LAWYERS
DEFENDING
AMERICAN
DEMOCRACY

October 12, 2022

Attorney Grievance Committee
Supreme Court of the State of New York
Appellate Division, First Judicial Department
180 Maiden Lane
New York, New York 10038
(212) 401-0800
Email: AD1-AGC-newcomplaints@nycourts.gov

Re: Professional Responsibility Investigation of Kenneth John Chesebro
Registration No. 4497913

Dear Grievance Committee Members:

The undersigned attorneys submit this ethics complaint against Kenneth J. Chesebro, a member of the bar of the State of New York. Based on a broad range of publicly available information, we believe that Mr. Chesebro violated the New York Rules of Professional Conduct while acting in his capacity as an attorney for then President Donald J. Trump in the aftermath of the 2020 presidential election. In doing so, Mr. Chesebro appears to have acted in concert with other attorneys, notably John C. Eastman and Rudolph W. Giuliani, to devise and attempt to implement a fraudulent scheme relying on fake electors in order to overturn Joseph R. Biden's irrefutable victory in the 2020 presidential election. Mr. Chesebro, however, is the apparent mastermind behind key aspects of the fake elector ploy, including the legal theory that the Vice President had the sole authority to determine the outcome of the election. Mr. Eastman and Mr. Giuliani are already subject to ethics investigations and disciplinary proceedings for their roles in the endeavor to overturn the election.[1] It is time for Mr. Chesebro to be subject to scrutiny comparable to his better known collaborators .[2]

Among those who have signed this complaint are members of the Steering Committee of Lawyers Defending American Democracy, a voluntary organization formed almost four years

[1] See "State Bar Announces John Eastman Ethics Investigation" (CA); In the Matter of Rudolph W. Giuliani (NY); In re Rudolph Giuliani (DC).

[2] We are aware that at least one other complaint has been filed with the Grievance Committee against Mr. Chesebro. Our goal is to not to repeat the allegations made in any prior complaint, but carefully to set forth a road map for the Committee to follow in deciding whether to initiate an investigation and disciplinary proceedings. We believe that your agency will be assisted by a narrow, targeted analysis of the key issues, which we have endeavored to provide, and trust that a more complete record will enable you to determine whether a broader array of charges of ethical violations may be appropriate

ago to speak out against and, in appropriate instances, ensure that people are held accountable for, assaults on fundamental principles of our American democracy.

The essence of our complaint is straightforward: Mr. Chesebro violated Rule 8.4(c) of the New York Rules of Professional Conduct (22 NYCRR Part 1200) (RPC) by engaging in fraudulent and deceitful conduct, resulting in serious harm to the public, the legal system, and the profession – indeed, to our democracy. In summary, and as described in more detail in Section I of this complaint:

- Mr. Chesebro conceived and participated in planning and promoting the creation of slates of fake electors from multiple states to interfere with the count of electoral votes on January 6, 2021.
- Mr. Chesebro advanced and promoted the false legal theory that the Vice President could declare that the electoral slates from multiple states were disputed by virtue of the fake electors slates, and that the Vice President could declare the outcome of the electoral count in favor of Mr. Trump.
- Mr. Chesebro knew that the scheme to submit fake elector slates and to propose the Vice President as the sole arbiter of the outcome had no basis in fact or law.
- Mr. Chesebro conspired with Mr. Giuliani, Mr. Eastman, and others to subvert our democracy by preventing the proper certification of Mr. Biden's victory in accordance with the Constitution and laws of the United States.

In addition to violating RPC Rule 8.4(c), these actions adversely reflect on Mr. Chesebro's fitness as a lawyer, in violation of RPC Rule 8.4(h), and plainly merit investigation by the Grievance Committee. As the Appellate Division emphasized in its decision suspending Mr. Giuliani in response to claims of violation of these same rules, "[a]ttorney efforts to undermine a legitimate presidential election warrant the attorney's referral to the grievance committee." *In the Matter of Rudolph W. Giuliani*, at n. 3.

