July 28, 2022

Clerk, Supreme Court of the United States
One First Street, NE
Washington, DC 20543

Dear Clerk:

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 attempts to subvert American democracy.

We write to request that the United States Supreme Court review the undisputed and publicly available accounts of actions taken by John C. Eastman, a member of the Supreme Court Bar, relating to a concerted effort to overturn the legitimate 2020 presidential election results. Although many attorneys participated in this scheme, Mr. Eastman largely orchestrated it, and a federal court has specifically identified him as having "more likely than not" acted as part of a criminal conspiracy.[1]

We also ask that Justice Thomas recuse himself from considering this matter.

We base these requests on the reasons described below.

MR. EASTMAN'S CONDUCT VIOLATES THE STANDARDS SET FORTH FOR CONTINUED MEMBERSHIP IN THE UNITED STATES SUPREME COURT BAR

To become a member of the United States Supreme Court Bar, a lawyer takes an oath to "conduct myself uprightly and according to the law" and "to support the Constitution of the United States."[2] Rule 8 of the Rules of the Supreme Court of the United States provides that:

> *Whenever* a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, *or has engaged in conduct unbecoming a member of the Bar of this Court*, the Court *will* enter an order suspending that member from practice before

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[1] *Eastman v. Thompson, et al.*, Case No. 8:22-cv-00099-DOC-DFM (C.D. Ca.), Order Re Privilege of Documents Dated January 4-7, 2021 at 40, available at https://s3.documentcloud.org/documents/21561085/eastman-ruling.pdf.
[2] Sup. Ct. R. 5.

> this Court and affording the member an opportunity to show cause, within 40 days, why a disbarment order should not be entered.[3]

Mr. Eastman violated his oath to conduct himself uprightly and engaged in conduct unbecoming a member of our nation's highest court. He bolstered and amplified "claims not backed by law" and "claims not backed by evidence (but instead, speculation, conjecture, and unwarranted suspicion)."[4] He actively participated in an effort to undermine our elections – a scheme that led to the gravest attack on American democracy since the Civil War.

This Court's rules require that "whenever" an admitted attorney engages in conduct unbecoming a member of the Bar, the Court "will" enter an order suspending that individual from practice before the Court. The nondiscretionary nature of Rule 8 commands that the Court take disciplinary action against Mr. Eastman for the reasons outlined below.

1. BACKGROUND

Donald Trump lost the 2020 presidential election.[5] Anticipating his loss, Mr. Trump and his allies began questioning the election's legitimacy months before even one voter had cast a ballot.[6] In fact, this fit a pattern of Mr. Trump declaring fraud or a rigged election any time he lost or anticipated a loss.

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.[7] Mr. Trump's head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, announced that the "November 3rd election was the most secure in American history.[8] . . . There is no evidence that any voting system deleted or lost votes or changed votes or was in any way compromised." Mr. Trump fired him[9]. William Barr, Mr. Trump's own Attorney General, declared that the Department of Justice has

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[3] Sup. Ct. R. 8 (emphasis added).
[4] *King v. Whitmer*, 556 F. Supp. 3d 680, 689 (E.D. Mich. 2021).
[5] *See* United States National Archives, Electoral College Results – 2020, available at https://www.archives.gov/electoral-college/2020.
[6] K. Liptak, *A List of the Times Trump Has Said He Won't Accept the Election Results or Leave Office if He Loses*, CNN (Sept. 24, 2020), https://www.cnn.com/2020/09/24/politics/trump-election-warnings-leaving-office/index.html.
[7] *See* Federal Election Commission, *Official 2020 Presidential General Election Results*, available at https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf.
[8] M. 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] A. Wise, *Trump Fires Election Security Director Who Corrected Voter Fraud Disinformation*, Nat. Public Radio (Nov. 17, 2020), https://www.npr.org/2020/11/17/936003057/cisa-director-chris-krebs-fired-after-trying-to-correct-voter-fraud-disinformation.

"not seen fraud on a scale that could have effected a different outcome in the election."[10] Attorney General Barr announced his resignation less than two weeks later, but not before again confirming that the 2020 elections had been free and fair.[11]

Many of Mr. Trump's own senior advisors agreed with Attorney General Barr and Mr. Krebs.[12] Indeed, Deputy (and later Acting) Attorney General Jeffrey Rosen and Associate (and later Acting) Deputy Attorney General Richard Donoghue regularly refuted the false information and allegations that Mr. Trump and his allies asserted about a fraudulent election.[13] Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, that he and others told Mr. Trump that the information he was receiving from his political allies was incorrect.[14] And Mr. Donoghue has testified to the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee) that on December 27, 2020, he told Mr. Trump "in very clear terms" that after "dozens of investigations, hundreds of interviews" looking at "Georgia, Pennsylvania, Michigan, and Nevada," the Department of Justice – Mr. Trump's own Department of Justice – had concluded that "the major allegations are not supported by the evidence developed."[15]

