



May 18, 2022

VIA FACSIMILE: [REDACTED]

State Bar of Texas
Office of Chief Disciplinary Counsel
4801 Woodway Drive, Suite 315-W
Houston, TX 77056

Dear Office of Chief Disciplinary Counsel:

The undersigned individuals and The 65 Project¹ write to request that the Office of Chief Disciplinary Counsel investigate the actions taken by Senator Rafael Edward Cruz (Texas Bar No. 24001953) relating to his representation of Pennsylvania Republicans and Donald Trump. These actions involved Mr. Cruz assisting with criminal conduct and defending and amplifying “claims not backed by law” and “claims not backed by evidence (but instead, speculation, conjecture, and unwarranted suspicion).”² Mr. Cruz’s actions violated numerous Texas Disciplinary Rules of Professional Conduct (“TDRPC” or “Rules”) as enumerated below.

Mr. Cruz played a leading role in the effort to overturn the 2020 elections. And while the same can be said about several other elected officials, Mr. Cruz’s involvement was manifestly different. He chose to take on the role of lawyer and agreed to represent Mr. Trump and Pennsylvania Republicans in litigation before the U.S. Supreme Court in *Kelly v. Pennsylvania* and *Texas v. Pennsylvania*. In doing so, Mr. Cruz moved beyond his position as a United States senator and sought to use more than his Twitter account and media appearances to support Mr. Trump’s anti-democratic mission.³ Mr. Cruz added the value of his law license to the effort. The State Bar of Texas, therefore, may appropriately investigate Mr. Cruz’s actions, apply the standards set for lawyers within the TDRPC, and impose sanctions against Mr. Cruz for violating those requirements.

¹ The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

² *King v. Whitmer*, Case No. 21-13134 (E.D. Mich.), Aug. 25, 2021 Opinion and Order, available at https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf.

³ The Constitution’s Speech and Debate clause does not shield Mr. Cruz from consequence for statements on the Senate floor when that chamber was not acting in a “purely legislative” manner. *United States v. Brewster*, 408 U.S. 502 (1972)

This is especially true given a recent finding by a federal court that the efforts Mr. Cruz assisted “more likely than not” constituted a criminal conspiracy to obstruct an official proceeding.⁴ Mr. Cruz, it seems, was “working directly with Trump to concoct a plan that came closer than widely realized” to its objective of overturning the 2020 elections.⁵ Mr. Cruz’s own former campaign chairman has stated that Mr. Cruz “aided and abetted” Mr. Trump’s “relentless assault” on U.S. democracy.⁶

CONDUCT GIVING RISE TO THE COMPLAINT

Donald Trump lost the 2020 presidential election.⁷ In an effort to overturn the legitimate results, Mr. Trump and his allies filed at least 65 baseless lawsuits across the country, alleging conspiracies and fraud and claiming the election was stolen. They brought these claims despite the fact that officials across the country and at every level of government have called the 2020 election “the most secure in American history.”⁸ None of these efforts succeeded. In some instances, courts have imposed sanctions on the lawyers who participated in the lawsuits and referred them for sanctions by their respective state bars. The disciplinary arms of various state bars are pursuing the matters.⁹

Two significant undertakings to disrupt the election’s outcome centered on lawsuits filed by several Pennsylvania Republicans and by the State of Texas. The Pennsylvania Republicans, in *Kelly v. Pennsylvania*, sought to have the courts throw out nearly all absentee ballots cast in the

⁴ *Eastman v. Thompson, et al.*, Case No. 8:22-cv-00099 (C.D. Cal.), Order Re Privilege of Documents Dated January 4-7, 2021 at 33, 36, 40, available at <https://storage.courtlistener.com/recap/gov.uscourts.cacd.841840/gov.uscourts.cacd.841840.260.0.pdf>.

⁵ Michael Kranish, *Inside Ted Cruz’s Last Ditched Effort to Keep Trump in Power*, Washington Post (Mar. 28, 2022), <https://www.washingtonpost.com/politics/2022/03/28/ted-cruz-john-eastman-jan6-committee/>.

⁶ Todd J. Gillman, *Ted Cruz’s 2016 Presidential Campaign Chair Denounces Him for ‘Assault on Our Democracy’ After Capitol Riot*, Dallas Morning News (Jan. 10, 2021), <https://www.dallasnews.com/news/politics/2021/01/10/ted-cruzs-2016-presidential-campaign-chair-denounces-him-for-assault-on-democracy-after-capitol-riot/>.

⁷ See United States National Archives, Electoral College Results – 2020, available at <https://www.archives.gov/electoral-college/2020>.

⁸ Maria Henriquez, *Director of CISA Chris Krebs Says There’s No Evidence of Foreign Interference in the 2020 Election*, Security Magazine (Nov. 5, 2020), <https://www.securitymagazine.com/articles/93846-director-of-cisa-chris-krebs-says-theres-no-evidence-of-foreign-interference-in-the-2020-election>.

