 A Yes, it is.

1 Q Okay. And this has a date --

2 MR. MILLER: Should I wait, your Honor? I know
3 you're --

4 THE COURT: Yeah. Just a second, please.

5 MR. MILLER: -- getting that out. Sure. I'll
6 take my time.

7 THE COURT: Okay. Thank you.

8 MR. MILLER: Thank you.

9 BY MR. MILLER:

10 Q All right. So, Exhibit 1017 has a date on it of
11 October 19, 2020. Let me ask you so we can sort of lay a
12 foundation when you first looked at this. Did -- you were
13 subscriber to the American Mind? Is that how it was
14 distributed?

15 A Well, the American Mind is a on-line publication of the
16 Claremont Institute where I'm a senior fellow. So, I
17 regularly get notifications of articles that get posted.
18 It's not a subscription thing, but I tend to see them fairly
19 shortly after they're posted up there.

20 Q Okay. And explain to the Court just briefly, Doctor
21 Eastman, what was your connection with the Claremont
22 Institute as of October 2020?

23 A I was a senior fellow, am still a senior fellow, and I
24 was the founding director of its public interest law
25 department, the Center for Constitutional Jurisprudence.

1 Q Okay. And prior to the publication of Exhibit 1017 in
2 October 19, 2020, were you aware that Professors Yoo and
3 Delahunty were writing this article?

4 A I was not.

5 Q Okay. So it's fair to say the first time you saw it
6 was whenever it popped in some form on your screen?

7 A That's correct.

8 Q Okay.

9 A Probably just a link, and I linked to it and then read
10 it. I said, this is very interesting. It --

11 Q Okay.

12 A Yeah.

13 Q This is pre-election, so I'm assuming, Doctor Eastman,
14 that this had no significant bearing to you --

15 THE COURT: Are you -- are you leading the
16 witness?

17 MR. MILLER: Sure. Yes, your Honor, I was. So
18 let me break it down and ask it differently.

19 BY MR. MILLER:

20 Q Doctor Eastman, did Exhibit 1017 have any -- have any
21 bearing relative to the 2020 election to you?

22 A Well, not yet. Because this was going to have
23 relevance to the 2020 election only if we had a close
24 election and we had contested states and we had disputed
25 electoral ballots. And, of course, in October, one was

1 certainly hoping that it would not be such a close election
2 that we'd have those kind of disputes. But I certainly
3 became aware of a new avenue worth pursuing or considering
4 had -- if there -- if disputes arose after the 2020
5 election.

6 Q Okay. And so, what was -- did you have a takeaway of
7 Exhibit 1017, Professor Yoo and Delahunty's article,
8 relative to the issues they did raise?

9 A Yeah. The takeaway was that -- it wasn't Congress as a
10 whole, or the House and the Senate meeting in joint session,
11 that had authority to resolve the disputes. That it was
12 instead the vice president's role. And whether that is in
13 his role, unambiguous in the language of the 12th Amendment,
14 to open the certificates, or in his role as John and Robert
15 -- or Professor Yoo and Professor Delahunty say here,
16 implicitly to be the one that counts the -- the
17 certificates. But that nevertheless, wherever it was --
18 whichever language or phrase that was tied to it, it was his
19 role to resolve the disputes. And that the role of the
20 House of Senate were specifically there to be present, to
21 observe, but to have no formal role.

22 Q Fair enough. So -- all right. So, at some point,
23 Doctor Eastman, does the information or research that you
24 did as part of the two-page memo, when did that start to
25 occur in earnest?

1 A I think probably late November, maybe early December,
2 that I started to look at it. I don't remember when I first
3 pull up -- one of the first articles I looked at was the
4 more comprehensive one that was done by Mr. Kesavan. But I
5 also looked at the Bruce Ackerman article. I looked at the
6 -- couple of articles by Professor Foley. There was another
7 one by Landis (phonetic). There were seven or eight
8 articles that I reviewed at the time. Sometime late
9 November, early to mid-December. But I was also at the same
10 time looking at congressional records, most importantly, the
11 records of the Federal Convention.

12 Q So, is it fair to say that late November, early
13 December, Doctor Eastman, you had started to undertake
14 research about the 12th Amendment?

15 A I did. I -- you know, and again, I didn't know whether
16 that was going to become relevant. That we still had -- we
17 were focused on the litigation with the hope that the courts
18 would address the illegalities that we had observed and made
19 allegations about in the various litigations that were going
20 in the states. But the Yoo/Delahunty article had triggered
21 an interest in my mind to look further into -- into the
22 historical record and the scholarship on the role of the
23 vice president as well.

24 THE COURT: Just a minute. You testified that you
25 first looked at the Kesavan article, then Foley, Landis, and

1 I think you said --

2 THE WITNESS: Yeah. I don't remember the exact
3 order. I think I probably started with the Kesavan article.
4 I may have started with one of the others --

5 THE COURT: But I think I missed one of the
6 articles that you said you --

7 THE WITNESS: I'm sorry. Kesavan, Foley,
8 Ackerman --

9 THE COURT: "Ackerman."

10 THE WITNESS: -- Landis --

11 THE COURT: Okay.

12 THE WITNESS: Yeah.

13 THE COURT: That's him. All right.

14 THE WITNESS: And it's quite possible I started
15 with the Ackerman one, because he's -- his was a name, a
16 very prominent name in constitutional scholarship. And he
17 has, if I recall correctly, he has a footnote saying, I
18 don't need to go too much into this, because Vince Kesavan
19 has done a very good job of outlining the record. So, that
20 probably led me immediately to Kesavan's article if I hadn't
21 started it. I just don't recall what the precise order was.

22 BY MR. MILLER:

23 Q Okay. Thank you. So we'll go through that in a little
24 bit more detail in a bit. Tell me, if you remember, Doctor
25 Eastman, when was it then that you surfaced from the covid

1 diagnosis that you had in November?

2 A So, I know exactly when I got the news that one of the
3 other people in my meeting in Philadelphia came down with
4 covid. So that was -- that was -- the meeting was the
5 Saturday after the election, so that would have been 7th.
6 And on the 10th of November he -- that person called me and
7 said he had covid. I better get tested. And within a day I
8 was down, and it was -- I was down for three weeks. So, 11,
9 18, 25th. End of November, you know, even close to the
10 first of December, before I was -- had bounced back. But,
11 you know, I was trying to teach. We were luckily by Zoom at
12 the time, so I was able to teach from my bedroom.

13 And then once we got into the Thanksgiving holiday, I
14 didn't have teaching duties, and I -- my recollection is
15 that's probably when I started filling some of my time by
16 looking at the scholarship, but I just don't recall in
17 particular.

18 Q Okay. Fair enough. Then you mentioned a couple pieces
19 of litigation that you were involved in. One was the Texas
20 v. Pennsylvania case?

21 A Yes.

22 Q Okay. And you can probably place the dates for us
23 pretty well on that, Doctor Eastman. When was it that you
24 filed the motion to intervene in the Texas v. Pennsylvania
25 case?

1 A Texas filed its original action motion to -- for leave
2 to file on Monday, December 7th, and I filed the motion to
3 intervene, I think it was late in the day on Monday. And so
4 36 hours later we had filed our motion to intervene. That
5 would have been on Wednesday, December 9th.

6 Q Okay. And let's just focus on that time period in
7 early December, Doctor Eastman. In what capacity were you
8 acting at that point in time relative to any of the work
9 that you were doing?

10 THE COURT: At the time that he filed the motion
11 to intervene in --

12 MR. MILLER: Yeah, that's a good --

13 THE COURT: -- Texas v. --

14 MR. MILLER: -- place in time to look at, your
15 Honor. Thank you.

16 THE WITNESS: So, I had -- I had informally been
17 asked to become part of election integrity team by Cleta
18 Mitchell on request from the President himself, as that was
19 conveyed to me, and that was earlier September. We were
20 just kind of anticipating, you know, looking at state
21 statutes and election codes and election challenge
22 requirements and what have you.

23 I was asked formally by one of the attorneys
24 working with the campaign legal team to attend a strategy
25 discussion at the campaign legal headquarters in

1 Philadelphia on the weekend after the election. And that
2 would have been November 7th. And then -- and then after I
3 came back from covid, the President himself called me at
4 some point, first week of December, and asked me whether I
5 would consider representing him potential -- potential
6 actions -- I'm trying to be very careful not to go into the
7 substance of the communication, but in potential action,
8 original action in the Supreme Court.

9 BY MR. MILLER:

10 Q Okay. And did that request for that engagement
11 eventually result in you being retained with respect to the
12 Texas v. Pennsylvania action?

13 A Yes, it did.

14 Q Okay.

15 A It resulted in a written retainer agreement. I said I
16 wanted a retainer agreement in place before I made the
17 filing. The retainer agreement had described me as a
18 volunteer attorney, and I said, I should probably get a fee
19 for this. They asked me to make mention of what the fee
20 would be.

