



February 16, 2022

The State Bar of California
Complaint Review Unit
Office of General Counsel
180 Howard Street
San Francisco, California 94105-1617
via FedEx Overnight

Appeal of Closing of Complaint re: John Eastman, Case Number 21-O-12451

Dear Complaint Review Unit:

We write to appeal the November 22, 2021 closing of our Complaint against John Eastman on the ground that the Complaint, and the Supplemental Submission supporting it, did not indicate (1) “any personal knowledge by you, or by any of the group of individuals who signed on to your complaint” of the conduct by Mr. Eastman that is the subject of the complaint, or (2) that either we or any of the Complaint’s signatories “represent any party directly involved with that conduct.” Letter from William Todd to Christine Sun and Stephen Bundy, November 22, 2021, at 2.¹ In closing the Complaint, the State Bar noted that it “will separately decide whether to investigate the underlying circumstances presented by [our] Complaint.” *Id.* But the letter explained that the “existence or status of any such investigation prompted by this decision is confidential unless and until this office files disciplinary charges or reaches some other resolution that permits public disclosure.” *Id.* The effect of this decision is to insulate the State Bar, without statutory basis, from accountability and transparency concerning its investigations into allegations of egregious unethical conduct, solely because the conduct harmed the public at large, and not just particular individuals. Indeed, as discussed below in more detail, Mr. Eastman has *continued* to engage in the same sort of conduct described in our Complaint and Supplemental Submission—as recently as December 2021—making the need for a transparent investigation all the greater.²

The closing of our Complaint on this purported procedural ground—which keeps the status of the Bar’s investigation confidential—violates the State Bar Act, is inconsistent with the

¹ This appeal is timely because it is postmarked within 90 days of the closing letter.

² See Andy Kroll, *Wisconsin Is Ground Zero for the MAGA Effort to Steal the Next Election*, Rolling Stone (Feb. 6, 2022), <https://www.rollingstone.com/politics/politics-features/trump-wisconsin-eastman-election-decertification-1295191/>.

State Bar’s longstanding and widely publicized practice, and represents bad public policy. The decision should be reversed.

Background

I. Background on John Eastman’s Conduct

John Eastman, a prominent California attorney and former Dean of Chapman University Law School, represented Donald Trump in seeking to reverse the lawful outcome of the 2020 presidential election. To that end, Mr. Eastman represented Mr. Trump in litigation before the U.S. Supreme Court where he asserted legal theories challenging the election that numerous experts have regarded as frivolous with no possibility of success.³ In addition, after all of Mr. Trump’s legal claims had failed, and state and federal officials from both parties had debunked his claims of fraud, Mr. Eastman was the point person for Mr. Trump’s effort to pressure Vice President Mike Pence, the presiding officer at the January 6, 2021 congressional electoral vote count, to violate the law and derail Mr. Biden’s election either by unilaterally refusing to count lawful electoral votes from key swing states or by delaying the count indefinitely. In supporting that effort, Mr. Eastman and other Trump lawyers, in the words of Mr. Pence’s counsel, an eyewitness, “spun a web of lies and disinformation” and used “their credentials to sell a stream of snake oil to the most powerful office in the world, wrapped in the guise of a lawyer’s advice.”⁴ Mr. Trump, in a statement issued in the past few weeks, made explicit the purpose of these efforts, stating that Mike Pence “could have overturned the Election,” but that, “[u]nfortunately, he didn’t exercise that power.”⁵