⁹ See, e.g., *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf); *State Bar Announced John Eastman Ethics Investigation*, available at <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-announces-john-eastman-ethics-investigation>; *State Bar Sues Trump Lawyer Sidney Powell*, available at <https://www.houstonchronicle.com/politics/texas/article/Texas-State-Bar-sues-Trump-lawyer-Sidney-Powell-16989673.php>; *Two Former U.S. Officials Help Ethics Probe of Trump Ally Clark*, Source Says, available at <https://www.reuters.com/world/us/exclusive-two-former-us-officials-help-ethics-probe-trump-ally-clark-source-says-2022-03-29/>.

2020 election. The Pennsylvania Supreme Court rejected the effort and the plaintiffs sought to have the United States Supreme Court hear that matter. Additionally, on December 7, 2020, the State of Texas initiated a lawsuit with the United States Supreme Court against Pennsylvania, Georgia, Michigan, and Wisconsin. Texas sought for the Court to enjoin Pennsylvania and the other three defendant states from using the 2020 election results to appoint electors and to instead have the state legislatures choose electors or to have no electors at all. Texas based the request to disenfranchise over 20 million voters on factual and legal assertions that lacked any foundation and that state and lower federal courts had already uniformly rejected. Texas asserted that it – or any state – had the right to pursue these claims before the Supreme Court under its original jurisdiction, even though lower courts had already determined that substantially similar claims lacked merit.

Mr. Trump enthusiastically endorsed the effort and called it “the big one.”¹⁰ The filing, though, failed to address any of the factual or legal hurdles – including many settled principles of law – that stood in the way of the requested relief. Indeed, Texas’s own solicitor general at that time refused to allow his name to be added to the matter, likely because of its frivolous nature.¹¹ United States Senator John Cornyn, also a Texas Republican – and former Texas Supreme Court justice – said at the time, “I frankly struggle to understand the legal theory” behind the lawsuit.¹² Republican Senator Ben Sasse called it a “PR stunt rather than a lawsuit.”¹³ Conservative commentators and legal scholars lambasted the filing.¹⁴

On December 7, 2020, Mr. Cruz publicly announced that he had been asked to represent the Pennsylvania Republicans before the United States Supreme Court and that he had agreed.¹⁵ He made clear that he reviewed the pleadings in advance before agreeing to represent the plaintiffs.¹⁶ Further, the day after Texas initiated the action – on December 8, 2020 – Mr. Trump

¹⁰ Nomaan Merchant & Alanna Durkin Richer, *Supreme Court Rejects Texas Lawsuit — Backed by Trump and Most House GOP Members — To Overturn Election Results*, Chicago Tribune (Dec. 12, 2020), <https://www.chicagotribune.com/election-2020/ct-republicans-texas-supreme-court-election-lawsuit-20201211-gnoqqkqepqbfwxuoc3b5oqnjvy-story.html>.

¹¹ See Jim Rutenberg et. al., *77 Days: Trump’s Campaign to Subvert the Election*, N.Y. Times (Jan. 31, 2021), <https://www.nytimes.com/2021/01/31/us/trump-election-lie.html>.

¹² *Cornyn Questions ‘Legal Theory’ of Texas’ Suit to Overturn Other States’ Election Results*, CBS Austin (Dec. 10, 2020), <https://cbsaustin.com/news/local/cornyn-questions-legal-theory-of-texas-suit-to-overturn-other-states-election-results>.

¹³ Mairead McArdle, *Sasse Predicts Supreme Court Will Toss ‘PR Stunt’ Texas Election Lawsuit*, Nat’l. Rev. (Dec. 10, 2020), <https://www.nationalreview.com/news/sasse-predicts-supreme-court-will-toss-pr-stunt-texas-election-lawsuit/>.

¹⁴ Emma Platoff, *U.S. Supreme Court Throws Out Texas Lawsuit Contesting 2020 Election Results in Four Battleground States*, Texas Tribune (Dec. 11, 2020), <https://www.texastribune.org/2020/12/11/texas-lawsuit-supreme-court-election-results>.

¹⁵ Jack Durschlag, *Cruz Tells ‘Hannity’ He’d Argue Pennsylvania Election Case Before Supreme Court*, Fox News (Dec. 8, 2020), <https://www.foxnews.com/us/cruz-tells-hannity-he-would-present-oral-arguments-before-supreme-court-on-pa-no-excuse-mail-in-balloting>.

