July 9, 2024

APPENDIX A

CHRONOLOGY FOR EACH LAWYER

A. RUDOLPH GIULIANI

Rudolph Giuliani received his J.D. degree from New York University School of Law. After he graduated from law school, he clerked for Judge Lloyd MacMahon, U.S. District Court Judge for the Southern District of New York. He served as the Associate Deputy Attorney General (1981-83), U.S. Attorney for the Southern District of New York (1983-89), and Mayor of New York City (1994-2001). Giuliani joined Trump's personal legal team in 2018. https://en.wikipedia.org/wiki/Rudy_Giuliani

- On November 7, 2020, at a press conference and again on November 25, 2020 at a meeting of a Pennsylvania State Senate committee, Giuliani falsely stated that 8,021, and as many as 30,000 dead people "voted" in Philadelphia in the 2020 election. Giuliani did not provide any evidence supporting this contention in the ethics lawsuit brought against him by the New York Attorney Grievance Committee. The Supreme Court of New York, Appellate Division, held that these statements violated Rules 4.1 and 8.4(c). *Matter of Giuliani*, 146 N.Y.S. 3d 266, 274-275 (1st Dept 2021);

- Giuliani claimed that "although Pennsylvania sent out only 1,823,148 absentee ballots before the election, 2,589,242 absentee ballots were then counted in the election." He made the statement on radio programs on November 8, 2020 and December 17, 2020, on a podcast on December 24, 2020, at an event in a Gettysburg hotel attended by State legislators on November 25, 2020, and during a meeting of the Michigan House Oversight Committee on December 2, 2020. In fact, 3.08 million absentee ballots were mailed out before the election. The Court held that these statements violated Rules 4.1 and 8.4(c). *Id*. at 272;

- On November 14th, Trump announced on Twitter than Giuliani was now the head of his campaign's legal team. January 6th Report at 209.

- On November 17, 2020, Giuliani appeared in federal district court in Pennsylvania before Judge Brann on behalf of Plaintiff, "Donald J. Trump for President, Inc." The case was *Donald J. Trump for President, Inc. v. Boockvar*, 502 F. Supp. 3d 899 (M.D. Pa. 2020) ("*Boockvar*"). At the hearing, Giuliani argued in opposition to a motion to dismiss an amended complaint filed on behalf of his client. Giuliani "repeatedly represented to the court that his client was pursuing a fraud claim" and argued a fraud case alleging "'widespread, nationwide vote fraud." In fact, the complaint had previously been amended to withdraw all fraud claims leaving only an equal protection claim. Giuliani

admitted the "true status of the case . . . [when] he was pressed by the court to concede the point at page 188 of the transcript." The court's phone line was open to as many as 8,000 journalists and other members of the public and at least 3,700 people had dialed in at the outset of the argument. The New York Supreme Court held that Giuliani's false assertion that there was a fraud claim before the court violated Rules 3.3 and 8.4(c). *Matter of Giuliani* at 273-274;

- On November 21, 2020, Judge Brann dismissed Giuliani's amended complaint and denied leave to further amend the complaint. *Boockvar,* 502 F. Supp. 3d at 923;

- On November 25, 2020, the Third Circuit affirmed Judge Brann's decision. *Boockvar*, 830 Fed. Appx. 377 (3rd Cir. 2020). In its opinion, the Third Circuit stated:

> Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and proof. We have neither here.

Boockvar, 830 Fed. Appx. at 381;

- On November 30, 2020, before Arizona legislators, on radio on December 17, 2020, March 9, 11 and April 27, 2021, and on podcasts on December 24, 2020 and April 21, 2021, Giuliani claimed that thousands of illegal aliens had voted in Arizona in the 2020 election. Giuliani failed to produce any evidence supporting this claim. Giuliani claimed he reasonably relied on information provided by an Arizona State Senator and witnesses, but failed to provide any detail, identify any of the alleged witnesses or specify what he was told or provide an affidavit or statement from the Senator or the alleged witnesses. The Court held that Giuliani could not rely on this "'evidence' to controvert that he knowingly made false statements to the public about the number of 'illegal aliens' or 'illegal immigrants' voting in the Arizona 2020 presidential election" and that his statements violated Rules 4.1 and 8.4(c). *Matter of Giuliani*, 146 N.Y.S. 3d at 279-280.

- Giuliani claimed in an appearance before the Georgia State Senate Judiciary Committee on December 3, 2020, on his radio show on December 22, 2020, and on an episode of the War Room podcast on January 5, 2021, that Dominion Voting System's voting machines manipulated vote tallies in Georgia. He failed to point out Georgia did a hand audit which confirmed the accuracy of the election results with a zero percent risk limit. The Court held that Giuliani's statement about the results of the Georgia election were false and violated Rules 4.1 and 8.4(c). *Id*. at 275-276;

- On December 3, 2020, Co-Conspirator 1 (Guiliani) "orchestrated a presentation to the Judiciary Committee of the Georgia State Senate with the intention of misleading state senators into blocking the ascertainment of legitimate electors." During the presentation "an agent" of Trump and Giuliani falsely claimed that more than 10,000 dead people

voted in Georgia; played a video recording of ballot-counting; "insinuated that it showed election workers counting 'suitcases' of illegal ballots; and encouraged legislators to decertify the state's legitimate electors based on "false allegations of election fraud." Federal Indictment at ¶ 21(a) and (b);

- On podcast and radio on December 4, 6, 8, 10, 19, 27, 2020 and January 3 and 5, 2021, and at a hearing before the Georgia State Legislature, Giuliani claimed that he had reviewed in their entirety video evidence from security cameras showed the illegal counting of mail-in ballots that were surreptitiously retrieved from suitcases hidden under a table. The Georgia Secretary of State investigated the allegation, reviewed the videos, and concluded there was no improper activity. Giuliani argued that a reasonable observer could conclude that there was an illegal counting of mail-in ballots. The New York Supreme Court held that if the videos are reviewed in their entirety, Giuliani could not have "reasonably reached a conclusion that illegal votes were being counted." The Court held that Giuliani's statements violated Rules 4.1 and 8.4(c). *Matter of Giuliani*, 146 N.Y.S. 3d at 278-279;

- On December 10, 2020, Co-Conspirator 1 (Giuliani) appeared before a Georgia House of Representative's Committee and played a video of ballot counting in Atlanta and "falsely claimed that it showed 'voter fraud right in front of people's eyes' and was the 'tip of the iceberg.'" Federal Indictment at ¶ 26. He identified two election workers by name, and "baselessly accused them of 'quite obviously surreptitiously passing around USB ports as if they are vials of heroin or cocaine,' and suggested they were criminals whose 'places of work, their homes, should have been searched for evidence of ballots, the evidence of USB ports, for evidence of voter fraud.' Thereafter, the two election workers received numerous death threats." *Id*.

- On January 5, 7, 22 and April 27, 2021, Giuliani claimed on his radio show that up to 165,000 underage voters illegally voted in the 2020 election in Georgia. The Georgia Office of the Secretary of State investigated the claim and determined there were zero underage voters in the 2020 election. Giuliani claimed that he made this statement in reliance on expert affidavits, but he did not provide the affidavits to the Court. The Court held that it was insufficient to only provide names and conclusory assertions supporting his claims. The Court held that these statements violated Rules 4.1 and 8.4(c). *Matter of Giuliani*, 146 N.Y.S. 3d 266 at 276-77;

- On January 5, 2021, Giuliani claimed during a "Bannon's War Room" podcast that at least 2,500 felons voted in the 2020 Georgia election. The Georgia Secretary of State investigated this claim and identified 74 potential felony voters. Giuliani claimed he relied on an expert affidavit which he did not produce. The Court held that this statement violated Rules 4.1 and 8.4(c). *Id*. at 277.

- On January 6, 2021, Giuliani gave the following speech at the "Save America" rally at the Ellipse:

> Hello. Hello everyone. We're here just very briefly to make a very important two points. Number one: every single thing that has been outlined as the plan for today is perfectly legal. I have Professor Eastman here with me to say a few words about that. He's 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 five to 10 days to finally finish the work. We now have letters from five legislators begging us to do that. They're asking us. Georgia, Pennsylvania, Arizona, Wisconsin, and one other coming in.
>
> It seems to me, we don't want to find out three weeks from now even more proof that this election was stolen, do we?
>
> Crowd: No.
>
> So it is perfectly reasonable and fair to get 10 days . . . and you should know this, the Democrats and their allies have not allowed us to see one machine, or 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, they'd have you come in and look at the paper ballots. Who hides evidence? Criminals hide evidence. Not honest people.
>
> Over the next 10 days, we get to see the machines that are crooked, the ballots that are fraudulent, and if we're wrong, we will be made fools of. But if we're right, a lot of them will go to jail. Let's have trial by combat. I'm willing to stake my reputation, the President is willing to stake his reputation, on the fact that we're going to find criminality there.
>
> Is Joe Biden willing to stake his reputation that there's no crime there? No. 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. By 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 it for years to favor the Democrats.
>
> It is a matter of scientific proof. We need two days to establish that. It would

> be a shame if that gets established after it's over, wouldn't it be? This was the worst election in American history. This election was stolen in seven states. They picked states where they have crooked Democratic cities, where they could push everybody around. And it has to be vindicated to save our republic. This is bigger than Donald Trump. It's bigger than you and me. It's about these monuments and what they stand for.
>
> This has been a year in which they have invaded our freedom of speech, our freedom of religion, our freedom to move, our freedom to live. I'll be darned if they're going to take away our free and fair vote. And we're going to fight to the very end to make sure that doesn't happen. Let me ask Professor Eastman to explain as easily as we can, I know this is complicated, but what happened last night, how they cheated, and how it was exactly the same as what they did on November 3rd.

https://www.rev.com/blog/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat.