Despite clear proof that no fraud occurred, and that no one stole the election from him, Mr. Trump and his lawyers sought to overturn the legitimate results by filing 65 baseless lawsuits across the country.[16] None succeeded and, in fact, courts have imposed sanctions on the lawyers who participated in these suits and referred them for sanctions to their respective state bars.[17]

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[10] M. Zapotosky, D. Barrett, & J. Dawsey, *Barr says he hasn't seen fraud that could affect the election outcome*, Wash. Post (Dec. 1, 2020) https://www.washingtonpost.com/national-security/barr-no-evidence-election-fraud/2020/12/01/5f4dcaa8-340a-11eb-8d38-6aea1adb3839_story.html.

[11] M. Balsamo, *Disputing Trump, Barr Says No Widespread Election Fraud*, ABC News (Dec. 1, 2020) https://abcnews.go.com/Politics/wireStory/disputing-trump-barr-widespread-election-fraud-74497050.

[12] *Eastman v. Thompson, et al.*, Case No. 8:22-cv-00099-DOC-DFM (C.D. Ca.), Brief in Opposition to Plaintiff's Privilege Assertions (Brief in Opposition) pp 149 – 162, 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.

[13] *Id*. at 130 – 155.

[14] *Id.* at 6.

[15] *Id.* at 6 – 7.

[16] W. Cummings, J. Garrison & J. Sergent, *By the numbers: President Donald Trump's failed efforts to overturn the election,* USA Today (Jan. 6, 2021), https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/.

[17] *See, e.g.*, *King v. Whitmer*, 556 F. Supp. 3d 680.

2. MR. EASTMAN'S CONDUCT GIVING RISE TO REQUIRED DISCIPLINE

The effort to overturn the 2020 presidential election contained multiple spokes. One involved litigating the 65 bogus lawsuits. Another involved arranging a slate of false electors from seven states to submit certificates to Congress declaring themselves to be the duly appointed electors from their respective states. Yet a third spoke focused on pressuring Vice President Pence to rely on the false elector certificates to disregard the votes from those states and declare Mr. Trump the winner of the Electoral College. A fourth sought to convince state legislatures to overturn the will of the voters by holding special sessions to rescind the electoral votes as cast for Mr. Biden and instead award them to Mr. Trump. And, of course, a fifth spoke included summoning Mr. Trump's supporters to Washington, D.C. and, having spent months lying to them about fraud and a stolen election, sending them to the Capitol, agitated and armed, to stop the electoral vote count.

Mr. Eastman served as the hub of these efforts.

On the litigation front, Mr. Eastman participated in efforts to bypass the traditional appeals and bring Mr. Trump's bogus claims to this Court.

Mr. Trump's allies initiated that approach on December 7, 2020, by having Texas petition the Court for leave to file a Bill of Complaint against four other states: Pennsylvania, Georgia, Michigan, and Wisconsin.[18] Through its filing, Texas sought for the Court to enjoin the other defendant states from using the 2020 election results to appoint electors and to instead have the Court order that state legislatures choose electors or to have no electors at all.[19] 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.

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.[20] 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.[21] Republican Senator Ben Sasse called it a "PR

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[18] Bill of Compl., *Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020) (No. 220155).
[19] Mot. for Prelim. Inj. at 2, *Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020) (No. 220155).
[20] J. Rutenberg, J. Becker, E. Lipton, M. Haberman, J. Martin, M. Rosenberg & M. S. Schmidt, *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.
[21] *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.

stunt rather than a lawsuit."[22] Commentators and legal scholars from across the political spectrum lambasted the filing.[23]

Two days after Texas filed its motion, Mr. Eastman appeared as Mr. Trump's counsel of record in the matter. Mr. Eastman filed a Motion to Intervene and Bill of Complaint in Intervention.[24] The proposed Bill of Complaint in Intervention expressly adopted and joined in the Texas's Bill of Complaint, and similarly sought an injunction prohibiting the defendant states from using the 2020 election results to appoint electors and nullifying any prior appointment of electors by those states.[25]

On December 11, 2020, this Court denied Texas's motion, determining that Texas failed to demonstrate a judicially cognizable interest in the manner in which another state conducts its elections.[26]

Additionally, Mr. Eastman encouraged other members of Mr. Trump's legal team to pursue litigation in Wisconsin that sought to invalidate tens of thousands of votes from the two most Democratic counties – Dane and Milwaukee – in the state.