II. Our Complaint and the State Bar’s Response

Critical details of Mr. Eastman’s role in Mr. Trump’s efforts to derail the election, including his memoranda outlining the legal strategy for doing so, began to emerge in early to mid-September of 2021. Shortly thereafter, on October 4, 2021, Professor Stephen Bundy and States United Democracy Center, a nonpartisan organization advancing free, fair, and secure elections, filed a detailed 26-page Complaint with the State Bar requesting an investigation of Mr. Eastman’s conduct.⁶ Both Professor Bundy and Christine P. Sun, Senior Vice President of Legal at States United, are licensed California lawyers. The Complaint alleged violations of California Rules of Professional Conduct 3.1, 3.3, 4.1, 8.4(c), and/or 1.2.1 and parallel provisions of the State Bar Act. A supporting cover letter was signed by an array of leading lawyers from both parties, including former justices of the California Supreme Court, former

³ Stephen Bundy & States United Democracy Center, *Re: Request for Investigation of John C. Eastman, California Bar Number 193726 11-14*, States United Democracy Center (Oct. 4, 2021) [hereinafter Complaint], <https://statesuniteddemocracy.org/wp-content/uploads/2021/10/10.4.21-FINAL-Eastman-Cover-Letter-Memorandum.pdf>, at 8-9 & n.37.

⁴ *Read: Pence Aide Greg Jacob’s Draft Opinion Article Denouncing Trump’s Outside Lawyers*, Wash. Post (Oct. 29, 2021), https://www.washingtonpost.com/investigations/pence-jacob-trump-oped/2021/10/29/d9f324ac-392b-11ec-91dc-551d44733e2d_story.html.

⁵ Donald J. Trump, *Statement by Donald J. Trump, 45th President of the United States of America* (Jan. 30, 2022), <https://www.donaldjtrump.com/news/news-hkthafwz61481>.

⁶ Complaint, *supra* note 3.

federal district court judges, former officials of the Reagan, Bush, and Obama administrations, leading scholars of ethics and constitutional law and a former President of the State Bar.

On October 25, 2021, the Bar wrote requesting additional information. Letter from William Todd to Christine Sun, October 25, 2021. On November 16,⁷ at the Bar's request, we filed an extensive 35-page Supplemental Submission, marshalling the flood of new evidence that had become public following our initial Complaint, explaining how that information strengthened the case for investigation, and alleging additional violations of California Rules of Professional Conduct 1.1(a) and 2.1.⁸

Less than a week later, on November 22, the State Bar notified us that it had closed our Complaint, because none of the signers or endorsers of the Complaint had "any personal knowledge" of Mr. Eastman's conduct or "represent any party directly involved" therewith. The State Bar said it would "separately decide" whether to investigate Mr. Eastman's conduct. Both that decision, and the subsequent progress of any resulting investigation, would remain confidential.

Subsequently, we learned that the Bar has closed other complaints against Mr. Eastman on the same grounds.

Argument

I. The Procedural Rationale for the Bar's Closure of Our Complaint is Inconsistent with the State Bar Act and the Bar's Longstanding Practice

The Bar did not purport to close the Complaint because those signing or endorsing it had no right to complain. Nor could it properly have done so. The "right of all persons to make a complaint" is expressly recognized in the State Bar Act.⁹ That right is also expressly recognized in State Bar Rule of Procedure 2403, which provides examples of people authorized to make complaints, including members of the legal profession, and explicitly states that authorized complainants are "not limited to" the categories listed in that rule.¹⁰ The Bar's description of its routine practice similarly makes clear that a broad array of individuals are authorized to make complaints, noting that the Bar handles complaints even from "members of the public or other third parties, and anonymous submissions."¹¹ None of those sources limit the right to complain to those with personal knowledge of or involvement in the matter complained of.

Nor did the Bar determine that the Complaint failed to indicate misconduct and hence would not be investigated based on the merits of the allegations. Such a determination would

⁷ Mr. Todd initially asked for a response by November 9th but, given the volume of new information we were preparing, we requested and received a one-week extension to respond to Mr. Todd's request for additional information.

⁸ Stephen Bundy & States United Democracy Center, *Re: Matter of John Eastman, Case Number 21-O-12451*, States United Democracy Center (Nov. 16, 2021) [hereinafter Supplemental Submission], <https://statesuniteddemocracy.org/wp-content/uploads/2021/11/Supplemental-Letter-to-State-Bar-of-California.pdf>

⁹ Business and Professions Code Section 6092.5(h).