- The Federal Indictment alleges that at the January 6th rally at the Ellipse, Co-Conspirator 1 (Giuliani) made a statement, "based on knowingly false election fraud claims" that "the Vice President could 'cast [the ECA] aside' and unilaterally 'decide on the validity of these crooked ballots[.]'" Co-Conspirator 1 "lied when he claimed to 'have letters from five legislatures begging us' to send elector slates to the legislatures for review, and called for 'trial by combat.'" Federal Indictment at ¶ 103.a;

- On June 24, 2021, the New York Supreme Court, Appellate Division, ordered that Giuliani be suspended from the practice of law in the State of New York until his discipline case before the New York Attorney Grievance Committee is concluded and further order of the Court. *Matter of Giuliani*, 146 N.Y.S. 3d 266 at 284;

- On May 31, 2024, the D.C. Board on Professional Responsibility affirmed the conclusion of the D.C. Board of Professional Responsibility Ad Hoc Hearing Committee that Giuliani violated Rules 3.1 and 8.4(d) of the Pennsylvania Rules of Professional Conduct and the Committee's recommendation that Giuliani should be disbarred. In the Matter of Rudolph Giuliani, Board Docket No. 22-BD-027 ("*In re Giuliani*"), https://www.dcbar.org/Attorney-Discipline/Disciplinary-Decisions/Disciplinary-Case?docketno=22-BD-027 [1] The Ad Hoc Hearing Committee and the Board analyzed election fraud allegations in the complaint Giuliani helped draft in *Boockvar*, 502 F. Supp. 3d 899 (M.D. Pa. 2020). The complaint alleged that ballots where voters were notified and allowed to cure defects (notice and cure claims) and ballots that were counted without close supervision by partisan observers (observational barrier claims)

[1] These Rules are identical to ABA Model Rules 3.1 and 8.4(d).

were illegal and requested that the court enjoin certification of the election results in Pennsylvania. The Board affirmed the Ad Hoc Committee's conclusion that the remedy sought for the notice and cure claims -- enjoining certification of the election results "did not have a faint hope of success" because there were not enough cured ballots to change the election result and that the observational barrier claim was based on the "wholly unfounded supposition that observational boundaries necessarily led to fraudulent counting of mail-in ballots to favor President Biden." *In re Giuliani* at 2-3.

The Board acknowledged that it had never imposed the sanction of disbarment in a frivolous litigation case. *Id*. at 4. In prior cases, the Board has imposed sanctions of 30 to 90 days in cases involving violations of Rules 3.1and 8.4(d). *Id*. at 60. However, the Board pointed out that "[n]o prior disciplinary cases involving frivolous litigation are remotely comparable to this case."

> We conclude that disbarment is the only sanction that will protect the public, the courts, and the integrity of the legal profession, and deter other lawyers from launching similarly baseless claims in the pursuit of such wide-ranging yet completely unjustified relief.

Id. at 4.

- The Board predicated its sanctions analysis on the "seriousness of the conduct at issue" element in the multi-factor sanctions test it applies in D.C. discipline cases:

> In considering the seriousness of Respondent's effort to disenfranchise hundreds of thousands of Pennsylvania voters, we consider the Supreme Court's observation that "for reasons too self-evident to warrant amplification here, we have often reiterated that voting is of the most fundamental significance under our constitutional structure." *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). The right to vote is a foundational right "that helps to preserve all other rights." *Werme v. Merrill*, 84 F.3d 479, 483 (1st Cir. 1996). The "right to vote is cherished in our nation because it 'is preservative of other basic civil and political rights.'" *Pierce*, 324 F. Supp. 2d at 695 (quoting *Reynolds v. Sims*, 377 U.S. 533, 562 (1964)).
>
> The evidence clearly and convincingly establishes that Respondent sought to deprive hundreds of thousands of Pennsylvania voters of this most precious, cherished, foundational right, without the factual basis for doing so. He did so, even though he acknowledged that the voters themselves might not have done anything wrong.

In re Giuliani at 57-58.

- On July 2, 2024, the New York Supreme Court, Appellate Division, affirmed the recommendation of the Court-appointed Referee to disbar Giuliani. *Matter of Giuliani*, 2024 N.Y. App. Div. LEXIS 3602 (July 2, 2024) (1st Dept). After conducting a six-day liability hearing, the Referee found that the Attorney Grievance Committee had proven 16 charges of misconduct against Giuliani. The Referee rejected Giuliani's argument that he "lacked knowledge that statements he made were false and that he had a good faith basis to believe that the allegations he made to support his claim that the 2020 Presidential election was stolen from his client." *Id*. at *3-4. The Referee found that Giuliani "made 'knowing falsehoods' and that each falsehood was made 'with intent to deceive'". *Id.* at *4. The Referee found that Giuliani's false statements violated Rules 4.1, 8.4(b), 8.4(c), 8.4(d) and/or 8.4(h) of New York's Rules of Professional Conduct.

- The Court rejected Giuliani's lack of knowledge/good faith basis defense as follows:

> Contrary to respondent's allegations, there is nothing on the record before us that would permit the conclusion that respondent lacked knowledge of the falsehood of the numerous statements that he made, and that he had a good faith basis to believe them to be true. On the contrary, as the Referee properly found, the 16 acts of falsehoods carried out by respondent were deliberate and constituted a transparent pattern of conduct intended and designed to deceive. More specifically, as the Referee aptly described, respondent "told numerous lies in the numerous forums all designed to create distrust of the elective system of our country in the minds of the citizens and to destroy their confidence in the legitimacy of our government."

Id. at *42.

- In affirming the Referee's disbarment recommendation, the Court held:

> The seriousness of respondent's misconduct cannot be overstated. Respondent flagrantly misused his prominent position as the personal attorney for former President Trump and his campaign, through which respondent repeatedly and intentionally made false statements, some of which were perjurious, to the federal court, state lawmakers, the public, the AGC, and this Court concerning the 2020 Presidential election, in which he baselessly attacked and undermined the integrity of this country's electoral process. In so doing, respondent not only deliberately violated some of the most fundamental tenets of the legal profession, but he also actively contributed to the national strife that has followed the 2020 Presidential election, for which he is entirely unrepentant.

Id. at *42-43.

B. JEFFREY CLARK

Jeffrey Clark received his J.D. degree from Georgetown University Law Center after which he clerked for Judge Danny Boggs of the U.S. Court of Appeals for the Sixth Circuit. He was an associate and later a partner at Kirkland & Ellis and served as Deputy Assistant Attorney General and Assistant Attorney General in the Environment and Natural Resources Division of the Department of Justice. https://en.wikipedia.org/wiki/Jeffrey_Clark

- In December 2020, Jeffrey Clark was the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice. Because of a vacancy, he was also the Acting Assistant Attorney General for the Civil Division. He had no involvement in or responsibility for the Department of Justice's investigations into allegations of election fraud or irregularities. *In re Clark*, Specification of Charges at ¶¶ 8-9.

- On December 1, 2020 and again on December 21, 2020, Barr publicly announced that there was no evidence of election fraud or irregularities that would have altered the result of the 2020 presidential election. *Id.* at ¶ 6; January 6th Report at 377.

- On December 22, 2020, Trump met with Clark at the White House without having informed his leadership at the Justice Department of the meeting. The meeting violated the Justice Department's written policy restricting contacts with the White House to guard against improper political interference. Federal Indictment at ¶ 71.

- On December 23, 2020, Attorney General Barr resigned and Jeffrey Rosen became Acting Attorney General and Richard Donoghue became Deputy Attorney General. *In re Clark*, Specification of Charges at ¶ 7.

- On December 26th, Clark informed the Acting Attorney General about his meeting with Trump. Rosen directed Clark not to have unauthorized contacts with the White House again. "Clark lied about the circumstances of the meeting falsely claiming that the meeting had been unplanned." Clark agreed he would comply with Acting Attorney General's directive. Federal Indictment at ¶ 72.

- In the morning of December 28, 2020, Clark asked Kenneth Klukowski -- a lawyer in the Department of Justice -- to research the authority of state legislatures to send unauthorized slates of electors to Congress and to draft a "Proof of Concept" letter based on that legal research. Clark dictated the substantive key points of the letter to Klukowski and told him what to include. After several meetings with Clark during the day to update him on progress, Klukowski gave the letter to Clark. Clark emailed the letter to Acting Attorney General Rosen and Deputy Attorney General Donoghue. *In re Clark*, Specification of Charges at ¶ 12; January 6th Report at 50-51 and 392.

- The Proof of Concept letter was addressed to the Governor of Georgia, Speaker of the Georgia House of Representatives and President *Pro Tempore* of the Georgia Senate. The letter recommended that the Governor call the Georgia legislature into special session and argued that if the Governor refused to do so, the legislature had the authority to convene such a session on its own initiative. The letter was drafted to be signed by Messrs. Rosen, Donoghue and Clark. *In re Clark*, Specification of Charges at ¶ 14; Proof of Concept Letter, dated Dec. 28, 2020.

- The Proof of Concept letter stated, in part:

> "The Department of Justice is investigating various irregularities in the 2020 election for President of the United States. The Department will update you as we are able on investigatory process, but at this time, we have identified significant concerns that may have impacted the outcome of the election in multiple States, including the State of Georgia."
>
> This statement was false because the Department of Justice was aware of no allegations of election fraud in Georgia that would have affected the results of the presidential election.

In re Clark, Specification of Charges at ¶ 15.

> "In light of these developments, the Department recommends that the Georgia General Assembly should convene in special session so that its legislators are in a position to take additional testimony, receive new evidence, and deliberate on the matter consistent with its duties under the U.S. Constitution."
>
> This statement was false because the Justice Department had not made such a determination.

In re Clark, Specification of Charges at ¶ 18.

> "The Department believes that in Georgia and several other states, both a slate of electors supporting Joseph R. Biden, Jr., and a separate slate of electors supporting Donald J. Trump, gathered on that day at the proper location to cast their ballots, and that both sets of those ballots have been transmitted to Washington, D.C., to be opened by Vice President Pence."
>
> This statement was misleading because the Governor of Georgia had certified a slate of electors to the Electoral College pledged to Joseph Biden, and there was no legitimate alternative slate of Georgia electors pledge to Donald Trump.

In re Clark, Specification of Charges at ¶ 17.

> "The purpose of the special session the Department recommends would be for the General Assembly to (1) evaluate the irregularities in the 2020 election, including violations of Georgia election law judged against that body of law as it has been enacted by your State's Legislature, (2) determine whether those violations show which candidate for President won the most legal votes in the November 3 election, and (3) whether the election failed to make a proper and valid choice between the candidates, such that the

General Assembly could take whatever action is necessary to ensure that one of the slates of Electors cast on December 14 will be accepted by Congress on January 6." Proof of Concept Letter at p.3.

