States United DEMOCRACY CENTER

April 14, 2022

William Todd
Assistant Chief Trial Counsel
Office of Chief Trial Counsel
The State Bar of California
845 South Figueroa Street
Los Angeles, CA 90017
VIA EMAIL

Re: Matter of John Eastman, Case Number 21-O-12451

Dear Mr. Todd:

This letter supplements our October 4, 2021 Complaint and November 16, 2021 Supplemental Submission. Those earlier filings concerned the need to investigate whether John Eastman, in his efforts to discredit and overturn the results of the 2020 presidential election, violated various California Rules of Professional Conduct and related provisions of the State Bar Act. After those filings, on March 1, 2022, Mr. Cardona announced that your office has been conducting an investigation of Mr. Eastman since the fall of 2021 and thanked us and others like us for our prior submissions, noting that they will serve "as the starting point" for the Bar's investigation.[1]

You previously invited us to provide any additional facts related to the conduct described in our Complaint. This Second Supplemental Submission responds to that invitation with new information that is important to the ongoing investigation. It includes the fact that a federal judge recently found by a preponderance of the evidence that Mr. Eastman likely committed a federal crime and that Mr. Eastman "likely acted deceitfully and dishonestly" in pressuring Vice President Pence and others to reject or delay the counting of electoral votes.[2]

In our original Complaint and Supplemental Submission, we highlighted the strong basis for investigating whether Mr. Eastman's conduct in seeking to overturn the results of the election violated California Rules of Professional Conduct (and related provisions of the State Bar Act) relating to dishonesty and deception (including Rules 3.3, 4.1, and 8.4(c)); knowingly counseling

[1] State Bar of California, *State Bar Announces John Eastman Ethics Investigation* (Mar. 1, 2022), https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-announces-john-eastman-ethics-investigation.
[2] *Eastman v. Thompson*, No. 8:22-cv-00099, --- F. Supp. 3d. ----, 2022 WL 894256, at *24 (C.D. Cal. Mar. 28, 2022).

or assisting a client's criminal, fraudulent, or unlawful conduct (Rule 1.2.1); frivolous claims and contentions (Rule 3.1); competence (Rule 1.1); and professional independence (Rule 2.1).[3]

New information from the Select Committee to Investigate the January 6th Attack on the United States Capitol (the "Select Committee") reconfirms the merits of our initial Complaint. So too do recent judicial findings against Mr. Eastman, rendered on the basis of both information already referenced in our filings before the Bar and the new information, that "more likely than not" (1) Mr. Trump, with Mr. Eastman's knowing assistance, "corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021," and (2) Mr. Trump and Mr. Eastman "dishonestly conspired to obstruct the Joint Session of Congress on January 6, 2021," in each case in violation of federal criminal law.[4] Indeed, those additional findings suggest an additional charge for investigation: commission of an act "involving moral turpitude, dishonesty or corruption."[5]

In Part I of this submission, we briefly describe how the new information has emerged. In Part II, we discuss some of the most important new evidence. In Part III, we review the judicial findings that both Mr. Trump and Mr. Eastman likely engaged in criminal conduct. In Part IV, we briefly discuss how the new information and findings reinforce the need to investigate whether Mr. Eastman violated relevant provisions of the Rules of Professional Conduct and the State Bar Act.

Finally, we again[6] bring to your attention the continuing efforts by Mr. Eastman to use his legal credentials to overturn the results of the 2020 presidential election. Last month, for example, he reportedly pressured Robin Vos, the Speaker of the Wisconsin Assembly, in a closed-door meeting to decertify the state's 2020 electors—now more than one year after the inauguration of President Biden.[7] After that meeting with Speaker Vos, Mr. Eastman stated at an event at the Wisconsin Capitol later that day that, "[t]he Wisconsin Legislature, therefore, in my

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[3] *See* Stephen Bundy & States United Democracy Center, *Re: Request for Investigation of John C. Eastman, California Bar Number 193726 11-14*, States United Democracy Center (Oct. 4, 2021) [hereinafter Complaint], https://statesuniteddemocracy.org/wp-content/uploads/2021/10/10.4.21-FINAL-Eastman-Cover-Letter-Memorandum.pdf; Stephen Bundy & States United Democracy Center, *Re: Matter of John Eastman, Case Number 21-O-12451*, States United Democracy Center (Nov. 16, 2021) [hereinafter Supplemental Submission], https://statesuniteddemocracy.org/wp-content/uploads/2021/11/Supplemental-Letter-to-State-Bar-of-California.pdf.

