



July 20, 2022

Attorney Grievance Committee
Supreme Court of the State of New York
Appellate Division
180 Maiden Lane
New York, NY 10038

VIA ELECTRONIC MAIL: [REDACTED]

Dear Attorney Grievance Committee Members:

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, unethical conduct seeking to overturn legitimate election results.

We request that the Attorney Grievance Committee investigate the actions taken by Kenneth Chesebro (Registration No. 4497913) as a lawyer and advisor to Donald Trump and his presidential campaign, working alongside John Eastman and Rudy Giuliani in an effort to overturn the 2020 presidential election.

A full investigation by the Grievance Committee will demonstrate the egregious nature of Mr. Chesebro's actions, especially when considered in light of his intent, the direct and possible consequences of his behavior, and the serious risk that Mr. Chesebro will repeat such conduct unless the Supreme Court of the State of New York acts on this matter.

BACKGROUND

Donald Trump lost the 2020 presidential election.¹ Anticipating his loss, Mr. Trump and his allies began questioning the election's legitimacy months before even one voter had cast a ballot.² In fact, this fit a pattern of Mr. Trump declaring fraud or a rigged election any time he lost or anticipated a loss.

¹ See United States National Archives, Electoral College Results – 2020, available at <https://www.archives.gov/electoral-college/2020>.

² Kevin 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>.

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.³ 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. . . . 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. William Barr, Mr. Trump’s own Attorney General, declared that the Department of Justice has “not seen fraud on a scale that could have effected a different outcome in the election.” 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.⁴

Many of Mr. Trump’s own senior advisors agreed with Attorney General Barr and Mr. Krebs.⁵ 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.⁶ Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, he and others told Mr. Trump that the information he was receiving from his political allies was not correct.⁷ 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.”⁸

And White House Counsel Pat Cipollone also recently testified that no evidence existed regarding election fraud sufficient to change the results in any state and that Mr. Trump should have conceded on December 14, 2020, when states certified their electoral votes.

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

³ See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

⁴ M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://perma.cc/4U8N-SMB5>.

⁵ See Deposition of Jason Miller (Feb. 3, 2022), 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>; Interview of Jeffrey Rosen (Aug. 7, 2021), United States Senate Committee on the Judiciary, 117th Cong. 30, available at <https://www.judiciary.senate.gov/rosen-transcript-final>.

⁶ See Interview of Jeffrey Rosen *see also* Interview of Richard Donoghue (Oct. 1, 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>

⁷ Interview of Jeffrey Rosen.

⁸ Interview with Richard Donoghue.

across the country.⁹ 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.¹⁰

FACTS GIVING RISE TO COMPLAINT

Failing to achieve their desired ends through the courts or the state legislatures, Mr. Trump's legal team turned to concocting various schemes to ensure that Mr. Trump remained in power despite Mr. Biden's victory.

The primary effort focused on 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 basis for this strategy originated with a November 18, 2020 memorandum written by Mr. Chesebro. In the memorandum, Mr. Chesebro acknowledged being on a conference call with Mr. Trump's legal team in Wisconsin and suggested creating slates of false electors from several states, who would claim that they were the legitimate electors.

As Mr. Chesebro participated in meetings with lawyers within the Trump Campaign and the White House Counsel's office, he heard repeatedly that the false elector effort lacked any legal or factual basis, especially as Mr. Trump continued to lose lawsuit after lawsuit. Matthew Morgan, the campaign's general counsel, testified under oath that he sought to remove himself and others within the campaign from the false elector scheme: "I had Josh Finley email Mr. Chesebro politely to say this is your task. You are responsible for the Electoral College issues moving forward. And this was my way of taking that responsibility to zero."

Justin Clark, another campaign attorney, testified that:

I just remember I either replied or called somebody saying, unless we have litigation pending this, like, in these states, like, I don't think this is appropriate or, you know, this isn't the right thing to do. I don't remember how I phrased it, but I got into a little bit of a back and forth and I think it was with Ken Chesebro, where I said, Alright, you know, you just get after it, like, I'm out.

Mr. Chesebro then began further collaborating with Mr. Giuliani and Mr. Eastman on this plan. In early December 2020, Mr. Eastman drafted a short, two-page memorandum building from Mr. Chesebro's idea that false electors convene in seven states to designate themselves the duly appointed electors from their respective states.

