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STATE BAR COURT

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 **STATE BAR'S CLOSING BRIEF**

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I. INTRODUCTION

The evidence presented over 35 days of trial, including testimony from 23 witnesses and more than 400 exhibits, clearly and convincingly establishes that John Eastman ("respondent") is culpable of all charges and that his highly aggravated and serious misconduct requires his disbarment. Specifically, the evidence shows that respondent conspired with then President Donald Trump to develop and implement a strategy to obstruct the counting of electoral votes on January 6, 2021, and to illegally disrupt the peaceful transfer of power to President-elect Joseph Biden, knowing that there was no plausible evidence, and no good faith theory or argument, to lawfully undo or delay the January 6 electoral count.

By mid-December, courts in the seven key states had uniformly rejected the legal assertions and ersatz expert testimony about outcome-determinative fraud and illegality in the election offered by those who sought to further Trump's unsupported claims that the election was invalid, the Justice and Homeland Security Departments had publicly rebutted Trump's claims, and the seven key states (which included states with Republican Governors and legislative majorities) had certified Biden's victory, thus ensuring that those states' legal and accurate Biden slates would be counted on January 6.

By the time respondent wrote his December 23 and January 3 memoranda, therefore, he knew that there could be no true dispute about who had won the election. Nonetheless, he proposed in those memos and in his January 4-6 communications with Trump, former Vice President Michael Pence, and Pence's counsel Greg Jacob, that Pence should unilaterally refuse to count or delay counting seven properly certified slates of electoral votes for Biden. Such an unprecedented exercise of unilateral authority would violate the federal Electoral Count Act ("ECA"), which has governed electoral counts for more than a century. It would also cast aside the actions of every state official who certified slates of electors pursuant to state law; the uniform decisions of state and federal courts in the key states *not* to overturn those certifications; and the uniform decisions by state legislatures *not* to challenge the slates of electors or request a delay. And it would effectively make Pence the sole and

final super-judge of the lawfulness of state elections – and, indeed, *of his own election* – contrary to the Framers' intent, established principles of federalism and separation of powers, and any notion of checks and balances.

Respondent knew that this strategy had no support in law or historical precedent, even as he claimed just the opposite in his memos. Fortunately, Pence knew it too. Even after it became clear that Pence would not join him, however, respondent persisted in his efforts to implement this unlawful strategy—first, by making false and misleading remarks about election fraud to the crowd at the "Stop the Steal" rally at the Ellipse, and then in his communications with Jacob, persisting in his unsupported claim that Pence had authority to stop the count even as the violent attack on the U.S. Capitol was unfolding. Respondent knew, as he surveyed the "Stop the Steal" crowd and the national television cameras, that his unlawful strategy risked leading to predictable and destructive chaos.

Respondent has defended his conduct as a good faith search for truth and as a fight to defend democracy. But the evidence, including his often not-credible trial testimony, shows that he held—and still holds—truth and democracy in contempt, deliberately disregarding facts that demonstrate the validity of Biden's victory to further a false narrative that would ignore the Constitution, disenfranchise millions of voters, and undermine a democratic election for President of the United States in favor of his allegiance to Trump. Starting in December 2020, he repeatedly falsely claimed that "outright" and "rampant fraud [and] lawlessness" had "demonstrably occurred" and affected the election outcome. Respondent had no evidence of any such material fraud or effect. Instead, he purposely parroted the misguided opinions and narratives of demonstrably unqualified, unvetted, and unreliable "experts," as cross examination of several of his witnesses confirmed. Meanwhile, he consciously avoided due diligence review and vetting with qualified experts, who would have told him the obvious flaws in their analyses, as did Professor Justin Grimmer at trial.

The record also refutes any possible claim that respondent was simply performing his duties as a counselor or that a finding of culpability would chill creative advocacy at the

cutting edge of the law. Although the issues were vitally critical, and though respondent had access to the full resources of the Trump campaign, the evidence shows that he did not perform (or insist on the performance) of timely research, did not record the limited and engineered research he did, and avoided both consultation with other experts (including his friend and testifying expert John Yoo, whose admission that it was clear that Biden had "won the election fair and square" (Yoo XVIII-115:2) helped gut respondent's defense) and any honest engagement with the obvious factual and legal objections to his scheme. Respondent's tactics and admissions confirm that he understood that his role was not to provide good faith advocacy, but to fabricate an illusion of legality to an illegal effort to delay the formal recognition of Trump's obvious defeat by any means possible. His conduct and speech in furtherance of such an illegal effort is not protected in any way by the First Amendment.

Respondent's conduct harmed and continues to harm the nation. Using his reputation as an expert constitutional attorney, he made repeated false statements that he successfully intended to subvert and cause distrust of the 2020 presidential election and of local election officials; his tactics predictably contributed to officials receiving threats of harm. He demonstrably contributed to the gravest threat to our democracy in modern history—the violent attack on the Capitol on January 6, 2021. Respondent's repeated unlawful conduct, the harm it caused, and its predictable continued injury to our democracy require his disbarment.

II. RESPONDENT CONSPIRED WITH DONALD TRUMP AND OTHERS TO OBSTRUCT THE JANUARY 6, 2021, JOINT SESSION OF CONGRESS

Count One – Failing to uphold the laws of the United States (6068(a))

As respondent's own expert Professor John Yoo testified, President Biden "won the election fair and square." (Yoo XVIII-115:2.) The Certificates of Ascertainment in Arizona, Georgia, Michigan, New Mexico, Nevada, Pennsylvania, and Wisconsin ("the 7 States")—the key states in former President Trump's and respondent's January 6 strategy—uniformly confirmed the election of the Biden presidential electors. (Exs. 10-17.) Multiple pre-January 6 audits and recounts, including full hand recounts in Antrim County, Michigan, and

Georgia, and recounts in Arizona's and Wisconsin's most populous counties—focal points for Trump's and respondent's conspiracy theories—further confirmed the results. (Ex. 76 (AZ); Exs. 88-89, 92-93 (GA); Exs. 109-110 (MI); Exs. 137, 148, 291 at 5 (WI).)

Multiple state election officials who testified in this proceeding explained in detail the extensive pre-election, Election Day, and post-election measures taken to ensure the safety and integrity of the election, in the midst of a once-in-a-lifetime, global pandemic. (*See e.g.*, Richer, III-28:20-29:22, 30:12-32:25, 49:4-51:17; Marks III 109:4-110:14, 113:2-22; Dul VIII 7:16-18:24, 55:14-55:24; Brater VI-141:10-144:9, 145:15-151:19, 158:25-162:12; and Wlaschin IV 97:3-100:4, 107:18-108:20, 145:7-146:20.) And Trump-appointed federal officials confirmed the election was the most secure in American history and that its outcome had not been affected by fraud. (Exs. 186, 201.) Respondent knew Biden won the presidential election.[1] Nevertheless, as set forth below, he used his status as a lawyer and a constitutional scholar to provide cover for a strategy to obstruct and undermine the count of electoral votes of certain states, which strategy he knew (or did not care) was contradicted by the facts and the law. (*See infra* at § II.C.1-4.)

As shown by the chronology below, in early December, the strategy involved asking state legislatures and courts to decertify the election using false and misleading claims that the election's outcome had been altered by fraud and illegal conduct by election officials. (*See infra* at § II.C.2-3.) But, by mid-December, after the Supreme Court shut down efforts to decertify the election in Georgia, Michigan, Pennsylvania, and Wisconsin, after the Electoral College voted on December 14, and after Republican leadership in the Senate had confirmed Biden's win, eliminating any chance that Congress would overturn the election, the strategy grew even more lawless, culminating in a proposal to Vice President Pence, as President of the Senate, to override the ECA and the contrary determinations of state executives, state and federal courts,

[1] *See* Answer to NDC at 16:12-13, 18:9-11, 19-20, 33:23-24 (admitting that as of Dec. 23, the Biden electors in the 7 States had received more votes, had been certified by the respective Governors of these states, that no other state authority had certified the Trump electors, that 3 U.S.C. § 15 gives dispositive weight to electors certified by a state's Governor, and that Biden had been declared winner of the 2020 election.).

federal executive agencies, and both Houses of Congress by unilaterally rejecting the Biden electoral slates from the 7 States, or delaying their count at the January 6 Joint Session of Congress, in effect setting Pence up as the unreviewable "ultimate arbiter" of the question whether he and Trump had won the election. (*See infra* at § II.C.)

This strategy – the legal framework for which Pence's counsel described as "essentially entirely made up" (Ex. 68.) – was wholly unsupported by the facts and at odds with existing legal and historical precedent, and respondent knew it. (*See infra* at § II.C.1-4.) According to Yoo, Pence was "on unassailable grounds" when he rejected the plan, which it was "obvious" lacked merit. (Yoo XVIII 59:5-9.) Nevertheless, throughout this proceeding and in the face of clear and convincing evidence of his misconduct, respondent has sought to pervert and sidestep the evidence of his dishonesty and remains grossly indifferent to the harm caused by his actions.

A. Respondent's Testimony to the Georgia Senate Judiciary Subcommittee

On December 3, 2020, respondent testified before the Georgia Senate Judiciary Subcommittee, where he urged them to decertify the electors certified by Governor Kemp and instead to certify a Trump slate, prior to December 14. (Ex. 26 [transcript]; Ex. 1178 [written testimony]; Resp. II 16:20-17:7.) Although respondent was testifying in furtherance of his representation of Trump, he did not disclose that fact, introducing himself only as a constitutional scholar. (Ex. 2 ¶ 30; Ex. 26 at 1; Resp. I 132:12-133:8, 135:18-136:1, 138:1-3.)

In his testimony, respondent urged the Georgia Senate to disregard the popular vote and pick its own slate of electors. (Ex. 26 at 1-2.) As grounds for this breathtaking request, he claimed the election had been tainted by "rampant evidence of fraud" and illegal conduct by Georgia election officials. (Ex. 26 at 8.) In his written testimony,[2] he claimed Georgia election officials allowed: (1) "as many as 2,500 convicted and still-incarcerated felons to register to vote and cast votes in the election, which were then illegally counted;" (2) "*more than* 66,000 underage individuals to cast ballots, which were then counted;" (3) "*at least* 2,423 individuals to

[2] At trial, respondent claimed he "submitted a slightly corrected version of the testimony," and he could not recall whether his Ex. 1178 was the corrected version. (*See* Resp. II-16:13-24.) Respondent never sought to add or substitute any other version of his written testimony.

vote who were not listed in the State's records as having been registered to vote;" (4) "*more than* 1,000 voters who had registered at a post office box to cast ballots and have those ballots counted;" and (5) "*more than* 10,000 such deceased individuals votes to be counted." (Ex. 1178 at 5-6 (emphasis added).) In his oral testimony, he proclaimed the existence of "rampant fraud" and again claimed that "up to approximately 66,000 underaged individuals" were illegally allowed to register to vote and 2,500 felons were illegally allowed to vote. (Ex. 26 at 3, 8.)

Respondent knew or was willfully blind to the fact that these allegations were false and misleading. The figures respondent cited were from an affidavit respondent received just before he testified – the affidavit of Bryan Geels – which was appended to the Trump campaign's filing the next day in *Trump v. Raffensperger*. (Resp. I 87:1-11, 90:14-23; Ex. 1048.) As of December 3, 2020, the day respondent testified in Georgia, respondent had never met with or spoken to Geels, a CPA whose affidavit reflected no expertise in statistics, election administration, or political science (Resp. I 88:19-24; Ex. 1048 at 549-550.) and which disclosed the potential for false positives due to data limitations, a fact of which respondent acknowledges he was aware at the time. (Ex. 1048 at 556 ¶ 28 [death matches], at 556 ¶ 29 [inmate matches]; Resp. I 104:10-20.)[3] Nonetheless, respondent concluded the affidavit "looked credible," despite not showing it to anyone with relevant expertise or taking any meaningful steps to assess its reliability. (Resp. I 88:19-22, 90:20-91:2, 99:20-101:6.)[4]

At trial, the State Bar presented respondent with the Georgia Secretary of State's official responses to these numbers, namely: that **four** voters (all of whom turned 18 prior to the November 3 election) requested a ballot prior to turning 18, *not* "up to approximately 66,000" or "more than 66,000," as respondent claimed in his oral and written testimony, respectively;[5] that

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[3] *See* Grimmer V 183:1-187:5; VI 21:24-32:7, 112:5-113:10, 115:8-116:12; XXXII 84:1-88:15 (describing flaws in Geels' methodology).

[4] In a January 7 filing, Geels adjusted the 66,000 number down to 2,047. Neither Geels nor the plaintiffs disclosed the adjustment. (Resp. I 87:5-12; 91:12-23; Ex. 1049 at 6, 37, 54).

[5] Respondent's 66,000 figure was incorporated into Sen. Ligon's Dec. 17, 2020 Report, which stated that "the votes of approximately 66,000 underage individuals…were unlawfully counted." Ex. 1050 at 10. Respondent has continued to rely on the Ligon Report as a basis for his claims, including in his written answers to the State Bar's investigation and NDC. *See* Answer to NDC at fn. 1, 10:11-14, 18:16-20, 20:10, 56:19-23; Ex. 6 at 74.

two potentially deceased individuals voted, *not* "more than 10,000" as respondent claimed in his written testimony; that **zero** individuals voted who were not listed in the State's records as having been registered to vote, *not* "at least 2,423" as respondent claimed in his written testimony; that up to 74 potential felons voted, *not* "2,500" or "as many as 2,500" as respondent claimed in his oral and written testimony, respectively; and that many of the addresses alleged to be PO boxes were just apartments. (Ex. 94 at 9; Ex. 99 at 5-6.)[6]

When confronted with the state's responses and Geels' subsequently adjusted numbers (*see* n. 4, *supra*), respondent defended his statements, contending they were all prefaced by caveats like "up to" and "as many as" "that I think make them all true." (Resp. XXXI 73:23-25; I-87:1-12,106:22-107:3.)[7] These contentions are patently false – multiple statements were, in fact, prefaced by "more than" or "at least" – and exemplify respondent's dishonesty.[8]

B. Respondent's Intervention in *Texas v. Pennsylvania*
Count Two – Misleading a Court (6068(d))

On December 7, 2020, the State of Texas filed a Motion for Leave to File a Bill of Complaint in the United States Supreme Court seeking a declaration that the presidential elections in Pennsylvania, Georgia, Michigan, and Wisconsin violated the federal Constitution and an injunction to prevent their electoral votes being counted. (Ex. 260 at 46-47.) Respondent was involved in drafting the motion. (Resp. I 112:22-23; Resp. IV 33:13-22; Resp. XXXI 44:19-25; Ex. 381 at 1 [privilege log].)

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[6] *See also* Resp. I 92:19-96:1, 99:3-15, 104-107; & Jacob II 15:12-19:16.
[7] *See* Ex. 401; Grimmer XXXII 83:21-87:6 (explaining how the "up to" caveat is misleading, because zero is equally plausible).
[8] Another example of respondent's conscious disregard of the evidence is his repeated reliance on the affidavit of Jesse Morgan, who claimed he trucked in ballots from New York, as the basis for his contention that fraud affected the election outcome in Pennsylvania. (Ex. 363.) At trial, respondent repeatedly claimed that Morgan stated in his affidavit that he transported approximately 200,000 ballots (Resp. XXXI 93:19-95:1.) But Morgan did not say that. He stated that he "suck[ed] at" estimating numbers, and therefore could not say if he transported 250 or 7,500 ballots. (Ex. 363 at 13.)

On December 9, 2020, respondent filed a Motion to Intervene and Bill of Complaint in Intervention on Trump's behalf. (Ex. 262.) The Bill of Complaint in Intervention "adopt[ed] by reference and join[ed] in" Texas's Bill of Complaint, thereby incorporating multiple allegations respondent knew or consciously avoided knowing were false, including: (1) the "probability of former Vice President Biden winning the popular vote in the four Defendant States…given President Trump's early lead in those States as of 3 a.m. on November 4, 2020, is less than one in a quadrillion, or 1 in 1,000,000,000,000,000," or "less than one in a quadrillion to the fourth power" giving rise to "substantial reason to doubt the voting results in the Defendant States;" (2) election officials in Philadelphia and Allegheny Counties illegally adopted differential standards designed to advantage Biden; (3) the Pennsylvania Department of State violated a Supreme Court Order regarding the segregation of mail-in ballots received after Election Day by changing guidance issued by the Secretary of the Commonwealth "before the ink was dry on the Court's 4-4 decision;" (4) 58,221 mail-in ballots in Pennsylvania were returned on or before they were even mailed to voters, thus implying some kind of fraud occurred; (5) the Georgia Secretary of State's changes to the signature verification process resulted in a lower rejection rate for mail-in ballots; and (6) there was "rampant lawlessness arising out of Defendant States' unconstitutional acts," affecting an outcome determinative number of votes. (Ex. 262 at 16 ¶ 8; Ex. 260 ¶¶ 7, 8, 10, 12, 52, 57, 75, 76; Resp. I 176:20-22; Resp. IV 36:10-15, 37:5-17.)

These allegations were false, and respondent failed to do anything to evaluate the evidence on which they purported to be based. With respect to the statistical allegation regarding the odds of Biden winning, respondent admitted it was inconsistent with the declaration of Charles Cicchetti upon which it purported to be based, but that he had not had time to look at it carefully, stating "I don't think I had the opportunity to kind of do a deep dive on whether it was a completely accurate summarization of the Cicchetti declaration or not" and that it had "appear[ed] reliable" to him. (Resp. IV 38:9-22, 39:17-40:14, 44:5.) Had he carefully read the declaration or asked an expert to do so, which he did not, this misrepresentation would have been

obvious. (Resp. IV 48:11-19; Grimmer V 175:15-18.)[9] Indeed, as Professor Grimmer (who was called by the State Bar and testified at trial as an expert) explained, the probabilities that Cicchetti calculated were based on "ridiculous" assumptions. (Grimmer V 169:18-172:8 [assumption that Biden would receive same number of votes in 2020 that Clinton received in 2016] and Exhibit 174, p. 2-3. See also Grimmer V 176:10-177:16 [assumption that Biden's share from early-arriving absentee ballots would be equal to share from late-arriving ballots failed to account for well-known phenomenon called "blue shift"].)[10] When confronted with his misrepresentations about the probabilities of Biden having won the election, respondent was dismissive, claiming it was only a "preliminary part of the introduction of the brief, not the meat of the allegations of the brief" and therefore, in his view, it was not "material to the substance of the brief" and not "high on the priority [list]." (Resp. IV 47:15-22, 50:9-17, 51:19-52:2.) Such claims further demonstrate respondent's disregard for the truth, or for any facts that would undermine the position he continues, without basis, to advocate.

When asked for support for the allegation that certain Pennylvania counties adopted illegal standards designed to advantage Biden, respondent could not indentify reliable evidence to support this claim. After initially deflecting – "Well, again, this was Texas' brief, not mine" – respondent cited two bases from which he claimed he could make "a good inference…that there was an intent to benefit the Democrat side of the ticket." (Resp. I 177:13-179:2.) First, he claimed that Secretary Boockvar's September 2020 guidance concerning the procedure that county boards were to follow upon receipt of an absentee or mail-in ballot violated the state

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[9] Cicchetti himself criticized the Bill of Complaint for misrepresenting his conclusions, confirming the declaration did "not support what [Texas AG] Paxton claimed," was used "without his knowledge…or input" and, further, that he found no evidence of fraud in the analysis he performed or reviewed." (Ex. 1181 at 2, n.7.)

[10] Respondent was well-aware of the blue shift phenomenon before the election. *See* Resp. XXX 172:11-14 ("the idea that Democrats were focusing more on absentee ballots rather than in-person ballots was…fairly common currency among the people commenting about the election, both before and after."); Resp. XXX 169:1-170:12 (discussing Ex. 295 at 1 (Claremont Institute's 79 Day Report) (stating "***THE WINNER WILL NOT BE KNOWN ON ELECTION NIGHT DUE TO MILLIONS OF UNCOUNTED MAIL-IN BALLOTS IN 5 BATTLEGROUND STATES.*** THE POST-ELECTION PERIOD WILL LIKELY SEE A TRUMP LEAD STEADILY ERODED BY MAIL-IN BALLOT COUNTING[.]")(Emphases in original.))

election code. (Resp. I 177:15-25; Answer to NDC at 11:8; Ex. 6 at 14-16.)[11] But, as respondent knew at the time of his December 9 filing, the Pennsylvania Supreme Court had already concluded on October 16, 2020 that the guidance accurately summarized the law. (Ex. 233 at 2 (Oct. 16 Order); Resp. IX 140:4-7.)[12] Neither respondent's filing nor the Texas Bill of Complaint disclosed the Pennsylvania Supreme Court's earlier ruling. (Ex. 260 at 21-22 ¶¶ 43-46.)

Second, he referred to allegations in the Bill of Complaint claiming that Philadelphia and Allegheny counties adopted standards favoring Biden. (Ex. 260 at 16-17 ¶¶ 52-54; Resp. I 177:13-180:6.) Here, again, although the Texas Bill of Complaint references a November 18 Trump campaign lawsuit against Secretary Boockvar claiming those standards violated Pennsylvania law, it omits any mention of the November 21 and November 27 district court and Third Circuit decisions dismissing the action and denying the campaign's motion for an injunction pending appeal. (Ex. 222 [Nov. 21, 2020 Order]; Ex. 223 [Nov. 27 Order].)[13]

With respect to the allegation that Pennsylvania violated a Supreme Court Order concerning segregation of certain mail in ballots, the evidence is clear that this claim was false. On November 6, the Supreme Court (Alito, J.) issued an order requiring all counties to comply with the guidance provided by the Secretary of the Commonwealth to segregate ballots received

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[11] The guidance, which the Secretary issued to resolve a lawsuit filed by the League of Women Voters, cautioned the boards that "[t]he Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections." (Ex. 125 at 3; Ex. 233 at 4-5.)

