
**LAWYERS
DEFENDING
AMERICAN
DEMOCRACY**

December __, 2021

George S. Cardona Esq.
Office of Chief Trial Counsel
The State Bar of California
845 South Figueroa Street
Los Angeles, CA 90017

RE: Request for Investigation of John C. Eastman, California Bar Number 193726

Dear Chief Trial Counsel Cardona:

The undersigned attorneys file this ethics complaint against John C. Eastman, a member of the bar of the State of California, because, based on a broad range of publicly available information, we believe that Mr. Eastman violated California Rules of Professional Conduct while acting in his capacity as an attorney for President Donald J. Trump. In so doing, Mr. Eastman appears to have acted in concert with other attorneys, notably Rudolph W. Giuliani and Jeffrey C. Clark, in an effort to install Mr. Trump in the office of President of the United States for another four years notwithstanding the irrefutable fact that the people of the United States had chosen Joseph R. Biden to replace him. We believe that concerted unethical action by lawyers aggravates the circumstances of their violation.

Among those who have signed this complaint are members of the Steering Committee of Lawyers Defending American Democracy, a voluntary organization formed nearly three years ago to speak out against and, in appropriate instances, ensure that people are held accountable for, assaults on fundamental principles of our American democracy.

Before filing this complaint, we reviewed the complaints States United Democracy Center filed with you on [October 4](#) and [November 16](#), 2021. We adopt the carefully-documented and richly annotated factual assertions those documents contain. We shall not repeat them here except in summary form where helpful to provide context for the events we wish to bring to your attention.

The essence of our complaint is that when Mr. Eastman engaged in the activities documented by States United, he was not acting independently to provide legal advice to President Trump. Instead, he was participating with Mr. Giuliani and Mr. Clark in a carefully orchestrated collective plan to overturn the results of the 2020 Presidential election even though all of the available evidence clearly showed that Joseph R. Biden had won. Their concerted action proceeded on several fronts simultaneously, thereby increasing the danger of its success. As you

review the facts recited in this complaint and in complaints filed by States United, we strongly urge you to consider the concerted nature of Mr. Eastman's activities as an “aggravating circumstance” under the Standards for Attorney Sanctions for Professional Misconduct contained in Title IV, Standard 1.7(b) of the Rules of Procedure of the State Bar.

I. The 2020 Election and its Immediate Aftermath

The 2020 presidential election was held on November 3, 2020. Joseph R. Biden received slightly over 81 million popular votes and 306 electoral votes. Donald J. Trump, his opponent, received slightly over 74 million popular votes and 232 electoral votes. In all 50 states and the District of Columbia, those votes were [certified by December 9](#) and, [as required by law](#), the electors cast their votes in their respective States on December 14.

The period between November 3 and December 14, however, was tumultuous. Dozens of lawsuits challenging aspects of the election results were brought in state and federal courts. By December 1, however, Attorney General William Barr had publicly stated that the Department of Justice’s election monitoring had discovered nothing [“that could have effected a different outcome in the election.”](#) In addition, two separate federal agencies responsible for election monitoring had released a statement saying that the 2020 election had been [“the most secure presidential election in American history.”](#)

By mid-December, challenges to election results in all battleground States had been resolved in the manner prescribed in the Presidential Election Act of 1948 and on December 14, the electors in each of those states, also in the prescribed manner, [met and cast the votes](#) that determined that Mr. Biden would be the next President of the United States.¹ On December 15, then Senate Majority Leader Mitch McConnell [publicly declared](#) that Mr. Biden had won the election.

President Trump, however, pushed on with his claim that he was the winner and that the December 14 Electoral College vote to the contrary was based on massive fraud and chicanery. Undeterred by the absence of any factual basis for those claims, Mr. Eastman had been working and continued to work in concert or in conscious parallel with the efforts of other lawyers, particularly Mr. Clark and Mr. Giuliani, to overturn the secure and accurate election tallies and provide President Trump with another term in office.