21 I provided a flat rate, and we never concluded the
22 negotiations on that before we had to get the thing filed.
23 But I viewed that retainer agreement and the oral
24 communications from the President as retaining me to handle
25 that matter.

1 Q Okay. And did you eventually form an attorney/client
2 relationship with President Trump as a -- as a candidate?

3 A Yes, I did. And I think -- I think for purposes of
4 privileged communications, that relationship dates back to
5 early September. But certainly with respect to the Texas --
6 the Texas matter took that relationship to a specific
7 matter, and there was no question it was attorney/client
8 relationship there.

9 Q Now, Doctor Eastman, you were involved in some
10 litigation in the United States District Court on Orange
11 County regarding a subpoena by the January 6 House
12 Committee?

13 A Yes.

14 Q Okay. And in that case, Doctor Eastman, did the issue
15 come up as to whether in fact there was an attorney/client
16 relationship between you on the one hand, and candidate
17 Trump on the other?

18 A Yes, it did.

19 Q And what was the finding of -- tell us first of all,
20 the name of the judge who was presiding over that matter.

21 A Judge David Carter explicitly found that I had an
22 attorney/client relationship with the President.

23 Q Okay. So just so we're clear on the timeline, you were
24 acting pursuant to that attorney/client relationship in --
25 on December 9th when you filed the motion in intervention in

1 the Texas v. Pennsylvania case?

2 A That's correct.

3 Q Got it. Okay. Okay. And for the work that you did,
4 Doctor Eastman, for candidate Trump, we're going to talk
5 about different aspects of it as we go through the
6 examination. Were you ever paid for that work?

7 A Not for the Texas v. Pennsylvania work. I was paid for
8 the subsequent cert petition we did from three different
9 Pennsylvania Supreme Court decisions. And that's the Trump
10 v. Boockvar matter we filed on December 21st, I think, cert
11 petition in the Supreme Court. And that matter remained
12 pending until the court denied the cert petition on February
13 -- either 12th or 22nd. I can't remember the exact date.

14 Q Okay. And did you keep track of the time that you
15 spent relative -- I'm just going conglomerate it into the --
16 into the Pennsylvania -- the Supreme Court petition arising
17 out of the Pennsylvania litigation. Did you record your
18 time for that or keep track of it?

19 A You know, I don't -- I'd have to go back and look at my
20 records. I don't think I did. What I was getting paid
21 independently in the Pennsylvania matter was a flat fee, so
22 I may not have kept contemporaneous phone records at the
23 time. I just don't recall.

24 Q Okay. Fair enough. And then you also mentioned in
25 this December time period work that you did with respect to

1 litigation in the State of Wisconsin, do I have that right?

2 A Yes.

3 Q Okay. And what sort of work did you do relative to
4 litigation in Wisconsin?

5 A So there were -- there were two paths being pursued
6 simultaneously in Wisconsin. There was a state court
7 election challenges and up to the Wisconsin Supreme Court.
8 That for the lead attorney on that, if I recall, was former
9 Judge Jim Troupis.

10 And then there was federal action brought in the
11 Eastern District of Wisconsin Federal District Court. And
12 the law firm in charge of that was a firm based on Indiana.
13 And we thought it was important that there be -- that the
14 election challenges that had been proceeding in a number of
15 the contested states, if there was viable grounds for
16 seeking cert in the Supreme Court, that those cert petitions
17 get filed, so that there were enough electoral votes at
18 issue to affect the outcome of the election. We thought
19 that was important for the -- for the court to take these
20 matters under consideration.

21 And Wisconsin and Georgia and Michigan were among the
22 states we looked for that. And the Wisconsin ones I thought
23 were most clearly viable -- rock-solid legal claims that I
24 thought could be presented to the Supreme Court.

25 THE COURT: Which one? Go ahead.

1 THE WITNESS: Wisconsin was -- the state action
2 was Trump v. Biden, and the federal action was Trump v.
3 Wisconsin Elections Commission.

4 BY MR. MILLER:

5 Q We'll take those one at a time, just to sort close out
6 that aspect of your work, Doctor Eastman. What was the
7 resolution of the Trump v. Biden state court action in
8 Wisconsin?

9 A So, the state court action, the State Supreme Court had
10 dismissed on jurisdictional grounds. I -- laches, I
11 believe. I don't recall specifically. I know the federal
12 one was laches. I don't remember. I do remember that there
13 was a very strong dissent about them needing to take this
14 case.

15 And as a former Supreme Court clerk, dissents like that
16 are often red flagged for the Supreme Court, that there's
17 something here we need to look at. So, I was very
18 encouraged by the strength of the dissent in that -- in that
19 case. And the state -- that was the state action, Trump v.
20 Biden.

21 Q Right. And, I'm sorry, I lost track of what you were
22 referring to. Was that you were involved in a petition to
23 the United States Supreme Court arising out of the state --

24 A I was not -- I was not counsel on the case. I was
25 counsel for the President and having communications with the

1 attorneys on those cases. And help -- assisted with the
2 preparation of the cert petition.

3 Q Okay. And was -- is it fair, Doctor Eastman, that your
4 efforts with respect to the state court action in Wisconsin
5 were focused as part of the team on the cert petition?

6 A Yes.

7 Q Okay. And how did that cert petition -- how did that
8 turn out?

9 A My recollection is, that because they were a little bit
10 behind us in the queue, their cert petitions may have been
11 denied after ours in the Wisconsin state court proceeding in
12 Trump v. Biden. Or it may have been the same day in
13 February. The court denied several cert petitions on the
14 same day in February.

15 Q Okay. And as to the work --

16 THE COURT: And this was --

17 MR. MILLER: Go ahead, your Honor. I'm sorry.

18 THE COURT: -- state cert petition that you worked
19 on was one of those that was denied, right?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 BY MR. MILLER:

23 Q And you may have already answered this, Doctor Eastman,
24 but in what were you acting with respect to the work that
25 you just described relative to the cert petition from

1 Wisconsin?

2 A I was -- I was one of the attorneys for President
3 Trump. My primary role was -- had been on the cert
4 petitions from Pennsylvania where I was counsel of record.
5 But my role here was to provide assistance and counsel as a
6 Supreme Court practitioner to the folks that were working on
7 the cert petition from Wisconsin.

8 Q Okay. All right. So I got that. And then, so, can we
9 go back to the other aspect of the work that you were doing
10 relative to the State of Wisconsin in December, this one in
11 U.S. District Court. Can you explain what it is, what role
12 you played with respect to that work?

13 A Sure. And again, I didn't have any role in either --

14 THE COURT: And just to be clear, you're referring
15 to Trump v. The Wisconsin Elections Commission, right?

16 THE WITNESS: Yes.

17 THE COURT: Okay.

18 THE WITNESS: Yeah. And so I didn't have any role
19 in the trial court or even in the second -- Seventh Circuit
20 appellate decision briefing. But I did -- I was well aware
21 of the Seventh Circuit opinion when it came out, because it
22 was extraordinary.

23 It was to my knowledge the first time that any
24 court had even addressed the issue of the role of state
25 legislators -- legislatures after dispute of elections. And

1 the issue arose in the context of whether President Trump
2 had standing to challenge changes in election law that had
3 occurred in Wisconsin by non-legislative actors.

4 And the Seventh Circuit held he did have standing
5 because he was obviously harmed, he had a particularized
6 injury. But more importantly, he had a remedy that if he
7 was right on the merits, the remedy would be for this thing
8 to be relegated back to the state legislature under its
9 Article II authority under the Constitution to determine
10 what to do about the illegality.

11 To my knowledge, that was the first time any court
12 had ever addressed that specific issue.

13 BY MR. MILLER:

14 Q Okay.

15 A And I thought that was quite significant.

16 Q Thank you. And then I think you mentioned you didn't
17 have formal involvement in the case. Was there further
18 activity with respect to this -- to the district court --
19 federal court efforts in the State of Wisconsin?

20 A Sure. So, at that point after we filed our
21 Pennsylvania cert petition and we were put in touch with the
22 attorneys both in the state court action and Wisconsin, the
23 Trump v. Biden case, and in the federal court action, the
24 Trump v. Wisconsin Elections Commission case, to coordinate
25 or communicate and express our ideas about the best way to

1 pursue a cert petition. So I was involved in those
2 discussions somewhat extensively.

3 Q Okay. And was a cert petition eventually filed with
4 the United States Supreme Court?

5 A The cert petition was filed I think December 30th or
6 29, 30th, somewhere thereabouts --

7 Q Okay.

8 A -- in both of those cases.

9 Q And in what capacity were you acting, Doctor Eastman,
10 with respect to the cert petition arising out of the federal
11 court proceedings in Wisconsin?