[12] The Pennsylvania Supreme Court concluded "that the Election Code does not authorize or require county election boards to reject absentee or mail-in ballots during the canvassing process based on an analysis of a voter's signature on the "declaration" contained on the official ballot return envelope for the absentee or mail-in ballot." (Ex. 233 at 2.)

[13] Ex. 222 at 2 ("[o]ne might expect that when seeking such a startling outcome, a plaintiff would come formidably armed with compelling legal arguments and factual proof of rampant corruption, such that this Court would have no option but to regrettably grant the proposed injunctive relief despite the impact it would have on such a large group of citizens…Instead, this Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence."); Ex. 223 at 2-3 ("calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here"; "[t]he Campaign's claims have no merit. The number of ballots it specifically challenges is far smaller than the roughly 81,000-vote margin of victory. And it never claims fraud or that any votes were cast by illegal voters. Plus, tossing out millions of mail-in ballots would be drastic and unprecedented, disenfranchising a huge swath of the electorate and upsetting all down-ballot races too. That remedy would be grossly disproportionate to the procedural challenges raised.").

by mail after 8:00 p.m. on November 3 and that all such ballots, if counted, be counted separately. (Ex. 376.) The Secretary of the Commonwealth never changed that guidance. (Olsen XXIII 135:15-19, 141:15-23; Ex. 327 at 16.)

With respect to the allegation that 58,221 mail-in ballots in Pennsylvania were returned on or before they were even mailed to voters, on December 16, Pennsylvania's Secretary Boockvar debunked this and other similar claims, explaining they were a "perfect example of the dangers of uninformed, lay analysis while lacking both understanding of election administration as well as knowledge of basic election laws, including election deadlines the Representative himself voted to make law." (Ex. 129 at 1-2.) With respect to this particular falsehood, she explained that "Act 77 authorized eligible Pennsylvania voters to vote early in person (by mail ballot) at their county election offices, and…[m]ost of these voters would be shown as having been approved and provided their ballot on the same date they cast it at their county election office." (Ex. 129 at 2; Marks III 122:11-17; Grimmer V 188:9-14.) At trial, respondent continued to refuse to accept these explanations, claiming he did not find them "very credible" even though they were topics on which the Court found he lacked relevant personal knowledge. (Resp. XXX 79:3-81:22.)

With respect to the allegation that changes to Georgia's signature verification process resulted in a lower rejection rate for mail-in ballots, this claim was based on calculations about the *overall* rejection rate, not on the *signature match* rejection rate, which remained largely unchanged in 2020. (Olsen XXIV 21:22-22:5; Ex. 326 at 13.)[14]

Finally, as set forth in §II.C.1-2, *infra*, respondent had no compelling evidence that "rampant lawlessness" affected an outcome-determinative number of votes in any of these states. Furthermore, respondent presented no reliable evidence that election officials in Pennsylvania conducted the election with the intent to favor Biden, and the evidence at trial showed that

[14] *See also* Grimmer V 193:6-18 (explaining why the overall absentee ballot rejection rate was lower in 2020 as compared to 2016 and concluding that the "the change in the rate of ballots being rejected for signature-related issues is quite small.").

respondent's claim was false.[15] The Supreme Court denied Texas's motion for leave to file a bill of complaint on December 11. (Ex. 356.)

C. Respondent's December 23 and January 3 Memos

Counts Three and Six – Dec. 23 and Jan. 3 Memos – Misrepresentations (6106)
Count Ten – Moral Turpitude (6106)

By mid-December, it was clear to Trump and his allies that their options for attempting to alter the outcome of the election were vanishing. Courts and legislatures were consistently rejecting their efforts to decertify Biden electors and certify Trump electors, and the Electoral College had met and recorded their votes. In addition, following the Electoral College vote, it became clear that at the January 6 count neither House of Congress would vote to reject any slate from a state won by Biden, ensuring that if the procedures of the ECA were followed, Biden would be certified as the winner of the election. Respondent thus spearheaded a new strategy: to have Vice President Pence use his role as President of the Senate to prevent Biden's victory from being confirmed on January 6.

Laid out in two memos he provided to Trump attorney Boris Epshteyn on December 23, 2020, and January 3, 2021, the strategy called for Pence to refuse to count Biden slates from seven states (Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin) in which respondent claimed there were "dual slates of electors." (Ex. 4.) Under various scenarios, Pence would unilaterally refuse to count electors from those states on January 6 and either declare Trump the winner or unilaterally adjourn the joint session and allow state legislatures to engage in a "comprehensive audit and/or investigation of the election returns in their states" and possibly certify pro-Trump slates of electors that would allow Trump to win. (*See* Stipulation to Undisputed Facts ("Stip.") ¶¶ 1-5; Exs. 2-4.) Respondent knew this strategy violated the ECA, but falsely claimed that there was "very solid legal authority, and historical precedent, for the view that the President of the Senate" is responsible for "the resolution of

[15] *See, e.g.,* Marks III 143:12-144:19 (Pennsylvania election officials did not conspire to benefit Biden but took measures to protect health and safety of voters during a global pandemic).

disputed electoral votes . . . and all the Members can do is watch." (Exs. 3, 4.) He also knew that the proposal that Pence adjourn the count violated the ECA's requirement that counting be completed on January 6, but asserted that this ECA requirement was also "contrary to the Vice President's authority under the 12th Amendment." (*Id.*)

To justify this unprecedented course of action, respondent falsely claimed in his memos that "illegality and fraud [had] demonstrably occurred" in the 2020 election as part of a "strategic Democrat plan to systematically flout existing election laws for partisan advantage," while omitting any mention of the myriad courts that had already rejected these claims, on the merits and otherwise. (Ex. 4.) Instead, he argued, it was necessary to take "BOLD" action and to jettison "Queensb[er]ry Rules."[16] (*Id*. at 5.) Respondent emphasized as critically important to this radical plan that "VP Pence should exercise his 12th Amendment authority without asking for permission—either from a vote of the joint session or from the Court." (*Id*.) Instead, he should act unilaterally and then claim his actions were unreviewable as "non-justiciable political questions." (*Id*.) It is worth pausing to consider what respondent's memoranda proposed: that Pence (himself on the ticket) should unilaterally declare the ECA to be unconstitutional and throw out or refuse to count the electoral college slates properly certified by the 7 States, without regard to federalism or any notion of checks and balances.

In an effort to avoid discipline, respondent now asserts that his memos, which are replete with false and misleading representations and omit key legal considerations (*e.g*, that he was proposing a course of action never taken in the ECA's 130 year history) and critical material facts (*e.g*., that courts in the 7 States had already rejected these claims), were not advancing *any* particular strategy—that he was just laying out "scenarios or thoughts that people had expressed" for internal discussion, that the memos "did not take a position," and that he did not know whether Trump would even review them. (*See, e.g.*, Resp. IX:19:2-20:5; X-69:17-70:25; XXX-137:1-138:6; XXXI-40:1-10; XXXIII-215:18-21.)

[16] Resp. X-72:2-13, 73:3-8 ("the set of rules in place at the time.").

Respondent's efforts to recharacterize the memos at trial are not credible. Respondent drafted and sent the memos to Trump legal advisor Boris Epshteyn *in his capacity as counsel* to Trump and his campaign;[17] respondent had regular interactions with Trump over the course of the month of December and early January;[18] the memos *do* lay out a clear plan and recommendation for **"BOLD**" action that "should" be taken on January 6; and respondent, together with Trump and others, *advanced the plan* laid out in the memos in their communications with state legislators, in their communications with Jacob and Pence, and in their communications to the public, including on January 6. (*See id. See also* Stip. ¶¶ 2-5; Ex. 3 [Dec. 23 Memo at 1-2 ("Here's the scenario we propose…")], Ex. 4 [Jan. 6 Memo at 5 ("VP Pence should exercise his 12th Amendment authority without asking for permission[.]")].)[19] Respondent's efforts to downplay the import of the memos also fail to account for the fact that, as Trump's counsel, respondent had a duty to provide his client with complete and candid advice, see California Rule of Professional Conduct 2.2, and, as respondent conceded, the memos are the only record he produced of his claimed research into the Vice President's authority. (Resp. XXX-129:18-130:5 [research]; Resp. XXXI 40:11-44:11 [ethical obligations].)[20]

1. Respondent knew his claims of fraud lacked credible support.

Respondent knew that his claim in the January 3 memo that "outright fraud" had "demonstrably occurred" and affected the outcome of the election was false when he made it.

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[17] *See* Ex. 1 and Ex. 2 ¶¶ 19-30. *See also* Resp. X-70:11-15 (he anticipated Epshteyn would discuss the Memos with Giuliani, "because they were working very closely together[.]")
[18] Resp. XXX-151:7-15; Resp. XXXII 280:21-25; Exs. 385-386 (Jan. 3 and 5 Call Logs).
[19] *See also* Ex. 6 (Respondent's 9/22 Answer to Investigation) at 3 (admitting that he wrote the memos "in furtherance of" his representation of Trump), at 36 (admitting that respondent's "*advice* was that the Vice President accede to requests from numerous state legislators to delay the proceedings[.]"); Resp. XXXI 36:18-37:11 (acknowledging that "[Trump] receive[d] and absorb[ed] a lot of information fairly quickly. And on something as important as that [scholarship and memos about Pence's authority to reject contested electors], I don't have any doubt that he would have read at least portions of the articles.")
[20] Though respondent claimed he conducted "rather extensive research," he could not produce any evidence of it. (Resp. XI 117:21-119:21, Resp. XXX 127:19-129:5, 132:8-11; Resp. XXVII 152:17-153:19; Ex. 381.)

(Ex. 4 at 1, 6.) In emails on November 28 and January 2, respondent bemoaned the lack of "hard documented evidence of the fraud," complaining "serious forensic investigations have been blocked at almost every turn[.]" (Exs. 39, 56.) When pushed on the issue at trial, respondent became evasive and sought to expand "fraud" to encompass alleged illegal conduct by non-legislative actors that he claimed "opened the door for fraud." (*See, e.g.,* Resp. XXXI-86, 89:5-13, 90:2-4, 189:1-13.)[21] Ultimately, however, respondent and his witnesses conceded that it would be nearly impossible to establish whether any fraud occurred—"[p]roving the extent of fraud after the fact is a very difficult and, in fact, near-impossible thing[.]" (Resp. V 15:6-19, 96:22-97:9; Resp. X-160:25-163:18; Favorito XVI 142:14-143:15; Droz XXI 22:20-23:14; Blehar XXI 121:3-122:22; Young XXVI 117:8-20.) Respondent further admitted he did not know the extent to which fraud affected the outcome of the election in Arizona, Michigan, Nevada, New Mexico, or Wisconsin. (Resp. XXXI 87:24-25, 88:22-23, 90:9-18, 93:9-18.)

a. Respondent ignored reliable evidence that the election was not tainted by fraud and court decisions rejecting claims of fraud.

The evidence at trial showed respondent was aware, prior to January 3, of extensive evidence from reliable sources that the election had *not* been tainted by outcome determinative fraud—and that responsible government institutions had repeatedly rejected such claims, but that he consistently dismissed and ignored it. For example, he dismissed pre-January 3 statements and reports from election officials rebutting election-related disinformation and confirming the election results,[22] stating that he "didn't give them much credence." (X 111:16-19.)[23]

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[21] *See also* Grimmer V 132:7-134:5 (explaining that there is no evidence in respondent's exhibits or in his Answer that demonstrates outcome-determinative voter fraud and describing the issues with respondent's various types of evidence.); Jacob II 182:22-25 (concluding there was not sufficient irregularity to alter outcome).

[22] *See* Exs. 75-82 (Arizona); Exs. 88, 89, 90, 92, 93, 94, 95, 97, 98, 99 (Georgia); Exs. 100-106, 108-111 (Michigan); Exs. 114-120 (Nevada); Ex. 124 (New Mexico); Exs. 128-129 (Pennsylvania); Exs. 136-137, 140-141 (Wisconsin).

[23] *See also* Resp. V 93:25-96:5 (re statements by Georgia voting official Gabriel Sterling); Resp. IX-49:12-16, 112:25-113:15 (re MI, PA, and WI recount results); and Resp. XI-126:4-127:20 (re his distrust of "partisan" election officials). Respondent also admitted he did not contact election officials from either party to request election-related information. (Resp. IX 46:11-47:15

He dismissed the Cybersecurity and Infrastructure Security Agency's November 12, 2020, statement that "There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised," claiming he found this "rather implausible, given what we knew." (Resp. X 157:18-20; Ex. 201.)

He ignored the November 16, 2020 statement by fifty-nine of the country's top computer scientists and election security experts—including two he has cited for support (Alex Halderman and Harri Hursti)[24]—stating no credible evidence had been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise" and that such theories were "unsubstantiated or are technically incoherent." (Ex. 187.)

He dismissed Attorney General Barr's December 1, 2020, statement that "we have not seen fraud on a scale that could have effected a different outcome in the election," claiming "there was not a significant enough investigation[.]" (Ex. 186; Resp. XI 132:7-9.) In stark contrast, Yoo testified that Barr's statement "settled the matter" for him. (Yoo XVIII-65:9-18.)

He dismissed the results of Georgia's hand recount, which disposed of any doubt whether ballots scanned multiple times were actually *counted* multiple times, and has continued to imply fraud occurred at the State Farm Arena, even though he admitted at trial he had "no evidence one way or the other" whether any fraudulent ballots were processed there. (Ex. 88; Answer to NDC at 61:6-7; 70:13-14; Resp. V 92:20-93:2, 94:2-25; 97:7-10; XXXI-12:23-13:4.)

He ignored pre-January 3 court orders concluding that the fraud allegations raised by plaintiffs in the 7 States lacked merit. (*See, e.g.,* Resp. IX 58-63 [discussing Dec. 4 Order in *Law v. Whitmer* finding "there is no credible or reliable evidence that the 2020 general election in

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(Michigan); Resp. X 101:11-102:7 (Arizona); Resp. X 104:2-7 (Georgia); and Resp. X 144:14-18 (Wisconsin).)

[24] Respondent repeatedly claimed at trial that Halderman issued a report stating "that votes were flipped from Trump to Biden" in Antrim County, Michigan. Resp. X 13:15-17. In fact, Halderman concluded "[Antrim County's] final results match the poll tapes printed by the individual ballot scanners, and there is no evidence that the poll tapes are inaccurate, except for in specific precincts where particular circumstances I explain affected small numbers of votes, mainly in down-ballot races." Ex. 206 at 3.

Nevada was affected by fraud," Ex. 239 at 15:19-20];[25] Resp. IX 72-75 [discussing Dec. 4 and 8 Orders in *Ward v. Jackson* in Arizona finding "no misconduct, no fraud, and no effect on the outcome of the election"]; Exs. 252, 253 at 8;[26] Exs. 290 at 1-2, 291 [Dec. 11, 2020 Order in *Trump v. Biden* in Wisconsin adopting findings confirming the absence of evidence of fraud, or illegal votes or election impact and Dec. 14 Wisconsin Supreme Court Order affirming]; Ex. 362 at 34 [Dec. 7, 2020 Order in *King v. Whitmer* in Michigan, stating "With nothing but speculation and conjecture that votes for President Trump were destroyed, discarded or switched to votes for Vice President Biden, Plaintiffs' equal protection claim fails."].)

b. Respondent sought to support his fraud claims using inexpert, unvetted, and unreliable sources who concede they uncovered no fraud.

Respondent has tried to support his fraud claims with sources he knew or consciously disregarded were inexpert, unvetted, and unreliable. At trial, respondent called three of the individuals, whose 2020 election analyses he claimed to have seen and relied upon before January 6: John Droz, Ray Blehar and Stanley Young. (Ex. 6 at 9-10; Droz XIX 99:15-100:12; Resp. XXVII 204:6-205:17.) All of them conceded they could *not* demonstrate that fraud occurred in the 2020 election, a point which their reports expressly emphasized[27] and of which

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[25] *See,in particular*, Resp. IX 60:5-9 ("Q. Were you aware of this court finding prior to January 3rd? A. I was aware from speaking with a counsel in the case that they had lost on their challenge in District Court and had been denied review on appeal."); IX-62:16-19 ("Q. Do the Court's concerns about [declarant Jesse Kamzol's] methodology cause you to reevaluate your opinion of its reliability? A. It caused me to go back and look at his declaration, and I find the Court's analysis here to be lacking.")

[26] *See, in particular,* Resp. IX 72:5-18 (Q. Do you recall the *Ward v. Jackson* case? A. I vaguely recall the case. I don't know the specifics, and I was not involved in any of the Arizona litigation. Q. Were you following the Arizona litigation in late December or early January of 2021? A. I think "following" suggesting a more closer attention to it than I had time to be giving it to the time (sic). I was aware that there were litigations being filed, but I did not at the time have a chance or the time to review the specifics of those litigations.")

[27] *See, e.g.,* Exs. 1041 at 4 (acknowledging "science-based statistical analysis cannot identify exactly what happened—or prove that fraud was involved" and recommending audited recount); 1042 at 4 (recommending audited recount); and 1046 at 2 ("A statistical contrast is **not** proof of voting fraud, but a large contrast does point to situations that might merit closer examination."); 1043 at 2-3 ("Again, we cannot determine exactly **what** happened to cause these Dumps (e.g., ballot stuffing, something legitimate, etc.), but rather **where** (a State) and time(s) that these unusual results took place" and recommending forensic audit) (Emphases in original.)

respondent was well aware.[28] (Droz XXI 22:20-23:14, Blehar XXI 121:3-122:22; Young XXVI 117:8-20; Resp. X-160:25-163:18.) Moreover, none had the expertise necessary to credibly evaluate claims of fraud or anomalies in the 2020 election, a fact which respondent could have easily determined by consulting with bona fide experts like Grimmer prior to January 6, but which respondent consciously avoided doing.

Assembled by Droz from subscribers to his biweekly newsletter, which was frequently skeptical of climate change (Droz XXI 43:3-6), the group lacked a single member with election-related experience or expertise.[29] Droz testified that he did not seek out people with election-related expertise because he believes "numbers are numbers." (Droz XIX 21:15-23:11, 169:9-170:1, 174:22-176:18; Droz XXI 36:13-40:11, 38:8-22; Blehar XXII 21:7-13; Young XXVI 155:3-14.)[30] The problem with this tactic of avoiding qualified election experts was, as Grimmer explained, that one cannot understand the significance of a statistical observation about an election without a detailed understanding of "what goes on in elections," that is, without an understanding of what is "normal" in an election, there is no basis for declaring an observation "anomalous." (Grimmer XXXI 267:9-272:9.) Indeed, Blehar, Droz, and Young each admitted they made no attempt to determine if the alleged "anomalies" they identified were any more present in the 2020 election than in any other election in U.S. history. (Droz XIX 181:8-17, 187:12-188:15, 192:18-194:20; Droz XXI 21:14-21, 23:15-26:19, 29:4-30:9; Blehar XXI 118:13-120:2; Blehar XXI 149:10-23; Young XXVI 128:5-131:25.)

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[28] *See* Ex. 39 (Nov. 28 respondent email stating "it would be nice to have actually hard documented evidence of the fraud in the areas to which the analyses pointed").)

[29] Only Dr. Young was qualified at trial as an expert, but only in statistics, not with respect to elections. (Young, XXII 122:4-20.) Droz has degrees in math and physics and spent most of his career at GE doing quality control and testing before he retired in 1980. (Droz, XIX 17:10-18:18, 20:7-21:8, 169:9-170:1, 170:25-171:15.) Blehar has an undergraduate degree in geography from Indiana University and an MBA from Penn State. (Blehar, XX 78:13-21, 89:4-16.) In the parties' June 5, 2023 Joint Pretrial Statement, respondent falsely claimed Droz and Blehar were both statisticians. (June 5, 2023 Joint Pretrial Statement at 62:7-19.)

[30] Respondent likewise failed to ask if they had election-related experience. (Droz XXI 36:13-37:9; Blehar XXII 21:7-13; Young XXVI 155:3-14.)

As a result, the group's analyses were flawed and unreliable.[31] (*See* Grimmer V 132:7-134:5, 143:2-12, 168:24-170:17, 177:25-182:20.) For instance, Grimmer explained that Dr. Young's "contrast analysis," which compared the performance of the Democratic and Republican presidential candidates in 2020 and 2016, was fundamentally biased towards finding "anomalies" in large counties (which typically favor Democrats) because the calculation used vote totals rather than percentages. (Grimmer V 143:2-146:15, 147:9-148:16, 150:8-151:25.) He further explained that it would be "essentially impossible" for the methodology to ever identify a small county as anomalous. (Grimmer XXXII 30:10-33:4.)[32] At trial, Young conceded that he did not know if anyone had ever applied a contrast analysis to election data before or how accurate it was at identifying fraud and that respondent had never asking him about the reliability of his methodology. (Young XXVI 124:24-125:16, 135:7-137:21, XXVI 156:1-4.)

Remarkably, Young did not apply his contrast analysis to other pairs of elections in U.S. history to determine if the "anomalies" that he had identified in 2020 were actually quite common in elections. That Young never bothered to check if his claimed anomalies were common in elections reveals the unreliability of his methodology and his lack of qualification to perform this type of analysis, particularly given that Grimmer demonstrated that the "anomalies" Young identified are quite common (Ex. 394), and it took Grimmer "five minutes" to write the code to perform the historical analysis. (Grimmer XXXII 23:9-21.)