I. Factual Basis for the Complaint

Despite losing the 2020 presidential election by 74 electoral votes and 7 million popular votes, Donald Trump and his allies conspired to overturn the results based on false claims of fraud, a plot that resulted in the January 6, 2021, insurrection. One significant aspect of this conspiracy was a scheme first contrived by Mr. Chesebro to submit fake elector slates to Vice President Mike Pence.

Mr. Chesebro was counsel to Donald Trump and the Trump campaign in litigation in Wisconsin concerning the 2020 election. He initially outlined his plan in a November 18, 2020 memorandum to James R. Troupis, another Trump campaign lawyer. In that memorandum, Mr. Chesebro described January 6 as the "Hard Deadline" for submitting slates of electors to be counted by Congress. *Id*. at 1. Working back from that date, he proposed that Wisconsin's Trump electors should "meet and cast their votes on December 14 . . . even if, at that juncture,

the Trump-Pence ticket is behind in the vote count, and no certificate of election has been issued in [their] favor." *Id*. at 2.

Mr. Chesebro expanded his recommendations to five other states in a December 9, 2020, memorandum to Mr. Troupis. This memorandum laid out the procedural details for the Trump-Pence electors to meet, vote and transmit their results to Vice President Pence "without any involvement by the governor or any other state official." *Id*. at 1. While claiming that this would be "unproblematic" in two states and only "slightly problematic" in another, Mr. Chesebro recognized that his plan would be "somewhat dicey in Georgia and Pennsylvania" in certain circumstances and "very problematic in Nevada." *Id*. at 5.

President Trump's team relied on Mr. Chesebro's proposals even though they knew that the plan involved "fake" votes:[3]

> Mr. [Jack] Wilenchik [(a Trump campaign lawyer in Arizona)] told his fellow lawyers he had been discussing an idea proposed by still another lawyer working with the campaign, Kenneth Chesebro, an ally of Mr. Eastman's, to submit slates of electors loyal to Trump. "His idea is basically that all of us (GA, WI, AZ, PA, etc.) have our electors send in their votes (*even though the votes aren't legal under federal law* – because they're not signed by the Governor); so that members of Congress can fight about whether they should be counted on January 6th . . . .
>
> "*[W]e would just be sending in 'fake' electoral votes to Pence so that 'someone' in Congress can make an objection when they start counting votes, and start arguing that the 'fake' votes should be counted.*" (Emphasis added.)

A few days later, Mr. Chesebro expanded on the scheme in a lengthy email to President Trump's lead lawyer, Mr. Giuliani, on December 13, 2020. There, Mr. Chesebro explained the importance of "having the President of the Senate firmly take the position that he, and he alone, is charged with the constitutional responsibility not just to **open** the votes, but to **count** them." *Id*. at 1. (Emphasis in original.) Mr. Chesebro concluded the email by underscoring his enthusiasm to be part of the effort to stop Congress from lawfully determining that Joe Biden had won the election: "It's an honor and a privilege to be involved with you in this fight!" *Id*. at 6.

Mr. Chesebro continued his work with Mr. Giuliani to put the plan into action. As recently found by Georgia Superior Court Judge Robert McBurney,[4] Mr. Chesebro's work in Georgia included "the coordination and execution of a plan to have 16 individuals meet . . . to cast purported electoral college votes in favor of former President Donald Trump, even though none of those 16 individuals had been ascertained as Georgia's certified presidential electors." Judge McBurney

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[3] "'Kind of Wild/Creative': Emails Shed Light on Trump Fake Electors Plan". This New York Times article reports on emails "authenticated by people who had worked with the Trump campaign at the time" (*id.*). To our knowledge, no one has cast doubt on the authenticity of the emails as reported in this article.