¹⁶ See Verdict with Ted Cruz Podcast, Episode 62 (Dec. 2020), available at <https://open.spotify.com/episode/4AfhvVBnMJzecHexDA80Gb>. Mr. Cruz states: “And their lawyers reached out to me, and they asked, they said ‘Listen, if the court takes this case would you be willing to argue it?’ and I thought about it. And usually, more often than not, you argue a case where you drafted the

asked Mr. Cruz to represent him before the United States Supreme Court.¹⁷ Mr. Cruz agreed,¹⁸ creating an attorney-client relationship relating to the *Texas v. Pennsylvania* litigation.¹⁹

The Supreme Court summarily rejected the Pennsylvania Republican case on December 8²⁰ and the Texas effort on December 11, 2020.²¹ Therefore, at the very least, from December 7 to December 11, Mr. Cruz represented clients. During that time:

- Mr. Trump filed a motion to intervene in the *Texas v. Pennsylvania* litigation that “adopts by reference and joins in the Bill of Complaint submitted by Plaintiff State of Texas.”²²
- Mr. Cruz stated publicly that *Kelly v. Pennsylvania* “raises very serious issues” and presents “pure issues of law.”²³
- Mr. Cruz stated publicly that he was troubled that “the Pennsylvania Supreme Court is a partisan, Democratic court that has issued multiple decisions that were just on their face contrary to law.”²⁴
- Mr. Cruz publicly “called on the Court” to take the cases.²⁵

Importantly, in the leadup to Mr. Cruz making these statements, he had been identified not only as taking on the *Kelly* matter as a lawyer, but as an attorney who has argued and won cases before the United States Supreme Court.²⁶

Mr. Cruz’s conduct before and after his involvement in those matters also raises concerns. He regularly sought to intentionally amplify these false claims on multiple occasions and in various forums, for example:

briefs and argued it from the beginning. So, it’s fairly unusual to come in at the tail end, but given the importance of it I had already written a long statement... urging the Supreme Court to take the case. So, I had already read the pleading, and I thought it needed to be heard and so I said ‘sure, I’m happy to argue it.’”

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See *Vinson & Elkins v. Moran*, 946 S.W.2d 381, 405 (Tex.App.—Houston 1997) (an attorney-client relationship is established when the parties “explicitly or by their conduct manifest an intention to create it” and the relationship “may be established either expressly or impliedly from the conduct of the parties”).

²⁰ Order Denying Application for Injunctive Relief, available at <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20a98.html>.

²¹ Order Denying Motion for Leave to File a Bill of Complaint, available at https://www.supremecourt.gov/orders/courtorders/121120zr_p860.pdf.

²² Motion to Intervene, available at https://www.supremecourt.gov/DocketPDF/22/22O155/163234/20201209155327055_No.%2022O155%20Original%20Motion%20to%20Intervene.pdf.

²³ Jack Durschlag, *Cruz Tells 'Hannity' He'd Argue Pennsylvania Election Case Before Supreme Court*, Fox News (Dec. 8, 2020), <https://www.foxnews.com/us/cruz-tells-hannity-he-would-present-oral-arguments-before-supreme-court-on-pa-no-excuse-mail-in-balloting>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

- November 5, 2020, Mr. Cruz wrongly stated that Democrats were violating the law and “they are setting the stage to potentially steal an election.”²⁷
- November 5, 2020, Mr. Cruz incorrectly claimed that Philadelphia elections officials were “clouding the vote counting in a shroud of darkness.”²⁸
- November 6, 2020, Mr. Cruz falsely stated that Pennsylvania officials were “not allowing the election observers in, despite clear state law that requires election observers being there.”²⁹ In truth, election monitors were present and Mr. Trump’s lawyers admitted that in court.³⁰
- On January 2, 2021, Mr. Cruz stated Pennsylvania’s election was replete with “voter fraud, violations and lax enforcement of election law, and other voting irregularities.”³¹
- On January 3, 2021, Mr. Cruz sent an email solicitation, declaring that he was “leading the charge” to “reject the electors” from “the states with disputed results.”³²
- On January 6, 2021, Mr. Cruz objected to counting Arizona’s and Pennsylvania’s electoral votes, and did so even after he and his colleagues had to flee the Senate chamber because of the insurrectionists.

Mr. Cruz knew that the allegations he was echoing had already been reviewed and rejected by courts. And he knew that claims of voter fraud or the election being stolen were false. As just two examples: one regularly regurgitated allegation from Mr. Trump’s legal team was that in Pennsylvania, more absentee ballots were counted than were sent out before the election. In actuality, election officials mailed out 3.08 million absentee ballots to voters and 2,622,261 absentee ballots were counted.³³ Similarly, Mr. Trump’s backers made false statements regarding Georgia’s electronic voting system, despite completing a *hand* recount.³⁴ Mr. Giuliani, Mr.

²⁷ Ted Cruz (@tedcruz), Twitter (Nov. 5, 2020, 8:45 PM), <https://twitter.com/tedcruz/status/1324558397417549824?s=20>.

²⁸ *Id.*

²⁹ *Sen. Cruz on Hannity: The American People Want Every Vote That Was Legally Cast Counted*, Office of Sen. Ted Cruz (Nov. 6, 2020, <https://www.cruz.senate.gov/newsroom/press-releases/sen-cruz-on-hannity-the-american-people-want-every-vote-that-was-legally-cast-counted>).