¹⁰ State Bar Rule of Procedure 2403.

¹¹ State Bar of California, How to File a Complaint, <https://www.calbar.ca.gov/public/complaints-claims/how-to-file-a-complaint>.

have been impossible to defend, given the detailed factual and legal analysis in both the Complaint and the Supplemental Submission demonstrating the need for an investigation. Instead, the Bar said it would “separately decide” whether to investigate Mr. Eastman’s conduct. Both that decision, and the subsequent progress of any resulting investigation, would remain confidential.

The result of the Bar’s decision is to (a) deprive lawful complainants, presenting substantial claims of misconduct, of any information about the Bar’s ultimate decision whether to investigate or file charges based on their complaint; and (b) relieve the Bar of any public accountability for a decision not to do so. And the Bar’s decision rests on a distinction that appears in none of the relevant statutes, rules, or public statements of enforcement policy.

Indeed, the secrecy with which the Bar is handling the complaints against Mr. Eastman is inconsistent with both the letter and spirit of the relevant rules. Section 6092.5 of the State Bar Act requires the Bar to “[p]romptly notify the complainant of the disposition of each matter.”¹² Section 6093.5 similarly states that “[a] complainant shall be notified in writing of the disposition of his or her complaint, and of the reasons for the disposition.”¹³ If the basis of the dismissal was the response from the attorney who was the subject of the complaint, the statute requires the Bar to provide “a written summary” of that response upon request.¹⁴ These accountability provisions—along with the all-encompassing definition of the right to complain in Section 6092.5—were added to the State Bar Act in 1986 as part of a sweeping legislative response to criticism of the Bar’s disciplinary process as “secretive” and “lenient.”¹⁵ They recognize no distinction between complainants with personal knowledge or involvement and those lacking it.

The evident remedial purpose of these provisions was to ensure accountability to every complainant, without exception, by requiring the Bar to evaluate each complaint on the merits and to tell each complainant whether it was going to investigate or prosecute their complaint—and if not, why not. Yet that is what the closing letter we received expressly declines to do.

The Bar’s decision is also inconsistent with its own settled practices. In 2019, the Bar considered, and enacted, Rule 2605, dealing with vexatious complainants (defined as persons who have filed 10 or more baseless complaints in the prior two year period).¹⁶ The goal of the rule was to allow the Office of Trial Counsel to designate certain complainants as vexatious, so that the Bar “would not be required to review or process subsequent complaints” unless they were appropriately verified and submitted by an independent and ethically uncompromised

¹² Business and Professions Code Section 6092.5(a).

¹³ Business and Professions Code Section 6093.5.

¹⁴ *Id.*

¹⁵ State Bar of California, Office of General Counsel, White Paper: The Functions, Authority & Structure of the State Bar of California, at 7 (May 12, 2016), https://www.calbar.ca.gov/portals/0/documents/reports/2016%20Governance%20in%20the%20Public%20Interest%20Task%20Force%20Appendices_A-O.pdf.

¹⁶ State Bar Rule of Procedure 2605.

attorney.¹⁷ A memorandum drafted by the Bar’s Office of General Counsel described the Bar’s uniform practice in reviewing and processing complaints as follows:

The process for reviewing and acknowledging every new complaint includes creating a new case number entry in the case management system, substantively reviewing the complaint, drafting a narrative summary of the allegations, and analyzing whether the complaint alleges facts that could establish a potential violation of the Rules of Professional Conduct or State Bar Act so that further investigation should be conducted. If the intake attorney determines that the complaint does not sufficiently allege a violation, the intake attorney drafts a letter to the complainant informing them of the reasons for closing the complaint.¹⁸

