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**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of:

JOHN CHARLES EASTMAN,

State Bar No. 193726,

An Attorney of the State Bar.

CASE NO.: SBC-23-O-30029

**RESPONDENT, DR. JOHN EASTMAN’S
RESPONSE TO STATE BAR’S NOTICE OF
ERRATA**

**TO THE COURT, THE OFFICE OF CHIEF TRIAL COUNSEL OF THE STATE BAR OF
CALIFORNIA (“OCTC”) AND TO ITS DEPUTY TRIAL COUNSEL OF RECORD:**

Respondent JOHN CHARLES EASTMAN (“Dr. Eastman”) submits this response to the
State Bar’s December 26, 2023 Notice of Errata.

While Dr. Eastman agrees the State Bar’s Closing Argument Brief (“Brief”), filed on
December 1, 2023, erroneously claimed the “D.C. Circuit” “had just rejected the argument that the
ECA is unconstitutional in the *Wisconsin Voters Alliance* case,” identifying the wrong court is not
the only error in the Bar’s representation of the *Wisconsin Voters Alliance* ruling. Neither the “D.C.
Circuit” nor the United States District Court *rejected* the argument the Electoral Count Act is
unconstitutional. The issue the Court addressed was whether state legislatures were alone
authorized under the Constitution to certify the election of presidential electors and could not
delegate that authority to other state officials; it held that they were not. *Wisconsin Voters All. v.*
Pence, 514 F. Supp. 3d 117, 119, (D.D.C. 2021)

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CLERK’S OFFICE
LOS ANGELES

1 Skirting citation of the actual opinion, the State Bar cited a memo by Greg Jacob, former
2 Vice President Pence’s General Counsel, which mischaracterized the holding of the case. Here is
3 what Jacob wrote in his memo to the Vice President, and what the State Bar cited to this Court:
4 “And in Wisconsin Voters Alliance the court held that ‘[p]laintiffs’ theory that [the Electoral Count
5 Act is] unconstitutional and that the Court should instead require state legislatures themselves to
6 certify every Presidential election lies somewhere between a willful misreading of the Constitution
7 and fantasy.” Ex. 71 at 3 (citing Op. 6); *see also* Brief at 47, citing Ex. 71 at 1-3. After citing five
8 state laws delegating the certification task to state executive officials (and **not** the ECA or any other
9 federal statute), the Court actually wrote: “Plaintiffs’ theory that all of *these laws* are
10 unconstitutional and that the Court should instead require state legislatures themselves to certify
11 every Presidential election lies somewhere between a willful misreading of the Constitution and
12 fantasy.” *Wisconsin Voters All. v. Pence, supra.*, 514 F. Supp. 3d at 121 (emphasis added).

13 The opinion does not address the constitutionality of the Electoral Count Act; it does not
14 even mention it. But lest there be any doubt, here is the full passage from the D.C. District Court:

15 Even if the Court had subject-matter and personal jurisdiction, it still could not rule
16 in Plaintiffs’ favor because their central contention is flat-out wrong. “Plaintiffs
17 claim that Article II of the U.S. Constitution provides a voter a constitutional right
18 to the voter’s Presidential vote being certified as part of the state legislature’s post-
19 election certification of Presidential electors. Absence [sic] such certification, the
20 Presidential electors’ votes from that state cannot be counted by the federal
21 Defendants toward the election of President and Vice President.” Compl., ¶ 32
22 (emphasis added); *see also* PI Mem. at 1. More specifically, “Plaintiffs [sic]
23 constitutional claims in this lawsuit are principally based on one sentence in Article
24 II of the U.S. Constitution.” Compl., ¶ 54; *see also* PI Mem. at 1. That sentence
25 states in relevant part that the President “shall hold his Office during the Term of
26 four Years, and ... be elected[] as follows: [¶] Each State shall appoint, in such
27 Manner as the Legislature thereof may direct, a Number of Electors” U.S.
28 Const., art. II, § 1.