Faulty assumptions likewise invalidated Blehar's "vote spike" analysis, which purported to analyze "unusually large differences between Presidential candidates received/recorded at one time" for the purpose of identifying "potential anomalies." (Ex. 1043 at 2-3.) The analysis

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[31] Respondent cannot assert "tenability" or good faith based on what he may now claim is a negligent reliance on these lay "experts." His pattern was not to vet the purported experts he relied upon to support his allegations of fraud. (Resp. XI 89:2-11 (respondent "did not" do anything to review Mr. Oltmann's credentials and failed to inquire into his educational background and professional experience before on January 6 trumpeting his fraud theories as true); Resp. XI 55:8-14 (respondent failed to do any independent vetting of Mr. Ramsland and did not even do internet research on him). This pattern demonstrates his willful blindness, that is, his conscious effort to avoid learning the truth about the evidence on which he wanted to rely.

[32] *See also* Young XXVI 123:21-124:23, confirming that under his methodology, the smallest counties in Georgia cannot have the biggest contrasts.

assumed unofficial returns in an election *unaffected* by fraud or illegality would follow what statisticians call a "normal distribution." (Grimmer V 179:2-180:13; XXXI 270:7-274:22; Grimmer XXXII 49:1-55:6.) But as Grimmer explained, the evidence related to vote spikes "is not reliable evidence of fraud." (Grimmer V 182:18-20.) Democratic support tends to be stronger in large counties, so the release of a large county's results would be expected to cause a "spike" in Democratic candidates vote totals. (Grimmer XXXI 270:7-272:9.)

Testimony from two witnesses who conducted post-January 6 analyses of the election that respondent cited as post hoc support for his fraud allegations – Michael Gableman and Garland Favorito – similarly failed to support respondent's fraud claims. A former Wisconsin Supreme Court justice with no prior experience with election law or administration, Gableman headed a $650,000 effort to investigate the 2020 election. (Gableman XI 148:23-149:22,157:19-158:6; Gableman XII 159:2-10.) At trial, Gableman admitted that he "do[es] not have the numbers to quantify" the effect of the issues he purported to identify in the Wisconsin election—a fact of which respondent was aware. (Gableman XII 56:2-21; Resp. XXXI 87-7-8 ["I don't think Justice Gableman made a determination of how many ballots were fraudulently cast."].)[33]

Gableman's final March 1, 2022, report repeatedly noted that his investigation failed to determine whether various election irregularities occurred or to quantify their effects. (Ex. 1056 at 6 [conceding inability to detail "how the existing [electronic] systems were used in 2020"], 7 [report "draws no conclusions about specific, unauthorized outside interference or insider threats to machine voting"], 12 [no statistician was engaged to quantify the number of allegedly improperly-cast ballots in residential care facilities], 13 [group "has not been able to run to ground all issues relating to obtaining [cellphone] data" in connection with drop box analysis], 14 [aspects of voting machine analysis not yet complete].)[34] Gableman admitted he was fired from his position (Gableman XII 23:14-24:4.). A Wisconsin court found that his group

[33] *See also* Gableman, XII-40:1-47:11, 84:2-20, 110:6-15, 148:19-149:22, 168:6-170:25.

[34] Grimmer also testified that various of Gableman's assertions were ill-informed or inaccurate. (Grimmer XXXII 90:2-99:10 (explaining that maintaining a list of deactivated voters reduces the likelihood of fraud and that grants by the Center for Tech and Civil Life did not favor Democrats); Ex. 402.))

"accomplished nothing…gathered no measurable data…organized no existing data into any analytical format…[and] generated no reports based on any special expertise." (Ex. 333 at 88.)

Like Gableman, Favorito[35] admitted that he could not quantify the number of ballots affected by many of the issues about which he raised concerns. (*See, e.g.,* Favorito XVI 128:20-129:18 [tally sheet inaccuracies], 142:14-143:15 [drop box surveillance]; Favorito XVI 145:16-147:25 [confirming his litigation has not identified any counterfeit or fraudulent ballots that were actually cast].) He also repeatedly admitted that there were analytical vulnerabilities or errors in his work and in the information he relied upon to analyze Georgia election results, as well as uncertainty about how the conclusions in his report were reached. (Favorito XV 171:3-25, 172:17-24, 173:16-174:8, 183:18-184:25, 197:2-23; XVI 62:13-64:4, 77:11-78:18, 84:14-85:17, 134:13-136:10, 147:14-149:5; Ex. 1144.) Favorito also relied extensively on Geels' flawed analyses, and therefore inherited all its deficiencies. (Favorito XV 92:9-24, 95:21-25, 164:13-165:7, XVI 18:12-20, 61:7-62:12; Ex. 1144 & §§ II.A., *supra*, and §§ II.D., *infra.*)

As to Favorito's claim that 873 deceased voters voted in Georgia, Grimmer noted that Georgia's cancelled voter files indicated that 863 of those individuals died after Election Day, and that the records indicated that all but seven of those individuals voted in person, meaning they would have been required to present photo identification, while the few who voted absentee would have needed to return their ballots well in advance of being removed from the voter file. (Grimmer XXXII 80:13-83:13.) Grimmer also found numerous other errors and flaws in Favorito's testimony and report, including his apparent misunderstanding of how data matching and data merging work, links in the report that did not connect to the correct information, a failure to explain the methodology underlying certain numerical conclusions, and the reporting of numbers that Grimmer could not replicate. (Grimmer XXXII 88:16-89:11.)

Notwithstanding the above, when asked whether anything he had heard at trial caused him to reconsider whether there was outcome-determinative fraud in any of the swing states,

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[35] Favorito, who is retired, spent his career as an information technology professional. (Favorito XIV 27:15-17.) He has no training in statistics and has never been paid for any work relating to elections. (Favorito XVI 118:6-14.)

respondent said no, citing Gableman and Favorito. (Resp. XXXI 83:12-84:5, 85:23-86:5.) This further demonstrates respondent's willful disregard for the truth and for any facts that might undermine his desired position and the lack of credibility in his trial testimony.

2. Respondent knew his claims regarding illegal conduct by election officials lacked credible support and had been rejected by courts.

Respondent's claim in the memos that his recommendation to Pence was justified by "illegal conduct by election officials" in the 7 States was also false. (Ex. 4.) Emails he wrote on January 1 and 2 show he was unaware of *any* illegal conduct in Michigan, Arizona and Nevada, and at trial, respondent could not explain why his memo even included New Mexico, essentially conceding that New Mexico's results were not disputed. (Exs. 54, 55; Resp. IX 51-56.)[36]

By January 3, respondent knew that many of the claims of illegality he was raising had already been rejected as a basis to change the results by courts and that the Supreme Court was not going to rule otherwise.[37] For example, at trial, respondent admitted that his claim in the January 3 memo that "Michigan mailed out absentee ballots to every registered voter" illegally was wrong. (Ex. 4 at 2; Resp. IX 88:1-3.) Michigan mailed out absentee *applications* for ballots, which Michigan's Court of Claims had concluded was lawful and which conclusion the Michigan Court of Appeals affirmed on Sept. 16, 2020, in *Davis v. Secretary of State*. (Ex. 276.) When confronted with these decisions at trial, respondent was dismissive, citing "dissenting views on that[.]" (Resp. IX-88:4-90:8, discussing *Davis v. Secretary of State*, Ex. 276.)[38] As

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[36] *See, in particular,* Resp. IX 52:22-23 (confirming Biden won New Mexico by a "wide margin"); Resp. IX 54:9-24 regarding Ex. 1154 (confirming there were no New Mexico signers on Jan. 5 letter to Pence); Resp. IX 56:14-16 (confirming he "had not focused on the New Mexico litigation at all."); Resp. XI 127:20 ("I had very little involvement with Nevada at all.")

[37] *See* Resp. IX 92:11-19 (Q. When you authored the six-page memo, did you look into the extent to which these claimed illegalities had already been litigated in state courts? A. I don't recall the extent that I did that. I do recall seeing various disputes about the various rulings, some rulings that had been rejected on jurisdictional grounds, other rulings that had been hotly contested, with dissenting opinions. So I thought the issues remained open and were still being contested."); IX-142:1-12 (confirming he was not tracking litigation in which he was not involved).

[38] *See, in particular,* Resp. IX 90:4-8 (THE COURT: But the bottom line is that review was denied by the Michigan Supreme Court, isn't it? A. The review was denied by the Michigan Supreme Court, over significant dissent, if I recall correctly.")

respondent knows, "dissenting opinions are not binding and have 'no function except to express the private view of the dissenter.'" (*People v. Panighetti* (2023) 95 Cal. App. 5th 978, 1001.)

This pattern occurred repeatedly over the course of the trial, with respondent casting aside judicial decisions that analyzed the very claims he and his allies were raising and with which he disagreed, either citing non-binding dissents or claiming that the fact that the decisions were not rulings on the merits justified casting them aside. (*See, e.g.,* Resp. IX 58-65 (discussing *Law v. Whitmer*, Exs. 239, 334);[39] Resp. IX 65-70 (discussing *Mi Familia Vota v. Hobbs*, Exs. 343-344);[40] Resp. IX 92-97 (discussing *Trump v. Benson*, Exs. 224-225);[41] Resp. IX 100-103 (discussing *Constantino v. Detroit*, Exs. 217-219);[42] Resp. IX 111-120 (discussing *Trump v. Biden*, Exs. 290, 291, 362);[43] Resp. IX 120-130 (discussing *Trump v. Wisconsin Elections*

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[39] *See, in particular,* Resp. IX 59:8-11 ("Q. The Court also reached a finding regarding whether unlawful votes were accepted during signature verification, specifically. Do you recall that? That sounds right. I don't recall it specifically, but it sounds likely.")

[40] *See, in particular,* Resp. IX 67:10-17 ("Q. So your position in the six-page memo is that anyone who registered to vote after October 5th should not have their vote counted, correct? A. That's correct. Q …But … Arizona election officials were doing what the Ninth Circuit had told them to do, correct? A. Yes."); IX-70:2-5 ("When the Ninth Circuit acknowledged that the change in the registration deadline violated that state law, it's my view that that should have been the end of the matter, and Judge Bybee, in dissent, agreed with my view on that.")

[41] *See, in particular,* Resp. IX 93:11-94:10 ("the last sentence [of Ex. 225] says, "Plaintiffs are unable to show a likelihood of success on the merits."…So, Doctor Eastman… you don't recall having read this decision prior to January 3rd, 2021? A. I don't recall, but, had I read it, this is a decision on a motion for preliminary injunction, which is not a ruling on the merits[.]. Q. And the Michigan Court of Appeals denied leave for appeal on this case. Did you know that? A. I have a vague recollection of that, yes, but, again, a denial of review of a denial of a motion for preliminary injunction is not an ultimate ruling on the merits in a case.")

[42] *See, in particular,* Resp. IX 101:8-25 ("Q. The Court noted that Mr. Sitto's affidavit, which was one of the supporting affidavits, was "rife with speculation and guesswork about sinister motives," and then the last sentence of that paragraph is: "There is no evidentiary basis to attribute any evil activity by virtue of the city using a rental truck with out-of-state license plates." Do you see that? A. I see that, yes. Q. Do you recall knowing about the Court's rulings on that prior to January 3rd of 2021? A. I don't recall at the time. I do recall having been familiar with the dissenting opinions in the Supreme Court, questioning the legality of what the district judge did here, which is to make an evidentiary determination without a hearing, based on competing affidavits, on a motion to dismiss, which is highly irregular. I do recall that.")

[43] *See, in particular,* Resp. IX 112:25-113:22 (Q. All right. And so were you familiar with the Trump v. Biden case when you wrote the six-page memo on January 3rd? A. Yes, I was. Q. All right. And so you knew that the campaign had sought a re-count…and then challenged the results of that re-count to the Wisconsin circuit court…? A. I don't recall the particulars …I

Commission, Exs. 250-251);[44] Resp. IX 141-147 (discussing *Trump v. Boockvar*, Exs. 222, 223);[45] and Resp. IX 152-157 (discussion of orders in *Wood v. Raffensperger*, Exs. 273-274).[46]

Respondent's willingness to cast aside all these judicial decisions is striking, given his status as an officer of the court, the central role courts play in resolving election disputes, and the time and energy courts devoted to the election challengers. (*E.g.*, *Bush v. Gore* (2000) 531 U.S. 8.)[47] And respondent's denigration of cases that refused to entertain the merits of late-filed election challenges based on the laches doctrine or that refused to disenfranchise voters for

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knew they had done both. Q. Do you recall that the circuit court rejected that challenge and affirmed the results of the re-count? A. I don't recall that. It doesn't surprise me, but I just don't recall. Q. And the Wisconsin Supreme Court granted review, and then rejected the campaign's claims on December 14th. Do you recall that? A. Well, that's not quite what this says here, and what I'm remembering is that it rejected the broad-base claim on the indefinitely confined, because they had sought to disqualify all indefinitely confined ballots, but that it rejected the other three claims on laches grounds, which just means that it claimed it didn't have jurisdiction and did not reach the merits.")

[44] *See, in particular,* Resp. IX 127:23-128:4 (conceding that the district court's decision was on the merits but stating "that was taken up on appeal to the Seventh Circuit, which declined jurisdiction on the basis of laches grounds. So I think the merits decision here, therefore, has no force, but, as I said, that concluding holding is directly contrary to controlling Supreme Court precedent."); Resp. IX-129:15-25 (disagreeing with the Seventh Circuit dismissal). Throughout trial, respondent misrepresented the 7th Circuit's decision in *Trump v. Wisconsin Elections Commission* as grounded exclusively in laches. Resp. XXX 26:5-6. In fact, the 7th Circuit held "We agree that Wisconsin lawfully appointed its electors in the manner directed by its Legislature and add that the President's claim also fails because of the unreasonable delay that accompanied the challenges the President now wishes to advance against Wisconsin's election procedures." Ex. 350 at 7.

[45] *See, in particular,* Resp. IX 146:15-24 regarding *Trump v. Boockvar*, Ex. 223 ("Do you agree with the [Third Circuit's] position here that, under Pennsylvania law, technical defects for votes should be overlooked, as long as there is no fraud? A. Well, I disagree, partly because I disagree with the first sentence, that it "boils down to issues of state law." The Supreme Court of the United States has made very clear that when applying state election law in the context of a federal election… those state laws are effectively federal law, and so I disagree with that.")

[46] *See, in particular,* Resp. IX 156:4-11 regarding Ex. 273 and 274 ("So, Doctor Eastman, the Court was finding that there was no evidence that the settlement agreement had an effect on the election, correct? A. Well, that's what it's saying here. I disagree with it on several scores. Q. The 11th Circuit affirmed this decision on December 5th. Is that correct? A. I don't recall that, but it doesn't surprise me."); Resp. IX 157:1-8 (confirming he was aware of *Wood* decisions when he filed *Trump v. Kemp* and when he wrote the Jan. 3 Memo).

[47] According to Jacob, Vice President Gore's decision to reject objections that favored him consistent with the ECA was among the reasons that respondent's argument about vice presidential authority "did not make any Constitutional sense" to Pence. (Jacob II 45:2-17.)

technical issues based on the substantial compliance doctrine ignores the important values the laches rule and the substantial compliance doctrine serve in the election context. As the Wisconsin Supreme Court explained regarding the laches doctrine when rejecting Trump's effort to overturn that state's results, this "longstanding and well-settled doctrine" has "particular import in the election context." (Ex. 291 at 8-9.) Allowing late-filed challenges to votes cast in reliance on widely-publicized policies would "disenfranchise voters who did nothing wrong" based on "technical issues that arise in the administration of every election." (*Id.* at 18-19; *accord* Ex. 250 [recognizing the "unquestionable harm" to voters that laches avoids].)[48] Likewise, as the Pennsylvania Supreme Court explained when it rejected Trump's challenges to decisions by county boards of election to count certain absentee and mail-in ballots where those ballots substantially conformed to the statutory requirements, concluding that "failures to include a handwritten name, address or date in the voter declaration on the back of the outer envelope, while constituting technical violations of the Election Code, do not warrant the wholesale disenfranchisement of thousands of Pennsylvania voters." (Ex. 285 at 34.) Respondent, as an election expert, understood full-well the importance of the doctrines of laches and substantial compliance in election litigation.

3. Respondent knew his claim that there were dual slates of electors was false and misleading and provided no basis to reject electors or to delay the count.

Central to the strategy laid out in respondent's memos was his false pretext that the existence of dual slates of electors from the 7 States justified Pence unilaterally rejecting the Biden slates or delaying the count. (Ex. 46 [Dec. 23 respondent email stating "The fact that we have multiple slates of electors demonstrates the uncertainty of either. That should be enough."].) In fact, respondent facilitated the creation of these false elector slates. When he was working on *Texas v. Pennsylvania*, respondent and other Trump allies were pushing for

[48] Respondent's post-hoc claim that the Wisconsin Supreme Court's ruling in *Teigen v. Wisconsin Election Commission* (2022) 403 Wis.2d 607, somehow justifies the recommendation in his memos is baseless. *Teigen* was not decided until 2022 and, as respondent acknowledged, did not hold that the 2020 election results should not have been certified. (Resp. IX 118:18-24.)

Trump electors in the 7 States to sign and transmit slates to Congress falsely certifying they were "the duly elected and qualified Electors for President and Vice President" for their states. (Resp. I 162:2-12 [confirming that gathering Trump electors was "part of the work [he] was doing."]; Exs. 18-24 [false elector slates].) In mid-December, respondent participated with Trump in a phone call to RNC chair Ronna McDaniel asking for the RNC's help gathering "contingent electors,"[49] and he also sent multiple emails to campaign officials and allies emphasizing the urgency and importance of transmitting slates of Trump electors in the 7 States before the December 14 electoral college vote. (Resp. I 157:11-21, 169:7-25; Resp. X 165-170; Exs. 40, 42, 44, 45.)

Respondent knew then that the slates the Trump electors submitted on December 14, 2020 were not certified by any official or legislative body and had no authority, and that they were not the "duly elected and qualified Electors" as they falsely claimed. On December 19, respondent wrote an email confirming this: "not a one [Legislature] has acted…unless those electors get a certification from their State Legislators, they will be dead on arrival in Congress." (Resp. XXX 118:2-12; Ex. 380 at 2.)[50] Thus, as respondent knew – and as Yoo confirmed – the fabricated "dual slates" did not generate a real dispute for Pence (or anyone else) to resolve on January 6, 2021.[51]

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[49] When presented with McDaniel's statements about the call at her January 6 Committee interview, respondent testified that he participated in the call but did not remember the substance of the conversation. (Resp. I 157:3-16.) He did not dispute her claim that he told her it was important for the RNC to help the Trump campaign gather alternate electors for Trump, and he testified that it was "in line with the positions I had taken at the time, so it doesn't surprise me." (Resp. I 157:23-158:5, 159:21-25, 161:5-9 [no reason to doubt her statement].)

[50] *See also* Resp. IX 21:4-14 (discussing Ex. 61 (Jan. 11 email confirming the Trump slates were not certified "so they had no authority"); Resp. IX 22:6-9.

[51] *See* Yoo XVIII-62:4-13 ("Q. So would it be fair to say that your view related to the 2020 election was that the claim by the Trump campaign that there was a dispute over electors, that was a made-up dispute, rather than a real one? …Yes, that was my view and it's still my view."). *See also* Jacob II 46:17-47:10, 76:8-13, and 48:2-20 ("those procedures of the ECA for determining which of competing slates of electors to select, it was our conclusion, and the senate parliamentarian agreed with this when we spoke with her on January 3rd, that we were not proceeding under those procedures of the ECA, because it required certificates with an imprimatur of state authority to trigger those provisions…Rather, we were proceeding under the regular order procedures for electoral vote counts, which is what had been proceeded under for the previous 130 years under the ECA.")

To the extent respondent contends that the "dispute" arose from litigation that could change the outcome of the election in the 7 States at the time of his memos, that contention is also false. At the time he authored the memos, respondent knew that claims of fraud and illegality were roundly failing in the courts (*see* §§ II.C.1-2, *supra*), knew that his claim that the ECA was unconstitutional would fail in the courts (*see* § II.C.4.a, *infra*), and did not believe that the Supreme Court would intervene.[52]

4. Respondent knew his and Trump's January 6 strategy was illegal.

Under the Electoral Count Act and the United States Constitution, what should have followed from Election Day – and indeed what *did* follow, despite respondent's and others' efforts to disrupt it – was straightforward. The executive of each state provided a certificate of ascertainment to the Archivist of the United States. On December 14, 2020, the certified electors met to cast their votes. On January 6, 2021, before a joint session of Congress, the President of the Senate, Vice President Mike Pence was set to "open all the certificates" and have those votes then be counted. (U.S. Const. art. I, § 4, cl. 3. U.S. Const. amend. XII; 3 U.S.C. §§§ 6, 7, 15.) The candidate with the most votes would then "be the President." (U.S. Const. amend. XII.)

The Twelfth Amendment does not specify who counts or how to address disputes. (*Id.*) Since 1865, however, "Congress [has] exercised unquestioned control over the resolution of disputes" about the validity of electoral votes, resulting in its passage of the Electoral Count Act of 1887. (Seligman VII 87:21-88:24.) Under the ECA, after a state's electoral votes are read, the President of the Senate "call[s] for objections if any." (3 U.S.C. § 15.) If a written objection signed by a member of the House and Senate is provided, then the

[52] *See* Ex. 4 at 6 (Jan. 3 memo stating "the Supreme Court has signaled unmistakably that it will not do anything about it"); Ex. 50 (agreeing that "merely having this case pending in the Supreme Court, not ruled on, might be enough to delay consideration of Georgia, particularly if Pence has the legal ability and will insert himself at least enough to win delay."); Resp. IX 76:1-77:5 (if "there's still open pending litigation" then "that's one of the grounds on which the vice president can take into consideration the validity of electoral votes that are cast").)