[4] *Eastman v. Thompson*, 2022 WL 894256, at *22, *24 (C.D. Cal. Mar. 28, 2022).

[5] Bus. & Prof. Code § 6106.

[6] We discussed Mr. Eastman's recent conduct in Wisconsin in our February 16, 2022 letter appealing the procedural closing of our complaint. *See* Stephen Bundy & States United Democracy Center, *Appeal of Closing of Complaint re: John Eastman, Case Number 21-O-12451*, States United Democracy Center, at 8-9 (Feb. 16, 2022) [hereinafter Appeal], https://statesuniteddemocracy.org/wp-content/uploads/2022/02/2.16.22_Case-Number-21-O-12451_Appeal_Final2.pdf (discussing Mr. Eastman's ongoing efforts in Wisconsin, including a memorandum he wrote for state representative Timothy Ramthun arguing that the Wisconsin Legislature had the authority to decertify its electors even a year after the election).

[7] Will Steakin et al., *Former Trump Lawyer, Amid Clash with Jan. 6 Committee, Pushing to Decertify 2020 Election*, ABC News (Apr. 11, 2022), https://abcnews.go.com/Politics/trump-lawyer-amid-clash-jan-committee-pushing-decertify/story?id=83965757.

view, not just up until Jan. 6 [2021], or inauguration, but today as well, has the ability to look at the assessment and say, you know, our election was illegally certified."[8]

As we referenced in a previous filing,[9] in June 2021, a New York court granted a motion for interim suspension of Rudolph Giuliani's law license based on his pattern of misleading statements concerning the 2020 election.[10] The Attorney Grievance Committee in New York had moved for the interim suspension pending the completion of full disciplinary proceedings.[11] The court granted that motion, noting Mr. Giuliani's "underlying offense" and his "continuing misconduct," and finding that Mr. Giuliani's conduct "immediately threatens the public interest and warrants interim suspension from the practice of law."[12] In Mr. Eastman's case, in light of the harm already caused by Mr. Eastman's conduct and the potential for ongoing harm from his conduct, we respectfully suggest that, in addition to pressing forward with its investigation, the Bar should also consider whether it is appropriate to pursue interim remedies under Business & Professions Code § 6007 in order to protect the public.[13]

Part I: Background on *Eastman v. Thompson*

The new information, and new judicial findings, both arise from a lawsuit Mr. Eastman filed in the Central District of California in an effort to block a legislative subpoena from the Select Committee. The subpoena sought documents from Mr. Eastman's former employer, Chapman University, regarding the efforts of Mr. Eastman and his client, Mr. Trump, to overturn the results of the presidential election.[14] The records were sought from Chapman because Mr. Eastman refused to provide information or documents when the Select Committee subpoenaed

[8] Patrick Marley et al., *Wisconsin's Election Review Could Continue for Months as Top Republicans Meet with Trump and Attorney John Eastman*, Milwaukee Journal Sentinel (Apr. 7, 2022), https://www.jsonline.com/story/news/politics/2022/04/07/wisconsin-election-review-could-continue-months-trump-john-eastman-republicans-gop/9487316002/; *see also* Lauren Windsor (@lawindsor), Twitter (Apr. 12, 2022, 8:30 pm), https://twitter.com/lawindsor/status/1514038201194795013?s=20&t=tpr-9ctQDg8zI4AJVTOHKg (full video of Mr. Eastman's remarks).

[9] *See* Appeal at 7 n.29.

[10] *Matter of Giuliani*, 197 A.D.3d 1, 4 (N.Y. App. Div. 2021). A D.C. court followed suit and temporarily suspended Mr. Giuliani's law license there on a reciprocal basis. *See* Mike Scarcella, *Giuliani, Suspended in N.Y., Faces Attorney Ethics Probe in D.C.*, Reuters (Aug. 6, 2021), https://www.reuters.com/legal/government/giuliani-suspended-ny-faces-attorney-ethics-probe-dc-2021-08-06/.

[11] *Giuliani*, 197 A.D.3d at 4-5.

[12] *Id.* at 4, 14-18.

[13] *See, e.g.*, Bus. & Prof. Code § 6007(c)(2) (providing for involuntary inactive enrollment when an attorney "has caused or is causing substantial harm to . . . the public" and "there is a reasonable probability that the chief trial counsel will prevail on the merits of the underlying disciplinary matter, and that the attorney will be disbarred"); Bus. & Prof. Code § 6007(h) (providing for a "full range of interim remedies . . . short of involuntary inactive enrollment").