Shortly after Christmas, Mr. Eastman began lobbying Vice-President Michael Pence with a proposal to disregard the electoral votes cast in six states that had voted for Mr. Biden. By that time, lawyers for Mr. Trump [had filed more than fifty lawsuits challenging the election results](#), none of which had succeeded. Indeed, Mr. Eastman himself had appeared as counsel for Mr. Trump and sought to intervene in an original-jurisdiction lawsuit brought by the State of Texas in the Supreme Court of the United States that challenged the election results in several other states. That suit lasted less than one week before the Court threw it out.

Nevertheless, Mr. Eastman continued his fact-free effort to convince Vice President Pence that he should disregard the votes from the targeted states. To that end, he produced two memoranda that outlined paths forward. One, that came to be known as [the short memo](#), argued in essence

¹ Presidential Elections & Vacancies, 3 U.S. Code, Ch. 1, §§ 5, 7.

that the Electoral Count Act of 1887² was unconstitutional and that the Vice President had the authority – apparently the inherent authority, for neither the Constitution nor any statute conferred any such power on him – to decide for himself whether there were disputed electoral votes in any of the States. If he found that there were, the memo said, the Vice President could also decide for himself whether any votes from those states should be counted.

The other memo, [known as the long memo](#), described what Mr. Eastman called illegalities in six states and that, again because the Electoral Count Act was unconstitutional, Vice-President Pence had the right to decide which votes to count. He ended that memo with the following statement: “BOLD, Certainly. But this Election was Stolen by a strategic Democrat plan to systematically flout existing election laws for partisan advantage; we’re no longer playing by Queensbury Rules, therefore.”

Vice President Pence and Greg Jacob, his attorney, rejected the plans the two memoranda outlined, but Mr. Eastman persisted. Beginning on January 3, he and Mr. Giuliani, Stephen Bannon, Bernard Kerik and White House Counsel Pat Cippolone [met frequently in the Willard Hotel](#) with Vice President Pence in an effort to persuade him to disregard electoral votes from the six targeted states when he presided over the January 6 Electoral Vote Counting session. In the end, the Vice President resisted their efforts.

A parallel effort to nullify the election results began on December 28, when Mr. Clark delivered to his superiors, acting Attorney General Jeffrey Rosen and Acting Deputy Attorney Gen. Richard Donahue, [a letter he had addressed to Georgia Governor Brian Kemp, Georgia House Speaker David Ralston and Georgia Senate President pro tempore Cecil Terrell “Butch” Miller](#).³ The letter said that the Department of Justice was investigating “various irregularities” in the 2020 election and had “identified significant concerns that may have impacted the outcome of the election in multiple States, including the State of Georgia.” The letter recommended that, because of those irregularities, the Georgia Legislature should convene in special session and choose a new set of electors to cast the Georgia ballots.

The letter was built on demonstrably false premises and was [immediately and forcefully rejected by Mr. Rosen and Mr. Donahue](#). Mr. Eastman’s role in creating the letter and the proposal it contained is at this point unclear. It is noteworthy, though, that Mr. Clark’s letter contained the same highly misleading allegations about alleged machinations in Fulton County Georgia that Mr. Eastman earlier had included in an action he had filed on President Trump’s behalf in the United States District Court for the Northern District of Georgia.⁴

Whatever Mr. Eastman’s role in creating Mr. Clark’s letter, there is no doubt that Mr. Eastman subscribed to Mr. Clark’s effort and acted to effectuate it. On January 2, 2021, he, Mr. Giuliani, Director of White House Trade and Manufacturing Policy Peter Navarro, and Department of Justice Research and Statistics Senior Counsel John Lott [met on Zoom with 300 lawmakers from](#)

² 3 U.S. Code, Ch. 1, § 15.

³ See Clark Proposed Letter at <https://www.justsecurity.org/wp-content/uploads/2021/08/January-6-Clearinghouse-Jeffrey-Clark-emails-and-rejected-draft-letter-to-stop-Georgia-certification-december-28-2020.pdf>

⁴ Compare *Trump v. Kemp*, 511 F. Supp. 3d 1325, 1329, 1332 (N.D. Ga. 2021) with Clark proposed letter, *supra* n. 3 at 2.

[the six targeted states to urge them to take the steps Mr. Clark had advocated in the letter.](#)
Ultimately, none did and the effort failed.