[4] In re: Special Purpose Grand Jury, No. 2022-EX-000024, July 5, 2022 (certificate of material witness) at p. 2.

further found that Mr. Chesebro "worked directly with Trump Campaign attorney Rudy Giuliani as part of the coordination and execution of the plan."[5]

Mr. Chesebro's efforts eventually encompassed a complete and detailed road map to overturn the election results. In litigation in the United States District Court for the Central District of California involving Mr. Eastman,[6] Judge David Carter summarized how central Mr. Chesebro's theory was to the entire enterprise (at p. 20):

> Dr. Eastman and President Trump's plan to disrupt the Joint Session was fully formed and actionable as early as December 7, 2020. On that day, Dr. Eastman forwarded a memo [Mr. Chesebro's November 18, 2020, memorandum] explaining why January 6 was the "Hard Deadline" that was "critical to the result of this election" for the Trump Campaign. A week later, on December 13, President Trump's personal attorney received a more robust analysis of January 6's significance [Mr. Chesebro's email to Mr. Giuliani], *which was potentially "the first time members of President Trump's team transformed a legal interpretation of the Electoral Count Act into a day-by-day plan of action."* (Emphasis added.)

Although Mr. Eastman's actions have received more attention than Mr. Chesebro's, Mr. Eastman coordinated closely with Mr. Chesebro and based his recommendations on the fake electors plan that Mr. Chesebro originally developed. The so-called "short memo" completed on December 23, 2020, was a product of their joint effort (see Eastman email stating that he is "fine with all of Ken's edits" and, in the same email string, Mr. Chesebro's statement that the memo is "Really awesome").

In their pivotal memo, Mr. Chesebro and Mr. Eastman confirmed their role as participants, not mere legal advisors. The memo stated at p. 1 that "we propose" that Vice-President Pence violate the Electoral Count Act, 3 U.S. Code §1 *et seq*. (ECA) – which the memo declared to be unconstitutional in key respects – by refusing to count the certified electoral votes of the seven states that submitted fake electoral slates. This was the very approach that Mr. Chesebro had first suggested more than a month earlier. Vice President Pence should do this, they urged, "without asking for permission" and based on the theory that he is the "ultimate arbiter." *Id*. at p. 2. Mr. Chesebro and Mr. Eastman concluded, "We should take all of our actions with that in mind." *Id.* With January 6 just days away, Mr. Eastman reiterated and expanded on this proposal in the "long memo" of January 3, 2021.

Mr. Chesebro's scheme to overturn the election was based on his and his allies' demonstrably false claims of voter fraud or abuse. As Judge Carter concluded,[7] "more than sixty courts dismissed cases alleging fraud due to lack of standing or lack of evidence," noting that plaintiffs made "strained legal arguments without merit and speculative accusations" and that "there is no evidence to support accusations of voter fraud." Similarly, in a Pennsylvania case, the Third Circuit observed that "[c]harges of unfairness are serious. But calling an election unfair does not

[5] *Id.*

[6] *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM (C.D. Cal. Mar. 28, 2022).

[7] *Id.* at 6, 34-35.

make it so," i*d*. at p.2, and "tossing out millions of mail-in ballots" would "disenfranchis[e] a huge swath of the electorate and upset[] all down ballot races too". *id.* at p. 3.

Notwithstanding the lack of any basis to reverse the results of the election, in his December 13 email to Mr. Giuliani, Mr. Chesebro described compliance with the Electoral Count Act as "a charade in which Biden and Harris are declared the winner of an election in which none of the *serious abuses that occurred* were ever examined with due deliberation." *Id.* at p. 4. (Emphasis added.). His proposal, Mr. Chesebro concluded, would result in "Republicans having leverage on Jan. 6 . . . to ensure closer attention to the *voluminous evidence of electoral abuses*." *Id.* at p. 6. (Emphasis added.). In other words, Mr. Chesebro sought to disrupt the counting of the electoral vote on January 6, in plain violation of the Electoral Count Act, to overturn the results of the 2020 election based on false claims of electoral fraud or abuse that had already been shown to be without legal merit.