"While the Department of Justice believes the Governor of Georgia should immediately call a special session to consider this important and urgent matter, if he declines to do so, we share with you our view that the Georgia General Assembly has implied authority under the Constitution of the United States to *call itself into special session*."

> This statement was false because the Department had made no such determination.

In re Clark, Specification of Charges at ¶ 19.

- Clark proposed sending versions of the letter to elected official "in other targeted states." Federal Indictment at ¶ 75.

- A little more than an hour after receiving the Proof of Concept letter, Donoghue sent an email, copying Rosen, informing Clark that he would not sign the letter and advising that "I know of nothing that would support the statement, 'we have identified significant concerns that may have impacted the outcome of the election in multiple states.' . . . I do not think the Department's role should include making recommendations to a State legislature about how they should meet their Constitutional obligations to appoint Electors." *In re Clark*, Specification of Charges at ¶ 20.

- In his testimony before the January 6th Committee, Donoghue summarized his response to Clark:

> In my response I explained a number of reasons this is not the Department's role to suggest or dictate to State legislatures how they should select their electors. But more importantly, this was not based on fact. This was actually contrary to the facts as developed by Department investigations over the last several weeks and months.
>
> So I responded to that. For the Department to insert itself into the political process this way I think would have had grave consequences for the country. It may very well have spiraled us into a constitutional crisis. I wanted to make sure that he understood the gravity of the situation because he didn't seem to really appreciate it.

Hearing on the January 6th Investigation, 117th Cong. 2d Sess., June 23, 2022) at 18 https://www.govinfo.gov/committee/house-january6th.

- On December 28, 2020, at around 6:00 pm, Clark met with Messrs. Rosen and Donoghue. They informed Clark that they would not authorize or sign the letter because it contained false statements. Mr. Donoghue explained that none of the investigations into election fraud or irregularities in Georgia had produced reliable evidence of fraud or irregularities that could have affected the outcome of the election. *In re Clark*, Specification of Charges at ¶ 21.

- On January 2, 2021, Clark met with Messrs. Rosen and Donoghue and informed them that President Trump had offered him the position of Acting Attorney General and that he was thinking about accepting it if they were unwilling to send the Proof of Concept letter. *In re Clark*, Specification of Charges at ¶ 23. Rosen and Donoghue, again, refused to sign the letter. January 6th Report at 397.

- On the morning of January 3, 2021, Clark met with Trump at the White House – without having informed senior officials at the Department of Justice – and accepted Trump's offer to make him Acting Attorney General. Federal Indictment at ¶ 80.

- On the afternoon of January 3, 2021, Clark met with Rosen and advised him that he intended to accept the President's offer to become Acting Attorney General and that he would send the Proof of Concept letter once he assumed that position. He invited Rosen to serve as his deputy. Rosen declined. *In re Clark*, Specification of Charges at ¶ 26.

- Rosen told Clark that he would not accept being fired by a subordinate and scheduled a meeting with Trump that evening. Federal Indictment at ¶ 82. Rosen asked Donoghue and another senior Department of Justice attorney, Patrick Hovakimian, to call a meeting of the rest of the Department's leadership to describe the situation and hear how they would react to Clark's appointment. January 6th Report at 399.

- Hovakimian set up a conference call at Rosen's direction. All of the Assistant Attorneys General who participated in the call said they would resign if Rosen was removed from office. January 6th Report at 399.

- The meeting requested by Rosen was held in the Oval Office on January 3rd at 6:00 pm. and was attended by Trump, Rosen, Donoghue, Clark, White House Counsel Pat Cipollone, and two other lawyers. Except for Clark, all the lawyers argued against appointing Clark as Acting Attorney General and opposed sending the Proof of Concept letter because it contained false statements. Donoghue informed Trump that if Clark were appointed Acting Attorney General, the President should expect all of the Assistant Attorneys General and career Department of Justice employees to resign. *In re Clark*, Specification of Charges at ¶¶ 28-30.

- Donoghue told Trump the following:

> You should understand that your entire Department leadership will resign. Mr. President, these aren't bureaucratic leftovers from another administration. You picked them. This is your leadership team. You sent every one of them to the Senate; you got them confirmed. What is that going to say about you, when we all walk out at the same time. And what happens if, within 48 hours, we have hundreds of resignations from your Justice Department because of your actions. What does that say about your leadership.

January 6th Report at 400-01.

- White House Counsel Pat Cipollone threatened to resign as well and described Clark's letter as a "murder-suicide pact." *Id*. at 401.

- Toward the end of the meeting, Trump decided not to appoint Clark Acting Attorney General and the Proof of Concept letter was never sent. *In re Clark*, Specification of Charges at ¶¶ 28-30; January 6th Report at 401.

- The meeting lasted approximately 3 hours. January 6th Report at 401.

- Clark filed his Answer to D.C. Disciplinary Counsel's Specification of Charges on September 1, 2022. *In re Clark*, Answer of Respondent, dated Sept. 1, 2022 ("Clark Answer"). https://www.dcbar.org/ServeFile/GetDisciplinaryActionFile?fileName=2022-09-01AnswerClark.pdf

- In his Answer, Clark asserted 54 affirmative defenses, including the following ethics-related defenses:

    - Clark did not violate Rule 8.4(a) and (c) or Rule 2.1 because the Proof of Concept letter proposed findings, determinations and policy that could not be operative without the approval of Clark's superiors. Clark Answer, Aff. Defenses 27 and 28. Clark elaborated on this defense in his post-hearing brief, dated May 24, 2024 ("Clark Post-Hearing Brief") arguing that a proposed position in a "pre-decisional discussion draft that is inherently subject to later approval by superiors cannot be characterized as false or dishonest statements of the positions the draft proposes be changed". Clark Post-Hearing Brief, May 24, 2024 at 46;

    - Clark argued in his Post-Hearing Brief that the statements in the Proof of Concept letter that Department of Justice had "identified significant concerns that may have impacted the outcome of the election in multiple States, including the State of Georgia" and found "troubling the current posture of a pending lawsuit in

Fulton County" and the "litigation's sluggish pace" were statements of opinion "about the existence, nature, and significance of the evidence of election fraud and irregularity and what if anything should be done about it." Clark Post-Hearing Brief at 47. Clark argues that "[o]pinions, judgments, and policy determinations are incapable of being proved false in the sense required to show a violation of Rule 8.4 because they are inherently subject." *Id*.;

- Clark did not violate Rule 8.4(d) because his debate with other Department of Justice officials was submitted to the President for resolution who would decide the matter, the Proof of Concept letter did not have any impact on any proceeding, Clark did not attempt to interfere in any proceeding either before or after his proposals were rejected, and the letter had no impact on the events of January 6, 2021. Clark Answer, Aff. Defenses 30-32;

- Clark elaborated on his defense to the Rule 8.4(d) charge in his Post-Hearing brief contending that his Proof of Concept letter did not satisfy the three elements that must be satisfied under D.C. law: (i) the conduct must be improper; (ii) it must bear directly on the judicial process with respect to an identifiable case or tribunal; and (iii) it must harm the judicial process in more than a de minimis way. Clark Post-Hearing Brief at 53 (quoting *In re Yelverton*, 105 A.3d 413, 426 (D.C. 2014)). Clark argues that confidential and privileged internal deliberations are not improper; there is no identifiable case or tribunal because the discussion was internal and confidential, the letter was never sent, no document was ever filed in any court or tribunal, and there was no effect on the proceedings of any tribunal; and no identifiable judicial process or tribunal was harmed in any way because the draft letter was never sent. *Id*. at 54-55. Clark also argued that the requirement that there be an identifiable proceeding cannot be satisfied "by speculating about what might have happened if the letter had been sent. Speculation is not evidence, much less clear and convincing evidence." *Id*. at 55;

- Clark contends that his actions were justified because there were "significant bodies of information about election irregularities available before January 3, 2021", "[a] reasonable lawyer at the Justice Department could have formed a good-faith belief that the level of investigation by Messrs. Barr, Rosen and Donoghue as they testified to Congress concerning the election was insufficient", and because "significant new bodies of information developed after January 3, 2021 reinforce the reasonableness of Respondent's action prior to and including January 3, 2021". Clark Answer, Aff. Defense 34;

- Charges against Clark should be dismissed because they were brought for "political reasons rather than enforcement of the Rules of Professional Responsibility". Clark Answer, Aff. Defense 36;

- The DC Office of Disciplinary Counsel violated D.C. Bar Rule XI, Section 17, which requires that all disciplinary proceedings involving allegations of misconduct be kept confidential until a petition is filed or an informal admonition is issued. This had the effect of trying the matter in the press, in violation of D.C. Ethics Opinion No. 358. Clark Answer, Aff. Defense 44;

- Disciplinary proceedings were brought against Clark as a result of a bar complaint filed by Senator Durbin who lacked personal knowledge of the facts alleged in the Specification of Charges. This violates the D.C. Bar's "longstanding policy to not process complaints lacking in personal knowledge." Clark Answer, Aff. Defense 50

C. KENNETH CHESEBRO

Kenneth Chesebro graduated from Harvard Law School and clerked for U.S. District of Columbia Judge Gerhard Gesell. At law school and after his clerkship, he worked as a research assistant for Harvard law professor Laurence Tribe. In 1987, he started his own law firm in Boston. In 2016, he worked with then Chapman University law professor John Eastman on an amicus brief. Debra C. Weiss, "Meet Kenneth Chesebro, 'the brains' behind Trump's fake elector scheme," *ABA Journal*, Aug. 17, 2023. https://www.abajournal.com/news/article/meet-ken-chesebro-the-brains-behind-trumps-fake-elector-scheme. In 2020, working as an outside advisor, Chesebro came up with the dual elector legal theory that culminated in a strategy that he recommended to persuade Vice President Pence to reject the certified votes of electors in battleground States. https://en.wikipedia.org/wiki/Kenneth_Chesebro. Chesebro was a "central player in the scheme to submit fake electors to the Congress and the National Archives." January 6th Report at 105.