Then came January 6, the day prescribed by statute for recording the Electoral votes in a combined session of the House and Senate. Undeterred by reality, President Trump had continued his claim that he won the election and that certified results to the contrary were the product of fraud and misconduct. [For several weeks he had been urging his supporters to gather in Washington on January 6 to demonstrate their support for the fraud claims he had invented.](#) In a speech to the crowd assembled on the Ellipse on that date, he urged them to make their outrage known and visible.

Mr. Giuliani and Mr. Eastman spoke, too. The remarks those prominent lawyers jointly made to that highly energized crowd were the antithesis of the requirements, expectations, values and norms embodied in the license to practice law both men had received. Paraphrasing will not suffice to convey the degree to which they disregarded those requirements, expectations and values, so we set forth verbatim the core of what they said:

Mr. Giuliani: I have Prof. Eastman here with me to say a few words . . . He is one of the preeminent constitutional scholars in the United States. It is perfectly appropriate given the questionable constitutionality of the Election Counting Act of 1887 that the Vice President can cast it aside and he can do what a president called Jefferson did when he was Vice President. He can decide on the validity of these crooked ballots, or he can send it back to the legislators, give them 5 to 10 days to finally finish the work.

. . .

Mr. Giuliani: [Y]ou should know this, the Democrats and their allies have not allowed us to see one machine, one paper ballot. Now if they ran such a clean election, why wouldn't they make all the machines available immediately? If they ran such a clean election, have you come in and look at the paper ballots. Who hides evidence? Criminals hide evidence. Not honest people.

. . .

Mr. Giuliani: Also, last night one of the experts that has examined these crooked dominion machines has absolutely what he believes is conclusive proof that in the last 10%, 15% of the vote counted, the votes were deliberately changed. The same algorithm that was used in cheating President Trump and Vice President Pence. Same algorithm, same system, same thing was done with the same machines. You notice they were ahead until the very end, right? Then you noticed there was a little gap, one was ahead by 3%, the other was ahead by 2%, and gone, gone, they were even. He can take you through that and show you how they programmed that machine from the outside to accomplish that. And they've been doing that for years to favor the Democrats.

. . .

Mr. Eastman [after Mr. Giuliani finishes]: America's Mayor, wonderful. Hello America. Sorry I had to say that. Look, we've got petitions pending before the Supreme Court that identify it chapter and verse, the number of times state election officials ignored or violated the state law in order to put Vice Pres. Biden over the finish line. We know there was fraud. Traditional fraud that occurred. We know that dead people voted. But now we know because we caught it live the last time in real time, how the machines contributed to that fraud.

Mr. Eastman: And let me as simply as I can explain it; you know the old way was to have a bunch of ballots sitting in a box under the floor and when you needed more, you pulled them out in the dark of night. They put those ballots in a secret folder in the machines. Sitting there waiting until they know how many they need. And then the machine, after the close of polls, we now know who's voted, and we know who hasn't. And I can now, in that machine, match those unvoted ballots with the unvoted voter and put them together in the machine.

Mr. Eastman: And how do we know that happened last night in real time? You saw when it got to 99% of the vote total and then it stopped. The percentage stopped, but the votes didn't stop. What happened, and you didn't see this on Fox or any of the other stations, but the data shows that the denominator, how many ballots remain to be counted, how else do you figure out the percentage that you have, how many remain to be counted, that number started moving up. That means they were unloading the ballots from that secret folder, matching them to the unvoted voter, and voilà, we have enough votes to barely get over the finish line.

Mr. Eastman: We saw it happen in real time last night, and it happened on November 3 as well. And all we are demanding of Vice President Pence is this afternoon at 1:00 he let the legislators of the state look into this so we get to the bottom of it, and the American people know whether we have control of the direction of our government, or not.

Mr. Eastman: We no longer live in a self-governing republic if we can't get the answer to this question. This is bigger than President Trump. It is the very essence of our republican form of government, and it has to be done. And anybody that is not willing to stand up to do it, does not deserve to be in the office. It is that simple.⁵

But it was not “that simple.” Instead, everything Mr. Giuliani and Mr. Eastman said that afternoon was nonsense. The evidence in numerous lawsuits that had been filed and resolved in the two months after the election and the evidence introduced in the few lawsuits that remained was that, save for a few errors and anomalies that made no difference in the election's outcome, the election results were secure, accurate and reliable as a matter of fact and the Vice President had no authority to set any of them aside as a matter of law.