12 A As one of the attorneys for President Trump.

13 Q Okay. Did you appear as counsel of record in the cert
14 petition?

15 A I did not appear on -- in either of those. I was part
16 of the -- I would consider myself a consulting attorney on
17 those two matters.

18 Q Okay. I can't recall how we came out on this, but did
19 you -- let me start with the Wisconsin state court action.
20 Did you keep track of the time that you spent in the
21 capacity that you were acting?

22 A I'd have to go back and look. I -- I mean, there was
23 so much going on in such a compressed period of time. It's
24 quite likely I hadn't kept contemporaneous records, but
25 maybe I did, I just don't recall.

1 Q Same question with respect to the role that you played
2 with respect to Wisconsin federal court cert petition?

3 A Same answer.

4 THE COURT: Okay. How is this relevant? You've
5 asked this several times, like whether or not Doctor Eastman
6 kept track of his time. He's testified with regard to
7 certain of these matters he was not billing --

8 MR. MILLER: Right.

9 THE COURT: -- a client, so.

10 MR. MILLER: I think it's important to document
11 the effort and work that Doctor Eastman was doing. And as
12 part of that would be the time he was putting in, if he
13 had --

14 THE COURT: Why is that relevant?

15 MR. MILLER: Because we're talking about doctor --

16 THE COURT: He's acknowledged that he was involved
17 in various ways with certain filings.

18 MR. MILLER: Sure.

19 THE COURT: But how is that relevant?

20 MR. MILLER: Well, because it eventually leads to
21 the work that he continued to do with respect to the
22 preparation of the memos, the --

23 THE COURT: Okay. Then let's get to that.

24 BY MR. MILLER:

25 Q So with respect to Exhibit 3, the two-page memo, we

1 started to talk about that, Doctor Eastman. And I think the
2 phrase you used was that you were asked to create the most
3 aggressive strategy, do I have that right?

4 A Well, I was asked to kind of summarize all of the
5 different scenarios that were being talked about, both
6 internally among members of the campaign legal team and
7 political team, but also externally.

8 I mean, beginning back in September and October, people
9 were floating in public articles in Atlantic or other
10 journals, you know, what might happen if the election was
11 close and disputed. So there were lot's of different ideas
12 floating around, and I was asked to just put down the
13 various scenarios and how the might play out. But I was
14 asked, start with the most aggressive one. Let's assume
15 that the vice president has authority to decide these
16 things. What would happen if he just decided that there
17 were certain electoral votes that were invalid? So, start
18 with that, and then we'll fill out the rest of the scenarios
19 later. So that's why I began with that scenario.

20 Q Okay. And who's communicating that to you, Doctor
21 Eastman?

22 A You know, I -- I don't recall specifically. The only
23 two people I recall having direct communications about this
24 with were one of the strategic advisors/attorneys for the
25 Trump legal team, Boris Epshteyn, and also Kenneth Chesebro.

1 I don't think I had communications about this with anybody
2 else, so it would have been one of them, but I don't recall
3 who specifically.

4 And I've gone back through my e-mails, all of which
5 we're produced that weren't otherwise privileged, and I
6 don't have any specific discussion of that in my e-mails.
7 So, it was undoubtedly via a phone call, but that's the best
8 I can recall.

9 Q And is it your testimony, Doctor Eastman, that it was
10 -- that in this December 23rd time frame, mid to late
11 December time frame, that it was Mr. Epshteyn and Mr.
12 Chesebro that you were communicating with about developing
13 the different scenarios?

14 A Sure. We had -- we had -- there had been a bunch of
15 litigation that had been blocked under various
16 jurisdictional grounds in most cases, including the Supreme
17 Court action. We had just filed our Pennsylvania Supreme
18 Court cert petition. We were starting to work with the
19 Wisconsin team on those cert petitions. But it was
20 increasingly looking like that things were going to come to
21 a head on January 6, so we starting paying much greater
22 attention to what the scenarios that might play out on
23 January 6 would be.

24 Q Okay. And tell us, Doctor Eastman, what was -- what
25 was the process for -- maybe start mechanically, with the

1 creation of Exhibit 3, the two-page memo?

2 A Boy. That I have a memo at all out when, you know, two
3 days before Christmas and I had just gotten finished with
4 our Pennsylvania cert petition, is, you know, in hindsight,
5 a little bit surprisingly. So, I don't know. I think I
6 just sat down on my computer while I was visiting family in
7 Texas and, you know, chomped it out. Here's what that most
8 aggressive scenario might look like. And I knew some time
9 over the next week or 10 days I would incorporate that into
10 the fuller scenarios memo.

11 Q Okay. And when you say "the full scenarios memo," are
12 you talking about the six-page memo --

13 A Yes.

14 Q -- Exhibit 4?

15 A Yes, the six-page memo.

16 Q Thank you. Okay. Okay. I mean, let me ask you this,
17 Doctor Eastman. Was it customary for you to sort of script
18 out different scenarios in a -- in a litigation context? Is
19 that a habit that you had?

20 A It's something I normally do, but this one, this was
21 kind of sui generis, this particular project. You know,
22 nobody had ever really looked at these particular issues in
23 any sustained way. And we were trying to both grapple with
24 what limited historical record there was, the fairly limited
25 bit of scholarship there was, and then trying to make, you

1 know, political calculations on how things might play out
2 and what the actors might be -- what might do and how this
3 might play out.

4 It was still -- there was still pending litigation that
5 might have come down, in particular, in Georgia. We
6 remained hopeful that -- that a judge would be appointed to
7 hear that very -- very thorough, and I thought exhaustive
8 election challenge there.

9 There were still things playing out in Wisconsin with
10 the cert petition and the three cases that I brought in
11 Pennsylvania, but also the case about the deadlines that the
12 law firm of Jones Day had brought late in October.

13 And then another one that Congressman Kelly brought
14 dealing with the unconstitutionality under the Pennsylvania
15 Constitution of the no excuse mail balloting statute by Act
16 77. All of those were still pending and could have easily
17 led in several of the case -- states to an alternation of
18 the certified electoral votes.

19 Q Fair enough. So when you say all of those were still
20 pending, were focused on the December 23rd creation of the
21 two-page memo. Is that the time period you're talking
22 about?

23 A That is, yes.

24 THE COURT: Just to be clear. When you say all of
25 those were still pending, about how many cases are you

1 referring to?

2 THE WITNESS: Well, your Honor, I had three cases
3 combined into one cert petition from Pennsylvania.
4 Representative Kelly had his case. The Jones Day case on
5 the ballot deadline, and I believe there have been one or
6 two other cert petitions from Pennsylvania.

7 THE COURT: So you're not including the 60-plus
8 cases that have already been decided by various courts
9 throughout the country, and which for various reasons were
10 not -- were determined to lack merit?

11 THE WITNESS: I am -- well, your Honor, I
12 disagree, that for various reasons they were determined to
13 lack merit. Most -- many of those cases were denied on
14 various jurisdictional grounds without a judgment on the
15 merits.

16 THE COURT: They did not go forward though, right?

17 THE WITNESS: No, they were still --

18 THE COURT: Were they --

19 THE WITNESS: -- some of them --

20 THE COURT: Whether it was --

21 THE WITNESS: Excuse me.

22 THE COURT: -- whether it was jurisdictional
23 grounds or whether you want to contend that they were not
24 grounds that addressed cases on the basis of merit, they did
25 not go forth for various reasons?

1 THE WITNESS: That's -- that's not true, your
2 Honor. Several of those cases -- for example, the Wisconsin
3 case was denied in jurisdictional grounds, and it went
4 forward via a cert petition. The Seventh Circuit case was
5 denied on jurisdictional --

6 THE COURT: Okay. It went forward to what point?

7 THE WITNESS: It went forward with a cert petition
8 to the U.S. Supreme Court --

9 THE COURT: And what --

10 THE WITNESS: -- that remained pending.

11 THE COURT: -- did the U.S. Supreme Court do with
12 it?

13 THE WITNESS: It denied the cert petition in
14 February of 2021. So they were still pending in litigation
15 in December 23rd when I wrote this memo.

16 THE COURT: How many cases were still pending when
17 you wrote the memo?

18 THE WITNESS: Well, I was just trying to go
19 through those. I think six or so in Pennsylvania, the two in
20 Wisconsin. I believe there was still some pending Michigan.
21 The Georgia case was still pending. An Arizona cert
22 petition had been filed and was still pending.

23 We were still within the window for filing a cert
24 petition in the main Nevada case and the main Michigan
25 cases, but I don't know what the thinking was by the

1 attorneys in those cases and whether they were considering a
2 cert petition or not.

3 THE COURT: And how many cases that raised similar
4 issues were either rejected by courts on jurisdictional
5 grounds or grounds that where the court determined there's a
6 lack of merit?