³⁰ Joe Schneider, Peter Blumberg, *Trump's Bid for Emergency Halt to Philadelphia Count Denied*, Bloomberg Law (Nov. 5, 2020), <https://news.bloomberglaw.com/us-law-week/trump-sues-to-halt-philadelphia-count-without-gop-observers-1>.

³¹ *Joint Statement from Senators Cruz, Johnson, Lankford, Daines, Kennedy, Blackburn, Braun, Senators-Elect Lummis, Marshall, Hagerty, Tuberville*, Office of Sen. Ted Cruz (Jan. 2, 2021), https://www.cruz.senate.gov/?p=press_release&id=5541.

³² E-mail from Ted Cruz, U.S. Senator (Jan. 3, 2021, 3:01 AM), <https://politicalemails.org/messages/331969>.

³³ *Pennsylvania Early Voting Statistics*, U.S. Elections Project (Nov. 20, 2020), <https://electproject.github.io/Early-Vote-2020G/PA.html>.

³⁴ See, e.g., J. Gray, *Georgia Election Officials Show Frame-By-Frame What Happened in Fulton Surveillance Video*, WSB-TV (Dec. 4, 2020), available at <https://www.wsbtv.com/news/politics/georgia-election-officials-show-frame-by-frame-what-really-happened-fulton-surveillance->

Trump's lawyer, further alleged that 6,000 dead people voted in Georgia, a claim that Georgia's Secretary of State refuted with facts.³⁵ Even Mr. Trump's own attorney general disputed claims of voter fraud.³⁶ Mr. Cruz's decision to spread false information regarding the 2020 election aided Mr. Trump's efforts to wrongfully overturn the election.

Finally, failing to achieve their desired ends through the courts, Mr. Trump and his supporters turned to preventing Congress from certifying Mr. Biden's victory. Mr. Cruz played a significant role – in his words, he was “leading the charge” – in this effort. He collaborated with Mr. Trump and his legal team and worked in concert to pursue a plan designed to keep Mr. Trump in the White House – a plan which its proponent admitted violated the law.³⁷

The basis for this strategy rested in two memoranda written by John Eastman, one of Mr. Trump's attorneys and a longtime friend of Mr. Cruz.³⁸ Mr. Eastman's memoranda, which have been shown to be grounded in neither law nor fact, recommended that Mr. Pence take “BOLD” action to secure Mr. Trump's victory.³⁹ It also required the cooperation of at least one senator who would assist in delaying things further by demanding that the chamber operate under normal rules rather than those required under the Electoral Count Act. Mr. Eastman's memorandum specifically named Mr. Cruz as a likely participant.

Mr. Eastman and Mr. Trump met with Mr. Pence, Mr. Pence's counsel, and Mr. Pence's chief of staff on January 4. During the meeting, Mr. Eastman presented Mr. Pence with one of two options: reject electors or delay the count.⁴⁰

At the January 6 rally that morphed into an insurrection, speakers highlighted the plan. Mr. Giuliani said:

[video/T5M3PYIBYFHFOD3CIB2ULDVDE/](https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf); Decl. of Frances Watson ¶ 7, ECF No. 72-1, *Pearson, et al. v. Kemp, et al.*, 20-cv-4809 (N.D. Ga. Dec. 6, 2020); Georgia Election Officials Briefing Transcript December 7: Will Recertify Election Results Today (Dec. 7, 2020); Interview of Richard Donoghue (Oct. 1, 2021) at 43 (informing President Trump that the “allegations about ballots being smuggled in a suitcase and run through the machines several times, it was not true, that we had looked at it, we looked at the video, we interviewed the witnesses, and it was not true”), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>.

³⁵ Brad Raffensperger, *Point by Point Refutation of False Claims about Georgia Elections*, Office of the Secretary of State of Georgia (Jan. 6, 2021), available at:

<https://www.scribd.com/document/490058358/Georgia-Sec-State-Brad-Raffensperger-letter-to-Congress>.

³⁶ Michael Balsamo, *Disputing Trump, Barr Says No Widespread Election Fraud*, A.P. (Dec. 1, 2020), <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.

³⁷ Email from John Eastman to Gregory Jacob on Jan. 6, 2021, available at

<https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>.

³⁸ The main Eastman memorandum is available at <https://www.cnn.com/2021/09/21/politics/read-eastman-full-memo-pence-overturn-election/index.html>.

³⁹ *Id.*

⁴⁰ Greg Jacob Deposition Transcript at 89.

[E]very 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 [sic] 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*.⁴¹

Mr. Eastman, who spoke right before Mr. Trump, said:

[A]ll 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...And anybody that is not willing to stand up to do it, does not deserve to be in the office. It is that simple.⁴²

And Mr. Trump declared:

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.

...