Houses meet separately to consider the objection. (*Id.*) Only if both Houses agree that a slate of electors' votes "have not been regularly given" may those votes be rejected. (*Id.*).

At trial, Yoo testified unequivocally that Pence had no authority to reject electoral votes for Biden on January 6. (Yoo XVIII 57:24-58:2, 58:24-59:9, 114:24-115:5.) When the Vice President receives only one set of electoral votes, Yoo testified, he "can *only* accept them as legitimate" and, thus, "no dispute over the electoral votes justified Vice President Pence's intervention." (Yoo XVIII at 45:23-46:6, 49:3-15 (emphasis added).) "Pence was on unassailable grounds," Yoo testified, "when he said that he had 'no right to overturn the election.'" (Ex. 1358 at 109; Yoo XVIII 49:16-23.) In fact, Yoo testified that he gave that advice directly to Pence in December 2020. (Yoo XVIII 57:24-58:1, 58:24-59:9, 114:24-115:5.)

a. Respondent had long acknowledged the vice president lacked dispute resolution authority.

Respondent—a graduate of the University of Chicago's law school, a Supreme Court clerk, and constitutional law professor—knew that the January 6 strategy was illegal, a fact reflected in his own correspondence in the months before and after the election.[53] For example, on October 16, 2020, respondent decisively rejected the very theory at the heart of the January 6 strategy set out in his memos, that is, that "the President of the Senate decides authoritatively what 'certificates' from the states to 'open' and what electoral votes are 'counted,'" – writing in an email:

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

(Ex. 38 at 2 (emphasis added); Resp. IX 24:9-25:24.)

[53] *See, e.g.,*Ex. 51 (Dec. 31, 2020 respondent email re *Trump v. Kemp* filing, stating "I have no doubt that an aggressive DA or US Attorney someplace would go after both the President and his lawyers once all the dust settles on this."); Ex. 62 (Jan. 11, 2021 respondent email to Giuliani asking to be placed on pardon list.)

Respondent had long held this view. In 2000, he testified before a Florida legislative committee that returns from a state "must be counted by Congress unless both the House and the Senate meeting separately concurrently reject that return." He further testified that *Congress* has "the power to be the ultimate judge" and that problems of how to count multiple returns submitted to Congress arise "only if the two houses of Congress are not able to agree." (Resp. IX 27:7-20; Ex. 25 at 2-3.) Even after hatching the January 6 strategy, he admitted to Jacob on January 5 that "there had been no actual instances of departure from [ECA] procedures during the entire 130 years that the [ECA] had been in effect." (Jacob II 61:12-15; Resp. X 90:13-17.)

Respondent's original view was consistent with longstanding practice. "Beginning in 1865, Congress exercised unquestioned control over the resolution of disputes" about the validity of electoral votes—first through a joint rule in 1865, then the Electoral Commission Act in 1877, and finally the Electoral Count Act of 1887. (Seligman VII 87:21-88:24.) Every Congress since the ECA's enactment has adopted the ECA's rules in the organizing resolution for the joint session, including for the 2020 election.[54] (Resp. XXXI 27:23-28:13.) No vice president in American history has ever rejected a single slate of electors, and no vice president has ever claimed or suggested that they had that power. (Seligman VII 147 14-21, VII 69:17-23.) Indeed, as Yoo acknowledged, as early as 1800, a majority of both Houses of Congress, including future Chief Justice John Marshall and many who had been at the Constitutional convention, voted for legislation that recognized Congress as the dispute resolver. (Yoo XVIII 73:5-74:9.) Nor is there any evidence that opponents of that legislation believed the Vice President should resolve such disputes. (Yoo XVIII 73:20-78:12.)[55] Instead, they believed that no federal actor had authority to regulate how a state chose its electors. (Yoo XVIII 74:14-75:1.) This is hardly surprising given the foundational maxim in

[54] Congress is empowered to "determine the Rules of its Proceedings" under article II, section 5.
[55] *See* Yoo XVIII 73:20-23 ("Q. And both of the final versions assumed that Congress would ultimately decide disputes about the electoral votes, right? A. Yes."); 73:24-74:3 ("Q. [S]o the difference between [the final versions] was that, in the Senate version, the vote of one house would be sufficient to…to make the decision, whereas, in the House version, both houses of Congress needed to be in agreement to overcome the state choice. Is that accurate? A. Yes.")

Federalist No. 10 (Madison) that in our constitutional system, "[n]o man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity."[56]

Respondent's insistence that Pence should "act without asking permission" further shows that respondent knew the plan was illegal. On December 22, 2020, attorney Larry Joseph consulted respondent about filing a lawsuit in D.C. federal court to test the theory of vice presidential power respondent advanced in his memos. (Ex. 47.) Respondent's reaction was swift and unequivocal. He instructed Joseph to hold off because a loss would "completely tank the January 6 strategy" and put "the odds at winning in either D.D.C. or CADC closer to zero, and the risk of getting a court ruling that Pence has no authority to reject the Biden-certified ballots very high." (Ex. 47 at 4.)[57] Consistent with that view, on December 23, respondent wrote to Trump lawyer Boris Epshteyn warning that "hearings on the constitutionality of the ECA could invite [unwanted] counter-views" and that it would be better for Pence "just to act boldly and be challenged." (Ex. 46; Resp. X 169:13-170:9.)

When Joseph filed the lawsuit in Texas on December 29, respondent emailed a colleague to express disapproval.[58] He wrote: "Crazy. So what do they realistically think will be the outcome of this? A federal court denying that Pence has the authority we believe he has? And how will that help bolster our arguments to Pence? Digs the hole deeper. Unbelievable." (Ex. 49; Resp. IX 32:18-22.)[59]

Respondent's concern that litigating the issue would undermine the January 6 strategy was well-founded. A second case challenging the ECA's constitutionality – *Wisconsin Voters Alliance, et al v. Pence* – filed on December 22, 2020, in D.C.'s District Court swiftly foundered. (Ex. 254.) In a January 4, 2020 order denying relief, the court explained: "the suit rests on a

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[56] *See* Ex. 179 (Seligman Report) at 91 & n. 285 (quoting The Federalist No. 10.)
[57] *See also* Resp. IX 33:7-24, 34:10-24; Ex. 47.
[58] The lawsuit asked the Court to declare that the ECA is unconstitutional and that the Vice President has the "exclusive authority and sole discretion" to determine which electoral votes should count." (Ex. 258 at 4.)
[59] On January 1, 2021, the Texas District Court dismissed the *Gohmert* case, and on January 2, 2021, the Fifth Circuited affirmed. (Exs. 258, 325.)

fundamental and obvious misreading of the Constitution. It would be risible were its target not so grave: the undermining of a democratic election for President of the United States. Plaintiffs' theory…lies somewhere between a willful misreading of the Constitution and fantasy." (Ex. 254 at 1-2, 6.)[60]

At trial, respondent claimed an October 2020 article in *The American Mind* by Yoo and Robert Delahunty "triggered" his about face on the vice president's authority. (Resp. XXIII 155:6-8, 161:20-23; Ex. 1017.) Though Yoo had been his friend and colleague for close to 30 years, respondent did not even try to discuss the article or the legal or historical support underlying the brief opinion piece with him. (Resp. XXX 199:2-14.) At trial, respondent dismissed the idea, claiming he "didn't see any need" for a discussion. (Resp. XXX 200:21-204:1.)[61] Yoo, however, volunteered that it "seem[ed] weird," given their relationship. (Yoo XVIII 110:6-111:23).

Respondent's decision not to consult Yoo was consistent with his broader approach to the January 6 strategy which was *not* to provide competent and candid advice about such a momentous issue, but instead to act as a validator for a lawless theory and avoid and ignore anything that would demonstrate the strategy's flaws. (Resp. XXX 12-22.) In contrast to Jacob, who wrote multiple memos detailing his analysis of the Vice President's powers and duties (*see* Exs. 70-71), respondent's memos provide a single, conclusory, and incorrect sentence referencing the 1797 and 1801 electoral counts as the strategy's entire legal basis and wholly fail to acknowledge or discuss any legal or factual problems with the position advanced. (Ex. 3, 4.) When pressed on the lack of written analysis, respondent testified that he "didn't go into detail because I didn't need to." (Resp. XXX 129:24-25.) Respondent's claim that he conducted "rather extensive research" into the matter himself is implausible—when pressed for evidence of his research, he claimed he kept no notes of his alleged research, could not say how much time he

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[60] *See also* Ex. 71 at 2-3 (Jacob Jan. 5 Memo citing decision as one of many reasons to reject respondent's Jan. 6 strategy.)

[61] As Yoo disclosed at trial, he knew that respondent was working for Trump in late 2020 and "didn't want to really help in any way people who asserted that the election was fraudulent or had been stolen." (Yoo XVIII-112:4-16.)

spent on it and, accordingly, did not withhold or log any research-related material on his privilege log. (Resp. XI 117:21-119:21, Resp. XXX 127:19-129:5, 132:8-11; Resp. XXVII 152:17-153:19; Ex. 381.)

b. Respondent knew that contrary to the statement in his January 3 memo, there was not "very solid legal authority and historical precedent" for Pence to reject disputed electoral votes or to delay their count.

In the January 3 memo, respondent claimed there was "very solid legal authority and historical precedent" supporting the January 6 strategy. (Ex. 4 at 3.)[62] Respondent knew that was false because none of the materials he claims to have consulted provides support for the notion that Pence had authority to reject votes or delay the count on January 6.

i. Delay

Almost three years after pursuing the January 6 strategy, respondent still has not identified any support for his recommendation that Pence violate the ECA and the Congressional Resolution by unilaterally delaying the electoral count for 10 days, over congressional objection, to allow legislative investigation.[63] Nor could he. It was and is an illegal proposal, which he knew offered no path to a legal change in the result and was designed only to delay recognition of Biden's victory and extend the window for further mischief in a way respondent hoped would avoid judicial review.[64]

The Twelfth Amendment's text does not give the President of the Senate control over the timing of the proceedings. Conversely, the text contains substantial evidence that the framers

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[62] *See also* Dec. 23 memo (Ex. 3 at 2 ¶ 6 stating "The fact is that the Constitution assigns this power to the Vice President as the ultimate arbiter.")

[63] Respondent knew there was no legal or practical end game for his proposal. *See, e.g.,* Resp. XXIV 172:5-9 ("Based on the percentage of legal votes that had been cast by absentee or mail-in, and the percentages that each of the two principal candidates that received, you could make some extrapolations in the relatively short period of time, and we're talking about a week or so delay, is all."); Resp. XXXI-21:18-22:7, 22:18-25 (agreeing the issue could not be resolved in 10 days and that he had "no idea" how long it would take to resolve.)

[64] *See* Ex. 4 at 5-6 (Jan. 3 Memo) ("Let the other side challenge his actions in court…and others who would press a lawsuit would have their past position – that these are nonjusticiable political questions – thrown back at them, to get the lawsuit dismissed.")

regarded timing as critical, including the express command that after the required opening of certificates, the votes "shall then be counted." Founding-era evidence shows prescient concern that delaying counting would open the door to "domestic intrigue" and "corruption." (Ex. 1014 at 66-68.) Consistent with that concern, the ECA dictates that recess is permitted only one day at a time for a maximum of five days. (3 U.S.C. § 16; Jacob II 93:17-94:15.)

Until 2020, no one had ever asserted that a vice president has unilateral power to delay an electoral vote count over Congressional objection. (Seligman VII 154:2-155:15; Jacob II 43:18-44:23.) It is undisputed that "no vice president or President of the Senate has ever, in American history, unilaterally postponed or delayed the electoral count for any reason." (Seligman VII 152:15-21.) Every recess or adjournment taken during the electoral count between 1789 and 2017 was initiated and controlled by Congress. (Seligman VII, 162:14-17.) Yoo offered no testimony supporting respondent's position. (Order Granting MIL No. 5 (June 20, 2023).) And, as respondent conceded, none of the legal articles he cited supported (or mentioned) the delay strategy he and Trump advanced. (Resp. IX 178:24-179:2; Seligman VII 153:17-154:2.)

ii. Reject

Respondent's reject theory called on Pence to refuse to count electoral votes of electors who had been certified by the relevant state executive under state law, after recounts and extensive litigation had confirmed the election results, when no court, no state legislature, or any other state entity had certified a competing slate of electors, and without the consent of Congress. This theory posited not just that the vice president has *some* power to adjudicate disputes (a position itself contrary to the ECA), but that under the circumstances Pence faced on January 6 he had the unilateral power, absent any dispute, to refuse to count seven states' only legally certified electoral votes.

Respondent claims this position is supported by the historical record. The deception inherent in this claim, however, is demonstrated by the repeated changes in the portions of the historical record on which defendant has purported to rely in his ever-evolving effort to paper over the patent falsity of his reject theory. In the memos, respondent cited only the electoral

counts of 1797 and 1801. In his September 22, 2022, response to the State Bar's investigation letter, he cited the records of the Federal Convention of 1787. (Ex. 6 at 7.) In his November 14, 2022, response to the State Bar's investigation letter, he cited three additional vote counts: those taken in 1789, 1857, and 1961. (Ex. 8 at 8; Answer to NDC at 36 [omitting the 1789 count].) At trial, he added the electoral counts of 1817, 1821, and 1837, despite admitting that he *had not had a chance to look at the last two*. (Resp. IX 185:18-186:2; X 58:19-20.) Then, on the twenty-third day of trial, respondent claimed that the "most important[]" evidence in "the historical record" was the records of the 1787 Federal Convention. (Resp. XXIII 161:9-11, 214:12-18; Resp. XXV 27:6-10 [admitting "I can't say I looked at all of it before January 5, but I looked at a significant sampling of it."].)[65] This ever-evolving set of purported support demonstrates increasingly desperate and dishonest trial tactics. Indeed, a review of the evidence shows that respondent, an experienced constitutional law professor with asserted expertise in election law, could not have believed that any of the historical events respondent has at various times cited actually supported the January 6 strategy.

c. Historical Electoral Vote Counts and the Federal Convention Provide Respondent No Support.

i. 1797 and 1801 electoral counts (Adams v. Jefferson)

Despite being the only historical support cited in his memos, respondent conceded at trial he only "briefly looked" at the 1797 and 1801 electoral counts, that they are "weak" precedent for his view, and that the records of the count are "cursory." (Resp. IX 187:16-23; X 91:8-13; Jacob II 58:19-69:2, 67:13-18.) Yoo and Mathew Seligman, the State Bar's expert, agreed that neither electoral count was relevant precedent for the situation Pence faced on January 6 and that any suggestion otherwise rested on speculation or conjecture.[66] (Yoo XVIII 68:13-70:6, 71:3-16,

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[65] Respondent's claim at trial that Seligman failed to address the 1787 Federal Convention is unfounded. *See* Ex. 179 at 24-27, 74 (Seligman Report re 1787 Federal Convention); Seligman VII 109-110, 123, 128-129.

[66] Respondent's basis for claiming the vice president exercised *any* authority to resolve disputes during the 1797 count is a 2004 article written by Bruce Ackerman and David Fontana suggesting that a pause taken by Vice President Adams before announcing the votes "[i]n

72:13-19, 82:12-18, 83:15-23, 92:5-7 & Ex. 1358; Seligman VII 98:16-99:5, 101:12-17, 102:13-21 & Ex. 179 at 40 [Seligman Expert Report]; Resp. XXXI 111:24-112:4.) These conclusions are not surprising given that neither Adams (1797) nor Jefferson (1801) stated or implied that they were resolving a dispute, no member of Congress at either count disputed or objected to the counting of the state slates at issue, and no one alluded to or suggested that there was federal power to exclude those slates, especially on grounds that the state itself had already considered and rejected. (*Id.*)

ii. 1961 electoral count (Kennedy v. Nixon)

Respondent did not reference the 1961 electoral count in his memos, but like the 1797 and 1801 counts, he discussed it with Jacob on January 5 and conceded then that it does not show a vice president rejecting electoral votes or claiming authority to do so. (Resp. X 91:8-11; Jacob II 67:13-18.) Respondent's renewed contention, at trial, that it supports his position lacks any basis. Following the 1960 election, Hawaii initially certified Nixon the winner, but by January 6, after a court ordered recount, both the state court and the state's governor had certified Kennedy as the winner and forwarded a new certificate of ascertainment so finding. (Stip. 5:7-12.) There is no record that anyone disputed that the post-recount certificate should be counted, and Nixon (at the time the Vice President) did not purport to make a final decision as to which of the certificates to count. Rather, he "suggest[ed]" that the Kennedy votes should be counted, and explicitly asked the joint session if there was an objection to counting them. (Stip. at 5:21-24.)[67] Seligman explained that "[i]t is absolutely clear that [Nixon] was not asserting any authority over

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obedience to the constitution and law of the United States, and to the commands of both Houses of Congress" indicated that he was resolving a dispute about the Vermont votes. (Resp. XXX 197:25-198:7; Ex. 179 at 34 (Seligman Report).) In his article, Yoo proposes six other possible interpretations of this event, also noting it is possible the pause did not even occur. (Ex. 1358 at 73-74.)

[67] Respondent appears not to have taken note of Nixon's remarks at the conclusion of the Joint Session, regarding the peaceful transition of power: "I do not think we could have a more striking and eloquent example of the stability of our constitutional system and of the proud tradition of the American people of developing, respecting, and honoring institutions of self-government. In our campaigns, no matter how hard fought they may be, no matter how close the election may turn out to be, those who lose accept the verdict, and support those who win." *See* Ex. 1012 at 5/center column (1961 Congressional Record).

Congress." (Seligman VII 121:19-122:7.) Yoo and Jacob agreed. (Yoo XIII 140:25-141:22; Jacob II 58:19-59:2).[68]

iii. Post-hoc citation of five electoral counts (1789, 1817, 1821, 1837, 1857)

In an apparent post-hoc effort to shore up his defense after the State Bar's investigation began, respondent identified five additional electoral counts during the investigation and at trial that he claims support the strategy. Respondent admitted that he had not "looked at" two of those counts, 1821 and 1837, so he could not explain why they supported his position. (Resp. IX 185:18-186:2; X 58:19-20.) None come close to supporting his January 6 strategy.

1789. In 1789, electoral votes were counted under a resolution providing that the first Congress should "appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President." (Ex. 179 at 27; Ex. 6 at 7.) At most, that resolution suggests that some of the drafters of the Constitution thought that the President of the Senate *counted* votes. It says nothing about resolving disputes or delay.[69] Indeed, respondent acknowledged there was *no dispute* about which votes to count in 1789, which was an uncontested election. (Resp. X 58:11-13.)

1817, 1821, and 1837. Notwithstanding respondent's assertion that these three counts support his position (despite not having reviewed two), Yoo and Seligman concur that none shows the President of the Senate exercising any decision-making power. (Yoo XVIII 88:7-14, 90:6-10, 90:13-16, XIII 138:18-20 ["we don't try to claim that one should draw real significance from these events"] and Ex. 1358 at 80-82; Seligman VII 89:16-24 & Ex. 179 at 60-68).)[70]

1857. Despite not mentioning it in his memos or discussing it with Jacob in January

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[68] Notably, Yoo regards post-founding era examples as having little probative value. (Yoo XVII 76:6-11.)

[69] *See* Seligman Report, Ex. 179 at 29 ("there is no reason to think [the first Congress]… understood [the President of the Senate] to have the authority to resolve disputes about those electoral votes.")

[70] The electoral counts of 1817, 1821, and 1837 involved similar issues. In all three elections, electoral votes were received from states—Indiana, Missouri, and Michigan—that had not been admitted to the union at the time the votes were cast but that were or were soon to be admitted when the votes were counted in the joint session.

2021, respondent claimed at trial that the 1857 count is "a very clear precedent in support of the position I took." (Resp. XXIX 82:23-25, 91:22-23.) He asserted that during the 1857 electoral vote count, it was the President of the Senate who "determined to count" disputed votes from Wisconsin cast on the wrong day because of a snowstorm and "resolved that dispute, in other words." (Resp. XXIX 83:10-16, 84:2-7, 91:6-8.) Yet, when asked by the court—twice—to identify the evidence for his contention in the record of the 1857 vote count, he admitted that he could not "recall specifically," and claimed the evidence "continues for several pages." (Resp. XXIX 84:8-12, 85:8-17.)

Seligman thoroughly assembled and analyzed the historical record and concluded that respondent's claims about 1857 are "clearly and unequivocally refuted by the historical record." (Seligman VII 113:1-18.) First, at the joint session where the votes were counted, the President of the Senate indicated that the *tellers,* rather than the President, were counting and verifying the votes, and the tellers themselves announced and counted Wisconsin's vote. (Ex. 1356 at 2/left hand column.)[71] Second, when members of Congress objected to his decision to declare a vote total including the Wisconsin votes, the President of the Senate ruled those objections out of order. In doing so, he did not resolve a dispute, but instead made a procedural ruling because the congressional joint resolution governing the count required him to declare the count as reported to him by the tellers, subject to being overridden by congressional action. (Ex. 1356 at 2/center column; Ex. 180 at 298.)[72] Third, when some Senators accused the President of the Senate of resolving the dispute, he three times expressly denied having done so, stressing that the validity of the votes was an issue for Congress to decide. Respondent's assertion that the Presiding Officer exerted or claimed constitutional power when he expressly denied having done so (Resp. XXIX 91:12) is without historical support.

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[71] "The Presiding Officer considers that the duty of counting the vote has devolved on the tellers under the concurrent order of the two Houses; and he considers, further, that the tellers should determine for themselves in what way the votes are verified to them, and read as much as they may think proper to the two Houses assembled."