In that case, the Wisconsin Supreme Court denied Mr. Trump's effort to invalidate several categories of ballots it argued were unlawfully cast. Importantly, Mr. Trump did not identify any particular voter who was not entitled to vote, instead seeking to disenfranchise groups of voters because they *might* not have complied fully with Wisconsin's voting rules. For example, Mr. Trump asked the Wisconsin Supreme Court to invalidate all ballots cast by voters who claimed indefinitely confined status since March 25, 2020 – but only in the two most Democratic counties: Dane and Milwaukee.

The opinion, written by one of the four Republicans on the Wisconsin Supreme Court, rejected all of Mr. Trump's arguments. In fact, with regard to the "indefinitely confined status" category, the Court called Mr. Trump's effort "*meritless on its face*."[27] The Court explained:

> The Campaign does not challenge the ballots of individual voters. Rather, the Campaign argues that <u>all</u> voters claiming

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[22] M. McArdle, *Sasse Predicts Supreme Court Will Toss 'PR Stunt' Texas Election Lawsuit,* Nat. Rev. (Dec. 10, 2020), https://www.nationalreview.com/news/sasse-predicts-supreme-court-will-toss-pr-stunt-texas-election-lawsuit/.
[23] *See, e.g.*, E. Platoff, *U.S. Supreme Court Throws Out Texas Lawsuit Contesting 2020 Election Results in Four Battleground States*, Texas Trib. (Dec. 11, 2020), https://www.texastribune.org/2020/12/11/texas-lawsuit-supreme-court-election-results.
[24] Mot. of Donald J. Trump, President of the United States, to Intervene in His Personal Capacity as Candidate for Re-Election, Proposed Bill of Complaint in Intervention, and Br. in Support of Mot. to Intervene, *Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020) (No. 220155).
[25] *Id*. at 16 – 24.
[26] *Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020).
[27] *Trump v. Biden*, 2020 WI 91, ¶ 3, 394 Wis. 2d 629, 633, 951 N.W.2d 568, 570, *cert. denied*, 141 S. Ct. 1387, 209 L. Ed. 2d 128 (2021).

> indefinitely confined status since the date of the erroneous Facebook advice should have their votes invalidated, whether they are actually indefinitely confined or not. Although the number of individuals claiming indefinitely confined status has increased throughout the state, the Campaign asks us to apply this blanket invalidation of indefinitely confined voters only to ballots cast in Dane and Milwaukee Counties, a total exceeding 28,000 votes. The Campaign's request to strike indefinitely confined voters in Dane and Milwaukee Counties as a class without regard to whether any individual voter was in fact indefinitely confined has no basis in reason or law; it is wholly without merit.[28]

The Court further held that the laches doctrine barred the other three requests, which focused on policy decisions that had been announced and implemented as far as 2010.[29] The Court stated, "Voters reasonably conformed their conduct to the voting policies communicated by their election officials. Rather than raise its challenges in the weeks, months, or even years prior, the Campaign waited until after the votes were cast. Such delay in light of these specific challenges is unreasonable."[30]

In sum, the Court made clear:

> The claims here are not of improper electoral activity. Rather, they are technical issues that arise in the administration of every election. In each category of ballots challenged, voters followed every procedure and policy communicated to them, and election officials in Dane and Milwaukee Counties followed the advice of WEC where given. Striking these votes now—after the election, and in only two of Wisconsin's 72 counties when the disputed practices were followed by hundreds of thousands of absentee voters statewide—would be an extraordinary step for this court to take. We will not do so.[31]

Mr. Eastman then worked with Kenneth Chesebro, another of Mr. Trump's attorneys, to seek this Court's review through a petition for writ of certiorari.[32]

Recently disclosed email exchanges between Mr. Eastman and Mr. Chesebro reveal that the men viewed the petition they filed simply as a means to pressure Supreme Court justices. Mr.

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[28] *Id*. at ¶ 8.
[29] *Id*. at ¶ 10.
[30] *Id*. at ¶ 22.
[31] *Id*. at ¶ 31.
[32] *Eastman v. Thompson, et al.*, Case No. 8:22-cv-00099-DOC-DFM (C.D. Ca.), Ex. A, available at https://storage.courtlistener.com/recap/gov.uscourts.cacd.841840/gov.uscourts.cacd.841840.350.2.pdf.

Eastman wrote: "So the odds are not based on the legal merits but an assessment of the justices' spines, and I understand that there is a heated fight underway. For those willing to do their duty, we should help them by giving them a Wisconsin cert petition to add into the mix."[33]

Mr. Chesebro responded by saying, "[G]etting this on file gives more ammo to the justices fighting for the court to intervene…I think the odds of action before Jan. 6 will become more favorable if the justices start to fear that there will be 'wild' chaos on Jan. 6 unless they rule by then, either way."[34] Mr. Chesebro's reference to "wild" chaos was quoting from Mr. Trump's tweet several days earlier in which he summoned his supporters to Washington, D.C. for January 6, 2021, and stated "Be there, will be wild!"[35]

Mr. Trump filed a petition for writ of certiorari on December 29, 2020.[36] The Court rejected requests for expedited review[37] and ultimately denied the petition for writ of certiorari, with no justices dissenting from the order.[38]

Unable to achieve their desired ends through the courts or the state legislatures, Mr. Trump's legal team turned to pressuring Vice President Mike Pence to usurp Congress's power by throwing out the electoral votes of seven states that Joe Biden won and thereafter declaring Mr. Trump (and, incidentally, Mr. Pence) victorious.