[14] *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM, ECF No. 43, at 6-7 (C.D. Cal. Jan. 25, 2022).

him directly.[15] The court has since ordered that Mr. Eastman produce unprivileged emails on an expedited basis.[16]

The court also considered whether Mr. Eastman must produce additional documents that Mr. Eastman contended were attorney-client privileged or attorney work product.[17] The Select Committee urged the court to find, among other things, that any arguable privilege or work product protection had been extinguished because of the federal crime-fraud exception.[18] That exception applies when (1) a "client consults an attorney for advice that will serve [them] in the commission of a fraud or crime," and (2) the communications are "sufficiently related to" and were made "in furtherance of" the crime.[19] The party seeking disclosure must prove the crime-fraud exception applies by a preponderance of the evidence, meaning "the relevant facts must be shown to be more likely true than not."[20]

Part II: New Evidence from the Select Committee

To establish that the crime-fraud exception required disclosure, the Select Committee offered extensive evidence that Mr. Eastman and Mr. Trump likely committed two specific crimes: (1) attempting to obstruct the January 6 Joint Session of Congress, in violation of 18 U.S.C. § 1512(c)(2); and (2) conspiring to defraud the United States by interfering with the election certification process, disseminating false information about election fraud, and pressuring state officials to alter state election results, in violation of 18 U.S.C. § 371.[21] The Select Committee also offered evidence showing that Mr. Trump had likely engaged in common-law fraud by making false statements about the election to his supporters and government officials, and showing that it appeared that these false statements "were informed by Dr. Eastman's extensive advice that the election was stolen and that Congress or the Vice President could change the outcome of the election on January 6."[22]

Though much of the Select Committee's evidence was the same evidence cited in our Complaint and Supplemental Submission, some had not previously been made public. For example, in our Supplemental Submission, we cited reported communications between Mr. Eastman and Greg Jacob, the former Chief Counsel to then-Vice President Mike Pence, in which Mr. Eastman counseled that Mr. Pence either reject the Biden electors or delay the count and send the election back to the states.[23] The Select Committee has since filed in the *Thompson* matter an email chain between Mr. Eastman and Mr. Jacob occurring on and around January 6

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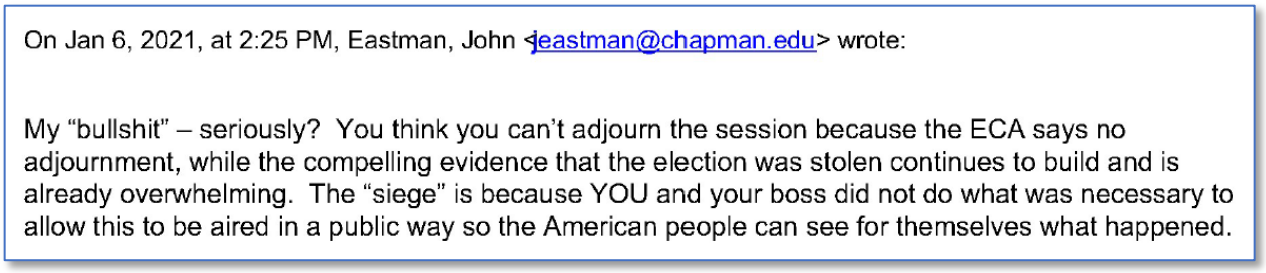
[15] Katelyn Polantz, *Trump Lawyer Ordered to Respond to January 6 Committee Subpoena for his Chapman University Emails*, CNN (Jan. 25, 2022), https://www.cnn.com/2022/01/24/politics/eastman-january-6-committee-subpoena-chapman-university/index.html. According to the Select Committee, Mr. Eastman had pled the Fifth Amendment in response to 146 questions from the Select Committee. *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM, ECF No. 164-1, at 1 and n.1 (C.D. Cal. Mar. 3, 2022).
[16] *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM, ECF No. 50, at 2-3 (C.D. Cal. Jan. 26, 2022).
[17] *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM, ECF No. 195, at 1, 3 (C.D. Cal. Mar. 9, 2022).
[18] *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM, ECF No. 164-1, at 38-53 (C.D. Cal. Mar. 3, 2022).
[19] *Eastman v. Thompson*, 2022 WL 894256, at *19 (C.D. Cal. Mar. 28, 2022).
[20] *Id.*
[21] *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM, ECF No. 164-1, at 38-45 (C.D. Cal. Mar. 3, 2022).
[22] *Id.* at 46-51.
[23] Supplemental Submission at 6-7.

that includes additional communications not previously made public, including emails that bear on the lack of legal support for Mr. Eastman's advice and Mr. Eastman's awareness of that fact.