To achieve that purpose, Mr. Chesebro and Mr. Eastman began their "short memo" with the further false statement that "7 states have transmitted dual slates of electors." *Id.* at p. 1 Of course, the states did no such thing – the Trump electors submitted their own slates, devoid of any certification by any state official. As noted above, even their own allies referred to these as "'fake' electoral votes." The "long memo" made the same baseless claim of "dual slates of electors," along with assertions of "illegal conduct" and "outright fraud." It concluded with the baseless assertion that "this Election was Stolen by a strategic Democrat plan to systematically flout existing election laws." Baseless, as everyone from the Attorney General to the White House Counsel to the courts had concluded. Even lawyers for the Trump campaign refused to play along, telling Mr. Chesebro that he was "responsible for the electoral college issues" and reducing their own responsibility for the fake elector scheme to "zero" (Just Security, July 18, 2022 at para. 21).

Undeterred, Mr. Chesebro pressed on. Shortly after completing the "short memo" with Mr. Eastman, Mr. Chesebro noted in a December 24, 2020, email that "the odds" for one element of his plan were not based on the "legal merits" but rather on whether the Supreme Court Justices "start to fear that there will be 'wild' chaos on Jan. 6." Mr. Chesebro's quote marks around "wild" could only reference President Trump's tweet a few days before calling on his supporters to protest on January 6, which he promised "will be wild!" And it was.

II. Basis for the Application of New York Ethics Rules

In addition to his admission to practice law in New York, Mr. Chesebro is admitted in several other jurisdictions, including Massachusetts (active status), Texas (inactive status), Florida (ineligible to practice), and California (active status). While it is not known where Mr. Chesebro was located at the time of the conduct described here, RPC Rule 8.5 (a) expressly provides that his conduct is subject to discipline in New York, and Rule 8.5(b)(2)(ii) resolves any uncertainty about the applicable substantive rules by providing that "[i]f the lawyer is licensed to practice in this state and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices . . ." Mr. Chesebro's LinkedIn page[8] lists

[8] Mr. Chesebro's LinkedIn page can be found by members of that service here and by non-members by inseting the following into a search engine: "kenneth chesebro linkedin"

him as a lawyer in New York, and he appears to have reported to at least one other state that his primary practice location is New York. The only exception to this principle is where the effect of the misconduct is in another jurisdiction in which the lawyer is admitted. *id.* (". . . if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct."). Here, the alleged misconduct involves application of U.S. election law, as well as the election laws of seven states (Wisconsin, Pennsylvania, Michigan, Georgia, Arizona, New Mexico, and Nevada). Mr. Chesebro is not listed as registered to practice in any of the seven states or in the District of Columbia.

III. Applicable Rules of Professional Conduct

Although Mr. Chesebro's actions raise concerns under several of the New York Rules of Professional Conduct,[9] we focus at this complaint stage principally on RPC Rule 8.4(c), which states that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation," as well as RPC Rule 8.4(h) which prohibits "conduct that reflects adversely on the lawyer's fitness as a lawyer."

To establish a violation of Rule 8.4(c), a lawyer must "know" that the conduct violates the Rule, though actual knowledge may be inferred from circumstances. *In the Matter of Rudolph Giuliani*.[10] Whatever Mr. Chesebro may have believed in the immediate aftermath of the election, it is reasonable to infer that he knew in December, and certainly by the time of the short memo of December 23, that many of his factual and legal representations concerning the 2020 election and its aftermath were false.

For instance, as noted above, in the short memo, Mr. Chesebro joined Mr. Eastman in representing that seven states had certified alternate elector slates, and further that "there are no electors that can be deemed validly appointed" from those seven states. Mr. Chesebro surely knew, based on his familiarity with the applicable federal and state laws, that this statement was not true. None of the alternative slates had been certified by the chief executive of the state as required by §9 of the Electoral Count Act, and therefore these elector slates were facially invalid. Indeed, Mr. Chesebro's earlier memorandum on December 9 acknowledged that the Congress would need "proof" that the alternate electors were "validly appointed" prior to January 6, and he would have known that no such proof had been forthcoming from any state.

