



**LAWYERS
DEFENDING
AMERICAN
DEMOCRACY**

August 11, 2022

Hamilton P. Fox, III
Office of Disciplinary Counsel
Board of Professional Responsibility
District of Columbia Court of Appeals
515 5th Street NW
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VIA EMAIL

Re: Request for Investigation of John Charles Eastman

Dear Mr. Fox:

The States United Democracy Center is a nonpartisan organization advancing free, fair, and secure elections. We focus on connecting state and local officials, public safety leaders, and pro-democracy partners across America with the tools and expertise they need to safeguard our democracy. Critical to our mission is helping to ensure that democracy violators are held accountable, including those in the legal profession who betray their ethical duties to uphold the rule of law.

Lawyers Defending American Democracy (LDAD) is a non-profit, nonpartisan organization, the purpose of which is to foster adherence to the rule of law. LDAD is devoted to ensuring that individual lawyers are held accountable for participating in assaults on fundamental principles of our American democracy.

We know that the District of Columbia's Office of Disciplinary Counsel (ODC), which has recently investigated and filed formal charges against Rudolph Giuliani and Jeffrey Clark for their misconduct concerning the 2020 election, takes these threats to our democracy seriously.¹ Consistent with your recent actions against Giuliani and Clark, we ask that you take similar action with another attorney licensed in your jurisdiction. We respectfully request that the ODC open an investigation into whether John C. Eastman, a member of the District of Columbia Bar,

¹ *In the Matter of Rudolph W. Giuliani*, No. 2020-D253 (D.C. June 6, 2022), <https://www.dcbbar.org/ServeFile/GetDisciplinaryActionFile?fileName=6-6-22-Specification22BD027.pdf>; *In the Matter of Jeffrey B. Clark*, No. 2021-D193 (D.C. July 19, 2022), <https://www.judiciary.senate.gov/imo/media/doc/Spec.%20Jeffrey%20B.%20Clark.pdf>.

violated the Rules of Professional Conduct (California Rules 1.1(a), 1.2.1, 2.1, 3.1, 3.3., 4.1, 8.4(b), and 8.4(c) and/or D.C. Rules 1.1(a), 1.2(e), 2.1 3.1, 3.3., 4.1, 8.4(b), and 8.4(c)) through his actions to assist his client Donald J. Trump in attempts to discredit and overturn the results of the 2020 presidential election.²

In October of 2021, States United filed a complaint against Mr. Eastman with the California Bar detailing Mr. Eastman's conduct that warranted an investigation into whether he had violated various Rules of Professional Conduct.³ In December of 2021, LDAD filed its own complaint supporting States United's request for an investigation.⁴ The LDAD complaint provided further grounds for investigation by showing that, when Mr. Eastman engaged in the activities documented by States United, he was participating in a coordinated effort with others, including Rudolph Giuliani, a lead attorney for Mr. Trump, and Assistant Attorney General Jeffrey Clark.

² There is no question that Mr. Eastman is subject to the District of Columbia's disciplinary process. Under D.C. Rule 8.5(a) "a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs." It is a closer question as to which jurisdiction's rules should be used to evaluate Mr. Eastman's conduct. Some of Mr. Eastman's conduct concerns litigation before the U.S. Supreme Court. Under Rule 8.5(b)(1), concerning conduct "in connection with a matter pending before a tribunal," the rules governing Mr. Eastman's conduct before the Supreme Court should be "the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise." But it is not clear how to define the jurisdiction in which the Supreme Court sits (arguably it is the United States as a whole) and that Court has apparently not adopted binding ethical rules. For Mr. Eastman's non-litigation conduct, under Rule 8.5(b)(2)(ii), the applicable rules will be those of the jurisdiction in which the lawyer "principally practices" unless the particular conduct "clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice." This language suggests that California's Rules of Professional Conduct should apply, again unless the "predominant effect" test points to the United States as the relevant jurisdiction. In any event, our examination of the District of Columbia Rules of Professional Conduct indicates that they do not differ materially from the California Rules in their treatment of the issues described here, with the exception of potential differences between California Rule 1.1(a) and D.C. Rule 1.1(a) and between California Rule 1.2.1(a) and D.C. Rule 1.2(e). For simplicity of analysis, the attached filings assumed that California's rules govern.