Chesebro wrote up his legal theory in four memos, which are summarized below.[2]

Chesebro's November 18, 2020 Memo:

Chesebro sent a legal memo to James Troupis, a former Wisconsin Circuit Judge hired by the Trump campaign to oversee ballot recounts in Wisconsin, on whether the

[2] The memos are dated Nov. 18, 2020, Dec. 6, 2020, Dec. 9, 2020 and Dec. 13, 2020. https://www.politico.com/news/2023/08/09/ken-chesebro-memos-trump-coconspirator-00110458. A summary of Chesebro's key memos is available at Kyle Cheney, "'Co-Conspirator 5', Ken Chesebro and the Evolution of Donald Trump's January 6 Strategy", *Politico*, Aug. 9, 2023 https://www.politico.com/news/2023/08/09/ken-chesebro-memos-trump-coconspirator-00110458. See also, Norm Eisen, "The Secret Memo and Obscure Lawyer at the Center of the Trump Indictment", *MSNBC Opinion*, Aug. 12, 2023, https://www.msnbc.com/opinion/msnbc-opinion/trump-lawyer-chesebro-memo-key-indictment-rcna99526.

"presidential election timetable affords ample time for judicial proceedings." In his memo, Chesebro wrote:

> There is a very strong argument supported by historical precedent (in particular, the 1960 Kennedy-Nixon contest), that the real deadline for a finding by the Wisconsin courts (or, possibly, by its Legislature) in favor of the President and Vice President . . . [is] January 6 (the date the Senate and House meet for the counting of electoral votes)."

Chesebro argued that so long as Trump/Pence electors met and voted on November 14th (the date on which electors must vote in their respective States), and send their votes to the President of the Senate before January 6th, "a court decision (or perhaps a legislative determination) rendered after December 14 in favor the Trump-Pence slate of electors should be considered timely." Chesebro argued that it was a "fair reading of the federal statutes", that the 10 Trump/Pence electors in Wisconsin meet and vote on December 14, 2020, "even if, at that juncture, the Trump-Pence ticket is behind in the vote count, and no certificate of election has been issued in favor of Trump and Pence."

Chesebro's conclusion states that "[t]he position taken by the Trump-Pence campaign regarding the outside deadline for resolving post-election challenges could conceivably end up proving critical to the results of this election. . . Thus, the issue of the real deadline should be examined carefully in the near future, so that the campaign presents a clear and united front concerning it."

- In early December, "the highest levels of the Trump Campaign took note of Chesebro's fake elector plan and began to operationalize it." "The evidence indicates that by December 7th or 8th, President Trump had decided to pursue the fake elector plan and was driving it." On December 13th and 14th, President Trump worked with Rudolph Giuliani on the plan's implementation." January 6th Report at 345 and 346.

<u>Chesebro's December 6, 2020 Memo</u>:

Chesebro sent a second memo to Troupis in which he expanded to five other states his recommendation with respect to Wisconsin in his November 18th memo. He argued that it was feasible that the "Trump campaign can prevent Biden from amassing 270 electoral votes on January 6, and force the Members of Congress, the media, and the American people to focus on the substantive evidence of illegal election and counting activities in the six contested States". To do so, Chesebro wrote there were three requirements:

> The Trump/Pence electors in all six contested states[3] had to meet on December 14, 2020, cast their votes in favor of Trump/Pence and send certificates containing their votes to Congress;
>
> There must be pending on January 6 in each of the six States at least one lawsuit "which might plausibly, if allowed to proceed to completion, lead to Trump either winning the States or at least Biden being denied the State."
>
> On January 6, 2021, "in a solemn and constitutionally defensible manner, consistent with clear indications that this is what the Framers of the Constitution intended and expected, and consistent with the precedent from the first 70 years of our nation's history, Vice President Pence, presiding over the joint session, takes the position that it is his constitutional power and duty, alone, as President of the Senate, to both open and count the votes, and that anything in the Electoral Count Act to the contrary is unconstitutional."

Chesebro wrote that while he was "not necessarily advising this course of action . . . it is important that the alternate slates of electors meet and vote on December 14, if we are to create a scenario under which Biden can be prevented from reaching 270 electoral votes even if Trump had not managed by that date to obtain court decisions (or state legislative resolutions) invalidating "enough results to push Biden below 270."

Chesebro also wrote:

> Even if, in the end, the Supreme Court would likely end up ruling that the power to count the votes (in the sense of resolving controversies concerning them) does not lie with the President of the Senate, but instead lies with Congress (either voting jointly, or in separate House), letting matters play out this way would guarantee that public attention would be riveted on the evidence of electoral abuses by the Democrats, and would also buy the Trump campaign more time to win litigation that would deprive Biden of electoral votes and/or add to Trump's column.
>
> I recognize that what I suggest is a bold, controversial strategy and that there are many reasons why it might not end up being executed on January 6. But as long as it is one possible option, to preserve it as a possibility it is important that the Trump-Pence electors cast their electoral votes on December 14.

---

[3] The six states were Arizona, Georgia, Michigan, Nevada, Pennsylvania and Wisconsin. By the time the fake Trump/Pence electors met on December 14, 2020, government officials in each of these states had certified their State's official election results for Biden/Harris. January 6th Report at 342.

Chesebro then discussed and recommended "logistics" for Trump/Pence electors in Wisconsin and the other contested states to cast and transmit electoral votes on December 14, based on the Electoral Count Act and Wisconsin law, including:

- Meet on December 14th at such place as directed by the legislature of each State; The electors should meet in private to thwart the ability of protestors to disrupt the event;
- The Trump/Pence electors would vote for Trump for President and Pence for Vice President;
- The electors would prepare six "identical sets of papers" – "certificates" indicating that each of them has voted for Trump and Pence;
- The electors would place each certificate in a separate envelope, seal up the envelopes, and indicate on the outside of the envelopes that they contain the votes of the State of Wisconsin for President and Vice President;
- The electors would transmit the six envelopes to the President of the Senate; Wisconsin's Secretary of State; the National Archives and the U.S. District Court for the Western District of Wisconsin.

Chesebro's December 9, 2020 Memo:

Chesebro sent a third memo to Troupis in which he outlined the "requirements under federal law, and under the law of the six States in controversy, concerning what is required for presidential electors to validly cast and transmit their votes." His memo acknowledged that "none of the Trump-Pence electors are currently certified as having been elected by the voters of their State", but argued they should cast and transmit their votes "so that their votes might be eligible to be counted if later recognized (by a court, the state legislature, or Congress) as the valid ones that actually count in the presidential election."

His memo states:

> It is important that the Trump-Pence Campaign focus carefully on these details, as soon as possible, if the aim is to ensure that all 79 electoral votes are properly cast and transmitted – each electoral vote being potentially important if the election ultimately extends to, and perhaps past, January 6 in Congress.

The memo then summarizes the requirements for electoral votes under the Electoral Count Act and the State laws of Arizona, Georgia, Michigan, Nevada, Pennsylvania and Wisconsin.

- On December 10, 2020, at Giuliani's direction, Chesebro sent to points of contact in five battleground States a streamlined version of his November 18, 2020 Memo, fraudulent elector instructions and fraudulent elector certificates that he had drafted. Chesebro had

previously sent these documents to a point on contact in Wisconsin. Federal Indictment at ¶ 59; Georgia Indictment at Acts 48-50 and 52-53, 59-61, 71;

- Chesebro also gave logistical guidance on when and where to convene, how many copies each elector would need to sign, and recommended that they send their votes to Congress. January 6th Report at 350;

- Trump electors followed Chesebro's step-by-step instructions for completing and mailing the fake certificates to multiple officials in the U.S. Government, complete with registered mail stickers and return address labels. January 6th Report at 43.

- On December 12, 2020, Giuliani and Chesebro participated in a conference call with Trump electors who expressed concern about signing certificates representing themselves as legitimate electors. Giuliani "falsely assured them that their certificates would be used only if the Defendant succeeded in litigation." *Id*. at ¶ 61.

- The Georgia elector transmittal memorandum and certificate, both dated December 14, 2020, are cut and pasted below. The electoral certificate states that "THE UNDERSIGNED" are "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Georgia, this 14th day of December, 2020."

David J. Shafer

Chairman, Georgia Republican Party

Chairman, Electoral College of Georgia

MEMORANDUM

TO: President of the Senate (By Registered Mail)
United States Senate
Washington, D.C. 20510

Archivist of the United States (By Registered Mail)
700 Pennsylvania Avenue, NW
Washington, DC 20408

Secretary of State (By Certified Mail)
State of Georgia
214 State Capitol
Atlanta, GA 30334

Chief Judge, U.S. District Court (By Certified Mail)
Northern District of Georgia
2188 Richard D. Russell Federal
Office Building and U.S. Courthouse
75 Ted Turner Drive, SW
Atlanta, GA 30303

FROM: David J. Shafer, Chairperson, Electoral College of Georgia

DATE: December 14, 2020

RE: Georgia's Electoral Votes for President and Vice President

Pursuant to 3 U.S.C. § 11, enclosed please find duplicate originals of Georgia's electoral votes for President and Vice President, as follows: two (2) duplicate originals for the President of the Senate and the Archivist, and one (1) duplicate original for the Secretary of State and Chief Judge.

David J. Shafer

STATE OF GEORGIA

COUNTY OF FULTON

CERTIFICATE OF THE VOTES OF THE

2020 ELECTORS FROM GEORGIA

****

WE, THE UNDERSIGNED, being the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Georgia, do hereby certify the following:

(A) That we convened and organized at the State Capitol, in the City of Atlanta, County of Fulton, Georgia, at 12:00 noon on the 14th day of December, 2020, to perform the duties enjoined upon us;

(B) That David J. Shafer presided and Shawn Still served as Secretary for the meeting.

(C) That the undersigned 2020 Electors from the State of Georgia cast each of their respective ballots for President of the United States of America, as follows:

FOR DONALD J. TRUMP – 16 VOTES

JOSEPH BRANNAN

JAMES "KEN" CARROLL

VIKKI TOWNSEND CONSIGLIO

CAROLYN HALL FISHER

HON BURT JONES

GLORIA KAY GODWIN

DAVID G. HANNA

MARK W. HENNESSY

MARK AMICK

JOHN DOWNEY

CATHLEEN ALSTON LATHAM

DARYL MOODY

BRAD CARVER

DAVID SHAFER

SHAWN STILL

C.B. YADAV

(D) That the undersigned 2020 Electors from the State of Georgia cast each of their respective ballots for Vice President of the United States of America, as follows

FOR MICHAEL R. PENCE – 16 VOTES

JOSEPH BRANNAN

JAMES "KEN" CARROLL

VIKKI TOWNSEND CONSIGLIO

CAROLYN HALL FISHER

HON BURT JONES

GLORIA KAY GODWIN

DAVID G. HANNA

MARK W. HENNESSY

MARK AMICK

JOHN DOWNEY

CATHLEEN ALSTON LATHAM

DARYL MOODY

BRAD CARVER

DAVID SHAFER

SHAWN STILL

C.B. YADAV

Witness the hands and seals of the undersigned as the duly elected and qualified Electors of the President and Vice President of the United States of America from the State of Georgia, this 14th day of December, 2020.