The plan began with a memorandum from Mr. Chesebro, outlining a plan to create slates of false electors from several states, who would claim that they were the legitimate electors.[39]

Mr. Chesebro's memorandum appears to have made its way to Mr. Eastman. He then drafted two memoranda of his own, which have been shown to be grounded in neither law nor fact, and that recommended that Mr. Pence take "BOLD" action to secure Mr. Trump's victory.[40] Under Mr. Eastman's plan, Mr. Pence would preside over the January 6, 2021 Joint Session of Congress, during which the electoral votes cast and certified in each state on December 14, 2020 would be opened and confirmed. Established law and precedent limited Mr. Pence's role to opening the Certificates of Votes and announcing the results of each, as well as the outcome. Mr. Eastman sought to have Mr. Pence disregard the vice president's constitutional and statutory obligations,

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[33] M. Haberman & L. Broadwater, *Trump Lawyer Cited 'Heated Fight' Among Justices Over Election Suits*, N.Y. Times (June 15, 2022), https://www.nytimes.com/2022/06/15/us/trump-emails-eastman-chesebro-jan-6.html.

[34] *Id.*

[35] *Id.*

[36] Pet. for Writ of Cert., *Trump v. Biden*, (No. 20-882).

[37] *Trump v. Biden*, 141 S.Ct. 1045 (Mem).

[38] *Trump v. Biden*, 141 S.Ct. 1387 (Mem).

[39] K. Chesebro, *The Real Deadline for Settling a State's Electoral Votes* (Nov. 18, 2020) https://int.nyt.com/data/documenttools/trump-electors-memo-november/6dfa71755c7d0879/full.pdf

[40] *READ: Trump Lawyer's Full Memo on Plan for Pence to Overturn the Election*, CNN (Sept. 21, 2021), https://www.cnn.com/2021/09/21/politics/read-eastman-full-memo-pence-overturn-election/index.html.

and to instead claim unto himself the authority to invalidate seven states' electoral votes and unilaterally declare Mr. Trump the victor, without turning the matter over to Congress. The scheme required an existing controversy over which slate of electors should be viewed as valid from the seven states.[41] In other words, for Mr. Pence to throw out the electoral votes cast and certified by the seven states, there needed to be an alternative slate of electors who claimed to be the legitimate electors.

Importantly, Mr. Eastman admitted at the time that he was offering an interpretation of the Twelfth Amendment or the Electoral Count Act that not even one member of the Supreme Court would agree with.[42] In fact, in an email to Mr. Pence's lawyer, Mr. Eastman acknowledged he was proposing violating the Electoral Count Act – though he considered it only a "relatively minor violation."[43]

Many original Trump electors refused to participate in the scheme. For example, Lawrence Tabas – the Chairman of the Pennsylvania Republican Party and *an election lawyer who represented Mr. Trump in 2016* – rejected the effort and did not attend the gathering to select false electors.[44] Another originally slated elector, John Isakson, from Georgia later told the Washington Post: "It seemed like political gamesmanship, and that's not something I would have participated in. We have a process for certifying the election. We have a process for challenging the election. The challenges failed, *so I wouldn't have participated in something that was going against all of that*."[45]

Unfortunately, 84 individuals from seven states obliged and created false slates of electors. And thus, the scheme orchestrated, in part, by Mr. Eastman, became a conspiracy.

On December 14, 2020, the false electors met in Arizona, Georgia, Michigan, New Mexico, Nevada, Pennsylvania, and Wisconsin. In each of the states but New Mexico and Pennsylvania, the individuals declared themselves the "duly elected and qualified Electors for President and Vice President of the United States of America" and certified that their state cast its electoral votes for Mr. Trump.

They then transmitted these false documents, stating:

> "Pursuant to 3 U.S.C. § 11, enclosed please find duplicate originals of [State]'s electoral votes for President and Vice President, as follows: two (2) duplicate originals for the President of the Senate

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[41] *Id*.
[42] Brief in Opposition at 163 – 187.
[43] *Id*. at 220 – 222.
[44] B. Reinhard, A. Gardner, J. Dawsey, E. Brown & R. S. Helderman , *As Giuliani Coordinated Plan For Trump Electoral Votes In States Biden Won, Some Electors Balked,* Wash. Post (Jan. 20, 2022) https://www.washingtonpost.com/investigations/electors-giuliani-trump-electoral-college/2022/01/20/687e3698-7587-11ec-8b0a-bcfab800c430_story.html (emphasis added).
[45] *Id*.