Today, we see a very important event though, because right over there, right there, we see the event going to take place. And I'm going to be watching, because history is going to be made. We're

⁴¹ The transcript of Mr. Giuliani's and Mr. Eastman's January 6, 2021 remarks is available at <https://www.rev.com/blog/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat>.

⁴² *Id.*

going to see whether or not we have great and courageous leaders or whether or not we have leaders that should be ashamed of themselves throughout history, throughout eternity, they'll be ashamed. And you know what? If they do the wrong thing, we should never ever forget that they did. Never forget. We should never ever forget.

...

I also want to thank our 13 most courageous members of the US Senate, Sen. Ted Cruz, Sen. Ron Johnson, Sen. Josh Hawley, Kelly Loeffler....⁴³

It is well-documented what happened next. As the rioters made their way to the Capitol, Mr. Cruz fulfilled his promise to object to certifying Arizona's electoral votes. The House and Senate then met separately to debate the objection. Mr. Cruz spoke to his colleagues and urged that they delay the electoral vote counting for a "10-day emergency audit."⁴⁴ Just as Mr. Cruz finished pushing for the delay that Mr. Trump and Mr. Eastman sought, insurrectionists breached security, vandalized the building, assaulted police officers, and sought to hunt down members of Congress and Mr. Pence. Nine people died as a result of the insurrection, including four police officers who committed suicide within seven months of responding to the attack.⁴⁵ The insurrectionists injured over 138 police officers.⁴⁶ To date, 816 people have been charged in connection with the January 6 insurrection, with at least 165 of those defendants pleading guilty, and courts have imposed sentences reaching over 60 months.⁴⁷

As insurrections attacked the U.S. Capitol, with his colleagues huddled in hiding, Mr. Cruz sent a fundraising message that declared, "I'm leading the fight to reject electors from key states unless there is an emergency audit of the election results. Will you stand with me?"⁴⁸

⁴³ The transcript of Mr. Trump's January 6, 2021 remarks is available at <https://www.cnn.com/2021/02/08/politics/trump-january-6-speech-transcript/index.html>.

⁴⁴ Adam Shaw, *GOP Senators, Led by Cruz, to Object to Electoral College Certification, Demand Emergency Audit*, Fox News (Jan. 2, 2021), <https://www.foxnews.com/politics/gop-senators-cruz-electoral-college-certification-audit>.

⁴⁵ Jan Wolfe, *Four Officers Who Responded to U.S. Capitol Attack Have Died by Suicide*, Reuters (Aug. 2, 2021), available at <https://www.reuters.com/world/us/officer-who-responded-us-capitol-attack-is-third-die-by-suicide-2021-08-02/>.

⁴⁶ Michael S. Schmidt & Luke Broadwater, *Officers' Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. Times (Feb. 12, 2021), available at <https://www.nytimes.com/2021/02/11/us/politics/capitol-riot-police-officer-injuries.html>.

⁴⁷ Madison Hall et. al., *At Least 816 People Have Been Charged in the Capitol Insurrection so far. This Searchable Table Shows Them All*, Insider (Apr. 11, 2022), <https://www.insider.com/all-the-us-capitol-pro-trump-riot-arrests-charges-names-2021-1>.

⁴⁸ Jeremy Wallace, *Ted Cruz Explains Fundraising Text Sent During Siege on U.S. Capitol*, Houston Chronicle (Jan. 7, 2021), <https://www.houstonchronicle.com/politics/texas/article/Ted-Cruz-explains-fundraising-text-sent-during-15854497.php>.

When the Senate reconvened approximately six hours after secret service agents whisked Mr. Pence out of the chamber as insurrectionists breached the building, Mr. Cruz voted against certifying Arizona's and Pennsylvania's electoral votes.

**A SUBSTANTIAL BASIS EXISTS FOR THE OFFICE OF CHIEF DISCIPLINARY
COUNSEL TO INVESTIGATE MR. CRUZ'S CONDUCT AND TO IMPOSE
APPROPRIATE DISCIPLINE**

The Office of Chief Disciplinary Counsel should investigate Mr. Cruz's actions on the following basis:

1. Mr. Cruz Violated Rule 3.01 By Asserting an Issue He Should Have Reasonably Known To Be Frivolous

Rule 3.01 provides, in part, as follows: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous."

Comment 2 states that: "A filing or assertion is frivolous ... if the lawyer is unable either to make a good faith argument that the action taken is consistent with existing law or that it may be supported by a good faith argument for an extension, modification or reversal of existing law."