³ See Stephen Bundy & States United Democracy Center, *Re: Request for Investigation of John C. Eastman, California Bar Number 193726*, 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>.

⁴ See Lawyers Defending American Democracy, *Re: Request for Investigation of John C. Eastman, California Bar Number 193726* (Dec. 16, 2021), <https://ldad.org/wp-content/uploads/2021/12/Eastman-Complaint-121621.pdf>.

States United also submitted several supplemental filings as new information came to light.⁵ In March 2022, the California Bar announced that it was investigating Mr. Eastman’s conduct in relation to the November 2020 election.⁶ As a member of the District of Columbia bar, Mr. Eastman is also subject to the ODC’s jurisdiction under Rule 8.5(a). Because Mr. Eastman is also licensed to practice in the District of Columbia—and because Mr. Eastman used, and has continued to use, his law licenses in a manner that both violates his ethical obligations and threatens our democracy—we request that the District of Columbia’s ODC also investigate Mr. Eastman to ensure accountability and protection of the public.

States United’s and LDAD’s filings with the California Bar, summarizing and analyzing Mr. Eastman’s conduct, are attached. States United’s first two filings detail, for example, how Mr. Eastman assisted with Mr. Trump’s unlawful efforts to pressure then-Vice President Pence to violate his statutory and constitutional duties by refusing to count the electoral votes from certain states—which would have thrown the election to Mr. Trump—or by delaying the count and provoking a constitutional crisis in which the lawful winner of the election might not prevail.⁷ Mr. Eastman did so by writing memoranda that asserted false and frivolous legal propositions based on false factual premises—including that Mr. Pence had unfettered authority to decline to count electoral votes or to postpone the count—and then by lobbying Mr. Pence and Mr. Pence’s staff to follow the advice in those memoranda.⁸ Moreover, Mr. Eastman advanced false and frivolous claims in a lawsuit asking the Supreme Court to bar the certification of electoral votes in several states.⁹ Mr. Eastman also made false and misleading claims about the election on other occasions, including in his speech at the “Stop the Steal” rally on the National Mall on January 6.¹⁰

⁵ See 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>; Stephen Bundy & States United Democracy Center, *Appeal of Closing of Complaint re: John Eastman, Case Number 21-O-12451*, States United Democracy Center (Feb. 16, 2022) [hereinafter Appeal], https://statesuniteddemocracy.org/wp-content/uploads/2022/02/2.16.22_Case-Number-21-O-12451_Appeal_Final2.pdf; Stephen Bundy and States United Democracy Center, *Second Supplemental Submission Re: Matter of John Eastman, Case Number 21-O-12451*, States United Democracy Center (Apr. 14, 2022) [hereinafter Second Supplemental Submission], https://statesuniteddemocracy.org/wp-content/uploads/2022/04/04.14.22_Case-Number-21-O-12451_Second-Supplemental-Filing_Final1.pdf.

⁶ 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>.

⁷ See, e.g., Complaint at 9-14; Supplemental Submission at 3-26.

⁸ Complaint at 9-14; Supplemental Submission at 3-26.

⁹ Complaint at 6-9.

¹⁰ *Id.* at 16-18, 23.

In a supplemental filing, States United compiled additional evidence gathered and revealed by the House Select Committee investigating the January 6 attack and highlighted a federal judge’s findings that Mr. Eastman and Mr. Trump, in their efforts to convince Mr. Pence to reject or delay the counting of electoral votes on January 6, more likely than not violated federal criminal law.¹¹ Among other things, the judge found that Mr. Eastman “likely acted deceitfully and dishonestly each time he pushed an outcome-driven plan that he knew was unsupported by the law,” a plan the court concluded was a “coup in search of a legal theory.”¹² In that litigation, the Select Committee had presented new evidence bearing on Mr. Eastman’s knowledge of the lack of legal support for his plan. That evidence included testimony from Mr. Pence’s former chief counsel, Greg Jacob, who testified that Mr. Eastman urged this plan on Mr. Pence despite conceding to Mr. Jacob that he didn’t think that Vice President Kamala Harris should have the unilateral authority he was urging for Pence; Mr. Eastman also conceded that the notion that the vice president could reject certain votes would lose 9-0 at the Supreme Court.¹³ Mr. Eastman even explicitly acknowledged that what he was urging Mr. Pence to do violated the Electoral Count Act, describing it as a “relatively minor violation” of the law.¹⁴ States United’s filing also noted that, even a year after the 2020 election, Mr. Eastman was still seeking to interfere with the election’s lawful results, including efforts to decertify the 2020 electors in Wisconsin.¹⁵

