
LAWYERS DEFENDING AMERICAN DEMOCRACY

August 28, 2023

Attorney Grievance Committee
Supreme Court of the State of New York
Appellate Division, Third Judicial Department
286 Washington Avenue Extension, Suite 200
Albany, NY 12203
Email: AD3AGC@nycourts.gov

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

Dear Grievance Committee Members:

Lawyers Defending American Democracy (“LDAD”) is a non-profit, non-partisan organization, the purpose of which is to foster adherence to the rule of law. On October 12, 2022, LDAD filed an ethics complaint against Kenneth J. Chesebro because he violated Rules 8.4(c) and 8.4(h) of the New York Rules of Professional Conduct (22 NYCRR Part 1200) (RPC) while representing former President Donald Trump and the Trump Campaign. The complaint was filed with the First Department, but subsequently transferred to your Department, where Mr. Chesebro was first admitted to practice, in light of his reported relocation from Manhattan to San Juan, Puerto Rico.

We write now to describe three recent developments that further establish (and expand) Mr. Chesebro’s ethical violations. As the Attorney Grievance Committee (“AGC”) is very likely aware, on August 1, Special Counsel Jack Smith cited Mr. Chesebro as unindicted Co-Conspirator 5 in his indictment of the former president (the “Federal Indictment”),¹ and on August 14, a Fulton County, Georgia grand jury indicted Mr. Chesebro, along with the former president and seventeen other individuals, on range of conspiracy counts and a violation of Georgia’s Racketeer Influenced and Corrupt Organizations (“RICO”) statute (the “Georgia Indictment”).² The AGC may not, however, be aware of an August 8 blog post by Harvard Law School professor Laurence H. Tribe (“Anatomy of a Fraud”), in which he provides specific reasons for concluding that Mr. Chesebro knowingly “misrepresent[ed] my work” in the course

¹ *United States v. Trump*, No. 1:23-cr-00257-TSC (D.D.C. filed Aug. 1, 2023), available at https://www.justice.gov/storage/US_v_Trump_23_cr_257.pdf.

² *State of Georgia v. Trump*, No. 23SC1888947 (Fulton Super. Ct. filed Aug. 14, 2023), available at <https://d3i6fh83elv35t.cloudfront.net/static/2023/08/CRIMINAL-INDICTMENT-Trump-Fulton-County-GA.pdf>.

of Chesebro’s efforts to block the certification of Joseph Biden as president after the 2020 election.³ We discuss each of these developments briefly below.

I. The Federal Indictment

Federal district judge David Carter famously described the efforts of President Trump and John Eastman to overturn the 2020 presidential election as “a coup in search of a legal theory.”⁴ The Federal Indictment further confirms that that theory was actually provided by Mr. Chesebro. Our complaint discussed the initial step in his work, a November 18, 2020 memorandum that Mr. Chesebro wrote to James Troupis, a Trump lawyer working in Wisconsin during the recount then ongoing there (the “November 18 Memo”).⁵ That memorandum laid out, for the first time, the purported justification for having the Trump electors in Wisconsin meet and vote separately, with the goal of their vote being counted on January 6 in lieu of the Biden electors’. The Federal Indictment, however, reveals the existence of a second memorandum from Chesebro to Troupis, dated December 6, that “marked a sharp departure” in Chesebro’s approach.⁶ In that memorandum, Chesebro now advocated for the Trump electors to conduct their own bogus votes “in all six contested states.”⁷

The Federal Indictment also describes Chesebro’s concerted activity between December 9-13 developing and emailing state-specific instructions, and fabricated “certificate” language, to help the Trump electors in these states (and New Mexico) hold their spurious votes.⁸ Chesebro sent multiple emails to, and participated in numerous phone calls with, Trump lawyers in these states (including one in Arizona who described the electors as “fake”).⁹ He also urged the Arizona lawyers to file a lawsuit challenging the presidential election there so that the fake elector vote would not “appear treasonous,” as a state official had opined.¹⁰

Finally, and notably, Chesebro participated in a conference call with Trump electors in Pennsylvania in which Rudolph Giuliani falsely assured them that their fake votes would only be used in the event of litigation challenging the presidential election there, even though Chesebro knew that the plan was to use the fake votes in any case.¹¹

³ Laurence H. Tribe, “Anatomy of a Fraud: Kenneth Chesebro’s Misrepresentation of My Scholarship in His Efforts to Overturn the 2020 Presidential Election” (Aug. 8, 2023), available at <https://www.justsecurity.org/87498/kenneth-chesebros-misrepresentation-of-laurence-tribe-scholarship-in-his-efforts-to-overturn-the-2020-presidential-election/>.