Mr. Trump and the Pennsylvania Republicans retained Mr. Cruz precisely to defend and assert issues before the United States Supreme Court. Mr. Cruz acknowledged having read the filings in the *Kelly* case before agreeing to represent the plaintiffs. Further, Mr. Trump's Bill of Complaint incorporated by reference the allegations in the State of Texas's Bill of Complaint. Both Bills of Complaint were frivolous. As documented in the thorough complaint filed with your office against Attorney General Paxton, the assertions made by Texas and Mr. Trump in the *Texas v. Pennsylvania* litigation lacked any reasonable legal or factual basis. For example, the filings:

- Claimed that the State of Texas had standing to sue the four defendant states, but failed to provide a single precedent for the argument.⁴⁹
- Repeated allegations regarding voter fraud, unsecured ballots, and state officials destroying ballot materials that had already been rejected by every state and federal court that had heard similar concocted claims.⁵⁰
- Misrepresented its own expert's conclusion by claiming that "[t]he probability of former Vice President Biden's winning the popular vote in [each of] the four Defendant States – Georgia, Michigan, Pennsylvania, and Wisconsin -- ...given President Trump's early lead in those States as of 3 a.m. on November 4, 2020, is less than one in a quadrillion, or

⁴⁹ See Opposition to Motion for Leave to File Bill of Complaint and Motion for Preliminary Injunction, Temporary Restraining Order, or Stay [Pennsylvania] ("Pennsylvania's Opposition") pp. 3-5; Georgia's Opposition, pp. 6-7; and Michigan Brief, pp. 5-7, 10-12.

⁵⁰ See *id.*

1 in 1,000,000,000,000,000.”⁵¹ In actuality, the expert’s opinion focused on the likelihood of Mr. Biden overcoming Mr. Trump’s early lead if the votes counted *after* 3:00 a.m. had been “randomly drawn from the same population” as the votes counted *before* 3:00 a.m.⁵²

- Relied on unfounded factual assumptions that the votes tabulated after 3:00 a.m. would come from the same randomly drawn population as those counted before 3:00 a.m. and that the 2020 and 2016 electorates were identical.⁵³
- Requested extraordinary relief without providing any precedent to support the request.⁵⁴
- Used only an incomplete and misleading quotation from 3 U.S.C. § 2 to suggest that a state legislature could appoint replacement electors “for any reason.”⁵⁵

Mr. Cruz participated in this effort by agreeing to advance these very arguments before the United States Supreme Court. He “called on the Court” to hear the matter and supported the effort both by lending his law license to the cause and amplifying the allegations in social media and television appearances. In these settings,

The claims and requests made by Pennsylvania Republicans in *Kelly v. Pennsylvania* and by Mr. Trump in *Texas v. Pennsylvania* were frivolous, which is why the United States Supreme Court denied the motions in short orders.

2. Mr. Cruz Violated Rule 4.01 By Knowingly Making False Statements to a Third Person

Rule 4.01(a) provides that: “In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.”

From at least December 7 to December 11, Mr. Cruz represented clients involved in litigation before the United States Supreme Court. During that time, Mr. Cruz made statements endorsing the allegations contained in Texas’s filing before the United States Supreme Court.⁵⁶ He repeated on December 7, as well, the false claim that the lawsuit presented a “pure question of law” when, in truth, the defendant states disputed many of Texas’s and Mr. Trump’s allegations of material facts.⁵⁷

⁵¹ Motion for Leave to File Bill of Complaint and Motion for Preliminary Injunction, Temporary Restraining Order, or Stay.

⁵² Eric Litke, *Fact Check: Statistical Analysis Supporting Pro-Trump Supreme Court Case is ‘Ludicrous,’* USA Today (Dec. 10, 2020), <https://www.usatoday.com/story/news/factcheck/2020/12/10/fact-check-ludicrous-statistical-analysis-supporting-pro-trump-case/3877743001/>.

⁵³ *Id.*

⁵⁴ See Pennsylvania’s Opposition.

⁵⁵ See *id.*

⁵⁶ Jack Durschlag, *Cruz Tells ‘Hannity’ He’d Argue Pennsylvania Election Case Before Supreme Court*, Fox News (Dec. 8, 2020), <https://www.foxnews.com/us/cruz-tells-hannity-he-would-present-oral-arguments-before-supreme-court-on-pa-no-excuse-mail-in-balloting>.

⁵⁷ Jack Durschlag, *Cruz Tells ‘Hannity’ He’d Argue Pennsylvania Election Case Before Supreme Court*, Fox News (Dec. 8, 2020), <https://www.foxnews.com/us/cruz-tells-hannity-he-would-present-oral-arguments-before-supreme-court-on-pa-no-excuse-mail-in-balloting>; see also Pennsylvania’s Opposition pp. 3-5; Georgia’s Opposition, pp. 6-7; and Michigan Brief, pp. 5-7, 10-12.