In short, the Bar’s self-described uniform practice for complying with Section 6093.5 has been to substantively review and analyze “every new complaint,” without exception, to determine whether it “alleges facts that *could establish a potential violation.*”¹⁹ That uniform practice then reiterates that closure at this juncture is appropriate only if the complaint “does not sufficiently allege a violation,” and it requires the Bar to notify the complainant of its determination whether or not to commence an investigation.²⁰ This practice was so well established in 2019 that the Office of the General Counsel concluded that, in order to depart from it, even to the extent of requiring demonstrated vexatious complainants to provide additional assurance that their complaints had merit, a formal rule change was required.²¹ If rule-making was required in order to limit the Bar’s accountability to persons with a documented history of repeatedly filing baseless claims, then the Bar’s ad hoc decision here to shield its consideration of our complaint from accountability is plainly improper.

Similarly, the description on the State Bar’s website of the complaint process, written under statutory command²² and for the benefit of complainants, contemplates that every complaint will be reviewed substantively and that every complainant will be notified of the decision whether or not to investigate.²³ Given this record of past and current practice, it is not surprising that none of the experienced discipline-defense counsel with whom we have spoken

¹⁷ Memorandum from James J. Chang, Assistant General Counsel and Carissa N. Andresen, Assistant General Counsel to Members, Regulation and Discipline Committee, July 11, 2019, at 1, 3, https://www.calbar.ca.gov/Portals/0/documents/publicComment/2019/IIIB%20RAD_ProposedNewRuleofProcedure2605Vexatious%20Complainants_0719_noat....pdf.

¹⁸ *Id.* at 2.

¹⁹ *Id.* (emphasis added).

²⁰ *Id.*

²¹ *Id.* (“This new rule is necessary because there is currently no rule or other clear legal guidance to allow OCTC to depart from its ordinary process of acknowledging and processing every new complaint received.”).

²² Business and Professions Code Section 6092.5(g) requires the Bar to “[p]rovide information to prospective complainants regarding the nature and procedures of the disciplinary system, the criteria for prosecution of disciplinary complaints, the client security fund, and fee arbitration procedures.”

²³ State Bar of California, After You File an Attorney Misconduct Complaint, <https://www.calbar.ca.gov/Portals/0/images/public/File-Complaint-Against-Attorney.png>.

has ever heard of a policy of closing complaints solely on the ground that the complainant lacked personal knowledge or involvement.

II. The Procedural Rationale for the Bar’s Closure is Also Inconsistent with the Public Interest

The procedural rationale for the Bar’s closure of our complaint is not just inconsistent with the State Bar Act and the Bar’s longstanding practice; it is also contrary to the public interest. As a matter of policy, eliminating the Bar’s obligation to account for complaints filed by those without personal knowledge or involvement would be a bad idea. As this matter illustrates, such complaints serve an important role. The publicly available evidence of Mr. Eastman’s misconduct is substantial and there is no doubt that it threatened grave public harm. There is a strong public interest in a thorough and transparent investigation. In such cases, complaints by persons without personal knowledge can play a valuable role by bringing the matter to the Bar’s attention, marshalling evidence, and identifying critical issues, as our Complaint and Supplemental Submission did over the course of 55 pages.

In fact, since the procedural closing of our Complaint, new disclosures about Mr. Eastman’s role as a lawyer for Mr. Trump in seeking to overturn the results of the 2020 presidential election have continued to highlight the strong public interest in conducting the investigation into Mr. Eastman’s conduct with the transparency that the law requires. This new information shows (a) that Mr. Eastman’s efforts on behalf of Mr. Trump were part of a nationwide effort on the part of Mr. Trump’s allies to overturn the results of the 2020 election, and (b) that Mr. Eastman has continued, long after the election and even after we submitted our Complaint, to give similar advice to state officials aimed at undermining the 2020 election results. Consequently, the public interest in a transparent investigation continues to grow.