> and the Archivist, and one (1) duplicate original for the Secretary of State and Chief Judge."[46]

These false electors acted without any legal authority or mandate. Indeed, their acts contradicted federal and state statutes, as well as federal and state court rulings. The individuals who signed these documents did so knowing that they were false at the time they signed and transmitted them, nor did they ever act to correct or retract the fraudulent papers. And they submitted to each state's chief United States District Court judge. Two of these false electors are attorneys, and the Georgia State Bar's Chief Disciplinary Counsel recently announced they are referring the matter for investigation by the State Disciplinary Board based on a complaint filed by The 65 Project.[47]

The effort to promote the false electors and pressure Mr. Pence continued all the way to January 6, 2021. For example, while addressing the January 6, 2021 rally, Rudy Giuliani, stated:

> [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.

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.[48]

And Mr. Trump declared:

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[46] *American Oversight Obtains Seven Phony Certificates of Pro-Trump Electors*, 3 (Mar. 2, 2021), https://www.americanoversight.org/american-oversight-obtains-seven-phony-certificates-of-pro-trump-electors.
[47] D. Wickert, *State Bar Investigates Two Georgia Trump Electors*, Atlanta J.-Const. (July 27, 2022), https://www.ajc.com/politics/state-bar-investigates-two-georgia-trump-electors/AXJD6EANGZEJ3BSZM7KKAWNWDI/.
[48] *Rudy Giuliani Speech Transcript At Trump's Washington, D.C. Rally: Wants 'Trial By Combat'*, Rev (Jan 6, 2021), https://www.rev.com/blog/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat.

> Despite that, despite that, we won Wisconsin. It's going to see. I mean, you'll see.
> …
>
> But the only way that can happen is if Mike Pence agrees to send it back. Mike Pence has to agree to send it back.
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> …
>
> And Mike Pence is going to have to come through for us, and if he doesn't, that will be a, a sad day for our country because you're sworn to uphold our Constitution.
>
> 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.*[49]

It is well-documented what happened next. Members of the crowd then marched to the Capitol, 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.[50] The insurrectionists injured over 138 police officers.[51] To date, 884 people have been charged in

[49]B. Naylor, *Read Trump's Jan. 6 Speech, A Key Part of Impeachment Trial*, NPR (Feb. 10, 2021), https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial.
[50] J. Wolfe, *Four Officers Who Responded to U.S. Capitol Attack Have Died by Suicide*, Reuters (Aug. 2, 2021), https://www.reuters.com/world/us/officer-who-responded-us-capitol-attack-is-third-die-by-suicide-2021-08-02/.
[51] L. Broadwater & M. Schmidt, *Officers' Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. Times (Feb. 11, 2021), https://www.nytimes.com/2021/02/11/us/politics/capitol-riot-police-officer-injuries.html.

connection with the January 6 insurrection, with 165 of those defendants pleading guilty, and courts have imposed sentences reaching over 60 months.[52]

3. MR. EASTMAN'S ACTIONS WARRANT IMMEDIATE SUSPENSION AND ULTIMATELY DISBARRMENT

Although this Court has not provided specific standards or guidance for disciplining members, no serious dispute can exist that Mr. Eastman's actions constitute conduct unbecoming a member of the United States Supreme Court Bar.

Under the American Bar Association's Model Rules of Professional Conduct, "a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority."[53]

Mr. Eastman's decision to spread false information regarding the 2020 election served the opposite purpose: he intentionally sought to undermine confidence in the justice system, our democracy, and the rule of law. He violated his obligation to conduct himself uprightly.

But in addition to these broad principles, Mr. Eastman violated well-established rules of professional conduct, as promulgated by the State Bar of California, where Mr. Eastman currently remains licensed.

Rule 3.1 provides, in part, as follows: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."[54]

Comment 2 states that: "The action is frivolous…if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law."[55]

Further, Rule 3.3(a) of California's Rules of Professional Conduct provides:

> A lawyer shall not knowingly: 1) make a false statement of material fact or law to a tribunal; 2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client; 3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the

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[52] M. Hall et. al., *At Least 884 People Have Been Charged in the Capitol Insurrection So Far. This Searchable Table Shows Them All*, Insider (July 25, 2022), https://www.insider.com/all-the-us-capitol-pro-trump-riot-arrests-charges-names-2021-1.
[53] ABA Model R. of Prof. Conduct Preamble.
[54] Cal. R. Prof. Conduct 3.1.
[55] Cal. R. Prof. Conduct 3.1 Comment 2.

> lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or 4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.[56]

And, under Rule 8.4, it constitutes professional misconduct for a lawyer to "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation."[57]

As the Wisconsin Supreme Court succinctly stated with regards to the litigation Mr. Eastman advanced, the underlying claim was "meritless on its face."[58] In other words, an attorney with decades of experience, who served as dean at an established law school, would also be able to tell the claim lacked merit. But, as Mr. Eastman's own words to Mr. Chesebro demonstrated, prevailing was not his purpose. It was to get the Supreme Court to succumb to the pressure and threat of a "wild time" on January 6 to take the matter up.

Thus, Mr. Eastman chose to advance a meritless claim for the purpose of burdening and harassing the United States Supreme Court.

That was not the first time, either. The *Texas v. Pennsylvania* matter before this Court also presented frivolous claims that served no legitimate purpose. Indeed, the Texas State Bar Commission on Lawyer Discipline is pressing forward with an action against Mr. Paxton for bringing that matter. The Commission's initial filing states:

> Respondent's pleadings requesting this extraordinary relief misrepresented to the United States Supreme Court that an "outcome-determinative" number of votes in each Defendant States supported Respondent's pleadings and injunction requests. Respondent made representations in his pleadings that: 1) an outcome determinative number of votes were tied to unregistered voters; 2) votes were switched by a glitch with Dominion voting machines; 3) state actors "unconstitutionally revised their state's election statutes;" and 4)"illegal votes" had been cast that affected the outcome of the election.
>
> Respondent's representations were dishonest. His allegations were not supported by any charge, indictment, judicial finding, and/or credible or admissible evidence, and failed to disclose to the Court that some of his representations and allegations had already been adjudicated and/or dismissed in a court of law.

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[56] Cal. R. Prof. Conduct 3.3(a).
[57] Cal. R. Prof. Conduct 8.4.
[58] *Trump v. Biden*, 2020 WI 91, ¶ 3.

> In addition, Respondent misrepresented that the State of Texas had "uncovered substantial evidence… that raises serious doubts as to the integrity of the election process in Defendant States," and had standing to bring these claims before the United States Supreme Court.[59]

No question exists about Mr. Eastman's role in these meritless actions. He abused this Court's position as the highest in the land to pursue baseless and discredited claims of fraud. His conduct was unbecoming a member of the Court.

Mr. Eastman's conduct went beyond abusing the court system. He orchestrated a scheme that ended with the most serious attack on our country's democratic institutions since the Civil War. He spearheaded the effort to pressure Mr. Pence into disregarding his constitutional and statutory obligations, to subvert the People's will, and to declare Mr. Trump reelected despite his losing handily losing both the popular and Electoral College vote. A direct line exists between Mr. Eastman's efforts and the January 6th insurrection. Indeed, a federal court in California has already found that Mr. Eastman "more likely than not" engaged in a criminal conspiracy[60] and during the final days of the Trump Administration, Mr. Eastman indicated he thought he should seek a pardon from Mr. Trump for his post-election efforts.[61]

This Court has recognized in upholding disciplinary actions, that "speech by an attorney is subject to greater regulation than speech by others."[62] As officers of the court – and especially as members of the United States Supreme Court Bar – an attorney is "an intimate and trusted and essential part of the machinery of justice" and a "crucial source of information and opinion."[63] This Court has revoked the membership of many attorneys whose conduct has fallen short of the standard required.

Membership in the United States Supreme Court Bar represents a privilege, not a right, and should be afforded only to those whose professional conduct demonstrates respect for the rule of law. That a member of this nation's highest court would engage in the destructive and dangerous conduct described above should cause considerable distress within the entire legal profession.

[59] *Comm'n for Lawyer Discipline v. Paxton,* Cause No. 471-02574-2022 (Dist. Ct. Collin Cty., Tex.) Original Disciplinary Pet. at 4.
[60] *Eastman v. Thompson, et al.*, Case No. 8:22-cv-00099-DOC-DFM (C.D. Ca.), Order Re Privilege of Documents Dated January 4-7, 2021 at 40.
[61] A. Blake, *What John Eastman And 'The Pardon List' Means*, Wash. Post (June 17, 2022), https://www.washingtonpost.com/politics/2022/06/17/john-eastman-pardon-list/.
[62] *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).
[63] *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

JUSTICE THOMAS SHOULD RECUSE HIMSELF FROM CONSIDERING THE 65 PROJECT'S REQUEST TO DISCIPLINE MR. EASTMAN

From our nation's founding, Congress has sought to ensure the federal judiciary's integrity by imposing expectations regarding judges recusing themselves when conflicts arise.[64] While earlier statutes left the question of disqualification to the judge's subjective opinion, Congress enacted an extensive revision to the requirements that commands, in part:

> (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questions.
> (b) He shall also disqualify himself in the following circumstances:
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
> …
> (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
> …
> (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding…[65]

This Court has held that no scienter requirement exists within the statute, and that, instead, the question is whether the public might reasonably believe the justice knew of the facts creating the appearance of impropriety.[66]

To be clear, the statute's definition of "proceeding" does not include disciplinary matters,[67] and The 65 Project does not contend that Justice Thomas is obligated under 28 U.S.C. § 455 to recuse himself in considering Mr. Eastman's continued membership in the Supreme Court Bar. Nevertheless, the underlying congressional intent of the recusal statute rests on promoting public confidence in the judicial system's integrity,[68] and that purpose carries forward to the issue of Mr. Eastman's discipline.

Justice Thomas's involvement in deciding Mr. Eastman's membership status raises two significant conflicts.

First, Mr. Eastman clerked for Justice Thomas during the October 1996 term.[69] The justice-clerk relationship is unique and personal. Justice Thomas is well-known to develop strong connections

[64] Act of May 8, 1792, ch. 36 § 11, 1 Stat. 278.
[65] 28 U.S.C. § 455.
[66] *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 859-60 (1987).
[67] 28 U.S.C. § 455(d)(1).
[68] *Liljeberg*, 486 U.S. at 859-60.
[69] John C. Eastman, Claremont Institute (as visited July 27, 2022), https://www.claremont.org/scholar-bio/john-c-eastman/

with his clerks, including Mr. Eastman, who remains good friends with the justice. Indeed, Justice Thomas's spouse, Virginia Thomas, has spoken of her efforts to build among Justice Thomas's clerks, a "connective tissue across the years,"[70] which included gathering with former clerks at a summer retreat in Utah.[71] The former clerks maintain a group listserv, in which Ms. Thomas regularly participates and refers to the group as a "family."[72]

Unlike a case in which a former clerk represents a client, a disciplinary matter involves the former clerk as an individual, not as an attorney on behalf of others. It assesses the former clerk's own conduct, not the merits of legal arguments put forward by the former clerk. Just as any other judge could not preside over a criminal matter involving a former mentee and lifelong friend, neither should Justice Thomas participate in deciding whether Mr. Eastman should remain a member of the Supreme Court Bar.

Further, Ms. Thomas herself played a significant role in pursuing many of the same post-election strategies as Mr. Eastman.[73] The Select Committee has obtained post-election emails between Ms. Thomas and Mr. Eastman[74] – a fact that alone provides sufficient basis for Justice Thomas to recuse himself.

But that fact hardly stands alone. Beginning no later than November 5, 2020, Ms. Thomas began pressuring Mr. Trump's chief of staff, Mr. Meadows, to intensify efforts to overturn the election.[75] She texted Mr. Meadows at least twenty-nine times,[76] imploring him to keep up the

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[70] J. Kruzel, *Ginni Thomas's Close Ties With Husband's Law Clerks Highlighted in New Book*, The Hill (June 6, 2022), https://thehill.com/regulation/3530380-ginni-thomass-close-ties-with-husbands-law-clerks-highlighted-in-new-book/.

[71] *Id*.

[72] R. Barnes, *Ginni Thomas Apologizes to Husband's Supreme Court Clerks After Capitol Riot Fallout*, Wash. Post (Feb. 2, 2021), https://www.washingtonpost.com/politics/courts_law/ginni-thomas-apology-clarence-thomas-clerks-trump-rally/2021/02/02/a9818cce-6496-11eb-8c64-9595888caa15_story.html.

[73] Although Ms. Thomas appears to have passed the Nebraska bar in 1984 (under her maiden name, Virginia Lamp), The 65 Project has not identified any state bar to which Ms. Thomas is an admitted member in good standing. She therefore does not have any current disciplinary matters pending against her for her role in the post-election effort to subvert democracy. Were she to be a licensed attorney, she would unquestionably facing a misconduct investigation by the state bar where she were admitted to practice.

[74] R. Nobles, Z. Cohen, A. Grayer, K. Polantz & C. Duster , *January 6 Committee Has Emails Between Ginni Thomas and John Eastman,* CNN (June 16, 2022), https://www.cnn.com/2022/06/15/politics/ginni-thomas-john-eastman-emails-january-6-committee/index.html.

[75] D. Hakim, J. Becker, & A. Feuer, *Texts Show Ginni Thomas's Embrace of Conspiracy Theories*, N.Y. Times (Mar. 26, 2022), https://www.nytimes.com/2022/03/26/us/politics/ginni-thomas-donald-trump.html.