Also during the course of his representation, on December 7, Mr. Cruz also falsely accused the Pennsylvania Supreme Court of being a “a partisan, Democratic court that has issued multiple decisions that were just on their face contrary to law.”⁵⁸ In addition to dishonoring the judicial system, Mr. Cruz’s comment was flatly wrong. Mr. Cruz was referring to the Pennsylvania Supreme Court’s unanimous decision to reject an effort by Representative Mike Kelly and others to prevent Pennsylvania from certifying the election results.⁵⁹

As the New York Appellate Court stated in suspending Mr. Giuliani’s law license:

False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of free society. When those false statements are made by an attorney, it also erodes the public’s confidence in the integrity of attorneys admitted to our bar and damages the profession’s role as a crucial source of reliable information.⁶⁰

Just as Mr. Giuliani has been disciplined for his conduct, so should Mr. Cruz.

3. Mr. Cruz Violated Rules 1.02 and 8.04 by Assisting Mr. Trump to Commit a Criminal or Fraudulent Act and by Assisting Mr. Eastman to Violate Rules of Professional Conduct

TDRPC 1.02(c) provides: “A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent.”

In many respects, the question of whether Mr. Cruz aided criminal or fraudulent efforts has already been answered affirmatively by a federal court.

The Select Committee to Investigate the January 6 Attack on the U.S. Capitol sought over 100 documents from Mr. Eastman that he refused to provide, asserting attorney-client privilege. In responding to Mr. Eastman’s claims of privilege, the Select Committee argued that the crime-fraud exception governed and that no privilege existed regarding any documents that were used to aid Mr. Trump’s efforts to prevent Congress from certifying Mr. Biden’s victory on January 6. The crime-fraud exception to the attorney-client privilege applies when a “client consults an

⁵⁸ Jack Durschlag, *Cruz Tells 'Hannity' He'd Argue Pennsylvania Election Case Before Supreme Court*, Fox News (Dec. 8, 2020), <https://www.foxnews.com/us/cruz-tells-hannity-he-would-present-oral-arguments-before-supreme-court-on-pa-no-excuse-mail-in-balloting>.

⁵⁹ *Kelly v. Pennsylvania*, No. 68 MAP 2020 (Nov. 28, 2020) Per Curiam Order, available at https://www.supremecourt.gov/DocketPDF/20/20A98/162573/20201203162757140_final%20appendix%20with%20TOC.pdf.

⁶⁰ *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf).

attorney for advice that will serve [them] in the commission of a fraud or crime” and the communications are “sufficiently related to” and were made “in furtherance of” the crime.”⁶¹

The federal court examining the matter determined that by a preponderance of evidence, the Select Committee demonstrated that Mr. Trump and Mr. Eastman violated 18 U.S.C. § 1512(c)(2) by obstructing or seeking to obstruct an official proceeding based on Mr. Eastman’s plans regarding the Electoral Count Act.⁶² Additionally, the court concluded that the evidence showed that Mr. Trump and Mr. Eastman “more likely than not” also violated 18 U.S.C. § 371 in conspiring to “defraud the United States by disrupting the electoral count.”⁶³

It is not necessary that Mr. Cruz himself engaged in criminal or fraudulent conduct to implicate Rule 1.02(c). Instead, the Rule requires only that Mr. Cruz have assisted his client with fraudulent or criminal conduct.

Further, although it may be that Mr. Cruz’s direct attorney-client relationship with Mr. Trump ended when the United States Supreme Court summarily rejected the *Texas v. Pennsylvania* litigation, that may not actually be the case. In fact, three facts create some uncertainty about the end date of Mr. Cruz’s work for Mr. Trump.

First, when the Select Committee questioned Mr. Eastman under oath about Mr. Cruz’s involvement in the efforts to overturn the 2020 election, Mr. Eastman refused to answer, instead invoking the right against self-incrimination:

23 Q Dr. Eastman, did you have any communications with Senator Ted Cruz
24 regarding efforts to change the outcome of the 2020 election?
25 A Fifth.

If Mr. Eastman believed that answering that question could subject him to criminal liability, it is at least a tacit acknowledgement of a potential conspiracy that violated 18 U.S.C. § 371.

Second, the Select Committee has subpoenaed documents from Mr. Eastman and specifically identified as a priority emails that contain “Cruz.”⁶⁴ Mr. Eastman has asserted attorney-client privilege over such documents⁶⁵ – a privilege that would not exist were Mr. Cruz not a member of Mr. Trump’s legal team.

⁶¹ *Eastman v. Thompson, et al.*, Case No. 8:22-cv-00099 (C.D. Cal.), Order Re Privilege of Documents Dated January 4-7, 2021, available at <https://storage.courtlistener.com/recap/gov.uscourts.cacd.841840/gov.uscourts.cacd.841840.260.0.pdf>.

⁶² *Id.* at 33, 36, 40.

⁶³ *Id.*

⁶⁴ *Eastman v. Thompson, et al.*, Case No. 8:22-cv-00099 (C.D. Cal.), Priority Search Terms, available at <https://storage.courtlistener.com/recap/gov.uscourts.cacd.841840/gov.uscourts.cacd.841840.132.4.pdf>.