On December 13, 2020, Mr. Chesebro followed up Mr. Eastman's memorandum with a five-page, single-spaced email to Mr. Giuliani proposing a strategy to move forward with the false

⁹ W. Cummings, J. Garrison & J. Sergeant, *By the numbers: President Donald Trump's failed efforts to overturn the election*, USA Today (Jan. 6, 2021), available at <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

¹⁰ See, e.g., *King v. Whitmer*, No. 20-13134 (U.S. Dist. Ct. E. Dist. Mich. Aug. 25, 2021), available at https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf.

elector scheme and pressuring Mr. Pence or whoever acted as the Senate's presiding officer on January 6, 2021, to act unilaterally to effectuate the plan to overturn the 2020 presidential election.

Mr. Chesebro wrote, in part:

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 -- represents the best way to ensure:

(1) that the mass media and social media platforms, 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.

...

In the absence of the Vice President, the president pro tempore acts as the President of the Senate, and thus is the one with the sole power and responsibility to play that role in the joint session. So regardless of whether it is Chuck Grassley or another senior Republican who agrees to take on the role of defending the constitutional prerogatives of the President of the Senate, whoever it is then proceeds to open and count first Alabama, and then Alaska, at which point Trump and Pence are leading 12-0.

He then opens the two envelopes from Arizona, and announces that he cannot and will not, at least as of that date, count any electoral 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.

...

What the Supreme Court would do is anyone's guess, but I would not bet on a majority of the Court siding with the President of the Senate, even though a majority might well agree with that the Constitution is correctly construed, from an originalist perspective, in exactly that manner. More likely, to bring an end to a huge political crisis, the Court would find some way to rule in Biden's

favor or, at minimum, find the controversy nonjusticiable (as with the Texas case) on some basis, such as the "political question" doctrine, thus insulating its legitimacy from partisan conflict.

If Biden were to win in the Court, much will still have been accomplished, in riveting public attention on election abuses, and building momentum to prevent similar abuses in the future.

If the Court were to dodge, then we would have a situation similar to 1877, in which the parties would realize that if they remained at loggerheads, with the President of the Senate perhaps refusing to open the votes of the contested states as long as his authority to count the votes was being challenged, and Pelosi refusing to hold an election for president in the House, and with January 20 looming, political leaders would face a choice. Either Pelosi would become acting president on January 20 (after resigning as Speaker) or the Senate would reelect Pence as Vice President, who would then become acting president on Jan. 20.

In this situation, which would seem messy and unpalatable to many, with renewed attention on the election abuses, and with several states controlled by Republican legislators faced with perhaps not being counted in the Electoral College, it doesn't seem fanciful to think that Trump and Pence would end up winning the vote after some legislatures appoint electors, or else that there might be a negotiated solution in which the Senate elects Pence Vice President, and Trump agrees to drop his bid to be elected in the House, so that Biden and Harris are defeated, even though Trump isn't reelected.

Any of the outcomes sketched above seems preferable to allowing the Electoral Count Act to operate by its terms, with Vice President Pence being forced to preside over a charade in which Biden and Harris are declared the winner of an election in which none of the serious abuses that occurred were ever examined with due deliberation.

...

I hope this very rough, incomplete sketch is of some use. Thank you for seeking my further input on this possible strategy. **It's an honor and privilege to be involved with you in this fight!**¹¹

¹¹ Available at <https://storage.courtlistener.com/recap/gov.uscourts.cacd.841840/gov.uscourts.cacd.841840.350.2.pdf> . (emphasis added).