[76] B. Woodward & R. Costa, *Virginia Thomas Urged White House Chief to Pursue Unrelenting Efforts to Overturn the 2020 Election, texts show*, Wash. Post. (Mar. 24, 2022), https://www.washingtonpost.com/politics/2022/03/24/virginia-thomas-mark-meadows-texts/.

fight, stating in one of them, “It takes time for the army who is gathering for his back.”[77] Her texts also included entreaties to make Sidney Powell the head of Mr. Trump’s legal team.[78] Coincidentally, on November 19, 2020, both Ms. Thomas and Ms. Powell referred to releasing “the Kraken” to – as Ms. Thomas put it – “save us from the left taking America down.”[79] Of note, Ms. Powell also now faces disciplinary action by the Texas State Bar for her post-election conduct.[80]

Ms. Thomas also targeted state legislators, including one of Justice Thomas’s former clerks, in an effort to convince them to overturn the People’s will and to instead choose their state’s electors.[81] For example, on November 9, 2020, she wrote to Arizona Representative Shawnna Bolick that it was Rep. Bolick’s “awesome responsibility: to choose our state’s electors,” that this responsibility is hers and hers alone, and that she must fulfill her duty “and then please take action to ensure a clean slate of electors is chosen for our state.”[82] On December 13, Ms. Thomas joined the pressure campaign directed at Arizona Representative Rusty Bowers, reiterating the claim that legislators choose electors, that the election had been marred by fraud and unconstitutional procedures, and that “that’s why the nation’s eyes are now on you.”[83] Mr. Bowers recently offered powerful testimony to the Select Committee about these efforts, his belief of the proposals’ lawlessness, and the effect the pressure had on him and his family.[84]

Ms. Thomas also attended the January 6, 2021 rally in Washington, D.C., at which Mr. Eastman spoke, as discussed above. Ms. Thomas posted on Facebook that day, “LOVE MAGA people. GOD BLESS EACH OF YOU STSANDING UP OR PRAYING.”[85] Although Ms. Thomas wrote this message before rally attendees violently stormed the Capitol, four days later she wrote that, “Most of us are disgusted with the VP and are in listening mode to see where to fight with our teams.”[86]

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[77] D. Hakim, *Texts Show Ginni Thomas’s Embrace of Conspiracy Theories.*
[78] *Id.*
[79] *Id.*
[80] D. Lee, *Texas Judge Refuses to Dismiss Disciplinary Case Against Former Trump Attorney Sidney Powell*, Courthouse News (June 22, 2022), https://www.courthousenews.com/texas-judge-refuses-to-dismiss-disciplinary-case-against-former-trump-attorney/.
[81] J. Kruzel, *Ginni Thomas’s Close Ties With Husband’s Law Clerks Highlighted in New Book.*
[82] E. Brown, *Ginni Thomas, Wife of Supreme Court Justice, Pressed Ariz. Lawmakers to Help Reverse Trump’s Loss, Emails Show*, Wash. Post (May 20, 2022), https://www.washingtonpost.com/investigations/2022/05/20/ginni-thomas-arizona-election-email.
[83] *Id.*
[84] *Here's Every Word From the Fourth Jan. 6 Committee Hearing on its Investigation*, NPR (June 21, 2022), https://www.npr.org/2022/06/21/1105848096/jan-6-committee-hearing-transcript.
[85] R. Barnes, *Ginni Thomas Apologizes to Husband’s Supreme Court Clerks After Capitol Riot Fallout.*
[86] D. Hakim, *Texts Show Ginni Thomas’s Embrace of Conspiracy Theories*.

Finally, Ms. Thomas fought against Congress creating the Select Committee and signed a letter on December 15, 2021 to House Minority Leader Kevin McCarthy that called the investigation into the attack on the Capitol "merely" an effort "to exploit for the sake of political harassment and demagoguery."[87]

In short, Ms. Thomas participated in the concerted effort to overturn the 2020 presidential election. She supported Mr. Eastman's efforts and conferred with him as Mr. Eastman engaged in a scheme described by a federal court as a likely criminal conspiracy. She used her relationships with several other of Justice Thomas's former clerks to further push the effort to subvert American democracy.

Because of his close, personal connections to Mr. Eastman and because of Ms. Thomas's conduct discussed above, Justice Thomas should recuse himself from considering Mr. Eastman's standing with the Supreme Court Bar.

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For the reasons set forth above, we respectfully request that the Court issue an order suspending Mr. Eastman from practice before the Court and move forward with disbarment. We further request that Justice Thomas play no role in considering this matter.

Sincerely,

Michael Teter
Managing Director, The 65 Project

[87] M. Kranish, *Critics Say Ginni Thomas's Activism is a Supreme Court Conflict. Under Court Rules, Only Her Husband Can Decide if That's True*, Wash. Post (Jan. 31, 2022), https://www.washingtonpost.com/politics/2022/01/31/ginni-thomas-clarence-thomas-conflict-jan6-committee/.