7 MR. MILLER: I'm sorry. I lost the very end of
8 that, your Honor.

9 THE COURT: Where courts determined there's a lack
10 merit or they were cases that were denied due -- on
11 jurisdictional grounds.

12 THE WITNESS: Well, the ones I just gave you, your
13 Honor, none of them had been definitively resolved.

14 THE COURT: I'm -- that's not my question. My
15 question was, weren't there well over 50 plus, almost 60
16 cases that either had been denied on jurisdictional grounds,
17 that cases that raised very similar issues or had been
18 denied on -- as to merit?

19 THE WITNESS: There were -- there were over 60,
20 closer to 100 cases that we brought. Not all of them --
21 very -- a small percentage of them had been brought by the
22 Trump campaign. Some were just brought by individual voters
23 that had no basis for standing, and they were dismissed on
24 jurisdictional grounds. And I'm not talking about those
25 cases, I'm talking about the ones that I was involved with

1 or watching that involved the Trump campaign, and many of
2 those still pending in litigation at the time --

3 THE COURT: And just to be clear, you said there
4 were about five or six of those cases?

5 THE WITNESS: There were five or six out of
6 Pennsylvania directly. There were two out of Wisconsin.
7 There was one still pending in Georgia. There was a cert
8 petition pending in Arizona. At least a dozen cases there
9 that were still pending --

10 THE COURT: As of what date -- as of December 23rd
11 when you drafted this Exhibit 3 memo?

12 THE WITNESS: As of December 23rd when I drafted
13 the two-page memo. Yes, your Honor.

14 MR. MILLER: Thank you, your Honor. That's
15 exactly where I was going to get to our timeline in order
16 here.

17 BY MR. MILLER:

18 Q Let me ask you a general question, Doctor Eastman.
19 Were you tracking all the election-related litigation that
20 was going on nationally in some organized way?

21 A There --

22 Q Meaning, were you tracking it in an organized way?

23 A There -- yeah. I would -- there was so much going on
24 it was hard to track at all. I was trying to keep up with
25 it, but it was like drinking from a fire hose at the time.

1 And the combination of the volume, the number of cases that
2 were filed by all sorts of players that had no connection
3 with either the campaign or the President.

4 Various parties in Pennsylvania, there were cases filed
5 by an individual member of an elections board, you know,
6 those type things. And so it was very hard to keep track of
7 all of it and every -- and every pleading filed in all of
8 those cases. But there -- it was just a huge volume in a
9 very short period of time.

10 Q Okay. Again, focusing on December 23rd or thereabouts
11 of 2020. I want to talk for a second about Georgia, because
12 you mentioned that had some ongoing litigation. What was
13 the ongoing litigation that you were referring to in Georgia
14 as of December 23rd?

15 A So, this is the main election challenge brought by the
16 President and one of the presidential electors. So
17 President Trump and David Shafer v. Raffensperger. It was
18 filed on December 4th. The judge initially signed to it was
19 ineligible to sit, and a judge who was eligible to sit and
20 hear the case had not been appointed until -- until the end
21 of the month, which I thought was rather extraordinary. It
22 led us to actually file a federal court action in Georgia
23 raising those election challenges and the violation of state
24 law to get an election challenge heard expeditiously.

25 Q So, let's talk about your involvement in Georgia then.

1 The state court action, Trump v. Raffensperger, were you
2 involved in that case in a formal way?

3 A I was not involved in a formal way. I was in
4 communication with one or two of the attorneys on that case
5 that were putting together some of the evidence, because I
6 was curious about it, and I had been invited to testify
7 before the Georgia Legislature about the same time they were
8 preparing to file that case. So they provided me with --
9 with some of the evidence that they were going to include in
10 that -- in that legal challenge.

11 Q When you say "they," can you describe for the Court who
12 it was that you were --

13 A Sure.

14 Q -- your main liaisons with respect to that information?

15 A Yeah. My main point of contact there was with Cleta
16 Mitchell, who was, as I understood it, one of the attorneys
17 that Trump had asked to kind of coordinate the effort in
18 Georgia.

19 THE COURT: I'm sorry. What was her name?

20 THE WITNESS: Cleta Mitchell.

21 THE COURT: "Cleta." Okay. Thank you.

22 BY MR. MILLER:

23 Q Okay. And then did you eventually act as counsel of
24 record in a United States District action with respect to
25 Georgia?

1 A I did. I was -- I was on the complaint that we filed
2 on December 31st. The lead attorney on the case was Kurt
3 Hilbert, who was also at that point one of the attorneys on
4 the Georgia state court action.

5 Q Okay. Have we now, Doctor Eastman, talked about the
6 various cases, at least through, let's take it through the
7 end of 2020, that you had a role in, either acting behinds
8 the scenes or as counsel of record?

9 A Yeah. There was -- there was one other case that when
10 I met with -- briefly with the legal team in Philadelphia on
11 that Saturday after the election, they were preparing to
12 file a new complaint, and I just, I got sick shortly
13 thereafter. I don't -- I don't ever recall knowing exactly
14 which complaint that was filed was the one that I had
15 briefly advised on. It may have been one of the cases filed
16 in the Western District of Pennsylvania, I just don't
17 recall. But my involvement lasted all of 15 minutes on
18 that. It was just, I pointed out the -- if I recall
19 correctly, the importance of having raised an Article II
20 legislative power being usurped type of argument, because I
21 thought that was the one that was most cert worthy for these
22 cases if they -- if and when they got to the Supreme Court.

23 Q Fair enough. So, all these various connections you had
24 with the litigation, let's just focus on December, post-
25 covid in December. Were you in all of those, Doctor

1 Eastman, acting in the capacity of the lawyer for candidate
2 Trump?

3 A Yes, I was.

4 Q Thank you.

5 A Well, let me -- I had not had direct communication with
6 President Trump by the time I went over to the Philadelphia
7 legal team office. So I --

8 THE COURT: When was that?

9 THE WITNESS: That was -- that was Saturday after
10 the election, so November 7th. So, I don't know whether my
11 role on that one was more as a outside constitutional expert
12 giving advice, or kind of derivative of the longstanding
13 part of the election integrity effort team. That -- we
14 certainly, we didn't discuss it. And I suppose one could
15 argue either way from -- on that role --

16 BY MR. MILLER:

17 Q Okay. Well --

18 A -- on that day. Yeah.

19 Q Thank you. So we'll get back to the election integrity
20 team, I think you called it, in a little bit, Doctor
21 Eastman. But going back to December 23rd -- or actually,
22 I'm going to a different topic briefly.

23 You mentioned that you were speaking with people, I
24 think on behalf of President Trump, when it came to whether
25 you would be engaged and you would have an attorney/client

1 fee agreement, written attorney/client fee agreement. Who
2 were you speaking to about that?

3 A So there were -- there were two members of the Trump
4 campaign team, Justin Clark and Matt Morgan. The President
5 had asked me to represent him. I said, yes. We had -- so,
6 whatever informal arrangement had existed before that, here
7 was a direct communication from the client himself, and that
8 attorney/client relationship was solidified.

9 I then told the legal team, who then I was working
10 with, I probably ought to have a written retainer agreement
11 in place before we go forward here, and then they sent me a
12 draft.

13 Q Okay. When you said, "legal team" you were working
14 with, was that Mr. Clark and Mr. Morgan or --

15 A Yeah. They -- as I understood it -- I think they were
16 lawyers on the campaign staff. They may have just been
17 political folks on a campaign staff. As I sit here right
18 now, I realize I don't know for certain.

19 Q Okay. All right. Let's go back to Exhibit 3, the two-
20 page memo. You've already mentioned to us that Mr. Epshteyn
21 and Mr. Cheesebro -- Cheesebro were part of those
22 discussions. Let's -- let me ask a general question, then
23 we'll break it down. Did either Mr. Epshteyn or Mr.
24 Cheesebro contribute to a draft of the December 23rd, two-
25 page memo?

1 A As I recall, I sent an initial draft to Boris Epshteyn,
2 copied Ken Chesebro, and he sent back some edits and
3 suggestion in a redline, which I incorporated and then sent
4 a clean version on back to Mr. Epshteyn.

5 THE COURT: Wait. When you said, "he," are you
6 referring to -- who sent the comments?

7 THE WITNESS: Chesebro. Mr. Chesebro.

8 BY MR. MILLER:

9 Q Okay. Do you know if you received -- let me break it
10 down so it's very, very clear. Did you receive any written
11 comments from Mr. Epshteyn with respect to an earlier draft
12 iteration of the December 23rd memo?

13 A I do not -- I don't think so.

14 Q Okay.

15 A I don't recall having any particular comments from him.

16 Q But you had spoken to Mr. Chesebro at that time -- by
17 that time, as part of the work that you were doing on
18 mapping out or detailing the various scenarios?