JOSEPH BRANNAN (SEAL)

MARK AMICK (SEAL)

Chesebro's December 13, 2020 Memo:

Chesebro sent an email to Giuliani entitled "Brief notes on 'President of the Senate' strategy". In his email Chesebro acknowledged that he "has not delved into the historical record." Nevertheless, he wrote:

> The bottom line is I think 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 – including making judgments about what to do if there are conflicting votes . . . [is] the best way to ensure:
>
> (1) that the mass media and social media platform, and therefore the public, will focus intently on the evidence of abuses in the election and canvassing; and
> (2) that there will be additional scrutiny in the courts and/or state legislatures, with an eye toward determining which electoral slates are the valid ones.

Chesebro recommended that the President Pro Tempore of the Senate (Pence having recused himself since he is a candidate for reelection) announce that he "cannot and will not, at least as of that date, count any elector votes from Arizona because there are two slates of votes, and it is clear that the Arizona courts did not give a full and fair opportunity for review of election irregularities, in violation of due process." Chesebro acknowledged in his memo that he "would not bet on a majority of the Court siding with the President of the Senate" and that "[m]ore likely, to bring an end to a huge political crisis, the Court would find some way to rule in Biden's favor or, at a minimum, find the controversy nonjusticiable . . . on some basis, such as the 'political question doctrine, thus insulating its legitimacy from partisan conflict."

Chesebro concluded his December 13th memo:

> And, in terms of Republicans having leverage on Jan. 6 to force closer reexamination of what happened in this election, a defensible interpretation may be all that's needed, because the Supreme Court might decline to reverse, based on the "political question" doctrine, and even if it did reverse, that would come only after a number of additional days of delay, which itself would ensure closer attention to the voluminous evidence of electoral abuses.

- In *Eastman v. Thompson et al*., 594 F. Supp. 3d 1156, 1196-97 (C.D. Cal. 2022), Judge Carter found that Chesebro's December 13th memo "pushed a strategy that knowingly violated the Electoral Count Act" and "is both intimately related to and clearly advanced the plan to obstruct the Joint Session of Congress on January 6, 2021." The Court held that "[b]ecause the memo likely furthered the crimes of obstruction of an official proceeding and conspiracy to defraud the United States, it is subject to the crime-fraud exception and the Court ORDERS it to be disclosed.".

- On December 14, 2020, certified electors from Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania and Wisconsin met and cast their electoral votes. Prior to that date, government officials from those States had certified their State's official election results on favor of Biden. No court had issued an order reversing or calling those results into question and most election-related litigation was over. No State legislature had agreed to Trump's request to reverse the result of the election by appointing a different slate of electors. January 6th Report at 341-42.

- On December 14, 2020, Trump/Pence electors in Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania and Wisconsin gathered and, using instructions provided by Chesebro, participated in signing ceremonies. In five of these States, the electors signed certificates that "used the language that falsely declared themselves to be 'the duly elected and qualified Electors' from their State." January 6th Report at 352-53. The U.S. Senate Parliamentarian wrote that materials from Trump/Pence electors from several of these states failed to meet the requirements of federal law. *Id*. at 354. According to the Federal Indictment, it was at the direction of Trump and Co-Conspirator 1 (Giuliani) that "fraudulent electors convened in the seven targeted states to cast fraudulent electoral ballots in favor of [Trump]." Federal Indictment at ¶ 66. False elector certificates signed and sent by Trump/Pence "electors" from Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania and Wisconsin are at https://www.archives.gov/foia/2020-presidential-election-unofficial-certificates.

- The Trump electors were not actually electors and the votes they cast on December 14th weren't valid and could not be used by Vice President Pence to disregard the real votes of electors chosen by voters. January 6th Report at 342.

- The January 6th Report states that the "fake elector effort was an unlawful, unprecedented and destructive break from the electoral college process that our country has used to select its President for generations. It led directly to the violence that occurred on January 6th." January 6th Report at 342-43.

- On January 1, 2021, Chesebro sent an email to John Eastman and Boris Epshteyn that contained a "rough draft" of several "filibuster talking points", including the following:

> 1. The state legislatures and the courts, including the Supreme Court, have failed to resolve, on the merits, serious contentions, backed by substantial evidence, that in at least 4 States – AZ, GA, PA, and WI – illegal votes were cast & counted in numbers much more than enough to have tipped the balance in favor of Biden & Harris, so that the electoral votes sent in by the governors of these States are not legitimate.
>
> 2. The core objective of Members of Congress who believe that it's wrong to count any electoral votes from these States unless and until those contentions are

decided on the merits, either by the Supreme Court or by state legislatures, should be to find a way to prevent the Biden camp from concluding the vote on Jan. 6, before there is time for further scrutiny of these contentions. Even if this effort ultimately proves unsuccessful in blocking Biden's election, it would at minimum focus public attention on the serious abuses by Democrats in this election, and make clear Biden was not legitimately elected.

3. The strategy of the Biden camp to have Biden annointed President in Congress on Jan. 6, when the electoral votes are to be opened and counted, without ever having this evidence scrutinized, is predicated entirely on the Electoral Count Act of 1887, which sets draconian limits on debating objections to the electoral votes of any particular State – 2 hours max, in each house of Congress, with no Member of Congress speaking for more than 5 minutes. The Democrats mean to use this antiquated Act to suppress information regarding the illegalities.

4. One way around the Act is for the VP to take the approach of Thomas Jefferson in 1801, and take the position that as President of the Senate, it is his responsibility to count the votes and, in so doing, resolve any disputes concerning them. If he did this, he would not necessarily count the contested States in favor of him and Trump – he might merely say that none of these States can be counted until either the Supreme Court or state legislatures act on pending objections. This would pressure the Supreme Court and state legislatures to act, particularly if he refused even to open the envelopes containing the electoral votes until there was further action on the objections (under the 12th Amendment, only the President may open the envelopes.)

- On October 20, 2023, Chesebro pled guilty to Count 15 of the Georgia Indictment which charged Trump, Chesebro, Guiliani, Eastman and others with conspiracy to knowingly file false documents. Count 15 states that they:

  [O]n and between the **6th day of December and 2020 and the 14th day of December 2020**, unlawfully conspired to knowingly file, enter, and record a document titled "CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM GEORGIA," in a court of the United States, having reason to know that said document contained the materially false statement, "WE, THE UNDERSIGNED, being the duly and qualified Electors for President and Vice President of the United States of America from the State of Georgia do certify the following";

  Georgia Indictment, Count 15. A video of Chesebro's Guilty Plea is at https://www.youtube.com/watch?v=K7ZOYQY3AwM

- On June 4, 2024, Chesebro, James R. Troupis and Michael Roman were charged by the Wisconsin Department of Justice with conspiracy to commit the crime of "uttering as genuine a forged writing or object, namely a 'Certificate of the Votes of the 2020 Electors

from Wisconsin', knowing it to have been falsely made or altered" in violation of Wisconsin Stat. §§ 939.31 and 943.38(2).

D. JOHN EASTMAN

John Eastman has a J.D. from the University of Chicago Law School and a Ph.D. in Government from Claremont Graduate School. He clerked for U.S. Supreme Court Justice Clarence Thomas. He is the founding director of the Center for Constitutional Jurisprudence, a public interest law firm. He taught constitutional law, legal history and property and was the Dean of Chapman Law School. In 2016, Eastman worked with Chesebro on an amicus brief. Eastman came to the attention of the Trump campaign after he wrote an op-ed in August 2020 challenging Kamala Harris's eligibility to run for Vice President claiming she was not a U.S. citizen. In December 2020, Eastman began working with Trump and his campaign to develop a legal and political strategy to dispute the results of the election. Eastman collaborated with Cheseboro on his dual elector legal theory and wrote two memos on the subject, dated December 23, 2020 and January 3, 2021. Eastman tried to persuade Vice President Pence to act on their theory by rejecting the votes of legitimately appointed Democratic electors from seven battleground States. https://en.wikipedia.org/wiki/John_Eastman; *In the Matter of John C. Eastman*, Notice of Disciplinary Charges, State Bar of California, dated Jan. 26, 2023 at ¶ 2 ("California State Bar Complaint") https://www.documentcloud.org/documents/23587628-john-eastman-state-bar-charges.

Eastman wrote up his dual elector theory in two memos which are summarized below.

Eastman's December 23, 2020 memo:

- Eastman contended that, based on "solid legal authority, and historical precedent", the President of the Senate can count electoral college votes, "including the resolution of disputed electoral votes."

- He argued that Section 15 of the Electoral Count Act is unconstitutional pursuant to the Twelfth Amendment. Section 15 states that if the President of the Senate receives more than one set of electoral votes from a State, only the votes of electors appointed by "the lawful tribunal" of a State pursuant to Section 5 of the Act shall be counted and that if there is a question as to what is "the lawful tribunal" of a State, the "two Houses, acting separately" shall decide the issue;

- Eastman argued that allowing the "two houses, acting separately" violated the Twelfth Amendment which provides only for a joint session. He also disputed Section 15's directive that if there was a disagreement between the two Houses as to which electoral votes should be counted, the slate certified by the executive of the State shall be counted. Eastman challenged this procedure because it was "regardless of the evidence that exists regarding the election, and regardless of whether there was ever fair review of what happened in the election, by judges and/or state legislatures."

- Eastman recommended a scenario in which Vice President Pence refused to count electoral votes from the seven states that had transmitted dual sets of electors to the President of the Senate because there were "ongoing disputes" and therefore "no electors can be deemed validly appointed in those States."