A. Mr. Eastman’s Advice Was Part of a Nationwide Effort to Overturn the 2020 Presidential Election

As we laid out in detail in our submissions to the Bar, an important premise of Mr. Eastman’s advice that Vice President Pence could and should reject or delay the counting of the electoral votes in seven states was Mr. Eastman’s false allegation that there were “dual slates” of bona fide electors in those states. He made the claim about “dual slates” of electors in seven states in both of the memos he prepared.²⁴ For example, the first memo states, “7 states have transmitted dual slates of electors to the President of the Senate.”²⁵ Mr. Eastman’s memo then suggested that because of those “dual slates,” during the count on January 6th, when Mr. Pence “gets to Arizona, he announces that he has multiple slates of electors, and so is going to defer

²⁴ *READ: Trump lawyer’s Memo on Six-Step Plan for Pence to Overturn the Election*, CNN (Sep. 21, 2021), <https://www.cnn.com/2021/09/21/politics/read-eastman-memo/index.html> (two-page memo); *READ: Trump Lawyer’s Full Memo on Plan for Pence to Overturn the Election*, CNN (Sep. 21, 2021), <https://www.cnn.com/2021/09/21/politics/read-eastman-full-memo-pence-overturn-election/index.html> (six-page memo).

²⁵ *READ: Trump Lawyer’s Memo on Six-Step Plan for Pence to Overturn the Election*, CNN (Sep. 21, 2021), <https://www.cnn.com/2021/09/21/politics/read-eastman-memo/index.html>.

decision on that until finishing the other States.”²⁶ And then Mr. Eastman’s memo suggested that “[a]t the end, [Mr. Pence] announces that because of the ongoing disputes in the 7 States, there are no electors that can be deemed validly appointed in those States.”²⁷

New reporting from the Washington Post²⁸ and CNN shows that Mr. Eastman’s colleague, Mr. Rudolph Giuliani,²⁹ and other Trump campaign allies worked “to put forward illegitimate electors from seven states that Mr. Trump lost,” and that “Giuliani and his allies coordinated the nuts-and-bolts of the process on a state-by-state level.”³⁰ Mr. Giuliani told Steve Bannon that he and his team were undertaking this scheme based in part on “advice we’ve gotten from a number of professors.”³¹ As we explained in our Supplemental Submission, Mr. Eastman was one of the first to publicly pitch the idea of alternate slates of electors when, on December 3, 2020, he told Georgia state legislators to “adopt a slate of electors yourself.”³² And in its article discussing the illegitimate elector scheme, CNN also reported that Mr. Eastman was working closely with Mr. Giuliani and others on efforts to overturn the election results, noting that according to a former Trump campaign staffer, “[t]hey were all working together. Rudy, John Eastman, and Christina Bobb,³³ in tandem, to create this coverage for OAN, to advance the Big Lie.”³⁴ Not surprisingly, the House committee investigating the January 6 insurrection (the “Select Committee”) is also investigating Mr. Trump’s allies’ attempts to submit illegitimate electors to the National Archives as part of its review of the nationwide effort to overturn the election.³⁵

²⁶ *Id.*

²⁷ *Id.*

²⁸ Beth Reinhard et al., *As Giuliani Coordinated Plan for Trump Electoral Votes in States Biden Won, Some Electors Balked*, Wash. Post (Jan. 20, 2022), https://www.washingtonpost.com/investigations/electors-giuliani-trump-electoral-college/2022/01/20/687e3698-7587-11ec-8b0a-bcfab800c430_story.html.