As Boris Epshteyn, another attorney for Mr. Trump, stated:

This was in total congruence with the overall effort to send it back to the states. With the rampant fraud across the country, the interplay of the 12th Amendment and the Electoral Count Act made it important to have alternate slates of electors be available when a challenge to states' slate of electors would be successful.¹²

Led by Mr. Giuliani, Mr. Trump's legal team called potential false electors in the critical states and sought to persuade them to participate in the scheme. Many refused. 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.¹³ 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.*”¹⁴

Unfortunately, 84 individuals from seven states obliged and created false slates of electors. And thus, the scheme, orchestrated, in part, by Mr. Chesebro, 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 and the Archivist, and one (1) duplicate original for the Secretary of State and Chief Judge.”¹⁵

¹² B. Reinhard, et al., *As Giuliani Coordinated Plan for Trump Electoral Votes in States Biden Won, Some Elections Balked*, Washington Post (Jan. 20, 2022), available at https://www.washingtonpost.com/investigations/electors-giuliani-trump-electoral-college/2022/01/20/687e3698-7587-11ec-8b0a-bcfab800c430_story.html.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ American Oversight obtained the false elector certificates. They are available at <https://www.americanoversight.org/american-oversight-obtains-seven-phony-certificates-of-pro-trump-electors>.

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.

To help create the scenario that Mr. Chesebro proposed in his two memoranda, he also worked on 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.”¹⁶ The Court explained:

The Campaign does not challenge the ballots of individual voters. Rather, the Campaign argues that all voters claiming 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.¹⁷

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 2010.¹⁸ The Court held, “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

¹⁶ [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 \(2021\).](#)

¹⁷ *Id.* at ¶ 8.

¹⁸ *Id.* at ¶ 10.

Campaign waited until after the votes were cast. Such delay in light of these specific challenges is unreasonable.”¹⁹

In sum, the Court stated:

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.²⁰

Mr. Chesebro then pursued United States Supreme Court review. He filed a petition for writ of certiorari on December 30, 2020. The Supreme Court rejected requests for expedited review and ultimately denied the petition for writ of certiorari, with no justices dissenting from the order.

Recently disclosed email exchanges between Mr. Chesebro and Mr. Eastman reveal that Mr. Chesebro viewed the petition he filed simply as a means to pressure Supreme Court justices. Mr. 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.”²¹

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.” 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!”

In early January, Mr. Eastman requested that Mr. Chesebro provide him with the December email that Mr. Chesebro sent to Mr. Giuliani, and Mr. Chesebro forwarded it to Mr. Eastman on January 4, 2021. Mr. Eastman prepared his own extensive memorandum pushing Mr. Chesebro’s plan forward. Although Mr. Eastman did not date this second memorandum, it refers to the Wisconsin-based petition for certiorari having been filed, which means Mr. Eastman wrote his memorandum after that date. It was also during this time that Mr. Eastman was regularly meeting with Mr. Trump, Mr. Pence, and Mr. Pence’s staff, trying to pressure Mr. Pence to overturn the election on January 6.

¹⁹ *Id.* at ¶ 22.

²⁰ *Id.* at ¶ 31.

²¹ <https://www.nytimes.com/2022/06/15/us/trump-emails-eastman-chesebro-jan-6.html>

Mr. Eastman’s memorandum proposed that Mr. Pence take “BOLD” action to secure Mr. Trump’s victory.²² 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, 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.²³ In other words, for Mr. Pence to throw out the electoral votes cast and certified by the seven states, Mr. Chesebro’s original plan to create slates of false electors needed to be completed.

Importantly, Mr. Eastman admitted at the time that he and Mr. Chesebro were offering an interpretation of the Twelfth Amendment and the Electoral Count Act that not even one member of the Supreme Court would agree with.²⁴ 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.”²⁵

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

²² Available at <https://www.cnn.com/2021/09/21/politics/read-eastman-full-memo-pence-overturn-election/index.html>.

²³ *Id.*

²⁴ Deposition of Gregory Jacob (Feb 1, 2022), 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>.

²⁵ 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>.

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.

And Mr. Trump declared:

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.

...

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.

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.²⁶ The insurrectionists injured over 138 police officers.²⁷ To date, 769 people have been charged in

²⁶ Wolfe, Jan, *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/>.

²⁷ Schmidt, Michael S.; Broadwater, Luke, *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>.

connection with the January 6 insurrection, with 165 of those defendants pleading guilty, and courts have imposed sentences reaching over 60 months.²⁸

Thus, Mr. Chesebro participated in a concerted effort to overturn the legitimate 2020 elections so that Mr. Trump could remain in power. A federal judge in California has stated that Mr. Trump's and Mr. Eastman's actions more likely than not constituted criminal conspiracy. Mr. Chesebro was an active and eager participant in the conspiracy.