- By not counting electoral votes from those States, Vice President Pence would "gavel[] President Trump as re-elected" because he received 232 electoral votes and Vice President Biden received 222. Eastman recommended that if Democrats objected because Trump did not receive 270 electoral votes, Pence should send the matter to the House, which Republicans controlled" resulting in Trump's re-election "there as well."[4]

- By January 2, 2021, Pence had a clear understanding of what his role would be in the electoral count but was concerned that most people did not understand the electoral certification process. To address this concern, his lawyer, Gregory Jacob, began drafting a statement for Vice President Pence to issue on January 6th that was intended to provide a "civic education" on the joint session explaining why the Vice President "didn't have the authorities that others had suggested that he might." January 6th Report at 441.

- On January 2, 2021, Eastman appeared on the "Bannon's War Room" radio show in which he stated there was "massive evidence" of fraud involving absentee ballots in the election "most egregiously in Georgia and Pennsylvania and Wisconsin." He stated there was "more than enough" absentee ballot fraud "to have affected the outcome of the election." California State Bar Complaint at ¶ 11.

Eastman's January 3, 2021 Memo:

On January 3, 2021, Eastman and wrote a second memo which he sent "to an attorney and strategic advisor to Trump's 2020 presidential campaign, with the intent of providing legal advice to Trump and Pence." California State Bar Complaint at ¶ 12.

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[4] Approximately two months earlier, Eastman took the opposite view as to the Vice President's authority with respect to electoral votes. In a memo, dated October 17, 2020, Eastman provided comments on a memo that was being drafted by another Trump advisor who was recommending that the Vice President had the authority to decide which electoral certificates to open. Eastman disagreed that the Vice President had this power, stating:

> The Twelfth Amendment only says that the President of the Senate opens the ballots in the joint session and then, in the passive voice, that the votes shall be counted. 3 U.S.C. § 12 says merely that he is the presiding officer, and then it spells out specific procedures, presumptions, and default rules for which slates will be counted. *Nowhere does it suggest that the President of the Senate gets to make determination on his own.* § 15 doesn't either.

January 6th Report at 432.

In his memo, Eastman stated there was "outright fraud (both traditional ballot stuffing, and electronic manipulation of voting tabulation machines) and contended that "important state election laws were altered or dispensed with altogether in key swing states and/or cities and counties." His memo gave examples of alleged election law violations in Georgia, Pennsylvania, Wisconsin, Michigan, Arizona and Nevada and then stated:

> Because of these illegal actions by state and local election officials (and, in some cases, judicial officials), the Trump electors in the above 6 states (plus in New Mexico) met on December 14, cast their electoral votes, and transmitted those votes to the President of the Senate (Vice President Pence). There are thus dual slates of electors from 7 states.

Eastman reiterated his argument that Vice President Pence had the authority under the Twelfth Amendment to count and reject electoral votes. His memo states:

> a. **The 12th Amendment** provides that "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted."
>
> There is very solid legal authority, and historical precedent, for the view that the President of the Senate does the counting, including the resolution of disputed electoral votes (as Adams and Jefferson did while Vice President, regarding their own election as President), and all the Members of Congress can do is watch.

Eastman's memo quotes Section 15 of the Electoral Count Act at length and states:

> This is the piece that we believe is unconstitutional. It allows the two houses, "acting separately," to decide the question, whereas the 12th Amendment provides only for a joint session. And if there is a disagreement, under the Act the slate certified by the "executive" of the state is to be counted, regardless of the evidence that exists regarding the election, and regardless of whether there was ever fair review of what happened in the election, by judges and/or state legislatures. That also places the executive of the state above the legislature, contrary to Article II.

Eastman's memo outlines various "War Gaming the Alternatives" and concludes:

> **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.**
>
> The main thing here that VP Pence should exercise his 12 Amendment authority without asking for permission – either from a vote of the joint session or from the Court.
>
> . . .

I have outlined the likely results of each of the above scenarios, but I should point out that we are facing a constitutional crisis much bigger than the winner of this particular election. If the illegality and fraud that demonstrably occurred here is allowed to stand – and the Supreme Court has signaled unmistakably that it will not do anything about it – then the sovereign people no longer control the direction of their government, and we will have ceased to be a self-governing people. The stakes could not be higher.

- At a meeting on January 4, 2021, in the Oval Office, President Trump and Eastman tried to convince Vice President Pence that he had the power to refuse to count the certified electors from several States won by Biden. Pence's counsel, Gregory Jacob attended the meeting. Eastman argued that Pence could reject outright the certified electors submitted by seven States or he could suspend the joint session and send the "disputed" electoral votes back to the States. Eastman acknowledged that his proposal for counting electoral votes on January 6 violated the Electoral Count Act. January 6th Report at 444-447. The Federal Indictment alleges that at that same meeting, Co-Conspirator 2 (Eastman) "acknowledged to the Defendant's Senior Advisor that no court would support his proposal." When the Senior Advisor said that "'[Y]ou're going to cause riots in the streets," Eastman stated that "there had previously been points in the nation's history when violence was necessary to protect the republic." Federal Indictment at ¶¶ 93-94.

- On January 5, 2021, at a meeting between Eastman and Pence's Chief of State and Counsel, Co-Conspirator 2 (Eastman) advocated that Pence "unilaterally reject electors from the targeted states." Federal Indictment at ¶ 95. At the meeting, Eastman conceded there was no historical support for his argument that Pence had the authority to count and decide disputes about electoral college votes. He acknowledged that his theory would lose 9-0 at the Supreme Court. In his deposition, Jacob testified that Eastman "acknowledged by the end that, first of all, no reasonable person would actually want that clause [of the 12 Amendment] read that way because if indeed it did mean that the Vice President had such authority, you could never have a party switch thereafter." January 6th Report at 450-51.

- The California State Bar Complaint against Eastman alleges that the actions that he proposed in his December 23 and January 3rd memos and at the meetings on January 4th and 5th "provided support for messages Trump sent to his followers on Twitter on the morning of January 6, 2021." California State Bar Complaint at ¶ 21.

- Vice President Pence's legal counsel, Gregory Jacob, researched the Electoral Count Act of 1887 and the Twelfth Amendment and concluded that the Vice President must adhere to the Act. In his testimony before the January 6th Committee, Jacob stated that the Act had been followed for 130 years and that his "'review of text, history, and, frankly, just common sense'" all confirmed that the Vice President had no power to affect the outcome of a presidential election. January 6th Report at 435.

- On January 5, 2021, Jacob wrote a legal memo to Pence ("Analysis Of Professor Eastman's Proposals") in which he analyzed Eastman's argument that the Vice President at the joint session of Congress on January 6th had the authority to not count the electoral certificates for any state which had an alternate uncertified slate of electors. Jacob concluded that Eastman's proposal would likely lose in court. Jacob's memo records that Eastman acknowledges that his proposal violated several provisions of statutory law – specifically, the Electoral Count Act. Memo from Jacob to Pence, dated Jan. 5, 2021. https://www.documentcloud.org/documents/22058340-greg-jacob-jan-5-memo. See also Jacob's memo to Pence, dated December 8, 2020 ("January 6 Process For Electoral Vote Count"), https://www.politico.com/f/?id=0000017f-daf9-d522-ab7f-def9bf4d0000

- On January 6, 2021, at approximately 1:00 a.m., Trump sent a message to his followers on Twitter stating: "If Vice President@Mike-Pence comes through for us, we will win the Presidency . . Mike can send it back!" At approximately 8:17 a.m., Trump sent another message on Twitter stating: "States want to correct their votes . . . All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is the time for extreme courage!" California State Bar Complaint at ¶ 21.

- Eastman spoke at the "Save America" rally on January 6, 2021 after Giuliani spoke:

> 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 President Biden over the finish line. We know there was fraud, traditional fraud that occurred. We know that dead people voted. But we now know because we caught it live last time in real time, how the machines contributed to that fraud.
>
> 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 an unvoted voter and put them together in the machine.
>
> 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 don'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 voila, we have enough votes to barely get over the finish line.

We saw it happen in real time last night, and it happened on November 3rd 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.

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.

https://www.c-span.org/video/?507744-1/trumps-jan-6-rally-speech at 2:24-2:27.

- Trump spoke at the rally after Giuliani and Eastman and said the following about Eastman and his dual elector argument:

> And I will tell you -- thank you very much, John, fantastic job. I watched - -that's a tough act to follow those two. John is one of the most brilliant lawyers in the country and he looked at this, and he said what an absolute disgrace that this could be happening to our Constitution and he looked at Mike Pence, and I hope Mike is going to do the right thing. I hope so. I hope so because if Mike Pence does the right thing, we when the election.
>
> All he has to do--all--this is--this is from the number one or certainly one of the top constitutional lawyers in our country he has the absolute right to do it; we're supposed to protect our country support our country, support our Constitution and protect our Constitution. States want to revote, the states got defrauded. They were given false information, they voted on it. Now they want to recertify; they want it back. All Vice President Pence has to do is send it back to the states to recertify, and we become president, and you are the happiest people.
>
> . . .
>
> Now it is up to Congress to confront this egregious assault on our democracy. And after this, we're going to walk down and I'll be there with you. We're going to walk down --We're going to walk down. Anyone you want, but I think right here, we're going to walk down to the Capitol. And we're going to cheer on our brave senators and congressmen and women and we're probably not going to be cheering so much for some of them. Because you'll never take back our country with weakness. You have to show strength and you have to be strong. We have come to demand that Congress do the right thing and only count the electors who have been lawfully slated. Lawfully slated.

> I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard. Today, we will see whether Republicans stand strong for integrity of our elections. But whether or not they stand strong for our country, our country. Our country has been under siege for a long time. Far longer than this four-year period.

B. Naylor, "Read Trump's Jan. 6 Speech, A Key Part of Impeachment Trial", NPR, February 10, 2021, https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial.

- After Trump's speech, hundreds of protesters left the rally and stormed the Capitol Building. Some of the protesters were armed with weapons. The mob overwhelmed law enforcement and violently broke into the Capitol in an attempt to prevent the Joint Session of Congress from counting the electoral votes that would result in Biden's victory. While the violent protestors were attacking the Capitol Building, Eastman and Trump continued to urge Pence to delay the electoral vote count. California State Bar Complaint at ¶ 26.

- Shortly after 2:00 p.m., protestors broke windows and climbed into the Capitol Building. At approximately 2:20 p.m., Secret Service agents removed Pence from the Senate floor, and the Senate and House were abruptly called to recess as the mob of protestors moved further into the building. At approximately 2:24 p.m., Trump posted a message on Twitter stating "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution." California State Bar Complaint at ¶ 27.