[72] "The Presiding Officer has made no such decision…The Chair considers that, under the law and the concurrent order of the two Houses, nothing can be done here but to count the votes by tellers, and to declare the vote thus counted."

iv. The Federal Convention

On the twenty-third day of trial, respondent pivoted back to the records of the 1787 Federal convention as the "most important[]" supporting evidence. (Resp. XXIII 161:9-11, 214:12-18.) Although he claims that he reviewed these records in late 2020 (*id.*), he did not discuss this evidence in his memos, in his communications with Jacob, or in his American Mind article (Ex. 31). That may be because, as Yoo acknowledged, there is "no evidence in the historical record [of the Federal Convention] of how electoral disputes were to be resolved." (Ex. 1358 at 51.) There was no debate in the Federal Convention regarding the President of the Senate's role in the electoral count. Nor was there debate about it in state ratifying conventions or the press. (Ex. 179 at 25 [Seligman Expert Report].)

v. Law review articles

Respondent also asserted that several law review articles supported the January 6 strategy. As shown below, not a single article respondent claims to have reviewed supports the strategy he was advancing. To the contrary, the only law review article that contemplated anything remotely like it – the Foley article (Ex. 1019) – rejected it outright.

Ackerman-Fontana (2004) (Ex. 1212.) This article concludes that the ECA governs modern electoral counts and rejects Kesavan's argument that it is unconstitutional. It states that the 1801 precedent could only possibly be relevant in one very narrow set of circumstances not covered by the ECA—if two rival sets of electoral votes each ratified by a state executive were submitted to the joint session—which was not the case in 2020. (Ex. 1212 at 92-93.) Yoo agreed.[73] (Yoo XVIII 107:13-109:4.)

Kesavan (2002) (Ex. 1014.) Though he argues that the ECA is possibly unconstitutional, Kesavan still explicitly rejects any role for the President of the Senate, concluding "the President of the Senate participates no more in the counting function than she participates in trial of

[73] Yoo also called the piece's analysis of the 1797 and 1801 historical precedent "conjecture" and "speculation." (Ex. 1358 at 73; Yoo XVIII 69:24-70:1)

impeachment—in neither case does the Vice President have a vote." (Ex. 1014 at 58.) Kesavan concludes, "[t]he best interpretation as a matter of text and the better interpretation as a matter of history is that the counting function is vested in the Senate and House of Representatives." (Ex. 1014 at 58.) Yoo agreed. (Yoo XVIII 104:16-105:7.)

Foley (2019) (Ex. 1019.) Foley explicitly rejects respondent's reject theory—a vice president ignoring the ECA and rejecting the only slate of electors certified by a state government, over the objection of both Houses of Congress—as "so far-fetched to [be] beyond the stretch of imagination" and having "no chance." (Ex. 1019 at 11, 22 n.46.) Indeed, Foley asserts that if a state submits only one set of electoral votes (as occurred in 2020), it "must count." (Ex. 1019 at 22.) Respondent conceded Foley does not claim the President of the Senate has exclusive constitutional authority to determine which votes to count. (Resp. IX 175:20-23.)

Colvin-Foley (2010) (Ex. 1020.) Respondent conceded that the article does not consider the legality of a vice president unilaterally excluding a single set of electoral votes from a state. He argued that the article only supported the scheme by "inference." (Resp. IX 177:7-21.)

Harrison (2000) (Ex. 1211.) Respondent concedes that he did not review the Harrison article before January 6, 2021, and never cited the article for support until trial. (Resp.. IX 160: 17-22, XXIII 217:15-16). Harrison in any event argues that "Congress has no such authority [to be the final judge of electoral votes], nor does anyone else." (Ex. 1211 at 1). Yoo agreed at trial that the Harrison article does not list the Vice President as a potential dispute decider. (Yoo XVIII 96:1-9; *see also* 98:15-21.)

Beermann-Lawson (March 2021 draft) (Ex. 1015.) On its face, the draft of the Beermann-Lawson article (Resp. IX 160:17-22) is precisely the type of academic grandstanding that should not be relied upon by *any* practicing lawyer, much less one purporting to advise the President, without examining the underlying sources. As an initial matter, the title of the article expressly claims that it consists of "fun facts" and "random academic speculations." The authors further admit that it is a "quickie essay, not a detailed research piece." (Ex. 1015 at 40). And as described in this section, the historical record provides no support for respondent's position.

D. December 31 Complaint in *Trump v. Kemp*
Count Four – Misleading a Court (6068(d))

On December 31, 2020, two weeks after the electoral college had voted, three weeks after a full hand recount confirmed the results of the election in Georgia, and just six days before the Joint Session of Congress, respondent filed *Trump v. Kemp*, a federal lawsuit seeking an emergency injunction decertifying the 2020 presidential election in Georgia. (Exs. 88, 270 ¶ 9 & pp. 28-29; Resp. V 22:22-23:18.) The complaint incorporated by reference the complaint and appended exhibits filed in *Trump v. Raffensperger*, a pending state court matter as to which respondent had provided legal advice. (Ex. 2 ¶ 28; Ex. 270 ¶ 24; Resp. I 139:8-10; Resp. V 23:19-24:15, 58:16-22.) According to December 31 emails exchanged among respondent, his co-counsel in the case Kurt Hilbert, and other members of Trump's Georgia team, they believed that having the case pending "might be enough to delay consideration of Georgia, particularly if Pence has the legal ability and will to insert himself at least enough to win delay." (Ex. 50.)[74]

Respondent's complaint included and incorporated by reference multiple allegations respondent knew or consciously ignored were false and misleading. (Ex. 270 ¶ 9; Ex. 1048.) First, it alleged that Georgia election officials allowed an outcome-determinative number of "unqualified voters" to vote based on affidavits from Bryan Geels, Matthew Braynard, and Mark Alan Davis. (Ex. 270 ¶ 9; Resp. I 88:16-24; Resp. V 26:6-11; 51:5-10; 74:21-76:8; Ex. 1048 at 69 (Braynard), at 547 (Geels), at 583 (Davis).)[75] Like Geels, discussed *supra* at § II.A.,

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[74] Exhibit 50, together with Exhibits 51 and 52, were disclosed pursuant to an October 19, 2022 court order in *Eastman v. Thompson*, wherein the Court concluded that they were subject to the crime-fraud exception to the attorney-client privilege, because they "demonstrate an effort by President Trump and his attorneys to press false claims in federal court for the purpose of delaying the January 6 vote." (*See* Ex. 302.)

[75] Allegations purportedly supported by the Geels affidavit included that Georgia election officials allowed: "as many as 2,560 convicted felons still serving their sentence to vote;" *at least* 66,247 underaged individuals to register and then vote; *at least* 2,423 unregistered or late registered individuals to vote; accepted as many as 10,315 votes cast by deceased individuals. (Ex. 265 at 28 ¶¶ 60-61, at 29 ¶¶ 67-68, and at 36 ¶¶ 101-103 (Emphasis added).) Allegations purportedly supported by the Braynard affidavit included that Georgia election officials allowed: *at least* 1,043 individuals to vote who had registered at a P.O. Box, church, or courthouse rather than their residence. And allegations purportedly supported by the Braynard affidavit included that Georgia election officials allowed *at least* 40,279 individuals to vote who had moved across county lines. (Ex. 265 at 33 ¶¶ 85-88 (Emphasis added).)

Braynard's lack of qualifications and unreliability were evident from the face of the filing. (Ex. 1048 at 70-84; Resp. V 24:16-19.)[76] Moreover, by the time of respondent's December 31 filing, the trio's conclusions had been discredited by the December 14 and 15, 2020 declarations, filed in *Trump v. Raffensperger*, of Charles Stewart, an MIT political science professor with expertise in election administration and election science, and Chris Harvey, the Elections Director for the Georgia Secretary of State's Office. (Ex. 202 (Stewart); Ex. 97 (Harvey); Resp. I 102:15-21, Resp. V 26:12-29:10, 30:17-20.) Stewart concluded that Geels, Davis and Braynard relied on database matching "procedures that are known to be unreliable and to produce a preponderance of 'false positives;'" the "anomalies" Geels uncovered were either "benign errors" not indicative of fraud or "suggest[ed] errors of analysis or ignorance of Georgia law;" and finally that Geels drew unfounded negative inferences from the decline of ballot rejection rates. (Ex. 202 ¶¶ 13-16.)[77] Harvey likewise undermined the accuracy of Geels' and Braynards' conclusions, citing concerns about their data and their assumptions. (Ex. 97.) At trial, respondent claimed he had "likely" read the Stewart and Harvey declarations prior to December 31, but he dismissed their significance, cavalierly contending they were simply part of the "adversarial process," and further, that the allegations at issue "had the necessary caveats to make the statements all true." (Resp. V 29-47, 52:8-53:1, 63:25-64:3.)

A December 31, 2020, email among respondent and his co-counsel, however, shows that respondent understood there were misrepresentations in the filing. At 10:59 AM, Hilbert wrote to

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[76] Braynard, whose highest level of education is a 2018 master of fine arts, is a political consultant who directed voter targeting efforts for Trump's 2016 presidential campaign. (Ex. 1048 at 84; Resp. V 24:16-26:11.) He has no training or education in statistics, election administration or political science.

[77] Grimmer agreed. (*See, e.g.,* Grimmer VI 21:24-27:7; XXXII 84:1-88:15 (re analyses attempting to identify voters who were either deceased or felons); Grimmer, VI 27:8-31:2, 112:5-113:10 (re analyses based on unwarranted inferences about the data) & Ex. 177 at 11-12; Grimmer XXXII 72:1-80:5 (stating that further analysis of public voter records indicated that the average age of those Geels identified as registering too young was 42 at the time of the 2020 election, including three 92 year-old voters, that more than half of those voters later re-registered, and that approximately 80% of the remainder registered at age 10 or younger, in many cases allegedly under the age of 1, strongly suggesting that those results reflected clerical errors, rather than illegality.).)

respondent, copying the team, to advise him that Hilbert had removed numbers from the verified complaint "as requested." At 11:15 AM, respondent wrote back to Hilbert, dropping the rest of the team, stating in relevant part:

> Keeping Bruce and his team off this for the moment. Here's the issue. The complaint incorporates by reference the state court challenge. Although the President signed a verification for that back on December 1, he has since been made aware that some of the allegations (and evidence proffered by experts) has been inaccurate. For him to sign a new verification with that knowledge (and incorporated by reference) *would not be accurate*.

(Ex. 51 (emphasis added); Resp. V 53:24-54:4, 55:16-17; 56:9-22 [acknowledging Trump lawyer Eric Herschman "raised a concern that some of the numbers may have been inaccurate"].) Several hours later, in an email to the full team, respondent and Hilbert agreed to insert a footnote in the Verified Complaint and Trump's Verification in Support disclaiming personal knowledge of the facts and figures therein, without changing the allegations. (Ex. 52 at 4; Ex. 270 at 6-7, 33-34.) At trial, respondent insisted that the allegations were accurate because "in every instance, [Mr. Braynard and Mr. Geels' affidavits]…are caveated with "as many as," or "based on information contained in the records." (Resp. V 59:14-60:1.) [78] This statement typifies respondent's efforts to disregard the truth and underscores his dishonesty.

Second, the complaint alleged Fulton county election officials engaged in misconduct by "remov[ing] suitcases full of ballots from under a table where they had been hidden, and process[ing] those ballots without open viewing by the public in violation of [state law]." (Ex. 270 ¶ 17.)[79] In fact, as respondent knew when he filed *Trump v. Kemp*, these claims had already been investigated and debunked by state election officials. (Resp. V 77-81.)[80] At trial, respondent conceded that the ballots under the table were not "hidden," as alleged, but were just regular absentee ballots in a processing container and that he has no evidence that the ballots the

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[78] *See* Resp. V 38:20-39:8. In fact, several of the statements used the caveat "at least" suggesting the numbers were minimums. *See* note 7, *supra*.

[79] A New York court suspended Rudolph Giuliani for making substantially similar allegations about alleged impropriety at the State Farm Arena in Georgia. *See* Ex. 305 at 21-23.

[80] Discussing Ex. 98 (Dec. 5, 2020 Watson Dec.) ¶¶ 6-7 (explaining "observers and media were not asked to leave" and "there were no mystery ballots brought in from an unknown location and hidden under the tables").

workers were processing were fraudulent ballots. (Resp. V 95:16-96:5, 96:18-22.) Furthermore, as respondent knew, Georgia law does not require poll watchers to be present for the canvassing, it simply permits them to be. (Resp. XI 109:4-6.) Thus, even if his allegation that observers were told the operation was closing for the evening were true, it does not follow that the ballots counted at that time were illegal as he dishonestly implied. (Resp. V 77:1-7, 78:2-25.)

Third, the complaint alleged that Georgia election officials engaged in an illegal signature verification process by virtue of abiding by a March 2020 Settlement Agreement, which was also false and misleading. (Ex. 270 ¶¶ 10, 12, 13.) As respondent knew, but did not disclose in *Trump v. Kemp*, on November 20, 2020, the District Court had denied a motion for a temporary restraining order predicated on the exact same allegations more than a month earlier in *Wood v. Raffensperger*, concluding that the "Settlement Agreement is a manifestation of Secretary Raffensperger's statutorily granted authority. It does not override or rewrite state law." (Ex. 274 at 29, 31, 38.) The 11th Circuit affirmed on December 5. (Ex. 273.)[81] On January 5, 2021, the district court denied the requested injunctive relief in *Trump v. Kemp*. (Ex. 271.)[82]

E. January 2, 2021, Appearance on the Steve Bannon Radio Program

Count Five – Misrepresentations (6106)

On January 2, 2020, respondent appeared on Steve Bannon's War Room podcast to advance the January 6 strategy. (X-73:20-24.) Bannon, who was in regular contact with Trump during this time,[83] introduced respondent as "the President's constitutional lawyer" and asked him: "you're the lead sled dog here. What should people be looking for?" (Ex. 28 at 1, 4 [Bannon Transcript].) Respondent replied:

> they ought to be putting pressure on their state legislators. So, if you're in Georgia, or Pennsylvania, or Wisconsin, or Arizona, call your legislators. Demand that they call themselves into session… And then, either decertify the existing slate of electors if

[81] *See* Resp. IX 157:1-8 (confirming he was aware of the *Wood* decisions when he filed *Trump v. Kemp* and when he wrote the Jan. 3 Memo).

[82] Contrary to respondent's repeated assertions otherwise, (*see, e.g.*, Ex. 28 at 1) the court's order further explained why "any delay in having the superior court render a decision in [*Trump v. Raffensperger*] is due to Plaintiff's own actions in that litigation." (Ex. 271 at 1-5, 26.)

[83] *See* Ex. 385 (Jan. 3 White House Phone Log) (reflecting calls to and from Bannon at 10:11 AM, 9:53 PM, and 10:43 PM); Ex. 386 (Jan. 5 White House Phone Log) (reflecting calls to and from Bannon at 8:57AM and 8:31 PM.)

> there's just too much uncertainty about the results of the election, or certify the correct slate of electors if the number of ballots that are shifted if you get rid of the illegal ones are enough to affect the outcome, as we believe they are…. So, pressure. Pressure beginning now. And, rolling thunder pressure. If you find one guy saying, "Well, I can't do anything. The leader is the one blocking it." Then, shift the focus to the leader.

(Ex. 28 at 4-5.)

As grounds for this "rolling thunder pressure" call to action, respondent claimed the existence of "massive evidence" that the election was conducted illegally by "partisan elected officials" and "partisan judicial officials" in violation of state statutes resulting in "more than enough [absentee fraud] to have affected the outcome of the election." (Ex. 28 at 1, 2, 6 [claiming the election was "meaningless because of fraud"]; Resp. X-75:24-76:11, 77:24-78:12, 85:2-6.) But respondent did not have "massive evidence" of absentee fraud. (Resp. X 79:11-22, 80:23-82:9.) When pressed at trial for the basis for this claim, respondent cited the "weakening of signature verification" rules in Georgia and Pennsylvania, claiming they "caused a dramatic decline in the disqualification of ballots." (Resp. X 79:8-22.) But the evidence at trial showed that neither respondent nor his "experts" had even sought to ascertain the number of absentee ballots rejected on signature verification grounds—something they could easily have done using publicly available information. (Resp. X 80:15-82:9; Grimmer XXXI 226:4-228:7.)[84]

As to several other swing states – Michigan, Arizona, and Nevada – respondent's own emails show he had no evidence of any alleged illegality, let alone fraud. On the night of January 1, before his appearance on Bannon's podcast the next day, respondent emailed Trump advisor Boris Epshteyn asking, "Has anyone identified state laws in MI, AZ and NV that were violated[.]?" (Ex. 54.) When confronted with this email at trial, respondent said "I vaguely knew

[84] On October 24, 2023, respondent attempted to calculate the number of votes in Georgia effected by changes to signature verification and testified that "6,500 votes . . . resulted from a decline in the rejection rate." (Resp. XXIX 100:16-22.) He reached that number by applying the signature rejection rate to the "roughly 5,000,000 votes that were cast in Georgia," an enormous miscalculation because 74% of those ballots were not verified by signature. (Grimmer XXXI 205:2-206:17). Respondent's erroneous belief that all ballots in Georgia were subject to signature verification reveals his conscious disregard of Georgia election administration, and his failure to consult a real expert on this issue reveals that he had no serious interest in learning the actual non-material effect of changes to signature verification.

of things. I was not involved in any of the litigation in Michigan, Arizona, or Nevada." (Resp. X 64:6-14.) On the morning of January 2, respondent sent another email, this time to another attorney asking for help identifying violations of state election law in "Michigan, Arizona and Nevada…to the extent the violations are clear. Can you let me know this morning what, if anything, went on in Michigan that fits the bill?" (Ex. 55.) When confronted with this email at trial, respondent explained "I had been vaguely aware… [of] allegations of illegality in all three of those states, but I didn't have the particulars." (Resp. X 66:9-14.)

Beyond the "rolling thunder pressure" on state legislators, Bannon asked respondent if there were options for Pence to take action if he "grows a spine and understands his constitutional duty." (Ex. 28, at 5.) Pointing to cert petitions in the Supreme Court challenging the results in Pennsylvania (which he filed) and Wisconsin (on which he consulted) and *Trump v. Kemp* (which he filed three days before), respondent urged that Pence "could at least agree that because those ongoing contests have not been resolved, we can't count those electors." (Ex. 2 ¶¶ 20; Ex. 28 at 6.) These filings were, of course, a ruse designed to create the appearance of a dispute to justify Pence's action—respondent knew the Supreme Court would not intervene.[85]

F. January 2 and 3 Meetings with Legislators

December 3 testimony to the Georgia Senate, described *supra* at § II.A., was just the first of several presentations respondent made to large groups of legislators in furtherance of his representation of Trump and his "rolling thunder" call to action. (Ex. 2 at ¶ 30.) On January 2, he joined Trump and other Trump allies as a featured speaker at a national briefing for several hundred legislators to solicit legislators' signatures on the January 5 letter to Pence demanding he delay certification. (Ex. 55, 1284.) During the briefing, respondent urged legislators to "insist on enough time to properly meet, investigate, and properly certify results to ensure that all lawful votes (but only lawful votes) are counted." (Ex. 1284.)

On January 3, respondent participated in a similar call with state legislative leaders from the 7 States. (Ex. 8 at 5.) The agenda shows its purpose was to obstruct the electoral vote count

[85] *See* note 52, *supra*.

on January 6: "we need Congress to stay/pause the vote counting on Jan. 6. Alternatively, we need State Legislatures to stay/pause (or de-certify) their certification of Electors before the count on Jan. 6 to prevent Congress from certifying anyone with 270. We must have 37 electoral votes on stay/pause/de-certify to pause (drop Biden below 270)." (Ex. 8 at 5.)

G. Respondent's Actions on January 4 and 5
Count Ten – Moral Turpitude (6106)

On January 4, 2021, respondent attended a meeting at the Oval Office with Trump, Pence, Jacob, and Pence's Chief of Staff Marc Short to discuss Pence's legal authority to advance the January 6 strategy. (*See* Stip. ¶ 6; Jacob II 48:21-23.)[86] Prior to the meeting, in October and November 2020, Jacob had conducted extensive research about the Vice President's role on January 6. He had read the text of the Constitution and the 12th Amendment, the ECA of 1887 and its legislative history, all of the law review articles concerning the ECA and its operation, and all of the congressional record and other similar formal records of all the electoral counts back to the founding. (Jacob II 42-43, 116-117.) Based on that research, which Jacob memorialized in a December 8 memo, his and Pence's "unequivocal conclusion" was that Pence had neither the authority to reject electoral votes from any state nor to delay their counting. (Jacob II 43:16-44:17, 45:2-46:14; Ex. 70.)[87]

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[86] Notwithstanding his claimed inability to recall any specifics about his communications with Trump in advance of this meeting or in early January more generally, White House phone logs suggest respondent and Trump were in regular communication in early January. *See, e.g.,* Ex. 385 at 6 (Jan. 3 White House phone log reflecting Trump left respondent a message the day before the Jan. 4 meeting.); Ex. 386 at 3 (Jan. 5 White House phone log.)

[87] At trial, respondent seized on Jacob's Dec. 8 memo to Pence to support his argument that his claims about the ECA's constitutionality were tenable. But Jacob's Dec. 5 memo did *not* address the tenability of that argument. It merely acknowledged that questions about the ECA's constitutionality had been raised by some scholars. *See* Ex. 70; Jacob II-127:9-22, 142:2-6, 143:18-144:2. On cross examination, Jacob explained that he had not by Dec. 5 "done sufficient research to…be able to supply a definitive conclusion" as to whether the ECA was unconstitutional in whole or in part and, further, that he had *not* concluded that "any of the applicable procedures that we would be operating under [] would be unconstitutional." (Jacob II 127:22-128:4, 143:2-6.) By January 6, however, Jacob testified he had "conclusively reject[ed] the argument that the Electoral Count Act is void as a whole" and concluded that "the procedures that governed the way that the President of the Senate…was to conduct those proceedings…are constitutional [and] appropriate[.]" (Jacob II 128:15-129:18.)