In one of those emails on January 6, Mr. Eastman said that Mr. Jacob was being "small minded" by "sticking with minor procedural statutes while the Constitution is being shredded."[24] Mr. Jacob replied that he didn't "believe that there is a single Justice on the United States Supreme Court, or a single judge on any of our Courts of Appeals, who is as 'broad minded' as you when it comes to the irrelevance of statutes enacted by the United States Congress, and followed without exception for more than 130 years."[25] Mr. Jacob went on to say that he had "run down every legal trail placed before me to its conclusion, and I respectfully conclude that as a legal framework, it is a results oriented position that you would never support if attempted by the opposition, and essentially entirely made up."[26] Mr. Jacob also added, "And thanks to your bullshit, we are now under siege."[27] Mr. Eastman replied to Mr. Jacob—at a time when Mr. Pence and Mr. Jacob were under guard as rioters tore through the Capitol calling for Mr. Pence's execution[28]—with the following: "The 'siege' is because YOU and your boss did not do what was necessary to allow this to be aired in a public way so the American people can see for themselves what happened."[29] *See* Figure 1.[30]


On Jan 6, 2021, at 2:25 PM, Eastman, John <jeastman@chapman.edu> wrote:

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

Figure 1: Email from John Eastman to Greg Jacob

[24] *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM, ECF No. 164-17, at 2 (C.D. Cal. Mar. 3, 2022).
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] Josh Dawsey et al., *During Jan. 6 Riot, Trump Attorney Told Pence Team the Vice President's Inaction Caused Attack on Capitol*, Wash. Post (Oct. 29, 2021), https://www.washingtonpost.com/investigations/eastman-pence-email-riot-trump/2021/10/29/59373016-38c1-11ec-91dc-551d44733e2d_story.html.
[29] *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM, ECF No. 164-17, at 2 (C.D. Cal. Mar. 3, 2022).
[30] Figures 1 and 2 are excerpts from a longer email chain between Mr. Jacob and Mr. Eastman provided by the Select Committee.

Later in that email exchange, Mr. Eastman also specifically encouraged Mr. Pence to violate the Electoral Count Act. After the rioters who had disrupted the electoral count had been cleared from the Capitol, and the Senate returned to resume the electoral count, Mr. Pence allowed lawmakers to speak without counting that time against the time limits in the Electoral Count Act.[31] In that context, Mr. Eastman wrote to Mr. Jacob: "So now that the precedent has been set that the Electoral Count Act is not quite so sacrosanct as was previously claimed, *I implore you to consider one more relatively minor violation* and adjourn for 10 days to allow the legislatures to finish their investigations, as well as to allow a full forensic audit of the massive amount of illegal activity that has occurred here."[32] *See* Figure 2.

From: Eastman, John
Sent: Wednesday, January 06, 2021 9:44 PM MST
To: Jacob, Gregory F. EOP/OVP <Gregory.F.Jacob@ovp.eop.gov>
Subject: RE: [EXTERNAL] Pennsylvania letter

The Senate and House have both violated the Electoral Count Act this evening – they debated the Arizona objections for more than 2 hours. Violation of 3 USC 17. And the VP allowed further debate or statements by leadership after the question had been voted upon. Violation of 3 USC 17. And they had that debate upon motion approved by the VP, in violation of the requirement in 3 USC 15 that after the vote in the separate houses, "they shall immediately again meet."

So now that the precedent has been set that the Electoral Count Act is not quite so sacrosanct as was previously claimed, I implore you to consider one more relatively minor violation and adjourn for 10 days to allow the legislatures to finish their investigations, as well as to allow a full forensic audit of the massive amount of illegal activity that has occurred here. If none of that moves the needle, at least a good portion of the 75 million people who supported President Trump will have seen a process that allowed the illegality to be aired.