19 A Yeah. Ken had been involved. He's from Wisconsin as I
20 understand it. He had been involved with the state court
21 litigation up there, advising Jim Troupis. And so, in my
22 communications about the Wisconsin case, and the potential
23 for filing Wisconsin Supreme Court petitions, I ended up on
24 several conference calls with Ken.

25 THE COURT: Ken Chesebro?

1 THE WITNESS: "Ken Chesebro," yes.

2 THE COURT: Okay.

3 BY MR. MILLER:

4 Q Okay. What was your understanding of the relationship
5 between Mr. Chesebro and President Trump?

6 A I don't know that I had an understanding of it, other
7 than he was like many of us lawyers working on -- like crazy
8 on behalf of the various efforts to try and ensure
9 investigations were conducted, so that whether or not the
10 certifications that had been issued were accurate we
11 confirmed or denied.

12 Q Did Mr. Chesebro have a title?

13 A I -- not to my knowledge. I don't know.

14 Q Okay.

15 A I do recall finding out sometime along the way, he was
16 opposite of me in the Bush v. Gore litigation matters down
17 in Florida, because he was working with Professor Larry
18 Tribe as the time, who was one of the attorneys representing
19 Mr. Gore. And I was part of several different legal teams
20 involved on the President Bush side, or in the third branch,
21 on the part of the legislature.

22 Q Tell us about the drafting and editing process leading
23 up to what became the final version, Exhibit 3 in this case,
24 of the two-page memo. Do you know long sort of the drafting
25 process --

1 THE COURT: Wait a minute. Just to be clear.
2 Exhibit 3 is the final version of this document, is that
3 right?

4 THE WITNESS: That's correct. Well, it's the
5 portion of what became the final document, which is the six-
6 page version.

7 THE COURT: Okay. But as to the -- as to the
8 initial document that was prepared, is Exhibit 3 the final
9 version of that initial document?

10 THE WITNESS: The reason I'm hesitating, your
11 Honor, is it was one component of what became the six-page
12 memo.

13 THE COURT: But before it became --

14 THE WITNESS: So to call it a final --

15 THE COURT: -- the six-page memo, it was a two-
16 page memo, right? Is this -- I'm asking whether or not what
17 we have in this case marked as Exhibit 3, is the final
18 version of the two-page memo that you subsequently, as I
19 understand it, incorporated into the six-page memo.

20 THE WITNESS: Yes, it is, your Honor.

21 THE COURT: Okay. Thank you.

22 BY MR. MILLER:

23 Q All right. So as this -- as of December 23rd, 2020,
24 the only memo that was created with respect to the scenarios
25 you were looking at is the two-page memo?

1 A That's correct.

2 Q Okay.

3 THE COURT: Okay. And that's not what he
4 testified to just a minute ago, but go ahead.

5 THE WITNESS: That's not -- your Honor, that's not
6 true. Really, this is not true. I said this is a part of
7 the bigger memo. When you asked me if it was the final
8 memo, I said --

9 THE COURT: It is a part of bigger memo --

10 THE WITNESS: -- it was not.

11 THE COURT: When did you incorporate the two-page
12 memo into the six page --

13 THE WITNESS: About a week later, as I've
14 testified repeatedly.

15 THE COURT: So, as the initial document, the
16 initial two-page memo, Exhibit 3 is a copy of the initial
17 two-page memo --

18 THE WITNESS: It is.

19 THE COURT: -- that you subsequently incorporated
20 into the six-page memo, is that right?

21 THE WITNESS: It is right, but the question you
22 asked --

23 THE WITNESS: All right. Thank you.

24 THE WITNESS: -- me, your Honor, was whether this
25 was the final version of the memo, and I said, no, it was

1 incorporated --

2 THE COURT: No. I said, is this the final version
3 of the two-page memo? Is it the final version of the
4 Exhibit 3, two-page memo, yes or no?

5 THE WITNESS: And the reason I said it's not the
6 final version is because it was but one component of the
7 final version of the memo, the large memo, the six-page
8 memo.

9 THE COURT: Before it became a component of the
10 six-page memo, it was a two-page memo.

11 THE WITNESS: No, but you accused me of making a
12 false statement, and I --

13 THE COURT: But the two-page memo -- no.

14 THE WITNESS: -- did not make a false statement.

15 THE COURT: No. I'm saying that Mr. Miller
16 improperly -- in my view, improperly characterized your
17 testimony --

18 THE WITNESS: Okay.

19 THE COURT: -- or your answer to my question.

20 THE WITNESS: All right. I just -- you -- you --

21 THE COURT: Let's move on.

22 MR. MILLER: Yeah. I got it.

23 BY MR. MILLER:

24 Q So, was the creation of the two-page memo part of a
25 process?

1 A Yes, it was.

2 Q And explain the process as you looked at it in
3 December, mid-December 2020.

4 A As I started out, I was asked to prepare a memo
5 outlining all of the scenarios. And I asked to begin with
6 the most aggressive of the scenarios, so we would see what
7 that looked like. This two-page memo was that component of
8 the process, and it became a component of the six-page
9 scenarios memo.

10 Q Okay. I got it now. And I think you've already
11 testified to this, but was the two-page memo -- or, you
12 know, the two-page memo incorporated into the six-page memo?

13 A Yes.

14 Q Okay.

15 THE COURT: So how many times are we going to go
16 over this?

17 MR. MILLER: Well, it's -- there's a good way to
18 track it.

19 THE COURT: It's been testified to at least three
20 or four times now. Move on, please.

21 BY MR. MILLER:

22 Q Okay. And who was it -- well, I'll move on. Okay.
23 The six-page memo, let's just get a point of reference on
24 that, Doctor Eastman. You want to flip a page and get that
25 to the next, and the easiest way to follow it.

1 A I'm there.

2 Q Yeah. Thank you. So --

3 MR. MILLER: And you can pull up the first page of
4 the six-page memo, Mr. Benveniste, so everybody can see
5 this.

6 THE COURT: This would be Exhibit 4. Let's
7 reference the document so that the record will be clear.

8 MR. MILLER: Thank you, your Honor. This is
9 Exhibit 4.

10 BY MR. MILLER:

11 Q So, on the screen is the six-page memo. Doctor Eastman,
12 there's -- we've looked this. There's many more pages to
13 this, but this contains a section called, "illegal conduct
14 of election officials." Why is it, Doctor Eastman, that the
15 illegal conduct section of Exhibit 4 was not included in the
16 two-page memo as of December 23rd, 2020?

17 A Well, the two-page memo was very quick, only looking at
18 one of the scenarios. I knew at the time I wrote it, I
19 would fill in both the more -- the foundation that would
20 create the opportunity for exercising or recommending any of
21 those scenarios. And so as I continued with the project,
22 the six-page memo fills out that foundation that I had not
23 had time to put into the beginning.

24 Q Okay. So when you talked about foundation, you're
25 talking about the factual information about legal conduct,

1 correct?

2 A The factual and legal disputes that in my view
3 triggered even the possibility of the vice president
4 exercising authority under the 12th Amendment.

5 Q Okay. So, had you, Doctor Eastman, started the process
6 of collecting the information that was depicted in the six-
7 page memo about illegal conduct as of the time of the two-
8 page memo on December 23rd?

9 A I had. Much of this I had already reviewed extensively
10 in the preparation for our motion to intervene in the Texas
11 v. Pennsylvania case. The Pennsylvania section I had
12 exhaustively explored in the cert petition we did from the
13 Pennsylvania cases.

14 Q Okay. Fair enough. So we'll go through that. Do you
15 know what portions of the illegal conduct section of the
16 six-page memo you had scripted or -- you had scripted as of
17 December 23rd, 2020?

18 A Sure. I think all three of these. In fact, one of the
19 areas where I added to the Texas v. Pennsylvania original
20 action bill of complaint was elaborating more on an aspect
21 of the settlement agreement the Secretary of State had
22 entered into, to -- that was not covered by the Texas bill
23 of complaint. They had -- they had focused on that fact
24 that instead of one poll worker reviewing signatures, it
25 required a consensus of three poll workers.

1 And I wanted to focus on another aspect of that
2 settlement agreement, which I thought was extremely
3 important. And that was under Georgia law as I read it, the
4 signature on the ballot had to be compared to a signature in
5 the voter's registration file.

6 The settlement agreement allowed signatures to be
7 qualified if they matched either a signature in the voter
8 registration file or any other signature, such as the DMV,
9 or more troubling to me -- this is why I wanted this in our
10 Texas motion to intervene, was the -- you know, if it
11 matched the absentee ballot application itself.