At the January 4 meeting, respondent told Pence there were two legally viable arguments about vice presidential authority with respect to January 6. "One was that the vice president had unilateral authority to determine the validity of electoral vote certificates. The other would be that, as presiding officer of the proceeding, that he had the authority to suspend the proceeding and send the electoral vote certificates back to state legislatures for them to determine who had legitimately won the vote in that state." (Jacob II 49:20-50:5.) Respondent acknowledged his proposal violated multiple provisions of the ECA, and that were Pence to act under his proposal, he would be sued for violating the ECA in the D.C. Circuit, which had just rejected the argument that the ECA is unconstitutional in the *Wisconsin Voters Alliance* case. (Ex. 71 at 1-3.) He further acknowledged "that no Republican-controlled legislative majority in any disputed State has expressed an intention to designate an alternate slate of electors." (*Id.*; Jacob II 81:1-12.) Nonetheless, he proposed that the "prudent course" would be for Pence to "suspend the proceeding for a 10-day audit." (Ex. 71 at 3; Ex. 254; Jacob II 50:6-15.)[88]

The January 4 Oval Office meeting is the only occasion on which respondent could recall discussing with the President the courses of action outlined in his memoranda, and hence (based on respondent's asserted recall) the only occasion on which he could have provided candid advice consistent with his obligations under California Rule of Professional Conduct 2.1 to correct the errors and distortions in the memos. But the evidence is clear that he did not do so. As Jacob, who was present for that meeting and for a subsequent call with the President and respondent on January 5, testified, "based on everything that I had seen…the instances of advice I had seen provided to the president…that January 4th meeting and that brief phone call late in the afternoon of January 5th… was deficient" and "brought our profession into disrepute[.]" (Jacob II 106:6-11, 107:12-13; Ex. 73 at 2 [respondent failed to "ensure that the President

[88] After the meeting, Jacob did some additional research on the delay option respondent presented, since none of the scholarship he reviewed previously had addressed it. (Jacob II 44:7-14, 80:4-23; Ex. 71.) Nothing he reviewed changed his conclusion that Trump and respondent's proposed course of action – delaying the vote – "would violate several provisions of the [ECA]." (Jacob II 53:16-55:11, 80:9-14; Ex. 71 at 1-2.)

understood all the legal and practical implications" of unilaterally overriding the statutes governing the counting of electoral votes].)

The next morning, at 8:06 AM on January 5, Trump tweeted, "The Vice President has the power to reject fraudulently chosen electors." (Ex. 297.) A few hours later, fresh from his loss at oral argument in *Trump v. Kemp*,[89] respondent met again with Jacob and Short. This time, according to Jacob, respondent, echoing Trump's tweet, asked Pence to *reject* electors from five to seven states. (Jacob II 55:22-56:9, 57:2-4, 76:20-81:3; Resp. XXV-19:18-20, Resp. XXVIII 14:2-5.) Although publicly, respondent has strenuously denied making this request (*see, e.g.,* Ex. 31), under oath he was far less forceful, stating, "I have no recollection of making that request, and given where we ended on January 4th, I can't imagine that I would have done so." (Resp. XXV 35:1-4.) Contemporaneous records of the events – namely Jacob's handwritten notes from the meeting, which state, "Requesting VP reject," and a January 6 email from Jacob referring to respondent's "retreat" from the proposal to reject, as well as respondent's own January 6 email referencing "the most aggressive position that had been discussed and rejected" – corroborate Jacob's account. (Ex. 65 at 1; Ex. 68 at 1.)

During the January 5 meeting, Jacob and respondent discussed respondent's claimed legal and historical support for his proposal. (Jacob II 57:8-58:22.) They talked about the law review articles respondent cited, including articles by Laurence Tribe and Bruce Ackerman, and details of the 1796, 1800, and 1960 elections and related historical documents, including the Congressional Record, letters, and newspaper accounts.[90] (Jacob II 57:14-67:24.) In Jacob's view, the historical record did not support respondent's recommendation. (Jacob II 58:23-59:2.)

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[89] The judge in that case ruled from the bench. In the Jan. 5 written order that followed, the court refused to decertify the election, holding, *inter alia*, that Trump did not show a likelihood of success on the merits of the claims and that "to interfere with the result of an election that has already concluded and has been audited and certified on multiple occasions would be unprecedented and harm the public in countless ways. Granting injunctive relief here would breed confusion, undermine the public's trust in the election, and potentially disenfranchise of [sic] millions of voters." *See* Ex. 271 at 27-28 (internal citations omitted.)

[90] *See also* Jacob II 79:13-16 ("Any law review article that he raised I had already read. Every historical incident we talked about I knew the details of at least as well or, in many instances, better than he did.")

Ultimately, according to Jacob, he and respondent agreed "that there had been no actual instances of departure from [ECA] procedures during the entire 130 years that the [ECA] had been in effect." (Jacob II 61:12-15; Resp. X 90:13-17.) Respondent further conceded that the Adams (1797), Jefferson (1801), and Nixon (1961) examples he had been citing "did not represent examples of vice presidents rejecting electoral vote certificates or claiming that they had any authority to do so, or claiming that they had any authority to make any kind of substantive decision about electoral vote certificates." (Jacob II 67:13-18; Resp. X 91:8-11.) Finally, they agreed that if Pence were to unilaterally reject electors from multiple states, they would lose any resulting Supreme Court challenge 9-0. (Jacob II 72:3-8; Resp. X 92:15-25.)

When it became clear to respondent that the "reject" option was not gaining traction, respondent retreated to his proposal to "send it back to the states." (Jacob II 72:18-21, 73:4-6, 91:11-18; Ex. 68.) Based on Jacob's research – his review of statements from state legislators and Republican leaders "indicating that the people had spoken, and that they did not intend to take any action at the state level to try to cause there to be a different result than the result that had already been certified in that state" – he believed that "[i]n addition to it not being legally warranted, there was no reason to believe that the states were interested in that." (Jacob II-73.)

Respondent knew it too, because he had been directly involved in efforts to persuade state legislatures to formally request such a delay. (*See* § II.E-G, *supra*.) Indeed, at trial, respondent admitted he knew that there was never a majority of state legislators from any state requesting a delay, stating "I've never asserted that there was a majority that had signed these letters in any of the states." (Resp. XXX-104:2-4.)[91] And he admitted he was aware of statements by state leaders disavowing any intention of calling state legislatures back into session to overturn the will of the voters. (*See, e.g.,* Resp. XXX-109:11-110:8 & 111:6-11 [acknowledging he knew Michigan Republican Senate Majority Leader Mike Shirkey stated that the Michigan legislature was not going to certify different electors "sometime in December" and

[91] *See* Ex. 379 (reflecting that the percentage of legislators from the 7 States who signed the letters seeking delay was *far* from a majority: 28% in AZ, 6% in GA, 15% in MI, 0% in NV, 0% in NM, 17% in PA, and 11% in WI.)

that Republican leaders in the Michigan legislature were not inclined to take up the issue]; Resp. XXX 114:7-115:5 [acknowledging Wisconsin legislative leaders did not want to conduct hearings or certify different electors]; Resp. X 98 and XXX 105:19-106:23 [discussing Dec. 4 statement by Arizona House Speaker Bowers stating that nullifying the people's vote based on unsupported theories of fraud would violate his oath to support the Constitution], Ex. 189.)[92]

After their meeting, Jacob had two more calls with respondent on January 5 – one with Trump and another without – in which respondent acknowledged that "as of [Jan. 4], no Republican-controlled legislative majority in any disputed states has expressed an intention to designate an alternate slate of electors" though respondent claimed they were still working to persuade legislators to change their positions. (Jacob II 74:1-11, 80:24-81:17, 82:5-83:2; Ex. 71.)

Later that night, at 9:32 PM, respondent emailed Jacob proclaiming, "Major new development attached. This is huge, as it now looks like PA legislature will vote to recertify its electors if Vice President Pence implements the plan we discussed." (Ex. 66; Jacob II 86:1-2.) Jacob was not swayed, because, as respondent also knew, "there was not a majority of the Senate or the House sufficient to…warrant that conclusion….[and] no matter what a letter from the Pennsylvania legislature said…The vice president's authorities are what the vice president's authorities are." (Jacob II 74:22-75:14; Resp. XXX-104:2-4; Ex. 379.)

At 9:54 PM, respondent and Trump spoke on the phone for four minutes. (Ex. 386 at 3.) Just *two minutes later*, at 10:00 PM, Trump tweeted, "If Vice President @Mike_Pence comes through for us, we will win the Presidency. Many States want to decertify the mistake they made in certifying incorrect & even fraudulent numbers in a process NOT approved by their State Legislatures (which it must be). Mike can send it back!" (Ex. 298.) At trial, respondent agreed that Trump's tweet was consistent with his counsel. (Resp. XXX 162:5-8, 163:1.) He also knew

[92] Respondent's claim that he was unaware of Bowers' position at that time is not credible. At trial, he admitted that he participated in a call with Bowers on the same day that Bowers issued his statement and that he recalled, with respect to Arizona, "other legislators had told me that they were running into difficulty trying to get hearings and what have you to address the matter." *See* Resp. X-175:4-16 (discussing Ex. 53) and Resp. XXX-106:15-23.

as demonstrated above, that no state legislature was planning to certify a slate of Trump electors and that Pence did not have authority to send it back.

Neither Jacob nor Pence believed that the allegations of voting irregularities respondent was advancing gave Pence the right to unilaterally reject electors from any states or that there was evidence of fraud in any state that could have affected the outcome of the election. (Jacob II 84:20-25, 85:1-4.) Moreover, they did not believe that the proposal to delay the proceedings – which respondent acknowledged to Jacob had the same basis under the 12th Amendment – could be implemented without violating multiple provisions of the ECA. (Jacob II-53:16-54:6, II-92:19-25, II-165:16-166:5.) [93] Thus, Pence drafted a "Dear Colleague" letter to be sent to his colleagues in Congress before the electoral vote count on January 6th, explaining: "my oath to support and defend the Constitution constrains me from claiming unilateral authority to determine which electoral votes should be counted and which should not" and further explaining that, objections validly made under the ECA would be "given proper consideration." (Ex. 64; Jacob II-84:5-12.)

H. Respondent's Actions on January 6

Count Seven – Claims of Electronic Vote Fraud – Misrepresentations (6106)
Count Eight – Email to Greg Jacob that Evidence of that the Election was "Stolen" was "Compelling" and "Overwhelming" – Misrepresentation (6106)
Count Eleven – False and misleading statements that contributed to provoking the crowd to assault and breach the Capitol – Moral Turpitude (6106)

On January 6, 2021, respondent and Trump continued to pressure Pence to implement the plan laid out in the memos, sending Jacob a barrage of emails, *including while the Capitol was under attack*, and taunting the Vice President in a series of tweets and in public remarks at the January 6 rally at the Ellipse.

At 8:17 AM, Trump tweeted: "States want to correct their votes, which they now know were based on irregularities and fraud, plus corrupt process never received legislative approval.

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[93] *See also* Resp. XXIV-185:20-22 ("whether the vice president had the authority to even order delay turned on the vice president's authority under the 12th Amendment."); Jacob II-93:4-9 re Ex. 71 ("The underlying legal theory is the same, and the reason that the underlying legal theory is the same is that the procedural request to suspend the proceedings for 10 days and send it back to the states violates all those provisions of the ECA that are cited in my memo of January 5th.")

All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!" (Ex. 299.)

Around 10:00 AM, respondent accompanied Trump attorney Rudy Giuliani from the Willard Hotel to the "Stop the Steal" rally, where Trump was expected to deliver remarks. Rally organizers asked them to speak when Trump was delayed. (Resp. XXVIII-63:5-19, 71:4-7.)

At 10:44 AM, Jacob sent respondent an email indicating that Pence would not be implementing respondent's proposal. (Ex. 66.)

At the same time, at or around 10:45 or 10:50 AM, Giuliani and respondent took the stage at the ellipse to address a crowd respondent estimated at "between a quarter million and a half million people." (Resp. XXVIII 69:2, 72:18-73:22.) Giuliani took the stage first, claiming:

> **Number one: every single thing that has been outlined as the plan for today is perfectly legal. I have Professor Eastman here with me to say a few words about that.** He's one of the preeminent constitutional scholars in the United States. It is perfectly appropriate given the questionable constitutionality of the Election Counting Act of 1887 that the Vice President can cast it aside and he can do what a president called Jefferson did when he was Vice President. He can decide on the validity of these crooked ballots, or he can send it back to the legislators, give them five to 10 days to finally finish the work. We now have letters from five legislatures begging us to do that. They're asking us. Georgia, Pennsylvania, Arizona, Wisconsin. And, one other coming in….Also, last night one of the experts that has examined these crooked dominion machines has absolutely what he believes is conclusive proof that in the last 10%, 15% of the vote counted, the votes were deliberately changed.…This was the worst election in the American history. This election was stolen in seven states.

(Ex. 30 at 1-2 (Emphasis added).)

In fact, as reflected above, respondent knew there was no evidence the election was stolen in *any* state, but respondent stuck to the "plan for today" and doubled down, shouting:

> Look, we've got petitions pending before the Supreme Court that identify it chapter and verse, the number of times state election officials ignored or violated the state law in order to put Vice President Biden over the finish line. *We know there was fraud, traditional fraud that occurred. We know that dead people voted*. (emphasis added)

Regarding voting machines, he said:

> we now know because we caught it live last time in real time how the machines contributed to that fraud. And, let me as simply as I can, explain it. You know the old way was to have a bunch of ballots sitting in a box under the floor and when you needed

> more, you pulled them out in the dark of night. They put those ballots in a secret folder in the machines. Sitting there waiting until they know how many they need. And then the machine, after the close of polls, we now know who's voted, and we know who hasn't. And I can now, in that machine, match those unvoted ballots with an unvoted voter and put them together in the machine.
>
> And how do we know that happened last night in real time? You saw when it got to 99% of the vote total, and then it stopped. The percentage stopped, but the votes didn't stop. What happened, and you don't see this on Fox or any of the other stations, but the data shows that the denominator, how many ballots remain to be counted. How else do you figure out the percentage that you have? How many remain to be counted? That number started moving up. That means they were unloading the ballots from that secret folder, matching them to the unvoted voter, and voila. We have enough votes to barely get over the finish line. We saw it happen in real time last night, and it happened on November 3rd, as well.

(Ex. 30 at 2-3.)

At trial, when asked whether he believed his statements implied there had been fraud related to electronic voting, respondent acknowledged, in an intentionally misleading understatement, "[i]t's quite possible it implied that." (Resp. XXXI 84:22-25.) He further admitted that his statements about the voting machines were based solely on a one-page "voting system diagram" that purported to identify "points of vulnerability" which he had obtained one day prior from individuals he had just met and as to whom he performed no vetting: Russell Ramsland and Joe Oltmann. (Resp. XI-88:18-89:11, 93:20-94:21; XXVIII 11:11-12:5, 17:13-19:18, 24:11-25:11; Ex. 1213 at 3.)[94] At that time, respondent was familiar with Ramsland's Antrim County report, portions of which he testified "went beyond what could be proved." (Resp. XXVII 216:5-217:11, 221:4-13; Ex. 1047.) Minimal research on Ramsland and Oltmann before respondent's January 6 statements would have exposed additional reasons for respondent not to repeat their lies to the rally crowd and to the nation.[95] For example, on December 9, 2020, a district court in Arizona dismissed an election contest based on allegations of fraud and misconduct,

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[94] *See* note 31, *supra* (re respondent's failure to vet Oltmann and Ramsland.)

[95] *See also* Resp. XXVIII 30:21-31:20 (regarding Ramsland's and Oltmann's Jan. 5 run-off predictions, which respondent claimed he observed); Grimmer XXXI 255:9-21, 257:17-258:17; Ex. 391 (explaining the logical fallacies of these predictions) & Ex. 174 at 4 (Grimmer article explaining Dominion Voting Machines Do Not Decrease Trump Vote Share.)

finding that Ramsland's speculative assertions failed to "move the needle for [plaintiffs'] fraud theory from conceivable to plausible." (Ex. 214 at 1, 27; XI 62:15-65:8.) And, an expert report from Professor Gary King harshly criticized Oltmann's work. (Ex. 204 at 6:10-15; Resp. XI 99:11-100:10.)[96]

Respondent concluded his rally remarks to the Stop the Steal crowd by demanding that Vice President Pence accede to requests from what he knew to be a small minority of legislators in the 7 States to delay the January 6 Joint Session of Congress—requests respondent himself had helped orchestrate.[97] He proclaimed "all we are demanding of Vice President Pence is this afternoon at 1:00 he let the legislators of the state look into this so we get to the bottom of it, and the American people know whether we have control of the direction of our government, or not." (Ex. 30 at 2-3.) Respondent intended his remarks to pressure Pence to delay the proceedings.[98]

Around noon, Trump took the stage. From the outset, he cited respondent's credentials to validate his false and incendiary claims, stating:

> John is one of the most brilliant lawyers in the country…and he said, 'What an absolute disgrace that this can be happening to our Constitution.' And he looked

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[96] When confronted with the 130-page summary judgment order from Dominion's case against Fox, which concluded that "*the evidence developed in this civil proceeding demonstrates that it is CRYSTAL clear that none of the statements relating to Dominion about the 2020 election are true*," respondent dismissed its significance, claiming "there is counter-evidence that appears not to have been presented." *See* Resp. XI 86:5-87:10 (discussing Ex. 166 at 43 (Dominion summary judgment order) (emphasis in original).)

[97] Respondent knew that only a small minority of legislators had signed the letters. (Ex. 379 and note 91, *supra*.) Further, respondent's repeated reference to these letters as a basis for his demand that Pence "accede to requests to delay the proceedings" is highly disingenuous. *See, e.g.,* Ex. 6 at 36 ("His advice was that the Vice President accede to requests from numerous state legislators to delay the proceedings temporarily"); and Answer to NDC at 37:23-26 (same); Ex. 384 at 1 (Klingenstein Int.) (seeking "delay at the request of more than 100 state legislators"). In fact, the evidence shows that Trump and his allies, including respondent, orchestrated those letters. *See, e.g.,* Ex. 2 ¶ 30, Ex. 28 at 4-5 (respondent's call to action on Bannon podcast)); Exs. 8 at 5, 55 and 1284 (regarding meetings with legislators).)

[98] *See* Ex. 6 at 82 (Q. "Were the above statements at the January 6, 2021 "Stop the Steal Rally"' made for the purpose of putting pressure on former Vice President Pence to follow the plans set forth in respondent's six-page and/or two-page memoranda?" A. "The statements included a request that Vice President Pence accede to requests from numerous state legislators to briefly delay proceedings in order for the legislatures to formally assess the impact acknowledged illegality in the conduct of the election may have had on the election results.").

> at Mike Pence, and I hope Mike is going to do the right thing…Because if Mike Pence does the right thing, we win the election. All he has to do…this is from the number one, or certainly one of the top Constitutional lawyers in our country. He has the absolute right to do it. We're supposed to protect our country…and protect our constitution.

Later in his speech, addressing Pence directly, Trump told the assembled crowd:

> Mike Pence, I hope you're going to stand up for the good of our Constitution and for the good of our country, and if you're not, I'm going to be very disappointed…I hope Mike has the courage to do what he has to do. And I hope he doesn't listen to the RINOs and the stupid people that he's listening to.

(Ex. 322 at 3, 18, 22.) Foreseeably, these statements produced substantial anger against Pence. When, around this time, Pence released his Dear Colleague Letter confirming that he would not act to prevent Congress from counting electoral votes, members of the crowd began chanting: "Hang Mike Pence." (Jacob II 158:1-17.)

At 1:33 PM, with news of Pence's Dear Colleague letter public, respondent sent Jacob an email accusing him of being "small-minded" for "sticking with minor procedural statutes," that is, the ECA. (Ex. 66.) After receiving respondent's email, Jacob who was attending the Joint Session, began typing a response. Then he heard a loud "Boom, boom, boom" followed by glass shattering; rioters had stolen a police riot shield and used it to break the window. (Jacob II 86:25-87:7.) After being ushered by the Capitol Police to the Senate floor, Jacob quickly wrote the last sentence of his reply and sent it. That email, sent at 2:14 PM reads:

> John, very respectfully, I just don't in the end believe that there is a single Justice on the United States Supreme Court, or a single judge on any of our Courts of Appeals, who is as "broad minded" as you when it comes to the irrelevance of statutes enacted by the United States Congress, and followed without exception for more than 130 years…there is no reasonable argument that the Constitution directs or empowers the Vice President to set a procedure followed for 130 years before it has even been resorted to... I understand your argument that several state legislatures were out of session. But the role for state legislatures has for our entire history ended at the time that electoral certificates are submitted to Congress. Congress has debated submissions, including competing submissions. It has never once referred them out to state legislatures to decide.
>
> I respect your heart here. I share your concerns about what Democrats will do once in power. I want election integrity fixed. But I have run down every legal trail placed before me to its conclusion, and **I respectfully conclude that as a legal framework, it is a**

> **results oriented position that you would never support if attempted by the opposition, and essentially entirely made up.**
>
> **And thanks to your bullshit, we are now under siege**.

(Ex. 68 (Emphases added); Jacob II-86:1-7 [explaining the email was sent 2:14 PM EST].)