⁴ *Eastman v. Thompson, et al.*, No. 8:22-cv-00099-DOC-DFM (C.D. Cal. March 28, 2022), slip op. at 44, available at <https://www.courthousenews.com/wp-content/uploads/2022/03/eastman-select-committee-order.pdf>.

⁵ Available at <https://www.justsecurity.org/wp-content/uploads/2022/06/january-6-clearinghouse-kenneth-chesebro-memorandum-to-james-r.-troupis-attorney-for-trump-campaign-wisconsin-november-18-2020.pdf>.

⁶ Available at <https://int.nyt.com/data/documenttools/chesebro-dec-6-memo/ce55d6abd79c2c71/full.pdf>. The memorandum was first made public by the New York Times on March 8; *see* <https://www.nytimes.com/2023/08/08/us/politics/trump-indictment-fake-electors-memo.html>; *see also* “Co-Conspirator 5’: Ken Chesebro and the evolution of Donald Trump’s Jan. 6 strategy,” POLITICO (Aug. 9, 2023), available at <https://www.politico.com/news/2023/08/09/ken-chesebro-memos-trump-coconspirator-00110458>. The “sharp departure” quote is contained in ¶ 54.b of the Federal Indictment.

⁷ *Id.* at 1 (emphasis in original).

⁸ Federal Indictment, *supra* note 1, ¶¶ 54.c, 59, 64.

⁹ *Id.* ¶¶ 58, 60-62.

¹⁰ *Id.* ¶ 60.

¹¹ *Id.* ¶ 61-62.

II. The Georgia Indictment

The Georgia Indictment charges Mr. Chesebro with one Georgia RICO count, one count of conspiracy to impersonate a public officer, and two counts each of conspiracy to commit forgery in the first degree and to commit false statements and writings.¹² It reveals the existence of *many* more emails and phone calls made by Mr. Chesebro between December 9-13 “for the purpose of having the [fake] electoral votes sent in to Congress . . . to keep alive the possibility that the votes could be flipped to Trump.”¹³ In one of them, he explained how his proposed fake election scheme was “preferable to allowing the Electoral Count Act [ECA] to operate by its terms.”¹⁴ As discussed next, Mr. Chesebro knew that the course of action he was urging and assisting in required violation of the ECA.

The issuance of the Georgia indictment also raises the likelihood that Mr. Chesebro “engage[d] in illegal conduct that adversely reflects on the lawyer’s honesty, trustworthiness or fitness as a lawyer,” in violation of RPC Rule 8.4(b).¹⁵ A valid conviction is not required to establish a violation of this rule, so long as the underlying factual allegations are sufficient for a conviction.¹⁶ The AGC should investigate this prospect as well.

III. Anatomy of a Fraud

Laurence H. Tribe is Carl M. Loeb University Professor of Constitutional Law Emeritus at Harvard University. One week after the Federal Indictment was issued, Prof. Tribe published a blog post declaring that, “[i]n the wake of this historic indictment, it is important for those of us with more information to come forward.”¹⁷ Prof. Tribe is exactly such a person: Mr. Chesebro was a student and research assistant of Professor Tribe while the former attended Harvard Law School from 1983-1986, and Mr. Chesebro assisted Professor Tribe when the latter represented presidential candidate Al Gore in 2000.¹⁸ As Professor Tribe’s post explains, Mr. Chesebro’s November 18 Memo – in an transparent attempt to bolster the credibility of its specious logic – cited Tribe’s work in two instances and, in so doing, “grossly misrepresent[ed] my scholarship.”