12 My view was that that created a real opportunity for
13 fraud. If somebody would fraudulently file a ballot
14 application and sign it, and then have that ballot sent to
15 them at a different address than the voter, which is
16 permissible under Georgia law, and then sign the ballot,
17 those two signatures would match, and yet they would not be
18 the signature of the voter.

19 So we -- I specifically added that to our motion in
20 intervention in the Texas v. Pennsylvania original action,
21 in order to get that issue presented. And so that's --
22 that's captured here.

23 I believe the Texas complaint also talked about the
24 portable polling places and how that violated state law.
25 And then, of course, I add in, because it had become much

1 more salient than it was, the lawsuit in Georgia was filed
2 on December 4th, just three days or a weekend before the
3 Texas original action was filed. But here we are three
4 weeks later and there's still no judge appointed to hear
5 that election challenge.

6 Q Okay. So, the first four states here listed in the
7 illegal conduct section of Exhibit 4, Georgia, Pennsylvania,
8 Wisconsin and Michigan, those were the four states that were
9 named defendants in the Texas matter, correct?

10 A That's correct

11 Q Got it. Okay. And was -- were you informed by the
12 information that you reviewed as part of your work on the
13 Texas v. Pennsylvania action --

14 A I was.

15 Q -- relative to the information you put in Exhibit 4?

16 A I was. Yes.

17 Q Okay. Okay.

18 A I mean, it's possible I'd have to read through it all,
19 that there's some additional information there that wasn't
20 in that petition. This is three weeks later, but certainly
21 the core of it was both in the Texas v. Pennsylvania bill of
22 complaint itself, and also what I -- the allegations I made
23 in my own motion to intervene on behalf of President Trump.

24 Q So, back to the two-page memo, Exhibit 3. It says at
25 the very top, "privileged and confidential." And I'm

1 assuming those are your words, Doctor Eastman, do I have
2 that right?

3 A Yes.

4 THE COURT: You're looking at Exhibit 3?

5 MR. MILLER: This is now back to 3, your Honor,
6 yeah.

7 THE COURT: Uh-huh. Okay.

8 BY MR. MILLER:

9 Q And why was it --

10 THE COURT: You can take 4 down.

11 MR. MILLER: I'm sorry?

12 THE COURT: I was telling Mr. Benveniste he can
13 take 4 down.

14 MR. MILLER: Yeah. Perfect.

15 You can keep up 3, 4 in a minute. Take down the
16 other one. We'll back to that in a moment.

17 BY MR. MILLER:

18 Q And why was it, Doctor Eastman, that you put
19 "privileged and confidential" on top of Exhibit 3?

20 A Well, I was communicating with a member of the Trump
21 campaign legal team, so I put that in just as a matter of
22 course.

23 Q Okay. And who was that person?

24 A Boris Epshteyn.

25 Q Okay. And how was it, Doctor Eastman, that a copy of

1 the two-page memo, Exhibit 3, was distributed in some form
2 or fashion publicly?

3 A I only -- I only know that based on news accounts. I
4 was communicating thoughts on what might happen on January 6
5 with a couple of other people that had asked for my advice.
6 I provided it to one such person. And I understand from
7 news accounts in the Washington Post, somebody in that
8 person's office gave it to a reporter.

9 Q And was a copy of the Exhibit 3 eventually published in
10 some widespread manner?

11 A As I understand it, it was published in a book by Bob
12 Woodward, and an advance copy of that chapter of the book
13 was described in a Washington Post news story. And the
14 document itself was picked up, I believe, by CNN and then
15 posted there.

16 Q Okay. And just to round out the discussion about the
17 potential privilege nature of these communications. This
18 Exhibit 4, the six-page memo, how was it that that became
19 publicized, Doctor Eastman?

20 A Well, when it became evident to me that the portion of
21 that memo that was the two-page memo, had become public
22 because somebody in -- in one of these offices had provided
23 it to a reporter, I wanted the full version to be available.

24 Q Okay. And can -- I don't know if that took place in a
25 small period of time over several months, but can you give

1 the Court a time period where there was still sharing of the
2 memo and then publication?

3 A October of 2021.

4 Q Okay.

5 A So well after the period of time at which we were
6 considering the issues in this memo.

7 Q Okay. And --

8 THE COURT: Just a minute. What happened October
9 2021?

10 THE WITNESS: It got published.

11 THE COURT: Are you referring to -- which exhibit
12 are you referring to?

13 THE WITNESS: Both 3 and 4.

14 THE COURT: And it's your testimony that neither
15 exhibit was published prior to October of 2021?

16 THE WITNESS: I'm sorry?

17 THE COURT: Is it your testimony that neither
18 exhibit, Exhibit 3 nor Exhibit 4, was published prior to
19 October of 2021?

20 THE WITNESS: That's correct. That's my
21 understanding.

22 THE COURT: And when you say, "published," do you
23 mean made known to an individual who was not subject to the
24 attorney/client communications, or you mean published like
25 in a book, like made available --

1 THE WITNESS: As I understand it, it was
2 published, or at least described in a book and published by
3 CNN in October of 2021. Somehow they got a copy of it.

4 BY MR. MILLER:

5 Q Prior to that did you consider Exhibit 3 and Exhibit 4
6 to be confidential communications?

7 A I did, but there were several people asking me for
8 input or advice on what the role of the vice president was
9 by January 6. And so, the memos themselves don't reflect
10 any particular client. The ideas expressed, therefore, I do
11 not consider it a breach of any privilege to have shared
12 that with other people that were seeking similar advice from
13 me.

14 Q Okay. We'll go into that in a minute. But let me --
15 so we started talking about the -- the drafting process of
16 the creation of Exhibit 3. And you mentioned Mr. Chesebro
17 had made some edits and communicated those with you?

18 A Yes, he did.

19 Q Okay. What edits did Mr. Chesebro make with respect to
20 Exhibit 3?

21 A Go down to page -- yeah, page two, there it is. No,
22 no. Go to page two of Exhibit 3.

23 Q Okay. Okay. Can you direct us, Doctor Eastman --

24 A Yeah. I'm not -- I'm not seeing -- go back up to page
25 one. Maybe I missed it.

1 Q Well, you can also use the hard copy in front of you
2 from the exhibit binder.

3 A That's right. I can do that. Let me look at that.

4 Q Uh-huh. That way you're not beholding --

5 A I'm sorry. Yes. It's the second half of the first
6 paragraph. I think Ken --

7 Q Got it.

8 A -- Ken added in a redline edit back to me --

9 Q Let's get --

10 THE COURT: Which -- could you identify the
11 language you're referring to?

12 THE WITNESS: "There is very solid
13 legal authority and historical precedent
14 for the view that the president does the
15 counting, including the resolution of
16 disputed electoral votes."

17 That sentence.

18 BY MR. MILLER:

19 Q But that sentence --

20 THE COURT: Okay. Just a minute. Let me see if I
21 can find --

22 MR. MILLER: Sorry. Go ahead.

23 THE COURT: -- where you're referring to. Are you
24 highlighted at -- okay.

25 THE WITNESS: Yeah. All the way to the end of the

1 sentence I think is what I'm talking about.

2 MR. MILLER: Yeah. No, no, no. Just a -- just a
3 second.

4 THE COURT: Beginning with, "there is a very solid
5 legal authority" --

6 THE WITNESS: Yes.

7 THE COURT: -- "and historical precedent"?

8 THE WITNESS: Yes.

9 THE COURT: Through the rest of that sentence --

10 THE WITNESS: Yes.

11 THE COURT: -- the rest of the language on that
12 sentence? Let me -- I'm not clear about something. You
13 testified that you didn't know, or you had no understanding
14 about what the relationship was between former President
15 Trump and Kenneth Chesebro, but you forwarded this memo to
16 Kenneth Chesebro, who -- why was the -- why did you consider
17 this memo to be confidential and privileged?

18 THE WITNESS: Your Honor, as I believe I
19 testified, I knew Ken had been working with the legal team
20 on Wisconsin as one of the many volunteer attorneys working
21 for the Trump legal team. It was in that capacity. I don't
22 know what his specific formal relationship was or retainer
23 agreement was, but he was clearly a member of the volunteer
24 legal team as I understood it.

25 THE COURT: But with President Trump as the holder

1 of the privilege, had you gotten a waiver from President
2 Trump for you to communicate this information to Mr.
3 Chesebro?

4 THE WITNESS: It was another attorney working on
5 the same matter, your Honor. First of all, this didn't ever
6 go to President Trump. It was not advice we gave to
7 President Trump. And it was -- we were -- the legal -- the
8 lawyers that were working on the matter and exploring
9 various scenarios were working together to try and look at
10 the scope of scenarios that were going to be available to
11 us.