A SUBSTANTIAL BASIS EXISTS FOR THE ATTORNEY GRIEVANCE COMMITTEE TO INVESTIGATE MR. CHESEBRO'S CONDUCT AND TO IMPOSE APPROPRIATE DISCIPLINE

The Supreme Court of the State of New York, Appellate Division, suspended Mr. Giuliani's license for his post-election conduct, including the statements he made at press conferences and in media appearances. As the Court stated:

[T]here is uncontroverted evidence that [Mr. Giuliani] communicated demonstrably false and misleading statements to courts, lawmakers and the public at large in his capacity as lawyer for former President Donald J. Trump and the Trump campaign in connection with Trump's failed effort at reelection in 2020. These statements were made to improperly bolster [Mr. Giuliani's] narrative that due to widespread voter fraud, victory in the 2020 United States presidential election was stolen from his client. We conclude that [Mr. Giuliani's] conduct immediately threatens the public interest and warrants interim suspension from the practice of law, pending further proceedings before the Attorney Grievance Committee.²⁹

Mr. Chesebro knowingly and purposely worked alongside Mr. Giuliani in his effort to discredit the U.S. election system and overturn the fair and legitimate results. He should be held similarly accountable.

The Attorney Grievance Committee should investigate on the following bases:

1. Mr. Chesebro violated Rule 3.1 by pursuing a claim that lacked any basis in law and fact.

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

²⁸ See <https://www.insider.com/all-the-us-capitol-pro-trump-riot-arrests-charges-names-2021-1>.

²⁹ *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).

frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”

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.”

As the Wisconsin Supreme Court succinctly stated, the underlying claim that Mr. Chesebro advanced was “meritless on its face.” In other words, an attorney with decades of experience, who is licensed in at least seven states, would also be able to tell the claim lacked merit. But, as Mr. Chesebro’s own words to Mr. Eastman demonstrated, prevailing was not his purpose. It was to get the Supreme Court to succumb to the pressure and threat of a “wild” chaos on January 6 to take the matter up.

Thus, Mr. Chesebro chose to advance a meritless claim for the purpose of burdening and harassing the United States Supreme Court. His actions warrant discipline.

2. Mr. Chesebro violated Rule 1.2 by assisting Mr. Trump to engage in illegal and/or fraudulent behavior.

Rule 1.2(d) commands that a lawyer not “assist a client [] in conduct that the lawyer knows is illegal or fraudulent.”

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

The Select Committee 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 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.”³⁰

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.³¹ 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.”³²

³⁰ *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>.

³¹ *Id.* at 33, 36, 40.

³² *Id.*

It is not necessary that Mr. Chesebro himself engaged in criminal or fraudulent conduct to implicate Rule 1.6(d). Instead, the Rule requires only that Mr. Chesebro have assisted his client with fraudulent or criminal conduct. And Mr. Chesebro did just that – originating and then bolstering the plan to create a false state of electors and using that effort to then pressure Mr. Pence to ignore his constitutional and statutory obligations so that Mr. Trump would remain in power, despite having lost the 2020 presidential election.

3. Mr. Chesebro violated multiple aspects of Rule 8.4.

Rule 8.4 provides that it constitutes professional misconduct to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- ... or ...
- (h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

a. Mr. Chesebro persuaded others to engage in illegal conduct, which itself constitutes illegal behavior and reflects adversely on his honesty and trustworthiness.

Mr. Chesebro was an original architect of the false elector plan. He wrote the first memorandum on the topic and pushed the idea forward.

New York's criminal conspiracy statute provides:

A person is guilty of conspiracy in the first degree when, with intent that conduct constituting a class A felony be performed, he, being over eighteen years of age, agrees with one or more persons over sixteen years of age to engage in or cause the performance of such conduct.³³

Additionally, New York's statute specifies that:

An agreement made within this state to engage in or cause the performance of conduct in another jurisdiction is punishable herein

³³ See N.Y. Penal Law § 105.17.

as a conspiracy only when such conduct would constitute a crime both under the laws of this state if performed herein and under the laws of the other jurisdiction if performed therein.³⁴

New York has forgery laws very similar in nature and scope to those outlined below.³⁵ These statutes all relate to conduct that, if engaged in, negatively reflects on someone's honesty and trustworthiness.