John

Figure 2: Email from John Eastman to Greg Jacob

In other words, Mr. Eastman was trying to use the fallout from the January 6 attack—which prompted Mr. Pence to give lawmakers additional time to speak after reconvening—to convince Mr. Pence to violate the Electoral Count Act by refusing to tally Biden's electors and postponing the count.[33] As counsel for the Select Committee pointed out during a hearing on Mr. Eastman's effort to block the subpoena, this so-called "minor" violation of the law "could have changed the entire course of our democracy" and "could have meant that the popularly elected President of the United States would have been thwarted from taking office."[34]

The Select Committee also provided new evidence that bears on Mr. Eastman's knowledge of the lack of legal support for his advice. For example, according to Mr. Jacob's testimony in his deposition with the Select Committee, Mr. Eastman himself repeatedly

[31] Josh Dawsey et al., *During Jan. 6 Riot, Trump Attorney Told Pence Team the Vice President's Inaction Caused Attack on Capitol*, Wash. Post (Oct. 29, 2021), https://www.washingtonpost.com/investigations/eastman-pence-email-riot-trump/2021/10/29/59373016-38c1-11ec-91dc-551d44733e2d_story.html.
[32] *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM, ECF No. 164-19, at 2 (C.D. Cal. Mar. 3, 2022) (emphasis added).
[33] Aaron Black, *The Most Shocking New Revelation about John Eastman*, Wash. Post (Oct. 30, 2021), https://www.washingtonpost.com/politics/2021/10/30/most-shocking-new-revelation-about-john-eastman/.
[34] *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM, ECF No. 206, at 28 (C.D. Cal. Mar. 8, 2022).

recognized that his position lacked legal or historical support. According to Mr. Jacob's testimony:

- Mr. Eastman acknowledged that, "since the Electoral Count Act had gone into effect, there were no instances of departing from the Electoral Count Act."[35]
- Mr. Eastman acknowledged that there was "100 percent consistent historical practice since the time of the Founding that the Vice President . . . did not ever assert or exercise authority to do what [Mr. Eastman] was suggesting [Mr. Pence] should do."[36]
- He admitted that "he didn't think Kamala Harris should have that authority in 2024; he didn't think Al Gore should have had it in 2000; and he acknowledged that no small government conservative should think that that was the case."[37]
- He agreed that if "the Vice President had such authority, you could never have a party switch thereafter. You would just have the same party win continuously if indeed a Vice President had the authority to just declare the winner of every State."[38]
- He conceded his plan violated the Electoral Count Act in four separate ways.[39]
- And he eventually even admitted that the notion that the Vice President could refuse to count certain votes "would lose 9-0 at the Supreme Court."[40]

Notwithstanding these reported admissions by Mr. Eastman, however, he nonetheless advocated for Mr. Pence to reject or delay the counting of electoral votes in the two memoranda that he wrote, in media interviews, and in meetings with Mr. Pence and his staff.[41] Indeed, we now know that Mr. Pence's Chief of Staff Marc Short testified before the Select Committee that Mr. Pence had conveyed to Mr. Trump "[m]any times" Mr. Pence's position that he lacked unilateral authority to reject electors or otherwise decide which electoral votes should be counted.[42] And Mr. Jacob confirmed in his new testimony that Mr. Pence's "immediate instinct was that there is no way that one person could be entrusted by the Framers to exercise that authority."[43] Mr. Jacob testified that, nevertheless, in the Oval Office meeting with Mr. Eastman on January 4, Mr. Eastman continued to try to convince Mr. Pence to change his position.[44]

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[35] *Eastman v. Thompson, et al*., No. 8:22-cv-00099-DOC-DFM, ECF No. 164-11, at 108 (C.D. Cal. Mar. 3, 2022).
[36] *Id.* at 109.
[37] *Id.* at 110.
[38] *Id.*
[39] *Id.* at 128.
[40] *Id.* at 110.
[41] *See, e.g.*, Supplemental Submission at 5-7, 12-15.
[42] *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM, ECF No. 164-14, at 26-27 (C.D. Cal. Mar. 3, 2022); *see also* Michael R. Pence, *Dear Colleague Letter*, Jan. 6, 2021, *available at* https://int.nyt.com/data/documenttools/pence-letter-on-vp-and-counting-electoral-votes/9d6f117b6b98d66f/full.pdf (letter referenced in deposition testimony).
[43] *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM, ECF No. 164-11, at 95 (C.D. Cal. Mar. 3, 2022).
[44] *Id.*