Plaintiffs somehow interpret this straightforward passage to mean that state
legislatures alone must certify Presidential votes and Presidential electors after each
election, and that Governors or other entities have no constitutionally permitted
role. *See* Compl., ¶ 55. As a result, state statutes that delegate the certification to
the Secretary of State or the Governor or anyone else are invalid. *Id.*, ¶ 58. That,
however, is not at all what Article II says. The above-quoted language makes
manifest that a state appoints electors in “such Manner as the Legislature thereof
may direct.” So if the legislature directs that the Governor, Secretary of State, or

1 other executive-branch entity shall make the certification, that is entirely
2 constitutional. This is precisely what has happened: in each of the five states, the
3 legislature has passed a statute directing how votes are to be certified and electors
4 selected. See Ariz. Rev. Stat. Ann. § 16-212(B); Ga. Code Ann. § 21-2-499(b);
5 Mich. Comp. Laws Ann. § 168.46; Wis. Stat. Ann. § 7.70(5)(b); 25 Pa. Stat. § 3166.

6 ... Plaintiffs’ theory that all of these laws are unconstitutional and that the Court
7 should instead require state legislatures themselves to certify every Presidential
8 election lies somewhere between a willful misreading of the Constitution and
9 fantasy.

10 *Wisconsin Voters All. v. Pence*, 514 F. Supp. 3d at 120–21.

11 Jacob’s substitution of “Electoral Count Act” for “these [state] laws” is inaccurate, and given
12 the centrality of the constitutionality of the Electoral Count Act to the State Bar’s charges against
13 Dr. Eastman, the State Bar’s reliance on that erroneous memo for its claim that the court “had just
14 rejected the argument that the ECA is unconstitutional,” rather than the opinion itself, is improper
15 and misleading.

16 The State Bar made other mistakes in its Brief which it has not sought to correct in its Notice
17 of Errata. At page 57, for example, the State Bar claimed that Dr. Eastman knew his statements
18 about the illegality of the Democracy in the Park ballot harvesting scheme were false because “this
19 claim had already been rejected by the Wisconsin Supreme Court on December 14, which
20 concluded, in relevant part, ‘[s]triking these ballots would disenfranchise voters who did nothing
21 wrong when they dropped off their ballots where their local election officials told them they
22 could.’” Brief at 57. But the “Wisconsin Supreme Court” did not reject the claim that the ballot
23 harvesting scheme was illegal; it denied relief on laches grounds. *Trump v. Biden*, 2020 WI 91, ¶
24 10, 394 Wis. 2d 629, 636, 951 N.W.2d 568, 572; Ex. 291 at p. 6 ¶ 10. Only the separate concurrence
25 by Justice Hagedorn, joined only by one other member of the seven-member Court, contended that
26 the scheme was legal. Ex. 291 at p. 21 ¶ 36; pp. 30 ¶ 53 to 32 ¶ 57; p. 33 ¶ 30. The full Court
27 subsequently held that drop boxes (and therefore, necessarily, the “human drop boxes” of the
28 Democracy in the Park scheme) “are unauthorized by law.” *Teigen v. Wisconsin Elections Comm’n*,
2022 WI 64, ¶ 54, 403 Wis. 2d 607, 646, 976 N.W.2d 519, 539, *reconsideration denied*, 2022 WI
104, ¶ 54, 997 N.W.2d 401.

1 Dr. Eastman respectfully requests that the Court carefully consider the serious errors made
2 by the State Bar in reaching its decision in this proceeding.

3
4 Dated: December 28, 2023

MILLER LAW ASSOCIATES, APC

5
6 By: 

Randall A. Miller, Esq.

Zachary Mayer, Esq.

Jeanette Chu, Esq.

Attorneys for **Respondent JOHN C. EASTMAN**

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is MILLER LAW ASSOCIATES, APC, 411 South Hewitt Street, Los Angeles, CA 90013. On December 28, 2023, I e-served the document(s) described as **DR. EASTMAN'S RESPONSE TO STATE BAR'S NOTICE OF ERRATA** on the interested parties by serving them in the manner and/or manners listed below:

Sr. Trial Counsels:
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- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☒ by causing such document to be transmitted by electronic mail to the office of the addressees as set forth below on this date.
- ☐ by causing such document(s) to be sent overnight via Federal Express; I enclosed such document(s) in an envelope/package provided by Federal Express addressed to the person(s) at the address (es) set forth below and I placed the envelope/package for collection at a drop box provided by Federal Express.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 28, 2023, at Los Angeles, California.


JEANETTE CHU