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[9] Other provisions of the Rules that may apply to the alleged misconduct by Mr. Chesebro include: (i) RPC Rule 1.2(d) prohibiting a lawyer from "assist[ing] a client in conduct that the lawyer knows is illegal or fraudulent . . .", (ii) RPC Rule 4.1 providing that a lawyer shall not "knowingly make a false statement of fact or law to a third person," (iii) RPC Rule 8.4(a) which prohibits a lawyer from any "attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another"; and (iv) RPC Rule 8.4(d) prohibiting a lawyer from "engag[ing] in conduct that is prejudicial to the administration of justice." This complaint focuses on Rule 8.4(c) alone because it encompasses the entirety of the alleged misconduct, and because we believe these other rules have elements that are better addressed on a complete investigative record.

[10] *Matter of Rudolph W. Giuliani*, opinion at p. 8: "We, therefore, hold that in order to find a violation of RPC 8.4(c), the AGC is required to satisfy a knowing standard. Knowingness is expressly defined in the Rules of Professional Conduct. Rule 1.0(k) provides that '[k]nowingly,' 'known,' 'know' or 'knows' denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." Thus, the element of knowingness must be considered in connection with each particular claim of misconduct."

Similarly, when Mr. Chesebro represented that the election was marred by irregularities that undermined the legitimacy of the Electoral College vote, he again would have known that no such flaws had been established. Indeed, by that time, scores of courts had rejected any such assertions, and he had to have known that there was no remaining avenue to support such statements after certification of the electors in the various states.

Even more ethically damning were his specious claims about the authority of the Vice President to count and unilaterally reject certified electoral votes from the seven states. His theory purported to anoint a single official, the Vice President, as the sole arbiter of a presidential election in which more than 150 million voters had participated. As former Judge Michael Luttig testified to the January 6 Committee, "there was no basis in the Constitution or laws of the United States at all for the theory espoused by Mr. Eastman [and Mr. Chesebro]. *None*." (emphasis supplied). Judge Luttig also testified that the theory was part of a "treacherous plan . . . to steal America's democracy'." In the same vein, Judge Carter concluded that:

> The illegality of the plan was obvious. Our nation was founded on the peaceful transition of power, epitomized by George Washington laying down his sword to make way for democratic elections. Ignoring this history, President Trump vigorously campaigned for the Vice President to single-handedly determine the results of the 2020 election. As Vice President Pence stated, "no Vice President in American history has ever asserted such authority." Every American—and certainly the President of the United States—knows that in a democracy, leaders are elected, not installed.

https://storage.courtlistener.com/recap/gov.uscourts.cacd.841840/gov.uscourts.cacd.841840.260.0_4.pdf at p. 36.

Finally, a critical aspect of the Chesebro theory depended on the assertion in his December 13 email to Mr. Giuliani that the dispute resolution provisions of the Electoral Count Act of 1887, 3 U.S. Code § 1, were unconstitutional, and that the Vice President could simply ignore them. Those provisions resolved any disputes about competing electors in favor of the slate certified by the chief executive of each state. *Id.* at §§ 6, 9. Nevertheless, Mr. Chesebro recommended that the Vice President should simply declare, as President of the Senate, that he possesses the sole power to select an alternative electoral slate over the slate certified under the ECA by the chief executive of the state.

Mr. Chesebro purported to rest his position that the Vice President had such plenary authority on academic articles analyzing possible flaws in the ECA. Whether there are good faith reasons to question aspects of the ECA, however, is no defense here. Again, as Judge Carter concluded, "believing the Electoral Count Act was unconstitutional did not give President Trump license to violate it. Disagreeing with the law entitled President Trump to seek a remedy in court, not to disrupt a constitutionally mandated process." The same goes for Mr. Chesebro – he knew that his advice violated the ECA and his definitive assurances that the Vice President had any such authority misrepresented the law.