The false electors who followed Mr. Chesebro's plan broke their states' respective laws regarding forgery and holding oneself out as a state official. As just two examples, in Georgia, the false electors violated the following statutes:

- O.C.G.A. § 16-10-20.1, which prohibits filing, entering, or recording any document in a public record knowing that such document is false or contains a materially false, fictitious, or fraudulent statement or representation;
- O.C.G.A. § 16-10-20, which prohibits making a false, fictitious, or fraudulent statement or representation or using any false writing or document that contains a false, fictitious, or fraudulent statement;
- O.C.G.A. § 16-10-23, which prohibits holding oneself out as a public officer with intent to mislead; and
- O.C.G.A. § 16-10-71, which prohibits making a false statement in a way that purports to be made under lawful oath or affirmation.

In Wisconsin, the false electors broke the following statutes:

- Wis. Stat. § 943.38(1), which prohibits forgery;
- Wis. Stat. § 946.69(2), which prohibits falsely assuming to act as a public officer; and
- Wis. Stat. § 939.31, which prohibits conspiracy to commit criminal acts.

The U.S. Department of Justice is investigating to determine which federal statutes the false electors violated.

b. Mr. Chesebro engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

The entire enterprise that Mr. Chesebro participated in involved dishonesty, fraud, deceit, and misrepresentation. Further, this ethical standard applies to conduct that occurs outside of a tribunal. Just as the Appellate Division found that Mr. Giuliani's conduct violated Rule 8.4, so, too, do Mr. Chesebro's similar acts and statements.

³⁴ See N.Y. Penal Law § 105.25

³⁵ See N.Y. Penal Law § 170.05.

c. Mr. Chesebro assisted others to engage in conduct that violated the Rules of Professional Conduct.

Mr. Chesebro worked closely with, and assisted, Mr. Giuliani and Mr. Eastman as they carried out their efforts to undermine the 2020 presidential election results and overturn the will of over 81 million voters. Because Mr. Chesebro's work alongside Mr. Giuliani and Mr. Eastman is uncontroverted – indeed, Mr. Chesebro told Mr. Giuliani that, “It's an honor and privilege to be involved with you in this fight!” – and because the Appellate Division has already found that Mr. Giuliani violated numerous Rules of Professional Conduct, Mr. Chesebro violated Rule 8.4(a).

Further, Mr. Chesebro participated in a concerted effort to pressure Mr. Pence to disregard his constitutional and statutory duties so that Mr. Trump could unlawfully reclaim the presidency. That assisted Mr. Eastman and the acting head of the Department of Justice's Civil Division at the time, Jeffrey Clark – both of whom are under close scrutiny by their respective bars for violating the rules of professional conduct.

In addition, several of the false electors were attorneys and when those electors submitted their certificates claiming to be the duly appointed electors from their states, they sent those to the U.S. District Court, as well. Those attorneys, therefore, violated Rule 3.3's duty of candor to tribunals.

In short, Mr. Chesebro knowingly and purposely assisted and encouraged other lawyers and others working in concert with lawyers to violate the Rules of Professional Conduct as part of that effort. The Rules establish that aiding other lawyers and others working with lawyers to violate such standards constitutes its own misconduct.

That members of our esteemed profession would engage in such actions – conduct that contributed to substantial harm to American democracy – should cause considerable distress within the entire legal community.

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.

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.”³⁶ As officers of the court an attorney is “an intimate and trusted and essential part of the machinery of justice” and a

³⁶ *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

“crucial source of information and opinion.”³⁷ 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.³⁸

Mr. Chesebro abused his place of trust and played a significant role in fomenting discord, violence, and death, all through spreading lies and misinformation.

For the reasons set forth above, The 65 Project respectfully requests that the Attorney Grievance Committee investigate Mr. Chesebro’s conduct and impose appropriate discipline. And because of the serious risk that Mr. Chesebro will continue to engage in such behaviors, we request that you act on this matter with urgency.

Sincerely,



Michael Teter
Managing Director, The 65 Project

████████████████████

³⁷ *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

³⁸ See *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).