- On January 6, 2021, between 10:44 a.m. and 11:44 p.m., Eastman and Jacob exchanged emails on the legality of Eastman's recommendation that Pence disregard the Electoral Count Act because it was allegedly unconstitutional and either count the electoral college votes he thought were valid or suspend counting the votes and send the issue back to the States. The emails are quoted in full in A. Blake, "The Heated Jan.6 email exchange between Trump's and Pence's lawyers, annotated," The Washington Post, March 3, 2022. https://www.washingtonpost.com/politics/2022/03/03/heated-jan-6-email-exchange-between-trumps-pences-lawyers-annotated/.

- Here are some of the key emails between Eastman and Jacob on January 6th in chronological order:

  Jacob to Eastman at 10:44 a.m.:

  > Is it unconstitutional for the ECA (Electoral Count Act) to direct that the members should do objections, at least in the first instance? Would the constitutional imperative you argue for not kick in only after the statutorily required mechanism has been applied, and failed to uphold the Constitution?

Eastman to Jacob at 1:33 p.m.:

> I'm sorry Greg, but this is small minded. You're sticking with minor procedural statutes while the Constitution is being shredded. I gave you the Lincoln example yesterday. Here's another. In the situation room at the White House during the first Iraq war, the Sec of Interior said the law required an environmental impact assessment before the President could order bombing of the Iraq oil fields. Technically true. But nonsense. Luckily, Bush got statesmanship advice and ignored that statutory requirement.

Jacob to Eastman at 2:14 p.m. (just before he was evacuated from the Capitol):

> John, very respectfully, I just don't in the end believe that there is a single Justice of the United States Supreme Court or a single judge on any of our Court of Appeal, 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. They cannot be set aside except when in direct conflict with the Constitution that our revered Framers handed us. And very respectfully, I don't think that a single one of those Framers would agree with your position either. Certainly, Judge Luttig has made clear he does not. And there is no reasonable argument that the Constitution directs or empowers the Vice President to set a procedure followed for 130 years before it has even been resorted to.
>
> Lincoln suspended the writ when the body entrusted with that authority was out of session, and submitted it to them as soon as it returned. I understand your argument that several state legislatures were out of session. But the role for state legislatures has for our entire history ended at the time that electoral certificates are submitted to Congress. Congress has debated submissions, including competing submissions. It has never once referred them out of state to decide.
>
> I respect your heart here. I share your concerns about what Democrats will do once in power. I want election integrity fixed. But I have 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.
>
> And thanks to your bullshit, we are now under siege.

Eastman to Jacob at 2:25 p.m.:

> My "bullshit" – seriously? You think you can't adjourn the session because the ECA 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.

Jacob to Eastman:

I do apologize for that particular language, which unbecoming of me, and reflective of a man whose wife and three young children are currently glued to news reports as I am moved about to locations where we will be safe from people, "mostly peaceful" as CNN might say, who believed with all their hearts the theory they were sold about the powers that could legitimately be exercised at the Capitol on this day. Please forgive me for that.

But the advice provided has, whether intended or not, functioned as a serpent in the ear of the President of the United States, the most powerful office in the entire world. And here we are.

For the record, we were in the midst of an open, widely televised debated that was airing every single point that you gave members of Congress to make when all of this went down and we had to suspend.

I am not for a moment suggesting that you intended this result. But we were in fact giving you precisely the transparent debate that you suggest we were not. It was then up to you and the legal team to arm members with a case at least sufficient to convince a Senate that our own party controls. I'm not hearing that case at the moment, which I was anticipating with great interest (having previously reviewed many of the underlying filed materials), because the Senate floor has been abandoned.

Respectfully, it was gravely irresponsible for you to entice the President with an academic theory that had no legal viability, and that you well know we would lose before any judge who heard and decided the case. The knowing amplification of that theory through numerous surrogates, whipping large numbers of people into a frenzy over something with no chance of ever attaining legal force through actual process of law, has led us to where we are.

I do not begrudge academics debating the most far-flung theories. I love doing it myself, and I view the ferment of ideas as a good and helpful thing. But advising the President of the United States, in an incredibly constitutionally fraught moment, requires a seriousness of purpose, an understanding of the difference between abstract theory and legal reality, and an appreciation of the power of both the office and the bully pulpit that, in my judgment, are entirely absent here.

I'll say no more. And perhaps at some future Federalist Society Convention, we can more fully engage in the academic debate.

God bless.

Eastman to Jacob at 6:09 p.m.:

I appreciate tamping down the rhetoric. I will respond in kind.

With all due respect, the VP's statement today claimed the most aggressive position that had been discussed and rejected. "Some believe that as Vice President, I should be able to accept or reject electoral votes unilaterally." But we had given a much more limited option, merely to adjourn to allow state legislatures to continue their work. I remain of the view not only would that have been the most prudent course as it would have allowed for the opportunity for this thing to be heard out, but also had a fair chance of being approved (or at least not enjoined) by the Courts.

Alas.

Jacob to Eastman:

Did you advise the President that in your professional judgment the Vice President DOES NOT have the power to decide things unilaterally? Because that was pushed publicly, repeatedly, by the President and by his surrogates last week. And without apparent legal correction.

I acknowledge that the final proposal as to actual actions to be taken by the Vice President in violation of the ECA that was retreated to last night was more modest. But the legal theory is not. And it does not appear that the President ever got the memo.

Eastman to Jacob:

He's been so advised, as you know because you were on the phone when I did it. I should not discuss other conversations that I may or may not have had privately on that score with someone who is a client. But you know him – once he gets something in his head, it is hard to get him to change course.

When this is over, we should have a good bottle of wine over a nice dinner someplace.

Eastman to Jacob at approximately 11:44 p.m.:

The Senate and House have both violated the Electoral Count Act this evening – they debated the Arizona objections for more than two hours. Violation of 3 U.S.C. 17. And the VP allowed further debate or statements by leadership after the question had been voted upon. Violation of 3 U.S.C. 17. And they had that

debate upon motion approved by the VP, in violation of the requirement in 3 U.S.C. 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.

- The attack on the Capitol delayed the certification for approximately six hours until the Senate came back into session separately and then came together in a Joint Session at 11:35 pm. Federal Indictment at ¶ 122.

- Moments before Pence began presiding over the Joint Session, he read verbatim a "Dear Colleague" letter in which he stated that he did not have the authority to accept or reject electoral votes and explained why. https://int.nyt.com/data/documenttools/pence-letter-on-vp-and-counting-electoral-votes/9d6f117b6b98d66f/full.pdf

- In his testimony before the January 6th Committee, Jacob was asked about the process that he and his colleagues went through in researching the issue of the Vice President's authority and in reaching his conclusion that the Vice President did not have the authority to affect the outcome of the election. He responded as follows:

  So, as a lawyer who is analyzing a Constitutional provision, you start with the Constitutional text, you go to structure, you go to history.

  So, we started with the text. We did not think that the text was quite as unambiguous as Judge Luttig indicated. In part, we had a Constitutional crisis in 1876 because, in that year, multiple slates of electors were certified by multiple States, and, when it came time to count those votes, the antecedent question of which ones had to be answered.

  That required the appointment of an independent commission. That commission had had to resolve that question. The purpose of the Electoral Count Act of 1887 had been to resolve those latent ambiguities.

  Now, I am in complete agreement with Judge Luttig; it is unambiguous that the Vice President does not have the authority to reject electors. There is no suggestion of any kind that it does. There is no mention of rejecting or objecting to electors anywhere in the 12th Amendment. So the notion that the Vice President could do that certainly is not in the text.

But the problem that we had, and that John Eastman raised in our discussions was, we had all seen that in Congress, in 2000, in 2004, in 2016, there had been objections raised to various States, and those had even been debated in 2004. So here you have an amendment that says nothing about objecting or rejecting and yet we did have some recent practice of that happening within the terms of the Electoral Count Act.

So, we started with that text. I recall, in my discussion with the Vice President, he said, ''I can't wait to go to heaven and meet the Framers and tell them, 'The work that you did in putting together our Constitution is a work of genius. Thank you. It was divinely inspired. There is one sentence that I would like to talk to you a little bit about.'''

So, then we went to structure. Again, the Vice President's first instinct here is so decisive on this question. There is just no way that the Framers of the Constitution, who divided power and authority, who separated it out, who had broken away from George III and declared him to be a tyrant—there was no way that they would have put in the hands of one person the authority to determine who was going to be President of the United States.

Then we went to history. We examined every single electoral vote count that had happened in Congress since the beginning of the country. We examined the Electoral Count Act. We examined practice under the Electoral Count Act.

Critically, no Vice President in 230 years of history had ever claimed to have that kind of authority, hadn't claimed authority to reject electoral votes, had not claimed authority to return electoral votes back to the States. In the entire history of the United States, not once had a joint session ever returned electoral votes back to the States to be counted.

In the crisis of 1876, Justice Bradley of the U.S. Supreme Court, who supplied the decisive final vote on that commission, had specifically looked at that question and said, first, the Vice President clearly doesn't have authority to decide anything and, by the way, also does not have authority to conduct an investigation by sending things back out for a public look at things.

So, the history was absolutely decisive.

Again, part of my discussion with Mr. Eastman was, if you were right, don't you think Al Gore might have liked to have known in 2000 that he had authority to just declare himself President of the United States? Did you think that the Democrat lawyers just didn't think of this very obvious quirk that he could use to do that? Of course, he acknowledged Al Gore did not and should not have had that authority at that point in time.

But so text, structure, history. I think what we had was some ambiguous text that common sense and structure would tell you the answer cannot possibly be that the

Vice President has that authority —as the Committee already played the Vice President's re-marks, there is almost no idea more un-American than the notion that any one person would choose the American President—and then unbroken historical practice for 230 years that the Vice President did not have such an authority.

Hearing Before The Select Committee To Investigate The January 6th Attack On The Capitol, House of Representatives, 117th Congress, Second Session, June 16, 2022 at 10-12. https://www.govinfo.gov/content/pkg/CHRG-117hhrg49351/pdf/CHRG-117hhrg49351.pdf.