12 THE COURT: All right. We'll come to this.

13 MR. MILLER: Thank you, your Honor.

14 BY MR. MILLER:

15 Q So, let me see if I can tie this up. Did you consider
16 your communication with Mr. Chesebro, both with the -- well,
17 let me -- let me break it down in a better way. Did you
18 consider the communication with Mr. Chesebro where you sent
19 the draft of Exhibit 3 to him, to be a confidential
20 communication?

21 A I did.

22 Q Okay. And to your knowledge, did Mr. Chesebro maintain
23 the confidentiality of the draft of the two-page memo?

24 A To my knowledge he did, yes.

25 Q Okay. Have we now, Doctor Eastman, talked about to

1 your memory those edits or changes or additions that Mr.
2 Chesebro made to the draft of Exhibit 3?

3 A I think there may have been one or two minor word
4 choice suggestions, but that was the main substantive point.

5 Q Okay. And I think we started talking about
6 mechanically. Is this a Word document that is being shared?

7 A It's a Word document, and it came back to me in a
8 redline.

9 Q Okay. All right. And then -- then did you then
10 mechanically incorporate or accept the changes that Mr.
11 Chesebro had made to the earlier draft of Exhibit 3?

12 A I did.

13 Q Okay. And then is that --

14 THE COURT: Let me -- I'm sorry. What do you
15 mean, did you mechanically?

16 MR. MILLER: Well, I just meant the process of the
17 creation of a Word document. That's what I meant
18 mechanically.

19 THE COURT: You mean did he cut and paste it or
20 did -- what are you referring to?

21 MR. MILLER: No. I think I was just trying to
22 summarize the process in this editing process, which we're
23 all --

24 THE COURT: Okay. This is the danger with leading
25 witnesses.

1 MR. MILLER: Okay. Well --

2 THE COURT: Okay. So go ahead and ask your next
3 question.

4 MR. MILLER: Sure. Thank you.

5 BY MR. MILLER:

6 Q So, is Exhibit 3 the culmination of that editing
7 process?

8 A Yes, it is.

9 Q Okay. And once Exhibit 3 had been put in the form that
10 we see on the exhibit in this case, did you contemplate what
11 the next steps would be relative to the work that you were
12 doing that you were doing that was depicted in the three --
13 Exhibit 3?

14 A I did. I knew -- I knew at the time that I hadn't laid
15 out either the legal or factual foundation for exercising
16 any of the scenarios. This was just to get the first
17 scenario down on paper, and I fully anticipated I would do a
18 more complete scenarios memo, which I ultimately did.

19 Q Okay. Okay. So once the changes were made to Exhibit
20 3 as it appears here, was it further -- was it transmitted?

21 A It was -- yeah. So my recollection is when Mr.
22 Chesebro sent back his redline suggestions, that Mr.
23 Epshteyn was also copied on that.

24 THE COURT: Okay. I'm sorry. Just to be clear.
25 When did Mr. Chesebro send his redlined suggestions --

1 THE WITNESS: Within an hour. Within an hour or
2 two. I mean, it was on the same day on the 23rd --

3 THE COURT: Okay.

4 THE WITNESS: -- if I recall correctly. And then
5 I probably hit the accept button, and forwarded a clean copy
6 back on to Boris, Mr. Epshteyn.

7 BY MR. MILLER:

8 Q Okay. Well, only to Mr. Epshteyn or --

9 A And Mr. Chesebro, if I recall correctly.

10 Q Okay.

11 A I'd have to look at the exact e-mail. I'm sure it's
12 one we reproduced, but --

13 Q Broad question, but I'll try. Do you know who else in
14 this time period, maybe let's take it up until January 6,
15 2021, received a copy in some form of Exhibit 3, other than
16 Mr. Chesebro and Mr. Epshteyn?

17 A Yeah. Nobody -- no -

18 THE COURT: As of which date? Just a minute. As
19 of which date?

20 MR. MILLER: As of January 6, 2021.

21 THE WITNESS: To my knowledge, other than the
22 other individual that asked me for some advice on what --
23 what a scenario might look like in Congress, nobody else got
24 this memo.

25 //

1 BY MR. MILLER:

2 Q Okay.

3 THE COURT: So you're saying -- it's your
4 testimony, only Epshteyn and Chesebro?

5 THE WITNESS: Yes.

6 BY MR. MILLER:

7 Q Okay. And so then, where did the process from there --
8 well, let me set a better time frame. Exhibit 4, when was
9 that finalized in the version that it appears in this case
10 as an exhibit?

11 A So this was right before Christmas. I was with family
12 over Christmas, as my wife and I were heading back to our
13 house in New Mexico driving. On her stints on driving, I
14 was working on elaborating and filling in the foundational
15 parts of what became the larger six-page memo. My
16 recollection is I finished that on the plane on the
17 following Sunday, as I was flying to D.C. to meet with the
18 President.

19 THE COURT: Which date?

20 THE WITNESS: That would have been January 3rd.

21 BY MR. MILLER:

22 Q Okay. And you can look at it in your book, but let me
23 just sort of close this piece. Exhibit 4, as it appears as
24 an exhibit in this case, was that the final version of these
25 efforts, this process that you had undertaken?

1 A Yes, it was.

2 Q Okay. All right. And from what you've described on a
3 plane or working in a car, I'm -- was it that you were
4 working on a Word document still?

5 A On my laptop, yes.

6 Q Okay. All right. And did that process start with the
7 two-page memo and evolved?

8 A Yes.

9 Q Okay. In that time period between December 23rd, 2020
10 and January 3rd, 2021, was anybody else, other than
11 yourself, Doctor Eastman, involved in the transition of the
12 two-page memo to the six-page memo?

13 A No.

14 Q Okay. This may be a broad question, but I think you in
15 part answered it on the -- on some of the factual issues.
16 But what information or source information or any
17 information did you look at that informed you with respect
18 to the six-page memo, the final capture of your thoughts on
19 these issues?

20 A So, the legal issues are the things that I was tracking
21 all the way back from early December. Heavily involved in,
22 of course, in the original action in the Supreme Court. A
23 number of these illegal conduct points are raised as
24 allegations in that complaint and in my motion to intervene.

25 In Georgia they're raised in the Trump v. Kemp case

1 which we filed, but of course that's largely based on the
2 allegations in the Trump v. Raffensperger complaint that had
3 been filed on December 4.

4 If you scroll down a little bit, I can give you further
5 information about the other states. The Wisconsin -- the
6 Wisconsin ones are the two -- the two cert petitions we
7 filed there. And both of them are mentioned, Trump v. Biden
8 and Trump v. Wisconsin Elections Commission. And as I was
9 not a counsel of record or on the briefs in those case, but
10 I was a consulting attorney assisting with the preparation
11 or the review of those draft cert petitions. So I was very
12 familiar with the legal issues that were raised there, many
13 of which had already been raised in the original action in
14 the Texas v. Pennsylvania case.

15 Michigan I had very little involvement with, so my
16 recollection is that I asked somebody, probably Boris, to
17 put me in touch with one of the attorneys that had been
18 handling the various challenges that had been brought in
19 Michigan. And I do recall at some point speaking with one
20 of the lead attorneys in one or more of those cases named
21 Thor Hearne, to get some information about the illegalities.
22 You notice the Michigan --

23 THE COURT: I'm sorry. Who was the person you
24 spoke with?

25 THE WITNESS: What's that?

1 THE COURT: Who was the person you spoke with?

2 THE WITNESS: Thor Hearne, H-E-A-R-N-E, if I
3 recall correctly.

4 THE COURT: Okay. Thank you.

5 THE WITNESS: And you notice the allegations from
6 Michigan, Arizona and Nevada are much more -- much shorter
7 and more summary than the more detailed ones in the three
8 states I was more involved with.

9 BY MR. MILLER:

10 Q Okay. And were you -- did you continue to communicate
11 with Mr. Chesebro and Mr. Epshteyn during this 10-page (sic)
12 process of moving from the two-page Exhibit 3 to Exhibit 4?

13 A I don't think so. My recollection is when I finished
14 this -- this more complete version, I simply sent it to Mr.
15 Epshteyn, said, here's the -- here's the, you know, the
16 final. I'm not even sure I sent that to Mr. Chesebro. I
17 just don't recall.

18 THE COURT: When was that sent to Mr. Epshteyn,
19 January 3rd?

20 THE WITNESS: "January 3rd."

21 THE COURT: Okay.

22 THE WITNESS: There was one other I think
23 important clarification change I made in this as I was -- I
24 mean I noticed in the two page I said, seven states had
25 submitted," and I thought that could be misread as

1 suggesting that I thought seven -- seven state government
2 had submitted, which was not my intent. So I clarified it
3 in the six-page memo there, "as dual slates of electors from
4 seven dates," which I thought was a more accurate
5 description of what I was aware of.

6 BY MR. MILLER:

7 Q Got it. Okay. And you didn't hear back from either
8 Mr. Epshteyn or Mr. Chesebro after you sent Exhibit 3 with
9 any sort of response or communication or assessment?