²⁹ A New York Court granted a motion to suspend Mr. Giuliani’s New York law license after finding that “uncontroverted evidence” showed that he had made “demonstrably false and misleading statements to courts, lawmakers and the public at large in his capacity as lawyer for former President Donald J. Trump and the Trump campaign in connection with Trump’s failed effort at reelection in 2020.” *Matter of Giuliani*, 197 A.D.3d 1, 4 (N.Y. App. Div. 2021). The court concluded that Mr. Giuliani’s conduct “immediately threatens the public interest and warrants interim suspension from the practice of law” pending further proceedings. *Id.* A D.C. court followed suit and temporarily suspended Mr. Giuliani’s law license there on a reciprocal basis. See Mike Scarcella, *Giuliani, Suspended in N.Y., Faces Attorney Ethics Probe in D.C.*, Reuters (Aug. 6, 2021), <https://www.reuters.com/legal/government/giuliani-suspended-ny-faces-attorney-ethics-probe-dc-2021-08-06/>.

³⁰ Marshall Cohen et al., *Trump Campaign Officials, Led by Rudy Giuliani, Oversaw Fake Electors Plot in 7 States*, CNN (Jan. 20, 2022), <https://www.cnn.com/2022/01/20/politics/trump-campaign-officials-rudy-giuliani-fake-electors/index.html>.

³¹ Reinhard et al., *supra* note 28.

³² See Luke Broadwater and Alan Feuer, *Jan. 6 Panel and State Officials Seek Answers on Fake Trump Electors*, N.Y. Times (Jan. 21, 2022), <https://www.nytimes.com/2022/01/21/us/politics/jan-6-fake-trump-electors.html>; Supplemental Submission, *supra* note 8, at 4 n.7.

³³ Bobb is a correspondent for One America News (“OAN”), who was also working with Mr. Trump’s legal team. Cohen et al., *supra* note 30.

³⁴ *Id.*

³⁵ Press Release, Select Committee to Investigate the Jan. 6th Attack on the United States Capitol, *Select Committee Subpoenas “Alternate Electors” from Seven States* (Jan 28, 2022), <https://january6th.house.gov/news/press-releases/select-committee-subpoenas-alternate-electors-seven-states>.

B. Mr. Eastman Continues to Engage in Similar Conduct

Even as additional information comes to light concerning Mr. Eastman’s involvement in efforts to overturn the election, Mr. Eastman *continues* to provide legal advice to legislators in at least one state that they have the power to “decertify” their slate of electors for the 2020 election more than a year after that election took place. Wisconsin State Representative Timothy Ramthun is still seeking to decertify the results of the 2020 election;³⁶ Mr. Ramthun asked the Wisconsin Legislature’s in-house lawyers what options existed to claw back Wisconsin’s electoral votes, and they said that there were no such options.³⁷ Mr. Ramthun then reached out to Mr. Trump’s legal team, and John Eastman subsequently sent Mr. Ramthun a memo dated December 30, 2021.³⁸ The memo begins by explaining that it is a “an opinion letter addressing whether a state legislature has the constitutional authority to decertify previously certified electoral votes.”³⁹

In that memo, Mr. Eastman opined, contrary to the conclusions of the in-house lawyers in the Wisconsin Legislature, that state legislatures have the legal authority to decertify the presidential electors in their state, upon a “definitive showing of illegality and/or fraud.”⁴⁰ Mr. Eastman goes on to advise that states can do so even after electors cast their votes, and *even after the President has been inaugurated*,⁴¹ without even a passing explanation of what effect such a decertification would have on the country (at the time of the memo, nearly one year after inauguration) or on the due process rights of the voters who cast votes a year earlier. Mr. Eastman’s memo then goes on to falsely allege both that there were “numerous” violations of Wisconsin election law in 2020, and that this “illegal conduct” affected more ballots than Biden’s margin of victory.⁴² Then Mr. Eastman’s memo claims that this “illegal conduct” was “more than sufficient to warrant the Wisconsin Legislature taking back its plenary power” and even “adopting a slate of electors itself” at any time, even more than a year after the election.⁴³ What Mr. Eastman does not even acknowledge is that state and federal courts in Wisconsin, including the Wisconsin Supreme Court, had uniformly rejected attempts to invalidate ballots from the 2020 election based on those alleged legal violations.⁴⁴ Mr. Eastman’s memo fails to

³⁶ Kroll, *supra* note 2.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Letter from John C. Eastman to Representative Timothy Ramthun (Dec. 30, 2021), <https://s3.documentcloud.org/documents/21198864/eastman-memo-for-ramthun.pdf>, at 1.