Part III: Judge Carter's Ruling that Mr. Trump and Mr. Eastman More Likely Than Not Engaged in Criminal Conduct

After considering the evidence, Judge Carter held that the crime-fraud exception extinguished any claim of privilege as to one of the documents that Mr. Eastman had withheld because it was more likely than not that both Mr. Trump and Mr. Eastman had violated federal criminal law[45] and that the document "likely furthered the crimes of obstruction of an official proceeding and conspiracy to defraud the United States."[46] Mr. Eastman's attorney has since said that he intends to comply with Judge Carter's order, [47] and the emails that were the subject of the order have now been turned over to the Select Committee.[48]

With respect to the obstruction claim, the court found it was more likely than not that Mr. Trump attempted to obstruct an official proceeding by launching a pressure campaign to convince Vice President Mike Pence to disrupt the Joint Session on January 6.[49] The court also found that Mr. Trump had more likely than not acted with the "corrupt intent" required by the statute, because Mr. Trump "likely knew" that the allegations of election fraud used to justify the plan were "baseless," and because, notwithstanding Mr. Eastman's claim that the plan was grounded in a good-faith interpretation of the Constitution, "[t]he illegality of the plan was obvious."[50] The court also noted that if Mr. Trump in fact had entertained a good-faith belief in the unconstitutionality of the Electoral Count Act, he should have sought a judicial remedy so declaring, and that his failure to do so, "after filing and losing more than sixty suits," showed that the "plan was a last-ditch attempt to secure the Presidency by any means."[51]

With respect to the conspiracy claim, the court found it was more likely than not that Mr. Eastman, President Trump, and others entered into an agreement to obstruct a lawful government function, the counting of the electoral votes, and committed numerous overt acts in furtherance

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[45] *Eastman v. Thompson*, 2022 WL 894256, at *20-24 (C.D. Cal. Mar. 28, 2022).

[46] *Id.* at *26. That document was a draft memo forwarded to Mr. Eastman that recommended that Vice President Pence reject certain electors on January 6 in violation of the Electoral Count Act. *Id.* The court noted that Mr. Eastman's later memos closely tracked the analysis and proposal of this one. *Id.* The court concluded that this memo was subject to the crime-fraud exception and ordered that Mr. Eastman disclose it. *Id.* The court had already resolved the privilege issues concerning most of the other challenged communications on other grounds. *See id.* at *14-19. Ultimately, of the 111 documents addressed in Judge Carter's order, the court concluded that ten documents were privileged, one document had to be disclosed under the crime-fraud exception, and the other 100 documents had to be disclosed on other bases. *Id.* at *14-19, *26, *27.

[47] Sarah D. Wire, *Trump Likely Committed Felony Obstruction, U.S. Judge Says in Ordering Emailed Handed to Jan. 6 Committee*, L.A. Times (Mar. 28, 2022), https://www.latimes.com/politics/story/2022-03-28/former-trump-lawyer-john-eastman-must-hand-over-documents-to-jan-6-committee-judge-rules.

[48] Katelyn Polantz & Paul LeBlanc, *January 6 Committee Obtains Emails that Former Trump Attorney John Eastman Sought to Keep Secret*, CNN (Apr. 5, 2022), https://www.cnn.com/2022/04/05/politics/john-eastman-january-6-emails/index.html.

[49] *Eastman v. Thompson*, 2022 WL 894256, at *20-21 (C.D. Cal. Mar. 28, 2022).

[50] *Id.* at *21-22.

[51] *Id.* at *22. Consistent with that finding, the judge also found that certain documents relating to Mr. Eastman's plan to disrupt the electoral count did not qualify as attorney work product because they were not prepared in anticipation of litigation. *Id.* at *15-16. The court found that "[t]he plan proposed by Dr. Eastman's memo involve[s] actions by the Vice President without recourse to the courts" and that "[l]itigation was never Dr. Eastman's motivation for planning the events of January 6, perhaps because, as he conceded, his legal theories would be rejected '9-0' by the Supreme Court." *Id*. at *15.

of their shared plan.[52] The court also found that Mr. Eastman and President Trump had carried out their plan by deceitful or dishonest means, because both men more likely than not knew that the plan was unlawful.[53]