Since then, even more information concerning Mr. Eastman’s conduct has come to light. For instance, in the previously referenced federal litigation, the court analyzed additional emails from Mr. Eastman, including ones in which “Dr. Eastman explained that the worst case for the plan was receiving a court decision that constrained Vice President Pence’s authority to reject electors.”¹⁶ Accordingly, Mr. Trump’s legal team decided to “avoid the courts” and instead “forged ahead with a political campaign to disrupt the electoral count.”¹⁷ In addition, the U.S. Department of Justice recently revealed that it has obtained two federal search warrants to seize and search Mr. Eastman’s cell phone.¹⁸

¹¹ See Second Supplemental Submission at 3-11.

¹² *Eastman v. Thompson*, --- F. Supp. 3d ----, 2022 WL 894256, at *24, *27 (C.D. Cal. Mar. 28, 2022).

¹³ Second Supplemental Submission at 7.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 2-3; see also Appeal at 8-9 (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).

¹⁶ *Eastman v. Thompson*, Case No. 8:22-cv-99, Doc. 356, at 20 (C.D. Cal. June 7, 2022).

¹⁷ *Id.* at 21.

¹⁸ Kanishka Singh, *U.S. Gets Warrant to Search Phone of Trump's Election Attorney John Eastman*, Reuters (July 27, 2022), <https://www.reuters.com/world/us/us-gets-warrant-search-phone-trumps-election-attorney-john-eastman-2022-07-27/>.

Moreover, the House Select Committee also revealed more information bearing on Eastman’s conduct through its recent series of public hearings. For example, it was revealed that, although Mr. Eastman would later go on to urge Mr. Pence to disregard Biden electors in favor of purported alternate electors for Trump, Mr. Eastman had previously admitted that the false Trump electors had no legal weight and would be “[d]ead on arrival in Congress.”¹⁹ As another notable example, a few days after the January 6 attack, Mr. Eastman emailed Rudy Giuliani with the request: “I’ve decided that I should be on the pardon list, if that is still in the works.”²⁰ And we learned that Mr. Eastman pressured the speaker of the Arizona House to decertify that state’s 2020 electoral votes, even though there was no evidence of widespread or outcome-determinative fraud.²¹ Furthermore, we learned of evidence that Mr. Eastman worked directly with Mr. Trump to implement the false-electors scheme.²²

Altogether, Mr. Eastman’s conduct implicates rules concerning knowing or reckless dishonesty, knowingly assisting in a client’s fraudulent or criminal conduct, advancing frivolous claims, competence, and professional independence. The evidence that Mr. Eastman knowingly pushed a plan to overturn the election, running afoul of various ethical obligations in the process, has only become stronger since the California Bar began to investigate. We urge the District of Columbia to do the same.

* * *

For the reasons set forth above, we respectfully request that the Office of Disciplinary Counsel open an ethics investigation into Mr. Eastman’s conduct.

¹⁹ *Here’s Every Word of the Third Jan. 6 Committee Hearing on its Investigation*, NPR (June 16, 2022), <https://www.npr.org/2022/06/16/1105683634/transcript-jan-6-committee>.

²⁰ C-Span, *John Eastman: “I’ve decided that I should be on the pardon list, if that is still in the works.”* at 1:37, YouTube (June 16, 2022), <https://www.youtube.com/watch?v=x9rX6SdyEvc>.

²¹ *Here’s Every Word from the Fourth Jan. 6 Committee Hearing on its Investigation*, NPR (June 21, 2022), <https://www.npr.org/2022/06/21/1105848096/jan-6-committee-hearing-transcript>.

²² *Id.* (testimony of Republican National Committee Chair Ronna McDaniel that, during a call requesting the RNC’s assistance in coordinating purported alternate electors, Mr. Trump “turned the call over to Mr. Eastman” to talk about why Mr. Eastman thought it was important that the RNC play a role in carrying out that plan).

Respectfully submitted,

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