- In his testimony before the January 6th Committee, retired Fourth Circuit Judge J. Michael Luttig was asked to explain the basis for his conclusion that Eastman was wrong in concluding that the Vice President could unilaterally decide not to count the electoral votes from disputed States. Judge Luttig answered as follows:

> With all respect to my co-panelist, he said, I believe in partial response to one of the Select Committee's questions, that the single sentence in the 12th Amendment was, he thought, inartfully written.
>
> That single sentence is not inartfully written. It was pristine clear that the President of the Senate on January 6th, the incumbent Vice President of the United States, had little substantive Constitutional authority, if any at all.
>
> The 12th Amendment, the single sentence that Mr. Jacob refers to, says in substance that, following the transmission of the certificates to the Congress of the United States and, under the Electoral Count Act of 1887, the Archivist of the United States, that the presiding officer shall open the certificates in the presence of the Congress of the United States in joint session.
>
> It then says, unmistakably, not even that the Vice President himself shall count the electoral votes. It clearly says merely that the electoral count votes shall then be counted.
>
> It was the Electoral Count Act of 1887 that filled in, if you will, the simple words of the 12th Amendment in order to construct for the country a process for the counting of the sacred process for the counting of the electoral votes from the States that neither our original Constitution nor even the 12th Amendment had done.
>
> The irony, if you will, is that, from its founding until 1887, when Congress passed the Electoral Count Act, the Nation had been in considerable turmoil during at least 5 of its Presidential elections, beginning as soon thereafter from the founding as 1800. So, it wasn't for almost 100 years later until the Electoral Count Act was passed.

> So that is why, in my view, that piece of legislation is not only a work in progress for the country but, at this moment in history, an important work in progress that needs to take place.
>
> *Id*. at 9-10.

- It is reasonable to draw a direct link between the dual elector legal theory and the attack on the Capitol. In his deposition testimony during the January 6th Congressional investigation, Vice President Pence's counsel Gregory Jacob testified:

> The reason that the Capitol was assaulted was that the people who were breaching the Capitol believed that . . . the election [outcome] had not yet been determined, and, instead, there was some action that was supposed to take place in Washington, D.C., to determine it. . . I do think [the violence] was the result of that position being continuously pushed and sold to people who ended up believing that with all their hearts. . . [The people had been] told that the Vice President had the authority [to determine the outcome of the election during the joint session.]
>
> January 6th Report at 466.

- On March 27, 2024, the State Bar Court of California issued a decision recommending that Eastman be disbarred. *In re Eastman*, Decision and Order of Involuntary Inactive Enrollment, Case No. SBC-23-O-30029-YDR https://statesuniteddemocracy.org/wp-content/uploads/2024/03/Eastman-Decision.pdf

- The State Bar Court rejected Eastman's argument that his interview at the Bannon War Room, his statements at the Ellipse on January 6th, a published article, and his statements to Vice President Pence were protected by the First Amendment. The Court held:

> [T]he First Amendment rights of attorneys are linked to the critical role that they perform within the judicial system. While these rights are fundamental, they must be calibrated to align with the unique role attorneys play in the administration of justice. As the Review Department has stated, "attorneys occupy a special status and perform an essential function in the administration of justice. Because attorneys are officers of the court with a special responsibility to protect the administration of justice, courts have recognized the need for imposition of reasonable speech restrictions upon them." (citation omitted). Even the United States Supreme Court has emphasized that "'States have a compelling interest in the practice of professions within their boundaries, and . . . as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions.'" (*Florida Bar v. Went For It, Inc.* (1995) 515 U.S. 618, 625, citations omitted.) "The interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the courts.'" (*Goldfarb v. Virginia State Bar, supra,* 421 U.S. at p. 792.) *Id*. at 76.

- The State Bar Court concluded that Eastman's speech was not protected by the First Amendment because "this right does not extend to making knowing or reckless false statements of fact or law. Here, as shown below, Eastman made multiple false and misleading statements in his professional capacity as attorney for President Trump in court filings and other written statements as well as in conversations with others and in public remarks." *Id.* at 79;

- The State Bar Court also held that the First Amendment does not protect speech that is employed as a tool in the commission of a crime. *Id*. 79. The Court held that Eastman had committed a crime because he "had conspired with President Trump to obstruct a lawful function of the government of the United States, specifically, by conspiring to disrupt the electoral count on January 6, 2021, in violation of 18 U.S.C. § 371 (conspiring to commit an offense against the United States). *Id*. at 111-114;

- The Court held that Eastman made the false statement in his December 23, 2020 memo that there were dual slates of electors:

> The evidence shows that Eastman's "dual slates of electors" statement was false and misleading. Eastman knew that there were no legitimate dual slates of electors in the seven contested states because the Trump electors lacked certification and could not be legally considered on January 6, 2021. Moreover, Eastman was aware that Vice President Pence lacked the authority to decide which slate of electors would be counted because his sole responsibility was simply to open the ballots. Yet, Eastman used the false assertion concerning dual slates of electors to provide an alternative strategy for Vice President Pence to declare President Trump as the winner of the 2020 presidential election. The two-page memo was designed to provide legal support and convince Vice President Pence to carry out that strategy.
>
> . . .
>
> As a constitutional expert, Eastman knew that the only slates of electors which Vice President Pence could lawfully consider, were those included in the certificates of ascertainment executed by the governor of each state. Eastman understood that the so-called dual electors lacked legitimacy and would not be tallied on January 6, 2021, and he also knew that there was no constitutional provision permitting counting of uncertified, unascertained dual slates of electors. None of the contested states' officials had submitted a certificate of ascertainment naming Trump electors, thereby lacking any semblance of authority or official endorsement.

Id. at 88-89.[5]

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[5] The California State Bar Court's decision with respect to Eastman's misrepresentations in his December 23, 2020 memo, his January 3, 2021 memo, his speech at the Ellipse on January 6th and an email he sent to Gregory Jacob on January 6, 2021, violated Section 6106 of the California Business and Professions Code. Section 6106 states:

> 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

- The Court rejected Eastman's argument that his "dual slates of electors" argument in his December 23rd memo was permissible because of a lawyer's duty of zealous advocacy:

> Eastman also argues that he cannot be found culpable of moral turpitude because his statement amounted to no more than zealous advocacy in his representation of President Trump's interests. It is true that an attorney has a duty to engage in zealous advocacy on behalf of a client. (See Rules Prof. Conduct, rule 1.3 [duty to perform with diligence].) However, Eastman's inaccurate assertions were lies that cannot be justified as zealous advocacy. Eastman failed to uphold his primary duty of honesty and breached his ethical obligations by presenting falsehoods to bolster his legal arguments.
>
> *Id*. at 90.

- The Court further held that Eastman made false statements in his January 3, 2021 memo that there had been fraud in the election through the manipulation of voting tabulation machines, dual slates of electors from seven states, and that the State of Michigan had mailed an absentee ballot to every registered voter:

> Despite the absence of substantiated evidence, Eastman knowingly made false claims of fraud in the 2020 presidential election, suggesting manipulation of electronic voting machines to bolster his case for Vice President Pence to adjourn the Joint Session of Congress. A thorough examination of the data using strict criteria revealed no evidence to suggest that former Vice President Biden did better than expected in counties where Dominion voting machines were used. In addition, the Election Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees found no credible evidence supporting claims that the 2020 election results in any state were changed due to technical compromise. In fact, CISA confirmed that the 2020 presidential election was the most secure in American history. Eastman was informed by November 2020, that CISA had determined the November 3 election to be the most secure in U.S. history, contradicting the numerous baseless claims and potential for misinformation surrounding the electoral process. Nevertheless, Eastman chose to ignore credible sources indicating there was no voting machine manipulation.
>
> . . .

> 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.

> The evidence presented demonstrates that Eastman, despite claiming sincere belief, deliberately propagated false claims about the 2020 presidential election, thereby breaching his ethical duty as an attorney to prioritize honesty and integrity.
>
> *Id.* at 99 and 101.

- The Court held that Eastman's statements at the "Save America" rally at the Ellipse on January 6, 2021 that in Georgia, ballots were placed in a hidden folder in voting machines and used to manipulate the election result in favor of Biden were "intentionally false statements". *Id*. at 101-103. The Court refused to credit Eastman's argument that these statements were not intentional because he based them on "theories" that were provided to him on January 5th:

> Eastman's statements about the Dominion voting machines were based on the theories of Ramsland and Oltmann and others he met on January 5, 2021. Before making the misrepresentations on January 6, 2021, Eastman failed to vet Ramsland and Oltmann, their theories, and their credentials. He never determined the credibility of the Ramsland/Oltmann diagram but accepted its conclusions because certain individuals (whose names he could not recall and whom he perceived to possess technical expertise) informed him about alleged potential vulnerabilities in the Dominion voting machine system. He ignored CISA's unwavering confidence in the security and integrity of the 2020 election. Eastman recklessly relied on Ramsland, Oltmann, and others without verifying the validity of their findings.
>
> *Id*. at 102.

- The Court also held that Eastman falsely stated in his email to Gregory Jacob on January 6, 2021 that "'You think you can't adjourn the session because the [Electoral Count Act] says no adjournment, while the compelling evidence that the election was stolen continues to build and is already overwhelming'":

> As previously established, there was no outcome-determinative fraud in the 2020 presidential election . . . and Eastman was aware or should have known that there was no affirmative proof of fraud . . . . This lack of outcome-determinative fraud evidence indicates that there was no compelling or overwhelming evidence that the 2020 presidential election was stolen as Eastman claimed.
>
> During the violent attack on the Capitol and while the electoral vote count remained unfinished, Eastman persisted in his attempts to persuade Vice President Pence to postpone the Joint Session of Congress, despite the ongoing crisis and the incomplete democratic process. Eastman continued to pressure Jacob and Vice President Pence even though Eastman, a constitutional scholar, knew that Vice President Pence had no authority to recess, delay, or adjourn the electoral count because as provided by 3 U.S.C. section 16, only the House or Senate may direct a recess -- not a President of the Senate. Moreover, as the scholarship and history reflect and as Eastman, a constitutional scholar, had to know, from 1789 to 2016, all recesses and adjournments were initiated and

controlled by Congress and "no President of the Senate has ever unilaterally declared a recess."

Id. at 104.

- The State Bar Court dismissed for lack of evidence a count in the bar complaint alleging that Eastman's false statements at the Ellipse "'contributed to provoking the crowd to assault and breach the Capitol in an effort to intimidate [Vice President] Pence and prevent the electoral count from proceeding, when such harm was foreseeable.'"

  Id. at 108-110.