Counsel for Mr. Eastman had argued that Mr. Eastman lacked the mental state to be complicit in crime or fraud, because he "absolutely believed that what they were doing was well-grounded in law [and] fact and was necessary for what they believed was the best interest of the country."[54] The court rejected that factual claim in its entirety. The court found that Mr. Eastman "heard from numerous mentors and like-minded colleagues that his plan had no basis in history or precedent" and that Mr. Eastman "repeatedly recognized that his plan had no legal support" and violated multiple provisions of the Electoral Count Act.[55] The court found that Mr. Eastman's views were not a "good faith interpretation" of the law, but rather a "partisan distortion . . . driven not by preserving the Constitution but by winning the 2020 election."[56] Finally, the court found that because Mr. Eastman was aware that his plan was unlawful, Mr. Eastman "likely acted deceitfully and dishonestly each time he pushed an outcome-driven plan that he knew was unsupported by the law."[57]

Part IV: Relevance of the New Information and Findings to the Bar's Investigation

This new evidence, along with Judge Carter's findings by a preponderance of the evidence, are relevant to the professional conduct violations that we previously urged the Bar to investigate. That is particularly true to the extent they provide further evidence of Mr. Eastman's state of mind. They also support an additional potential violation we hadn't previously asserted.

A. Alleged Violations Referenced in Our Previous Filings

a. Counseling or Assisting in Known Crimes or Frauds (Rule 1.2.1)

The new information and judicial findings strengthen the case that Mr. Eastman knowingly counseled or assisted in Mr. Trump's criminal or fraudulent conduct in two ways. First, the judge's order identifies particular criminal offenses implicated by Mr. Trump and Mr. Eastman's efforts to derail the electoral count, and it marshals the evidence relevant to those potential criminal violations. Second, the new evidence, and the judge's findings based on them, suggest that Mr. Eastman likely knew that Mr. Trump's conduct was illegal, both because its stated factual premise was false and because it lacked any legal foundation. The court reached

[52] *Id.* at *22-24.
[53] *Id.* at *23-24.
[54] *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM, ECF No. 206, at 12 (C.D. Cal. Mar. 8, 2022). Moreover, according to reporting by *The Daily Beast*, multiple people who worked with Mr. Eastman, including a conservative lawyer who worked with him during the 2020 presidential transition, told the publication that "they simply did not buy, based on their personal interactions with Eastman over the years, that the attorney actually believed what he was pushing to then-President Trump." Jose Pagliery, *These Two Lawyers Breathed Life Into Trump's Big Lie, but Did They Even Believe It?*, The Daily Beast (Mar. 10, 2022), https://www.thedailybeast.com/how-lawyers-john-eastman-and-jeffrey-clark-breathed-life-into-trumps-big-lie?source=articles&via=rss.
[55] *Eastman v. Thompson*, 2022 WL 894256, at *23-24 (C.D. Cal. Mar. 28, 2022).
[56] *Id.* at *24.
[57] *Id.*

that conclusion by finding that Mr. Eastman's claims of good faith were not credible. Moreover, as we discussed in our Complaint,[58] it is well-settled doctrine in California that good faith can be dispelled, and knowledge shown, if the lawyer was willfully blind to evidence of wrongdoing.[59] Willful blindness occurs when the lawyer "deliberately or consciously avoids knowledge that a client is or may be using the lawyer's services to further a crime or fraud."[60] The facts marshaled by the district court suggest that even if President Trump or Mr. Eastman believed that their scheme was lawful, it was likely because they had willfully chosen, for self-interested reasons, to close their eyes and cover their ears, ignoring the evidence, legal materials, and repeated advice from responsible actors that demonstrated the illegality of their conduct.

b. Misrepresentation and Deception (Rules 4.1 and 8.4(c) and Business and Professions Code Section 1106)

The new evidence and findings also provide additional evidence to support the claim that Mr. Eastman's statements to Mr. Pence, Mr. Pence's staff, and the crowd at the January 6 "Stop the Steal" rally in furtherance of the plan to reject or delay the counting of electoral votes were false and that Mr. Eastman knew of or was recklessly indifferent to their falsity. As the court wrote: "Mr. Eastman likely acted deceitfully and dishonestly each time he pushed an outcome-driven plan that he knew was unsupported by law."[61]

c. Competence and Professional Independence (Rules 1.1 and 2.1)

Finally, the new evidence and findings lend additional support to the claim that Mr. Eastman's conduct was an intentional, reckless, or grossly negligent violation of his obligations to provide competent services under Rule 1.1 and to provide independent and candid professional advice under Rule 2.1. The court's findings suggest that Mr. Eastman violated those obligations repeatedly by giving advice that ignored the "obvious" illegality of the course of conduct proposed,[62] and which failed to meet even minimal standards of accuracy, candor, or disinterestedness.