10 A I don't think so.

11 Q Okay. And in that 10-day period between December 23rd
12 and January 3rd, 2021, did you speak with President Trump?

13 A Yes, I did, but not about this. We were still talking
14 about the election challenge. We were talking about the
15 Pennsylvania cert petition. I think we talked about the
16 Georgia case as well. I spoke with him several times during
17 that period, but not about this to the best of my
18 recollection.

19 Q Okay. All right. So, in terms of the legal issues
20 that you were looking at and the way -- the reason I
21 characterize it that way, Doctor Eastman, is -- well, let me
22 ask you. Is the six-page memo comprised of both legal
23 issues and factual issues?

24 A It is. Actually, I'd add a third category. So it's
25 factual issues, it's statutory legal issues, whether state

1 election law adopted by the legislatures of the state
2 pursuant to their federal constitutional authority had been
3 violated. And then it was federal constitutional issues.
4 What's the constitutional effect of those violations of
5 state law, and is there a constitutional remedy. And so
6 those were the various buckets of things that were being
7 discussed.

8 Q Okay. Let me see if I can find a bucket for the
9 authority that you were looking at relative to the vice
10 president's authority as President of the Senate under the
11 12th Amendment.

12 A Yeah. So that one, I -- it was the fourth bucket I
13 described.

14 Q Okay.

15 A The -- what constitutionally could be remedies for
16 violations of state election law, which amounted to a
17 usurpation of the legislature's authority under Article II
18 to direct their manner of choosing presidential electors.

19 Q Okay. Okay. And during that 10-day period, did you do
20 any additional, I'll call it "legal research" with respect
21 to the fourth bucket, vice presidential authority?

22 A You know, at some point I was sent or became aware of a
23 couple of other memos that had been done on that subject.

24 THE COURT: Which -- I'm sorry. Which subject are
25 you referring to?

1 THE WITNESS: Subject on the role of the vice
2 president in resolving disputes of presidential electors. I
3 think there was a memo from Jenna Ellis to the legal
4 campaign team. There was another memo published publicly
5 called the Pence Card that laid out similar scenarios. I
6 think I had seen both of those. I may have continued to do
7 research into legal scholarship or return to the research in
8 the legal scholarship, and also the historical record. I
9 just don't recall the timetable of when I looked at all that
10 information.

11 BY MR. MILLER:

12 Q When you say "the historical record," it's a big
13 phrase. What were you referring to there? Generally, tell
14 us what you were looking to.

15 A So, most importantly in my view, the records of the
16 Federal Convention of 1787. The first Congress and
17 recommendation from the Federal Convention to the first
18 Congress on how to proceed.

19 The Senate resolutions --

20 THE COURT: I'm sorry. Which recommendation
21 again?

22 THE WITNESS: The recommendation -- on September
23 17th, 1787, the Federal Constitution Convention closed its
24 work, referred its draft Constitution for consideration and
25 ratification, but it also signed a cover letter to the first

1 Congress saying, since the role of the vice president under
2 Article II is to open and count these votes, and there won't
3 be a vice president on that first election presiding over
4 the new Senate, we suggest that you appoint a temporary
5 president pro tem of the Senate to fulfill that role.

6 BY MR. MILLER:

7 Q After you prepared Exhibit 4, what was your
8 understanding, Doctor Eastman, of the next steps, if any,
9 with respect to the work that you had captured in Exhibit 4?

10 A So, the goal of this was to just put down on paper -- I
11 think there are nine different scenarios on how things might
12 play out. If I recall, five of them end up with president
13 -- Vice President Biden becoming elected as president, and
14 four of them end up after further investigation, if the
15 certifications that had been made turned out to be
16 incorrect, and that President Trump had actually won
17 reelection, then he would be certified.

18 So, it was for internal discussion purposes only, with
19 a few members of the -- of the legal team, with Boris,
20 probably Rudy Giuliani, very small. I don't even think it
21 extended beyond that to the more formal Trump campaign team.
22 I was just, you know, exploring what -- how things might
23 play out, you know, depending on what information came in,
24 whether any court decisions were decided or any legislatures
25 took action. It was really just kind of a modeling of what

1 might happen and when and -- so that we could be prepared to
2 address things.

3 Q Okay. And did you consider yourself prepared to
4 address the substance of Exhibit 4?

5 A I did. I thought I had -- I thought I had looked
6 pretty carefully at the various different options, at the
7 scholarship, at the historical record. And by that, I cut
8 off after the first election, but we had -- we had elections
9 in 1796 and 1800 that were contested -- or that there was
10 some dispute about, and significant scholarship addressing
11 those disputes. We had a dispute over the election in 1816
12 that resulted in discussion on this very subject in 1817 is
13 the joint session was meeting. Again, in 1821 over the
14 Missouri Compromise and the admission of Missouri to
15 statehood, which, you know, came loaded with the baggage of
16 the slavery debate over the Missouri Compromise.

17 We had a similar debate in 1837 over whether Michigan's
18 elector votes valid because they were cast allegedly prior
19 to Michigan becoming a state. We had the blizzard in
20 Wisconsin in 1856 that provoked a dispute in the 1857 joint
21 session. And another dispute in the 1872 election.

22 And then probably the most contentious one up until
23 2020 was the dispute in 1876 over the Hayes and Tilden race
24 that created a very special commission to try and resolve
25 the dispute. I mean, Congress itself questioning whether it

1 even authority.

2 I remember -- I remember reading the resolution that
3 they passed to create the Electoral Count Commission, saying
4 we're delegating to this commission whatever authority we
5 have, if any. Meaning Congress itself wasn't even sure
6 whether it had authority to resolve these things, rather
7 than the vice president. And then also the dispute in 1960
8 about Hawaii electors.

9 So, all -- I had looked at all of that stuff. I had
10 looked at the scholarship -- not all of it because there was
11 some scholarship that had been done in the 19th Century that
12 I didn't have ready access to. And then there were a couple
13 of articles, one in 1961, I think I had -- I don't recall
14 when I first got a hold of that one.

15 And somehow I had escaped seeing John Harrison's
16 article, which is too bad, because I think very highly of
17 his constitutional scholarship. But as I've subsequently
18 seen it, it largely confirms that what my own -- my own
19 assessment had been.

20 Q Let me see if I can bring this to a convenient stopping
21 point for this afternoon, Doctor Eastman. Who received a
22 copy of the Exhibit 4?

23 A As far as I know, only Boris Epshteyn.

24 Q And I think I meant to include within that, based on
25 your personal knowledge whether it was distributed to

1 anybody else beyond Boris?

2 A Not to my knowledge.

3 Q Okay. All right.

4 MR. MILLER: Your Honor, this is a good jumping
5 off point for me.

6 THE COURT: Okay. All righty. Do we have any
7 other housekeeping matters that we need to address before we
8 resume again on the 17th?

9 MR. CARLING: Not from the State Bar.

10 THE COURT: Okay.

11 Mr. Miller?

12 MR. MILLER: I was thinking. Make sure I wasn't
13 missing anything. I don't think so, your Honor. I know
14 we'll do the best we can to advise the Court and counsel
15 about the order that we expect when we return on Tuesday the
16 17th. We do have various witnesses we're working with, so
17 I'll -- we'll do the best I can in the next few days to let
18 everybody know where we stand. And that Mr. Carling and his
19 team have notice of who we expect to -- or have to call
20 next.

21 THE COURT: Okay. Thank you. And the Court will
22 also -- you will also -- the Court will provide for the
23 parties the -- a response to the Respondent's request
24 regarding Mr. Fried and his testimony. And I understand
25 that Respondent's -- I guess was a statement regarding the

1 proposed rebuttal testimony of Mr. Colbeck is filed -- was
2 filed this afternoon, right?

3 MR. MILLER: That's pending, too, your Honor.
4 Thank you.

5 MR. CARLING: It was filed?

6 MR. MILLER: Yeah.

7 THE COURT: Okay. All right. Okay. Does anyone
8 have anything else?

9 MR. MILLER: Nothing further from Respondent, your
10 Honor.

11 THE COURT: Okay.

12 MR. CARLING: Not from us. Thank you.

13 THE COURT: Okay. Thank you.

14 MR. MILLER: Thank you.

15 THE COURT: Let's go off the record. Everyone
16 have a good holiday weekend.

17 MR. MILLER: Thank you. Same to you.

18 THE CLERK: We're off the record, your Honor.

19 THE COURT: Okay.

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CERTIFICATION OF TRANSCRIBER

I, Holly Steinhauer, do hereby certify that the foregoing 219-page transcript of proceedings, recorded by digital recording, represents a true and accurate transcript of the hearing in the matter of John Charles Eastman, Esq., held on October 6, 2023.

Date

Transcriber