Professor Tribe first addresses the November 18 Memo’s implication that he endorses “the outlandish proposition” that any state is absolutely free to continue recounting the votes cast in that State’s presidential election until January 6, regardless of “what Congress might say and whatever the State’s chief executive might have certified as its official Electoral Slate.” Chesebro creates this implication by quoting and citing two pages of a Harvard Law Review article by Professor Tribe. Professor Tribe clarifies that his quoted sentence was only discussing Florida law, and never indicated that a state could disregard the ECA or Article II of the Constitution.

¹² Georgia Indictment, *supra* note 2, pp.1-2.

¹³ Georgia Indictment ¶¶ 47-53, 58-61, 64, 69, 70-72. Note that the indictment contains two ¶ 52s.

¹⁴ *Id.* ¶ 70.

¹⁵ *See, e.g., Matter of Rogan*, 170 N.Y.S.3d 556, 208 A.D.3d 22, 24 (N.Y. App. Div. 2022) (forgery and knowingly making false statements trigger RPC Rule 8.4(b)).

¹⁶ *See Matter of Hennessy*, 29 N.Y.S.3d 645, 138 A.D.3d 1230, 1231 (N.Y. App. Div. 2016).

¹⁷ *Anatomy of a Fraud*, *supra* note 3.

¹⁸ Mr. Chesebro’s LinkedIn page continues to note that he was a “researcher on litigation and scholarly projects for . . . Professor Laurence H. Tribe.” *See* <https://www.linkedin.com/in/ken-chesebro/>.

Professor Tribe then addresses the November 18 Memo’s citation of Professor Tribe’s constitutional law treatise for the proposition that one Congress is free to disregard a statute validly enacted by a prior Congress. He declares that this “flips . . . on its head” what his treatise actually declares: that any Congress is free, by a subsequent enactment, to revise or repeal a prior statute – but is bound by that statute unless and until the later statute is actually enacted. In particular, he emphasizes, Congress was bound by the ECA as the law then stood regarding the 2020 presidential election, and could not engage in violations of that law, however “minor,” as Chesebro’s strategy required.

RPC Rule 8.4(c) requires that a lawyer have acted knowingly, but such knowledge can be inferred from circumstances.¹⁹ Professor Tribe says he “must assume that Chesebro knew better” when he misrepresented his work, for several reasons:

- Chesebro had worked with him “on these very matters” when Professor Tribe represented Al Gore in *Bush v. Gore* and *Bush v. Palm Beach County*, and “was privy to all the key conversations”;
- He and Chesebro had discussed these matters shortly after the Supreme Court’s decision in *Bush v. Gore*;
- As a research assistant to Tribe, Chesebro had worked on the relevant part of the third edition of his treatise, and is listed in the acknowledgements; and
- Chesebro discussed these issues with him after reading his 2001 Harvard Law Review article criticizing the concurring opinion by Chief Justice Rehnquist in *Bush v. Gore*, and “[a]t the time . . . gave me every indication of agreeing with my views of all these issues. . . .”

Accordingly, the AGC has ample basis to conclude that Mr. Chesebro violated Rule 8.4(c) in his November 18 Memo.

In conclusion, we submit that Mr. Chesebro’s conduct described above further establishes his violation of RPC Rules 8.4(b), 8.4(c) and 8.4(h). We again urge you to investigate Mr. Chesebro’s conduct²⁰ and impose appropriate sanctions.

Respectfully submitted,

Lawyers Defending American Democracy, Inc.

By: _____/s/_____

John T. Montgomery

Board Member, Lawyers Defending American Democracy

¹⁹ *Matter of Giuliani*, 146 N.Y.S.3d 266, 197 A.D.3d 1, 8 (N.Y. App. Div. 2021).

²⁰ AGC might also wish to question Mr. Chesebro about still and video photography showing him on January 6, 2021 in the restricted area of the Capitol, including on the Capitol steps, in the close company of Infowars’ Alex Jones, and consider how that conduct, in the context of the foregoing, further reflects on his fitness as a lawyer. See “Kenneth Chesebro, alleged architect of fake electors’ plot, followed Alex Jones around Capitol grounds on January 6th,” CNN (Aug. 18, 2023), available at <https://www.cnn.com/2023/08/18/politics/kfile-kenneth-chesebro-followed-alex-jones-capitol-riot-jan-6/index.html>.