B. An Additional Potential Violation: Criminal Conduct in Violation of Business and Professions Code Section 6106 and Rule 8.4(b)

While the court's finding that Mr. Eastman likely committed a federal felony offense using dishonest or deceitful means is not itself a basis for professional discipline, it provides compelling grounds for the Bar to investigate whether Mr. Eastman should be disciplined for violating Business and Professions Code Section 6106. Section 6106 provides in full that:

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[58] *See* Complaint at 20.
[59] *See, e.g.*, *Matter of Carver*, No. 12-O-12062, 2016 WL 9649875, at *4 (Cal. Bar Ct. Apr. 12, 2016) (holding that an attorney's "willful blindness" to the fact that he was ineligible to practice law was "tantamount to having actual knowledge" that he was ineligible).
[60] American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Opinion 491, Apr. 29, 2020, at 5 & n.20.
[61] *Eastman v. Thompson*, 2022 WL 894256, at *24 (C.D. Cal. Mar. 28, 2022).
[62] *See id.* at *22.

> The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.
>
> If the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding is not a condition precedent to disbarment or suspension from practice therefor.[63]

Under Section 6106, discipline may be imposed for dishonest or corrupt conduct whether that conduct was intentional, reckless, or grossly negligent.[64] In addition, the Bar should investigate whether Mr. Eastman's conduct violated Rule 8.4(b), which provides that it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

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We appreciate your recent announcement of an ongoing investigation. You explicitly justified that announcement as based on the need for "protection of the public."[65] The new information concerning Mr. Eastman's conduct in seeking to prevent the January 6 counting of electoral votes, along with the aforementioned revelations concerning his ongoing efforts in Wisconsin to discredit and reverse the 2020 election results, makes the need to protect the public even more apparent. As Judge Carter concluded, "Dr. Eastman and President Trump launched a campaign to overturn a democratic election, an action unprecedented in American history. Their campaign was not confined to the ivory tower—it was a coup in search of a legal theory."[66] And as Judge Carter explained, their actions had real consequences because their "plan spurred violent attacks on the seat of our nation's government, led to the deaths of several law enforcement officers, and deepened public distrust in our political process."[67]

The new information discussed above provides further evidence to support the claim that Mr. Eastman's past conduct violated numerous ethical rules and that his ongoing conduct threatens grave public harm. That in turn strengthens the need for a prompt, comprehensive, and transparent investigation.[68]

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[63] Bus. & Prof. Code § 6106.
[64] *See, e.g., Matter of Yee*, 5 State Bar Ct. Rptr. 330, 334 (Review Dep't State Bar Court 2014).
[65] *See* State Bar of California, *State Bar Announces John Eastman Ethics Investigation* (Mar. 1, 2022), https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-announces-john-eastman-ethics-investigation; *see also* Bus. & Prof. Code § 6086.1(b)(2) (providing the Chief Trial Counsel and the Chair of the State Bar with the authority to announce disciplinary investigations "only when warranted for protection of the public"); State Bar Rule of Procedure 2302(d)(1) (providing the Chief Trial Counsel the authority to disclose a disciplinary investigation "for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality").
[66] *Eastman v. Thompson*, 2022 WL 894256, at *27 (C.D. Cal. Mar. 28, 2022).
[67] *Id.*
[68] *See* Appeal at 1, 9.

Moreover, as discussed above, given the harm already caused by Mr. Eastman's conduct and the potential for ongoing harm, we respectfully suggest that, in addition to pressing forward with its investigation, the Bar should also consider whether to pursue interim remedies in order to protect the public.

Respectfully submitted,

Stephen Bundy (SBN 253017)
Professor of Law (Emeritus)
University of California, Berkeley*

*Title and affiliation
for identification purposes only

STATES UNITED DEMOCRACY CENTER

/s/ *Christine Sun*

Christine P. Sun (SBN 218701)
Senior Vice President, Legal
Joanna Lydgate**
Chief Executive Officer
Norman Eisen**
Executive Chair, Board of Directors

Aaron Scherzer, Senior Counsel**
Colin McDonell, Counsel (SBN 289099)

**Not admitted to the California Bar

cc:

George S. Cardona, Chief Trial Counsel (*via email*)

Complaint Review Unit, Office of General Counsel (*via email)*