But even if Mr. Chesebro were somehow able to conclude that the Electoral Count Act was unconstitutional, the approach Mr. Chesebro proposed would have violated the plain text of the Constitution itself. The 12th Amendment, which is fundamental to all of this, begins by saying that "[t]he Electors shall meet in their respective states and vote by ballot for President and Vice-President . . ." Critically, though, the Amendment does not change the original provision of the Constitution specifying who the Electors are. Their identity is found in Article II, Sec. 2, which provides that "[e]ach State," shall appoint in such Manner as the Legislature thereof may direct, a Number of Electors . . ." The state legislatures, therefore, decide who the Electors will be and, in all states save Maine and Nebraska, the legislatures have decided that the state's Electors will be those "on the winning Presidential candidate's slate of potential electors."

Under both Article II and the 12th Amendment, those are the Electors who meet and vote in their respective states. Therefore, even if the Electoral Count Act is somehow unconstitutional, only votes cast by Electors chosen in the manner the state legislature specified can be counted. Self-selected Electors or Electors selected in some other manner simply have no standing whatsoever.[11]

None of that is ambiguous, none of it is complicated and none of it could have been unknown to Mr. Chesebro when he participated in an effort designed to count the votes of Electors who had not been "appoint[ed] in [the] Manner . . . the Legislature . . . direct[ed]." His actions were not those of a member of an honorable profession who sought for a client or a cause an advantageous result consistent with what the law permitted. Instead, his efforts were those of a schemer bent on helping a client or cause retain power through whatever manipulation of laws, customs and norms reaching that goal required.

Thus, based on the facts in the public record, there is ample reason to believe that Mr. Chesebro violated RPC Rule 8.4(c), and that his conduct was sufficiently egregious to reflect on his "fitness as a lawyer" under RPC Rule 8.4(h) :

- Mr. Chesebro was not a mere legal advisor to the Trump campaign, analyzing the consequences of various alternatives, but instead a participant in a series of deceptions intended to reverse the election results.
- There was no legitimate basis to challenge the outcome of the 2020 Presidential election or electoral vote count, but Mr. Chesebro did so anyway.
- Mr. Chesebro's scheme to submit fake elector slates and to propose the Vice President as the sole arbiter of the outcome had no basis in fact or law, and relied on misrepresentations through and through.
- Mr. Chesebro conspired with Mr. Giuliani, Mr. Eastman, and others to subvert our democracy by preventing the proper certification of Mr. Biden's victory in accordance with the Constitution and laws of the United States.

Mr. Chesebro's conduct was infused throughout with "dishonesty, fraud, deceit, [and] reckless or intentional misrepresentation" contrary to the core standard of RPC Rules 8.4(c) and 8.4(h). Although Mr. Chesebro did not succeed in his ultimate objective, the lies that he and his

[11] In that regard, Mr. Chesebro's reliance on the 1960 Hawaii vote in that year's presidential election is misplaced because the votes actually counted were those that had been cast and certified in accordance with Hawaii law.

confreres perpetrated have undermined public faith in our elections and caused incalculable damage to our democratic values and institutions.

Mr. Chesebro leveraged not only his own status as an attorney, but the misconduct of Mr. Eastman, Mr. Giuliani, and other lawyers to attempt to achieve his ends. The collaboration among these attorneys in what amounted to an attempted coup should also be regarded as an "aggravating circumstance" that should be relevant to any sanctions that the Committee may recommend. *See generally*, N.Y. Rules for Attorney Disciplinary Matters, § 1240.8(b)(2). These lawyers worked together, in violation of their oaths as attorneys, to undermine the rule of law and public respect for our democratic institutions.

While Mr. Eastman and Mr. Giuliani have received more attention, the public record amply demonstrates Mr. Chesebro's central role. As the original author of the fake elector scheme, Mr. Chesebro bears special responsibility for it and its consequences. We urge you to investigate Mr. Chesebro's conduct and to impose appropriate sanctions following your investigation.

Respectfully submitted,

LAWYERS DEFENDING AMERICAN DEMOCRACY, INC.,

By: _____/s/_____
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** The signatories have signed solely in their individual capacities and.do not do so on behalf of any organization or other affiliation