At 2:25 PM, as he was watching the angry mob storm the Capitol on television from the Willard,[99] respondent wrote back, continuing with the false stolen election narrative:

> You think you can't adjourn the session because the ECA says no adjournment, while the compelling evidence that the election was stolen continues to build and is already overwhelming. The "siege" is because YOU and your boss did not do what was necessary to allow this to be aired in a public way so the American people can see for themselves what happened.

(Ex. 68.) As demonstrated above, at the time, respondent knew there was neither compelling nor overwhelming evidence that the election was stolen and knew that there was no support for his unlawful theory that Pence had authority to reject or delay the counting of validly certified electoral votes.

At 3:05 PM, Jacob wrote back, admonishing respondent:

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

(Ex. 68.)

I. Respondent's January 18, 2021, American Mind Article

Count Nine – Misrepresentation (6106)

Neither Jacob's January 6 admonition to respondent nor witnessing the attack on the Capitol led respondent to moderate his public commentary about the election. Instead, on January 18 he published an article in the American Mind in which he falsely claimed that he

[99] *See* XXIX-69:2-9 (respondent returned to the Willard after his Ellipse speech and gathered in the Giuliani suite to watch the Joint Session).

never told Pence to reject the electors from the 7 States[100] and continued to spread deceptive, incendiary conspiracy theories about the election that he knew to be false and misleading. (Ex. 31.)

For example, he repeated – and continues to repeat[101] – claims about Fulton County election workers and "suitcases of ballots pulled from under the table after election observers had been sent home for the night," falsely implying that election workers were engaged in nefarious conduct. (Ex. 31 at 9.) Respondent knew these claims were false when he made them in *Trump v. Kemp* in December (*see* § II.D., *supra*), and by January 18, Georgia officials had put out even more information debunking them. (Exs. 94, 99; Resp. V 80-93.)[102]

He also repeated claims that election officials in Dane County, Wisconsin engaged in an illegal ballot harvesting scheme called "Democracy in the Park." In fact, as respondent knew, this claim had already been rejected by the Wisconsin Supreme Court on December 14, which concluded, in relevant part, "[s]triking these ballots would disenfranchise voters who did nothing wrong when they dropped off their ballots where their local election officials told them they could." (*See Trump v. Biden*, Ex. 291 at p. 18 ¶¶ 27-28 and p. 32 ¶¶ 57-58 (Hagedorn concurrence).)

He similarly repeated claims that votes were "electronically flipped" from Trump to Biden in Antrim County, Michigan – a claim he maintained even at trial – even while acknowledging he knew then "that state officials said that there was just simply human error." (Resp. X 112:15-23.) As early as November 6, 2020, the Michigan Secretary of State issued a

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[100] *See* Jacob II 56:8-9, 57:2-4, 76:20-77:8; Exs. 65, 68.

[101] Respondent *continues* to claim Fulton County election workers engaged in fraud. During a July 2023 interview filmed during the course of this proceeding, he said, "So, down in Georgia, we have this infamous video that captured what appears to be a fraud… So, I don't think they knew that…they were being recorded on this. And what it appears from the video is that they ran multiple ballots through the machines multiple times." (Ex. 382 at 6.)

[102] Ex. 99 at 3-4 (Jan. 4 Sterling Press Conference) (reviewing security camera footage showing election workers learning that they had been instructed to stay and scan ballots overnight and retrieving the ballot boxes they had sealed and placed under a table one hour earlier, when they believed they could leave for the night.); Ex. 94 at 7 (Jan. 6, 2021 Raffensperger Letter to Congress).

release confirming that "erroneous reporting of unofficial results from Antrim County was a result of accidental error on the part of the Antrim County Clerk. The equipment and software did not malfunction, and all ballots were properly tabulated." (Ex. 100 at 1.) On December 17, 2020, Michigan's Secretary of State issued a press release stating that a hand audit of all votes cast for president in Antrim County further confirmed that the "voting machines accurately tabulated the votes cast for president in Antrim County[.]" (Ex. 109.) At trial, respondent said "it's possible" that he saw the releases but "even if I'd seen them, I didn't give them much credence." (Resp. X 111; XI 126:4-127:20 [discussing respondent's distrust of information from state officials in Pennsylvania, Michigan and Georgia].)

Finally, respondent claimed that more absentee votes were cast than had been requested, in Wayne County, Michigan. At trial, he testified he didn't know the source of that claim or whether it was true. (Resp. XI 110:18-111:8.)

III. RESPONDENT'S CULPABILITY

A. Failure to Support the Constitution, section 6068(a) (Count One)

It is vital to the integrity of our legal system and of our democracy, "that attorneys strive to maintain the highest standards of ethics, civility, and professionalism in the practice of law. In order to instill public confidence in the legal profession and our judicial system, an attorney must be an example of lawfulness, not lawlessness." (*People v. Chong* (1999) 76 Cal. App. 4th 232, 243.) "Accordingly, an attorney, 'however zealous in his client's behalf, has, as an officer of the court, a paramount obligation to the due and orderly administration of justice....'" (*Ibid.* (internal citations omitted); see also *In re Snyder* (1985) 472 U.S. 645 ["Attorneys must abide by the highest professional standards and not engage in . . . conduct inimical to the administration of justice."].)

Consistent with their obligation to the orderly administration of justice, an attorney has the duty to support the constitution and laws of the United States and California. (Bus. & Prof. Code, § 6068(a).) The NDC charged respondent with violating the ECA (3 U.S.C. § 15); Article, II, Section 1, and the Twelfth Amendment of the Constitution; and 18 U.S.C. § 371.

The ECA, which had been followed at every electoral count during the entire 130 years that it had been in effect, established the procedure for the counting of electoral votes on January 6 and for resolving disputes about the votes: members of Congress serving as tellers count the electoral votes, and Congress resolves any disputes about whether votes should be counted. (See also Ex. 179 at 13-16 [Seligman Expert Report].) There is no case law on violations of the ECA because no one has violated the law in its entire history. Respondent's stated intent to violate the ECA,[103] coupled with his numerous overt acts in furtherance of that intent, clearly demonstrate that respondent violated his duty to support the law under section 6068(a).

Article II, Section 1, Clause 2 of the Constitution provides that each state shall appoint electors, and the Twelfth Amendment provides that on January 6, the votes submitted by the electors for each state "shall then be counted," with the President determined by the winner of a majority of electoral votes. (See also Ex. 179 at 46-47 [Seligman Expert Report].) The voters in the 7 States had the right to have their votes determine their states' electoral votes and to have those votes counted, and respondent's stated intent and overt acts to deprive those voters of their rights to have their votes counted violated his duty to support the law under section 6068(a).

A person violates 18 U.S.C. § 371 when he (1) enters an agreement to obstruct a lawful function of the federal government, (2) by deceitful or dishonest means, and (3) there is an overt act in furtherance of the conspiracy. (*Eastman v. Thompson* (C.D. Cal. 2022) 594 F.Supp.3d 1156, 1193, *appeal dism'd* No. 22-56013, 2022 WL 18492376 (9th Cir. Nov. 7, 2022), *cert. denied* No. 22-1138, 2023 WL 6379015 (U.S. Oct. 2, 2023) (Ex. 301, at 36-37).) Section 371 is a "very broad provision" that applies to a "wide range of activity." (*United States v. Caldwell* (9th Cir. 1993) 989 F.2d 1056, 1059.) It reaches conspiracies "to defraud the United States in any manner or for any purpose" (*United States v. Elkins* (11th Cir. 1989) 885 F.2d 775, 781), including when lawyers help clients to obstruct government functions. (*E.g.*, *United States v.*

[103] See Ex. 71 at 1 ["Professor Eastman acknowledges that his proposal violates several provisions of statutory law"]); Ex. 69 [respondent imploring Jacob to "consider one more relatively minor violation" of the ECA], and respondent XXXI 11:17 [acknowledging under ECA only Congress can recess the electoral count].

Green (5th Cir. 2022) 47 F.4th 279, 285; *United States v. Daugerdas* (2d Cir. 2016) 837 F.3d 212, 222-23; *United States v. Cueto* (7th Cir. 1998) 151 F.3d 620, 635-36.) A federal court has already determined that respondent's and Trump's agreement to pursue the January 6 Strategy violated § 371. (*Eastman*, 594 F.Supp.3d at 1193-95 (Ex. 301 at 36-40).) The elements of § 371 are met as follows:

Agreement to obstruct a lawful function. The evidence shows that respondent entered an agreement with Trump to disrupt the electoral count by pressuring Pence to declare Trump the winner in states where Biden had won and/or refusing to count votes until after a delay during which state legislatures would determine whether to certify Trump electors. Respondent and Trump's repeated and coordinated efforts to pressure Pence to reject ballots based on false claims of fraud demonstrates the "tacit agreement shown from an implicit working relationship" necessary to show agreement. (*United States v. Mubayyid* (1st Cir. 2011) 658 F.3d 35, 57.)

Dishonest Means. To constitute a conspiracy to defraud under § 371, the means must involve "deceit, craft, or trickery" or be "dishonest." (*Eastman*, 594 F.Supp.3d at 1193-94 (Ex. 301 at 36-39).) Acts that are "themselves legal lose their character when they become constituent elements of an unlawful scheme" under § 371. (*Cueto*, 151 F.3d at 635.) When the means involve false statements, actual knowledge of the falsity is not required; "deliberate ignorance" or "reckless disregard" for the truth suffices. (*United States ex rel. Schutte v. SuperValu Inc.* (2023) 598 U.S. 739, 749-52.)[104]

As discussed above, the evidence demonstrates that respondent knowingly committed multiple acts of dishonesty, including spreading false claims about fraud and "illegality" in the 2020 election. The evidence also shows that respondent knew that his representations to Pence

[104] Similarly, under the Rules of Professional Conduct, actual knowledge "may be inferred from the circumstances." Rule 1.0.1 (f). Such knowledge includes "willful blindness." *In re Girardi*, 611 F.3d 1027, 1036 (9th Cir. 2010). Willful blindness is shown when "the facts before the lawyer create a high probability" of illegality and the lawyer consciously and deliberately chooses not to inquire further. *See* ABA Formal Op. 491 (2020) (interpreting the same "actual knowledge" standard that is applied in California).

and Jacob that Pence could refuse to count electoral votes from multiple states (an integral part of the plan to obstruct the electoral count) was dishonest because respondent knew that this view of Pence's authority was without historical support and violated the ECA and Constitution. (*Eastman*, 594 F.Supp.3d at 1194 (Ex. 301 at 38-39).) Seeking to obstruct the government based on a knowingly incorrect legal theory is a well-established means of defrauding the government. (*Green*, 47 F.4th at 285-86 [lowering taxes based on frivolous "constitutional dollar" theory]; *Daugerdas*, 837 F.3d at 222-23, 228 [sophisticated tax shelter based on "legal views about the calculation of profit under the economic substance doctrine"]; *United States v. Benson* (7th Cir. 1999) 941 F.2d 598, 607 [refusing to pay tax based on theory that Sixteenth Amendment was not properly ratified].)

Although respondent has claimed that he was merely offering good-faith legal advice to a client in an unsettled area, overwhelming evidence shows that respondent knew the January 6 strategy was illegal. (*See United States v. Little* (9th Cir. 1984) 753 F.2d 1420, 1433 [affirming attorney conviction where "no decided case directly and precisely construes [legal argument's] legality" despite the lawyer's claim that he "reasonably believed" the advice rendered].) Respondent's plan required violating the ECA. (*See* § II.C.4, *supra*.) Because he knew that the Supreme Court would reject the plan, he sought to avoid having it tested in court. (*See id.*; Ex. 47.) He was repeatedly informed of the plan's illegality and ultimately confessed its deficiencies when he was unable to persuade Jacob on January 4—only to return the next day to reiterate the request that Pence reject votes.

Overt acts. The evidence shows many overt acts in furtherance of the conspiracy by Trump and respondent, including, for example, respondent's two memos, his conversations with Jacob and Pence, and his statements at the January 6 Stop the Steal rally. Overt acts are enough, as conspiracy requires neither success nor even the possibility of success. (*United States v. Jimenez Recio* (2003) 537 U.S. 270, 274-277.)

Respondent has argued that the standard for determining whether he violated section 6068(a) "must be the objective tenability test" (June 20, 2023 Bench Brief at 4:17.) Even were

this the correct legal standard, respondent's factual and legal claims were not tenable, for the reasons set forth above. But tenability is not the legal standard for determining violations of section 6068(a) in an attorney disciplinary proceeding. While a mistake of law made in good faith may be a defense to an alleged violation of 6068(a) (see *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 631), "willful" misconduct resulting from intentional wrongdoing or gross negligence is grounds for discipline. (See, e.g., *Lester v. State Bar* (1976) 17 Cal.3d 547, 549, 551 [intentional and repeated misconduct]; *Selznick v. State* Bar (1976) 16 Cal.3d 704, 708–709 [intentional misconduct or gross negligence].) Stated another way, section 6068(a) makes it a disciplinable offense to violate the Constitution or other laws unless the violation is the result of a negligent good faith mistake. (*Respondent P, supra,* 2 Cal. State Bar Ct. Rptr. at p. 631.)[105] As set forth above, respondent's violations of law were intentional and dishonest, and therefore subject to discipline.

B. Misleading a Judicial Officer, section 6068(d) (Counts Two and Four)

An attorney has a duty "never to seek to mislead . . . any judicial officer by an artifice or false statement." (Bus. & Prof. Code § 6068(d).) An attorney must "refrain from deceptive acts, *without qualification*" (*In re Chestnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174), including through any "concealment, half-truth, and false statement of fact" "designed to create . . . an impression that would mislead" (*Franklin v. State Bar* (1986) 41 Cal.3d 700, 709). Willful blindness is equivalent to knowledge. (*In re Carver* (2016) 5 Cal. State Bar Ct. Rptr. 427, 432-

[105] See also *In re Morse* (1995) 11 Cal.4th 184, which involved an attorney who mailed misleading solicitations offering his assistance in filing homestead declarations. The mailings were unlawful under Business and Professions Code section 17537.6. In finding the attorney culpable of violating section 6068(a), the Review Department stated, "Before engaging in such mass advertising, respondent should have thoroughly researched section 17537.6, including its legislative history, and should have consulted with the agency responsible for enforcing section 17537.6, the Attorney General's office. [Footnote omitted] His original failure to do so was grossly negligent and could be characterized as reckless or intentional after he disregarded the later request from the Attorney General's Office that he stop mailing unlawful advertisements. Thus, his violations of section 17537.6 are disciplinable under section 6068(a)." (*In the Matter of Morse* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 24, *4.) The Supreme Court reiterated: "Morse is simply incorrect in his steadfast assertion that a homestead declaration prevents a forced sale." "Section 17537.6 does not, as Morse asserts, misstate the law. To the contrary, it is the law." (*In re Morse, supra,* 11 Cal.4th at p. 204.)

33; see also *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, 388 [criticizing attorney for "ostrich-like behavior"].)

By expressly incorporating by reference and otherwise including statements he knew, or was willfully blind to facts demonstrating them to be false and misleading in the motion to intervene in *Texas v. Pennsylvania* (Count Two), and the Verified Complaint for Emergency Injunctive and Declaratory Relief in *Trump v. Kemp* (Count Four), *see* §§ II.B and II.D., *supra*, respondent sought to mislead the court by an artifice or false statement of fact or law, in willful violation of Business and Professions Code, section 6068(d).

C. Moral Turpitude, section 6106 (Counts Three, Five through Eleven)

Moral turpitude has been defined as "'everything done contrary to justice, honesty, modesty, or good morals.'" (*In re Craig* (1938) 12 Cal.2d 93, 97., citing *In re Coff*ey (1899) 123 Cal. 522, 524.) "[A]cts of deceit designed to subvert the free electoral process" constitute moral turpitude. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 887.) The concept of moral turpitude also depends on "the degree of public harm produced by the act in question." (*In re Higbie* (1972) 6 Cal.3d 562, 569–570.)

1. Misrepresentations (Counts Three, Five, Six, Seven, Eight, and Nine)

"[D]ishonesty in [the] profession" has long been a basis for attorney discipline. (*Ex Parte Wall* (1883) 107 U.S. 265, 273.) It relates to fitness to practice because "[h]onesty is absolutely fundamental in the practice of law." "Manifest dishonesty," it follows, "provides a reasonable basis" for finding that a person "cannot be relied upon to fulfill the moral obligations incumbent upon members of the legal profession." (*In re Glass* (2000) 58 Cal. 4th 500, 524.)

As discussed above, the evidence clearly and convincingly shows that respondent intentionally or with willful blindness made misrepresentations by falsely and misleadingly:

- asserting in his Dec. 23 memo that 7 states had transmitted dual slates of electors as a basis for the alternative legal strategies provided therein (Count Three, § II.C., *supra*);
- asserting on Bannon's War Room podcast on Jan. 2 that there was "massive evidence" of "more than enough" absentee ballot fraud "to have affected the outcome of the

election," with the intent to encourage the general public to question the legitimacy of the election results (Count Five, § II.E., *supra*);

- asserting in his Jan. 3 Memo that there had been "outright fraud" through "electronic manipulation of voting tabulation machines;" there were "dual slates of electors from 7 states;" the State of Michigan "[m]ailed out absentee ballots to every registered voter, contrary to statutory requirements;" and "this Election was Stolen by a strategic Democrat plan to systematically flout existing election laws for partisan advantage," as a basis for the alternative legal strategies proposed therein (Count Six, § II.C., *supra*);

- stating during his January 6 Ellipse speech that electronic voting machines had fraudulently manipulated the election results during the November 3, 2020, presidential election and during the January 5, 2021, run-off election in Georgia for its two Senate seats (Count Seven § II.H., *supra*);

- asserting in his January 6 2:25 pm email to Jacob that there was "compelling" and "overwhelming" evidence that the election was stolen, with the intent of pressuring Pence to adjourn the Joint Session of Congress (Count Eight, § II.H., *supra*); and

- asserting in his January 18 American Mind article that illegal and fraudulent conduct affected the election in Fulton County, Georgia, in parts of Wayne County, Michigan, and in Antrim County, Michigan, with the intent to encourage the general public to question the legitimacy of the election results (Count Nine, § II.I., *supra*).

Respondent knew these statements were false or was willfully blind to their falsity by deliberately ignoring the evidence that contradicted his claims and failing to take reasonable steps to evaluate the reliability of these claims.

2. Moral Turpitude (Counts Ten and Eleven)

Respondent's acts of moral turpitude in his attempt to overturn the election went beyond misrepresentations. His repeated actions, as alleged in Count Ten, to encourage Pence to exercise unilateral authority to disregard the electoral votes of the 7 States or delay the counting of electoral votes constituted moral turpitude because they were contrary to justice and fundamentally dishonest. Respondent knew there was no historical or legal support for his proposal, yet he proposed that Pence take these actions where the outcome of a presidential election was at stake, courts were unlikely to be in a position to intervene, and the intended result of the proposed actions, the reversal of the outcome of the 2020 presidential election, risked significant foreseeable harm. The fact that Pence refused to go along with respondent's plan does

not absolve respondent of culpability, because respondent's readiness to overturn the election showed "a flagrant disrespect for the law" and therefore warrants discipline (See, e.g., *In re Lesansky* (2001) 25 Cal. 4th 11, 17 [attempt to commit sexual criminal offense involved moral turpitude because it demonstrated a "readiness" to commit crime and warranted discipline].)

Respondent's acts of moral turpitude on January 6 went far beyond his misrepresentation that electronic voting machines were used to fraudulently manipulate the election. As alleged in Count Eleven, respondent misled the crowd of protestors into believing that outcome-determinative fraud had occurred in the election and that Pence had authority to delay the counting of votes. Respondent's factually and legally baseless claims about Pence's authority – which culminated in his and Trump's January 6 speeches at the Ellipse – contributed to provoking the crowd to assault and breach the Capitol, "a singular and chilling event in U.S. history, raising legitimate concern about the security—not only of the Capitol building—but of our democracy itself" (*United States v. Klein*, 539 F. Supp.3d 145, 153 (D.D.C. 2021).), by misleading the crowd into believing that Pence could change the outcome of the 2020 election. Unsurprisingly, when Trump repeated respondent's false claim about Pence's authority and then urged the crowd to "fight like hell," they did. (Jacob II 97:11-24 [based on his observations of the events of January 6, "the people who marched on the Capitol did so because they believed that there was a momentous decision that was going to decide who was going to be president of the United States to be made in that building that day."].)[106]

The evidence also shows that it was foreseeable to respondent that his false claims and exhortations during his Ellipse speech could lead to violence. In December, he warned that "[o]ur Country is deeply divided in ways that it arguably has not been seen since the election of 1860," division that he and his client were fomenting. (Ex. 262 at 8-9). Indeed, before the election, respondent participated in "an exercise conducted by a former military intelligence

[106] *See also* Jacob II 158:1-17 ("So it's numerous statements by the rioters themselves, as well as video footage of their chants, I think, lead inexorably to the conclusion that they were operating under the heartfelt belief that the vice president did have authorities to take significant actions in President Trump's favor that day, which the vice president simply did not have.").

officer looking at various scenarios" including the scenario that was gamed out, which involved ambiguity in the result and a delay in certification. (Resp. XXX 168:21-175:4, Ex. 295 at 2-3, 9 [79 Day Report].) The report of the exercise, which notes "there is a significant chance for unrest," provides vivid simulations of the types of unrest that could follow, including nationwide rioting, attacks on members of Congress, and "a massive and violent" demonstration in D.C. (Ex. 295 at 2-3, 9.) This prediction became true.