⁶⁵ *Eastman v. Thompson, et al.*, Case No. 8:22-cv-00099 (C.D. Cal.), Complaint for Declaratory and Injunctive Relief, available at

Third, the substance of Mr. Trump's and Mr. Eastman's effort was to delay certification by Congress. In fact, even after Congress reconvened following the insurrection, Mr. Eastman emailed Mr. Pence's attorney and pleaded:

I implore you to consider *one more relatively minor* violation [of the Electoral Count Act] 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.⁶⁶

Similarly, even after he and his colleagues were forced to flee as insurrectionists stormed the Capitol, Mr. Cruz still sought a **10-day delay** in the certification. In other words, Mr. Cruz appears to have been operating in lockstep with Mr. Trump. And, importantly, Mr. Eastman acknowledged in the email that the effort involved violating the Electoral Count Act.

Thus, a strong basis exists to investigate whether Mr. Cruz violated Rule 1.02(c).

Rule 8.04(a)(1) provides: "A lawyer shall not violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, *whether or not the violation occurred in the course of a client-lawyer relationship*" (emphasis added).

Mr. Cruz assisted Mr. Eastman with violating his own state's rules of professional conduct. Specifically, Mr. Cruz aided Mr. Eastman in violating the following:

- California Rule of Professional Conduct 1.2.1, which prohibits an attorney from advising or assisting a client in engaging in conduct that is criminal, fraudulent, or a violation of any law, rule, or ruling of a tribunal;
- California Rule of Professional Conduct 3.1(a), which prohibits bringing, continuing, or defending an action without proper grounds;
- California Rule of Professional Conduct 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonest, fraud, deceit, or reckless or intentional misrepresentation.

Mr. Eastman is currently subject to an investigation by the State Bar of California's Chief Trial Counsel after receiving numerous complaints regarding Mr. Eastman's conduct to overturn the 2020 election. The California Rules that Mr. Eastman is being investigated for violating have nearly identical companions in the Texas Disciplinary Rules of Professional Conduct, both based on the American Bar Association's Model Rules. Therefore, as Mr. Cruz aided Mr. Eastman's efforts that violated rules of professional conduct, Mr. Cruz, too, violated Rule 8.04.

<https://www.cacd.uscourts.gov/sites/default/files/documents/Dkt%201%2C%20Eastman%20Complaint.pdf>

⁶⁶ Email from John Eastman to Gregory Jacob on Jan. 6, 2021, available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>.

4. Mr. Cruz Violated Rule 8.04(a)(3) by Engaging in Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation

As discussed above, Mr. Cruz regularly repeated dishonest and deceitful claims about the 2020 election. For example, he repeated untruthful claims that Republican observers were not permitted to watch the vote count in Pennsylvania, he alleged voter fraud and violations by elections officials, and he said the Pennsylvania Supreme Court was a disregarding the Constitution and the law.

As Comment 4 to TDRPC 8.04 underscores, “Lawyers holding public office assume legal responsibilities going beyond those of other citizens.”⁶⁷ Rule 8.04(a)(3) provides that it constitutes professional misconduct for a lawyer to “[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation.”⁶⁸

False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of free society. When those false statements are made by an attorney, it also erodes the public’s confidence in the integrity of attorneys admitted to our bar and damages the profession’s role as a crucial source of reliable information.⁶⁹

Mr. Cruz violated these standards as he aided his client, Mr. Trump, by communicating demonstrably false and misleading statements to the public in an effort to keep Mr. Trump in power.

The United States Supreme Court has long recognized in upholding disciplinary actions that “speech by an attorney is subject to greater regulation than speech by others.”⁷⁰ As officers of the court an attorney is “an intimate and trusted and essential part of the machinery of justice” and a “crucial source of information and opinion.”⁷¹ Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech. Indeed, disciplinary boards and courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

⁶⁷ Tex. Disciplinary Rules of Prof’l Conduct r. 8.04 cmt. 4.

⁶⁸ Tex. Disciplinary Rules of Prof’l Conduct r. 8.04(a)(3).

⁶⁹ *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf).

⁷⁰ *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

⁷¹ *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

Mr. Cruz chose to offer his professional license to Mr. Trump's arsenal during the latter's assault on our democracy. He cannot be shielded from the consequences of that decision simply because, unlike Mr. Trump's other attorneys, he happens to hold high public office.

For the reasons set forth above, we respectfully request that the Office of Chief Disciplinary Counsel investigate Mr. Cruz's conduct and impose appropriate discipline.

Sincerely,

/s/ John Delaney

Former Chairman, State Bar Grievance Committee 8A

Former Member, Texas Committee on Model Rules of Professional Responsibility

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Past President, State Bar of Texas

Past President, Texas Trial Lawyers Association

State Bar Number: 00000061

Organizational Signer:

/s/ Michael Teter

Managing Director



On behalf of The 65 Project

The organizations referenced for Texas Bar Member signers have not endorsed this Complaint. They are listed for purposes of signer identity only.