⁵ See [“Rudy Giuliani Speech Transcript at Trump’s Washington DC Rally”](#).

II. Rules of Professional Conduct.

California Rule of Professional Conduct 8.4(c) states that it is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation.”⁶ If the facts contained in the public record are accurate, and there surely can be no doubt that the content of the long and short memos and the transcript of Mr. Eastman’s remarks on the Ellipse are accurate, then it is clear that Mr. Eastman violated Rule 8.4(c). There was absolutely no legitimate basis for any outcome-relevant challenge to the results of the popular vote in the 2020 Presidential election or to the succeeding electoral vote. Even if there somehow had been such a basis, Mr. Eastman advised Vice President Pence to exercise powers neither the Constitution nor any relevant statute gave him. And his address to the crowd on the Ellipse, following Mr. Giuliani’s remarks that he “was one of the preeminent constitutional scholars in the United States,” were filled with reckless fantasies, fantasies so footless that one is hard pressed to believe that they were anything other than deliberate falsehoods.

In the end, Mr. Eastman’s claims that the presidential election results were fraudulent was and is the kind of falsehood that has come to be known as The Big Lie. A lie of that kind strikes at the core of our constitutional democracy by undermining the essential public faith in our elections. As many have noted, promulgation of that kind of Lie is a familiar tactic of [authoritarian leaders and movements](#). And promulgation of such Lies almost invariably has a significant public impact. One need look no further than the latest polls showing that a significant share of the public, and two thirds of Republican party members, [believe that victory in the 2020 election was stolen from Donald Trump through fraud](#).

These features of Mr. Eastman’s misconduct likely qualify as an “aggravating circumstance” under Rules of Procedure, Title IV, Standard 1.7(b) in view of the “serious harm to . . . the public, the legal system, [and] the profession” that has occurred. Without belaboring the point, the impact of this loss of faith in our electoral process is incalculable (and continuing), and Mr. Eastman and other lawyers have played an essential role in fostering it.

The collaboration among Mr. Giuliani, Mr. Clark, Mr. Eastman and other lawyers leveraged their individual misconduct to increase the damage to our constitutional republic and the legal profession. We strongly urge that Mr. Eastman’s collaboration with those other lawyers in what amounted to an attempted coup is an aggravating factor in his violation of Rule 8(4)(c). There was no casual dishonesty. It appears, instead, to have been a carefully considered decision to work together to inflict on the Nation a grave constitutional trauma. Lawyers are licensed to practice in California and elsewhere in this country only after they have demonstrated their knowledge of and respect for the rule of law, the essential but fragile ingredient of a healthy democracy. That Mr. Eastman and other lawyers, including Mr. Giuliani and Mr. Clark, joined together not to nurture that ingredient but use its fragility to alter the results of a free election is

⁶ Footnote 1 to that Rule states that “[a] violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.” The facts revealed by the public record leave little doubt that at all relevant times Mr. Eastman was acting in in his professional capacity and not simply as an opinionated bystander but, even if he had been acting in the latter capacity, Rule 8(4)(c) nevertheless governed his conduct.

among the most serious violations of the rules of professional responsibility one can imagine. Activity of that kind simply cannot be tolerated.

Finally, as the State Bar is undoubtedly aware, courts and disciplinary authorities in other jurisdictions are in the process of addressing related misconduct with the utmost seriousness and transparency. Thus far, these proceedings have resulted in an interim suspension for Mr. Giuliani in New York (with reciprocal suspension in D.C.), judicial sanctions under Fed. R. Civ. P. Rule 11 and referrals for bar discipline for Sidney Powell and other lawyers in federal district court in Michigan,⁷ and similar sanctions in Colorado for two lawyers who commenced a baseless purported class action concerning the 2020 election.⁸ These disciplinary actions each focused on the propagation by lawyers of the falsehood that the 2020 election results were affected by systemic fraud as well as the threat such efforts pose to our constitutional democracy and the rule of law. We urge you to address the conduct of Mr. Eastman with the same seriousness, dispatch, and transparency exhibited by these other tribunals.