D. Respondent's Free Speech and Petition Defenses Fail

Respondent has contended that discipline here would violate his state and federal free-speech and petition rights because he was engaged in protected political speech.[107] It is true that a lawyer should never be disciplined simply because he represents a controversial client, takes unpopular political positions, or advocates a view of the law that is controversial. But respondent's actions went well beyond this. The evidence shows that respondent conspired with his client to commit a federal crime and made repeated false and misleading statements to further this conspiracy. The First Amendment does not shield this conduct from attorney discipline.

1. Respondent's criminal and fraudulent conduct is not protected by the First Amendment.

To the extent respondent's violation of 18 U.S.C. § 371 in Count One involved speech, that speech is categorically unprotected. As the Supreme Court has "many times" held, the First Amendment does not protect "speech integral to unlawful conduct." (*United States v. Hansen* (2023) 599 U.S. 762, 783.) "Numerous crimes under the federal criminal code are, or can be, committed by speech alone." (*United States v. Rahman* (2d Cir. 1999) 189 F.3d 88, 117.) Regulating this category of speech "does not implicate constitutionally protected speech rights and is not subject to any level of constitutional scrutiny." (*Larson v. City and Cty of S.F.* (2011) 192 Cal.App.4th 1263, 1286.) The "long established criminal proscription[] . . . against conspiracy . . . criminalize[s] speech" that is "undeserving of First Amendment protection."

[107] Although respondent references the California Constitution, the California Supreme Court has followed First Amendment precedent when evaluating attorney speech under the California Constitution. (*E.g.*, *Kitsis v. State Bar* (1979) 23 Cal.3d 957, 863-64.)

(*United States v. Williams* (2008) 554 U.S. 285, 298.) Moreover, respondent's speech in the course of the conspiracy to defraud is also not protected because "the First Amendment does not shield fraud." (*Illinois ex rel. Madigan v. Telemktg. Assocs., Inc.* (2003) 538 U.S. 600, 612.)

It makes no difference that respondent conspired to influence an election outcome. The electoral count "is a constitutionally scripted transition of presidential power," "not policymaking exercise open to political jousting." (*United States v. Robertson* (D.C. Cir. Oct. 20, 2023) __ F.4th __, 2023 WL 8010264, at *12 [rejecting First Amendment concerns].) Furthermore, using speech as a "tool for political ends does not automatically bring it under the protective mantle of the Constitution." (*Garrison v. Louisiana* (1964) 379 U.S. 64, 75; *accord McDonald v. Smith* (1985) 472 U.S. 479, 487 (Brennan, J. Marshall, J. and Blackmun, J., concurring.) Even when speech "spring[s] from the anterior motive to effect political or social change," it cannot be used to commit a crime. (*United States v. Freeman* (9th Cir. 1985) 761 F.2d 549, 551; *accord United States v. Rahman* (2d Cir. 1999) 189 F.3d 88, 117 [committing a crime "through the medium of political speech" does not "immunize[]" that conduct, despite the "jealously guarded" status of political speech].) Here, respondent "did not merely advocate for [his]…theories [about Pence's authority] or protest [the conduct of the 2020 election], but instead conspired…with the goal of directly impacting [the electoral count]." (*Green*, 47 F.4th at 291 [distinguishing conspiracy from mere speech].)

For the same reasons, the remaining counts do not violate the First Amendment. With the exception of Count Nine, the acts described in those counts are part of the course of conduct charged in Count One. (*See United States v. Hobgood* (8th Cir. 2017) 868 F.3d 744, 747 [evaluating First Amendment exception based on "nature of the conduct," not the charge].) And Count Nine alleges false and misleading statements by respondent that, for the reasons discussed below, also fall outside First Amendment protection.

2. The state's interest in maintaining honesty in the legal profession outweighs respondent's First Amendment interests.

Separately, California's interest in regulating attorneys overcomes any First Amendment value respondent's speech could have. Justice Cardozo once observed, "Membership in the bar is

a privilege burdened with conditions.' [Citation.] [An attorney is] received into that ancient fellowship for something more than private gain. He [becomes] an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice." (*People ex rel. Karlin v. Culkin* (1928) 162 N.E. 487, 489.) Because "[m]embership in the State Bar is a privilege burdened with conditions," "speech by an attorney is subject to greater regulation than speech by others." (*See Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1051, 1066.) That is true even for "pure speech in the political forum." (*Gentile,* 501 U.S. at 1034.) The justification is straightforward: "States have a compelling interest in the practice of professions within their boundaries." (*People v. Starski* (2017) 7 Cal.App.5th 215, 232.) Because lawyers are "essential to the primary governmental function of administering justice," States' interest in regulating the legal profession is "especially great." (*Ohralik v. Ohio State Bar* (1978) 436 U.S. 447, 460.)

As a result, section 6068(d)'s prohibition on misleading a court does not violate the First Amendment. (*Ramirez v. State Bar* (1980) 28 Cal.3d 402, 411.) "A lawyer's right to free speech is extremely circumscribed in the courtroom." (*Gentile*, 501 U.S. at 1031.) Respondent's out-of-court conduct is likewise subject to discipline. Respondent was acting as Trump's attorney throughout the course of conduct alleged in the NDC. (*See* Stip. ¶ 2 and Ex. 1.) While acting as Trump's lawyer, respondent repeatedly lied to advance the January 6 strategy. The lies—about the conduct of the election and Pence's supposed power (and its basis)—were central to the scheme, not peripheral. They violated federal criminal law and were calculated to disrupt the peaceful transfer of power. Respondent's conduct was thus dishonest, occurred in the course of his practice, was material to his representation of Trump, and showed callous disrespect for the rule of law. Even in much more mundane circumstances, "dishonesty . . . is clearly relevant to the fitness of an attorney to continue to practice law," "particularly when committed in the course of his practice." (*Baker v. State Bar* (1989) 49 Cal.3d 804, 815 n.3.) But here, respondent employed a level of "deceit designed to subvert the free electoral process" never before seen in the American legal profession. (*Segretti*, 15 Cal.3d at 887-88; *see Garrison*, 379 U.S. at 75 [explaining that "the use of a known lie is . . . at odds with the premises of democratic

government".].) As a court observed when suspending fellow Trump lawyer Rudolph Giuliani, "the seriousness of [this] misconduct cannot be overstated." (*In re Giuliani* (N.Y. App. Div. 2021) 146 N.Y.S.3d 266, 83 [rejecting First Amendment defense].) Not only was our country "torn apart" by the lies that respondent helped to spread on behalf of his client, but it also "tarnishe[d] the reputation of the entire legal profession." (*Id.* at 283.) Whatever rights a non-attorney or an attorney in a lay capacity might have to make campaign-related false statements are simply not relevant here. (*See Susan B. Anthony List v. Driehaus* (6th Cir. 2016) 814 F.3d 466, 475-76 [invalidating law that prohibited immaterial campaign-related false statements by any person].) Because respondent's deceit during the course of his representation has a "rational connection with [his] fitness or capacity to practice law," disciplining him for his false statements is constitutional. (*Schware v. Bd. of Bar Exam.* (1957) 353 U.S. 232, 239.)

3. States have an interest in regulating attorney speech, which is undisturbed by *Alvarez v. United States* (2012) 567 U.S. 709.

Attorneys are the only state licensees whose professional association is given constitutional status. (Cal. Const., art. VI, § 9.) "The interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the courts.'" (*Goldfarb v. Virginia State Bar* (1975) 421 U.S. 773, 792.)

Respondent may argue that the Supreme Court's decision in *Alvarez v. United States* (2012) 567 U.S. 709 protects his speech, but he would be wrong. Although *Alvarez* held that false statements are not categorically unprotected by the First Amendment (*Alvarez*, 567 U.S. at 721-22 [invalidating law that criminalized immaterial false claims]), *Alvarez* did not involve speech by an attorney made in the course of a representation. Furthermore, it did not hold that "false statements are *always* protected under the First Amendment" (*Animal Legal Def. Fund v. Wasden* (9th Cir. 2018) 878 F.3d 1184, 1194). Instead, the Court recognized that "[s]ome false speech may be prohibited" under the First Amendment and, significantly for present purposes, that the case "does not imply that *any* of these targeted prohibitions are somehow vulnerable." (*Alvarez*, 567 U.S. at 721 (emphasis added).) That limitation applies here for several reasons.

First, *Alvarez* acknowledges that fraudulent speech and speech integral to criminal conduct remain unprotected. (*Alvarez*, 567 U.S. at 717.) Moreover, the Court has long recognized a targeted prohibition on "dishonesty in [the] profession" as a valid basis for lawyer discipline and already held that States may consider attorney speech when assessing character and fitness. (*Konigsberg v. State Bar of Cal.* (1961) 366 U.S. 36, 51-52; *Wall*, 107 U.S. at 273.). *Alvarez* does not change the requirement of honesty that is firmly embedded in the profession.

IV. AGGRAVATING AND MITIGATING FACTORS

A. Respondent's Misconduct is Highly Aggravated.

Standard 1.5(b) – Multiple Acts of Wrongdoing

Respondent committed multiple acts of wrongdoing. He conspired with Trump and others to fraudulently stop or delay the electoral count on January 6 and reverse the lawful outcome of the 2020 presidential election. As part of that effort, respondent knowingly made repeated false statements about the legal and historical bases for the courses of action he was proposing and repeated false claims about fraud and illegality in the 2020 presidential election.

Standard 1.5(d) – Intentional Misconduct, Bad Faith or Dishonesty

The record is replete with evidence of respondent's bad faith. Respondent pursued a dangerous course of action that he knew had no factual or legal merit. He knew the course of action would be rejected by the Supreme Court, 9-0, and he actively discouraged others from pursuing legal review in court because he knew they would lose. When respondent's efforts to overturn the 2020 presidential election culminated in the violent attack on the Capitol on January 6, he sought to exploit the violence and chaos as *another* basis to attempt to convince Pence to violate the law in order to delay declaring Biden President. (Ex. 69 [on the evening of January 6, imploring Jacob to "consider one more relatively minor violation" of the ECA].)

Standard 1.5(f) – Significant Harm to the Client, the Public, or Admin of Justice

There harm from respondent's misconduct is immeasurable and deserving of the most significant aggravating weight, not least because it contributed to the January 6 violent attack on the Capitol. (*See* § II.H., *supra.*). But the harmful impact of respondent's misconduct on our

democratic institutions goes well beyond the attack on the Capitol; documents and testimony from multiple current and former state election officials show the harm that the election lies respondent peddled, and continues to peddle, caused to the institutions they serve and on them personally.[108] For example, they have had to:

- Expend resources to respond to and counter rampant disinformation about the election. (Wlaschin IV 170:24-174:12; Marks III 137:13-139:15; Marks XXXII-193:19-195:3; Rollow X 6:7-8:9, 9:1-11:18, 12:17-14:17, 16:22-17:13;19:17-20:11; Dul VIII 23:7-14; Dul XXXII 123:2-124:19, 130:9-131:13; Exs. 100-106, 108-111, 132, 135.)
- Increase security, which not only consumes resources, but also decreases in-person voter access to services. (Marks XXXII 201:22-202:25.)
- Conduct wasteful "audits" of the 2020 presidential election results and unnecessary and costly replacements of machines spurred by false conspiracy theories about Dominion voting systems. (Richer III 52:7-53:22, 53:23-56:14, 67:3-16; Marks III 141:18-25; Exs. 135, 166.)
- Address the erosion of trust in election officials and integrity of election processes, which has hampered efforts to increase efficiency. (Wlaschin IV 175:9-24; Dul XXXII 131:4-12.)
- Deal with unprecedented turnover in elections offices. (Wlaschin IV 174:2-12; Dul XXXII, 126:2-12.)
- Confront harassment and threats against their offices and in some cases, themselves personally. (Rollow, X 23:6-13, Marks XXXII 196:7-201:21; Dul XXXII 124:20-126:12, 28:13-23; Ex. 403.)

Any contention by respondent that he bears no responsibility for the harms suffered by the election officials and to our democracy because others were making similarly false and outlandish claims is unavailing.[109]

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[108] Several courts have already recognized the significant harm to our democracy caused by respondent and other Trump attorneys who conspired to spread false claims about the 2020 presidential election and disrupt the Joint Session of Congress. See, e.g., *Eastman v. Thompson*, 594 F. Supp.3d 1156, 1198 (C.D. Cal. 2022), appeal dismissed, No. 22-56013, 2022 WL 18492376 (9th Cir. Nov. 7, 2022), cert. denied, No. 22-1138, 2023 WL 6379015 (U.S. Oct. 2, 2023); *In re Giuliani*, 146 N.Y.S.3d 266, 283 (1st Dep't 2021).

[109] Neither the Standards of Attorney Sanctions nor California law places any burden on the State Bar to show for the purposes of aggravation that respondent's conduct was the "direct and immediate cause" of the harms described herein. *See* State Bar's Response to Request for Offer of Proof, filed June 29, 2023. *See also Sindell v. Abbott Labs*. (1980) 26 Cal. 3d 588, 604) (under "concert of action" theory it is settled law those who participate in a "common plan" are "equally liable" in tort for the harm caused by that plan).

Standard 1.5(g) – Indifference

Respondent has not accepted an iota of responsibility for his misconduct. To the contrary, he shows a callous indifference to the harm he has caused and does not appear to have any remorse whatsoever. (Resp. XXXI 19:7-20:5 [likening his statements at the Ellipse on Jan. 6 to shouting "fire" in a theater and claiming the risk of people getting hurt was justified]; Resp. XXXI 85:18-22 [admitting he gave no consideration of the effect on the crowd of his Ellipse statements].). Instead of accepting responsibility, respondent has attacked the State Bar and characterized this proceeding as political persecution. (Resp. XXXII 252:9-253:3 [agreeing that this matter is a "persecution by activist lawyers determined to get President Donald Trump…and every lawyer like me who had the temerity to defend his right to lawfully challenge illegalities in the 2020 Election."]; Resp. XXXII 254:6-11 [claiming the State Bar charged him with misconduct "not because [he] committed conduct that warrants discipline, but because [he was] affiliated with President Trump"].)

Moreover, it is clear that respondent has no regrets about his attempts to overturn the 2020 presidential election or its effects on the election officials and workers who run the elections whose integrity he claims to care about. Even during the pendency of this proceeding, as support for his continuing public claims that the 2020 election was stolen, respondent has continued to promote in media interviews the outlandish and long debunked conspiracy theory about State Farm Arena election workers scanning in ballots multiple times. (Resp. X 73:11-19; Resp. XXXI 12:13-13:13; Ex. 382.) As discussed above, respondent is wholly indifferent to the truth on any issue in this case, no matter what countervailing evidence is put before him. (Resp. XXXI 83:12-18 [nothing in trial caused him to reconsider whether electronic votes were fraudulently manipulated during the 2020 election]; Resp. XXXI 85:23-95:1 [nothing in trial caused him to reconsider his views on outcome determinative fraud in the seven targeted states].) Respondent's complete and total lack of remorse, his repeated disregard for the truth and any facts contrary to his desired position, and his stated contempt for these disciplinary proceedings all necessitate disbarment. (*See In re Silverton* (2005) 36 Cal. 4th 81, 93 (lawyer's "apparent lack

of insight into the wrongfulness of his actions" supported sanction of disbarment); *Marquette v. State Bar* (1988) 44 Cal. 3d 253, 266 [lawyer's "contemptuous attitude toward the disciplinary proceedings" supported sanction of disbarment].)

Standard 1.5(h) – Lack of candor to the State Bar Court

Much of respondent's testimony was evasive and inconsistent, and replete with convenient memory lapses, and his unwillingness to answer simple yes or no questions on matters small or large—including whether he believed there was outcome determinative fraud in the seven states he contested—hindered the fact-finding function of the court. *(See, e.g.,* Resp. XXXI 91:5-93:5 [evasive on whether he believed that there was outcome determinative fraud in Arizona].)[110] He was untruthful about numerous, critical issues in this matter, including that he urged Pence to unilaterally reject certified slates of elector and about his testimony before the Georgia State Senate subcommittee. (*See* § I.A and § II.C.8-9.)

B. Aggravation Overwhelms Mitigation

Respondent's lack of prior discipline and distinguished career are properly considered to the extent that they indicate that respondent would not engage in future misconduct. (*Cooper v. Bar* (1987) 43 Cal.3d. 1016, 1029.) But as described above, respondent has demonstrated a profound inability or unwillingness to acknowledge the wrongfulness of his actions, and instead contends, without basis, that he is a victim of political persecution by the State Bar. Thus, any such mitigation is entitled to little or no weight and instead his utter lack of remorse shows that disbarment is necessary to protect the public from future serious misconduct. (*Id.* at 1032 [disbarment where attorney with distinguished career and discipline-free record lacked remorse].) Furthermore, respondent's actions since 2020 indicate he is eager to continue

[110] *See also* Resp. IX 181:14-182:22 (evasive on whether the ECA had been found unconstitutional as of January 6, 2021); Resp. IV 65:14-66:12 (evasive on the truth or falsity of the statement that approximately 66,000 underage people had voted in Georgia); Resp. IV 39:25-40:14 (evasive on whether the Texas Attorney General had mischaracterized the Cichetti declaration); Resp. V 97:13-100:2 (evasive on whether he agreed with Georgia State Elections Director's statement that a hand recount had confirmed that no ballots were double counted at the State Farm Arena); Resp. XXXII 191:3-192-20 (evasive on whether Ex. 3 was the final version of his two page memo).

advising government officials to take similarly dangerous and unlawful courses of action. (*See, e.g.,* Ex. 185 [respondent letter to Wisconsin legislator nearly one year after inauguration day proposing that the legislature has the authority to decertify its 2020 slate of electors]; Seligman, VII 189:14-191:16 [explaining how such a course of action would violate the Constitution and mean that no presidential election would ever have finality].)

V. DISBARMENT IS THE ONLY APPROPRIATE OUTCOME

Respondent engaged in multiple acts of wrongdoing in an effort to keep his client, Trump, in power despite having lost the 2020 election. In doing so, respondent contributed to the violent attack on the Capitol on January 6, 2021, eroded without basis public trust in our government institutions and officials, and sought to disenfranchise millions of voters. Respondent remains brazenly remorseless for his actions and has made clear that he would continue to engage in the same misconduct if allowed. The only appropriate outcome is disbarment.

Respondent's misconduct strikes at the very heart of what it means to be a lawyer – he misused his license in a grave and injurious manner designed to undermine our democracy, subvert the peaceful transfer of presidential power, and thwart the will of the people in a free and fair election. In doing so, he betrayed the fundamental duties and oaths he swore to uphold. Standard 2.11 calls for disbarment or actual suspension for acts of moral turpitude, depending on the magnitude of the misconduct; the extent to which the misconduct harmed or misled; and the extent to which the misconduct related to the practice of law. Here, there is no question that respondent's illegal, deceitful and intentional acts are of the highest magnitude. He caused significant and profound harm and actual injury to our democratic institutions and public trust. His misconduct, committed in the course and scope of his representation of former President Trump, shocked the conscience of the nation, and is of such exceptional gravity that only disbarment will suffice. To protect both the public and the integrity of our legal system, disbarment is compelled.

Respondent's misconduct, accompanied by his blatant indifference, which persists to date, is so outrageous and exceptional, that there is no case law directly on point. By comparison, however, Segretti received a two-year actual suspension for repeated acts of deceit in connection with his work on President Richard Nixon's reelection campaign, which were designed to subvert the free electoral process. (*Segretti v. State Bar* (1976) 15 Cal. 3d 878.) Notably, Segretti had significant mitigation, including that "[h]e was only 30 years old at the time of the misconduct … and thought he was acting under 'the umbrella of the White House.'" Moreover, the court emphasized that Segretti's misconduct "was not committed in his capacity as an attorney" and that he recognized the wrongfulness of his acts, expressed regret, and cooperated with the investigating agencies. (*Id.* at p. 888.) Unlike *Segretti*, respondent has little to no mitigation and his misconduct occurred as a seasoned practitioner, during the course and scope of his representation of Trump. Moreover, *Segretti* was decided pre-standards and lacks the serious and pervasive aggravation present here. The scale of respondent's misconduct is much more egregious and has a direct correlation to the January 6 riot, which caused serious physical harm. Given respondent's multiple acts of moral turpitude and dishonesty, the significant harm caused, and his indifference – disbarment is the only appropriate result.

VI. CONCLUSION

Respondent is culpable of all of the charges in this case. Given the nature of his misconduct and the overwhelming aggravating factors, the court should recommend disbarment.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: December 1, 2023

By: _____
Duncan Carling
Supervising Attorney

DECLARATION OF SERVICE

CASE NUMBER(s): **EASTMAN (SBC-23-O-30029)**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, dawn.williams@calbar.ca.gov, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

STATE BAR'S CLOSING BRIEF

☐ **By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))** ☐ **By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**
- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County
- of San Francisco.

☐ **By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**
- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').

☐ **By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**
Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

☒ **By Electronic Service: (CCP § 1010.6)**
Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ *(for U.S. First-Class Mail)* in a sealed envelope placed for collection and mailing at San Francisco, addressed to: *(see below)*

☐ *(for Certified Mail)* in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: _____ at San Francisco, addressed to: *(see below)*

☐ *(for Overnight Delivery)* together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: _____ addressed to: *(see below)*

Person Served	Business Address	Fax Number / Electronic Address	Courtesy Copy via Email to:
Randall Allen Miller Zachary Mayer Jeanette Chu		Electronic Address rmiller@millerlawapc.com zachary@millerlawapc.com jeanette@millerlawapc.com	Olga Gorbunkova olga@millerlawapc.com Yvette Blandon yvette@millerlawapc.com

☐ **via inter-office mail regularly processed and maintained by the State Bar of California addressed to:**
N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

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

DATED: December 1, 2023

SIGNED: Dawn Williams

Dawn Williams
Declarant