III. Conclusion

As set forth above, and in the complaint by States United Democracy Center, the available public record is more than sufficient to justify an investigation of Mr. Eastman under Title V of the State Bar Rules of Procedure. Moreover, there is a strong public interest in an expedited process in this matter, a process made public should charges be lodged, in light of the gravity and intended impact of Mr. Eastman's misconduct.

As it concluded its opinion suspending Mr. Giuliani from the practice of law, the New York Appellate Division made the following observations:

The seriousness of respondent's uncontroverted misconduct cannot be overstated. This country is being torn apart by continued attacks on the legitimacy of the 2020 election and of our current president, Joseph R. Biden. The hallmark of our democracy is predicated on free and fair elections. False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of a free society. When those false statements are made by an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession's role as a crucial source of reliable information. It tarnishes the reputation of the entire legal profession and its mandate to act as a trusted and essential part of the machinery of justice.

.....

⁷ See [King v. Whitmer](#) in which the U.S. District Court for the Eastern District of Michigan sanctioned Sidney Powell, L. Lin Wood and several others for "deceiving a federal court and the American people into believing that [voting] rights were infringed without regard to whether any laws or rights were in fact violated."

⁸ See [O'Rourke v. Dominion Voting Systems, Inc.](#) in which a Magistrate Judge for the U.S. District Court for the District of Colorado sanctioned two lawyers for bringing a suit that amounted to a "disorganized and fantastical" "conspiracy theory" regarding, among other things, the allegedly nefarious operation of Dominion voting machines.

One only has to look at the ongoing present public discord over the 2020 election, which erupted into violence, insurrection and death on January 6, 2021 at the U.S. Capitol, to understand the extent of the damage that can be done when the public is misled by false information about the elections.

Slip Op. at 30-31 (citations omitted). Those observations apply equally to the conduct in which Mr. Eastman engaged. We, therefore, urge you to investigate carefully the conduct outlined above, including the collaboration with Mr. Giuliani and Mr. Clark, and following that examination to impose appropriate sanctions.

Respectfully Submitted,

LAWYERS DEFENDING AMERICAN DEMOCRACY, INC.,

By: _____/s/_____ Scott Harshbarger, Chairman
Former National President of Common Cause and two-term Attorney General of Massachusetts

James F. McHugh
Former Associate Justice, Massachusetts Appeals Court; LDAD Board Member

John T. Montgomery
Retired partner, Ropes & Gray; former First Assistant Attorney General of Massachusetts; LDAD Board Member

Dennis Aftergut
Of Counsel at Renne Public Law Group; former federal prosecutor and San Francisco Chief Assistant City Attorney

Cheryl Niro
Past President, Illinois State Bar Association; Former Partner, Quinlan & Carroll, Ltd; LDAD Board Member

Lauren Stiller Rikleen
President, Rikleen Institute for Strategic Leadership; LDAD Executive Director and Board Member; Former President, Boston Bar Association

Martha W. Barnett
Past President, American Bar Association; former partner Holland & Knight; LDAD Board Member

Evan Falchuk
Former independent gubernatorial candidate for Massachusetts; LDAD Board Member

Nicholas Fels
Retired partner, Covington & Burling LLP; LDAD Board Member

Thomas Mela

Retired Managing Attorney of the Massachusetts Advocates for Children; LDAD Board Member

Gershon M. (Gary) Ratner

Founder & Executive Director, Citizens for Effective Schools; Former Associate General Counsel for Litigation, U.S. Department of Housing & Urban Development; LDAD Board Member

Estelle H. Rogers

Retired Voting Rights Attorney; LDAD Board Member

Walter H. White, Jr.

Former Wisconsin Securities Commissioner & Past Chair Civil Rights & Social Justice Section of the American Bar Association; LDAD Board Member

Lucien Wulsin

Founder and retired Executive Director, Insure the Uninsured Project; LDAD Board Member

Additional online signatories can be viewed at LDAD.org.