⁴⁰ *Id.* at 1-2. Mr. Eastman goes on to explain that he does “not think it is *legally* necessary” that the illegality be sufficient to have altered the course of the election for the legislature to decertify its electors, but that it is “*politically* necessary, or at least strongly advised as a matter of prudent statesmanship.” *Id.* at 1. Mr. Eastman also would not concede that the Legislature was definitely barred from changing the electors after a “legal and fair election” simply because “the Legislature would have preferred a different outcome,” saying only that this option is “likely” not supported by the law. *Id.* at 2-3.

⁴¹ *Id.* at 2.

⁴² *Id.* at 4.

⁴³ *Id.*

⁴⁴ For example, Mr. Eastman alleges that ballots were improperly counted because of violations of Wisconsin law regarding absentee ballot procedures for indefinitely confined voters during the COVID-19 pandemic. Letter from John C. Eastman at 4. But the Trump campaign’s attempts to invalidate those ballots had already been rejected by

even mention those rulings or attempt to distinguish them, nor does he explain how arguments that were unsuccessful in court can serve as a basis for decertifying electors a year later.

As a *Wisconsin State Journal* article put it: “Eastman’s memo further underscores efforts by those in Trump’s inner circle to circumvent the Electoral College process in several states including Wisconsin following the 2020 election, despite recounts and court decisions affirming that President Joe Biden defeated Trump in the battleground state by almost 21,000 votes.”⁴⁵ Indeed, just a few weeks after receiving Mr. Eastman’s memo, Mr. Ramthun proposed a resolution attempting to “reclai[m] the state’s 10 electoral college votes” that had been cast for President Biden.⁴⁶ In our Supplemental Submission, we discussed how, after Mr. Eastman’s advice to Mr. Pence to reject electors came to light, Mr. Eastman sought to downplay and recharacterize the advice he had given.⁴⁷ Yet Mr. Eastman appears to still be engaged in the same sort of conduct.

While these latest details regarding Mr. Eastman’s involvement in the scheme to overturn the presidential election and are unsurprising in light of the allegations already asserted in our Complaint and Supplemental Submission, they do underscore the gravity of Mr. Eastman’s activities and the need for a comprehensive and transparent investigation by the State Bar to determine whether Mr. Eastman engaged in unethical conduct.

Conclusion

Given the relevant law and past practice, the strong public interest in an investigation, and the important nature of the matter at hand, the Bar’s decision not to disclose whether it will investigate our Complaint conflicts with the values of transparency and public accountability reflected both in the State Bar Act and in the Bar’s past practice in complying with the Act.

We hope and trust that the Bar is investigating the serious allegations raised in our Complaint. But by law we are entitled to *know* whether or not it is doing so. For the reasons set forth above, the decision to close our Complaint should be reversed.

Further, in the interest of transparency and accountability, should the Office of General Counsel decide to solicit a response to this appeal from the Office of Chief Trial Counsel, we

the Wisconsin Supreme Court and by a federal judge appointed by former-President Trump. *See Trump v. Biden*, 951 N.W. 2d 568, 572 (Wis. 2020), *cert. denied*, 141 S. Ct. 1387 (2021) (“The Campaign’s request to strike indefinitely confined voters in Dane and Milwaukee Counties as a class without regard to whether any individual voter was in fact indefinitely confined has no basis in reason or law; it is wholly without merit.”); *Trump v. Wisconsin Elections Comm’n*, No. 20-CV-1785-BHL, 2020 WL 7318940 (E.D. Wis. Dec. 12, 2020), *aff’d*, 983 F.3d 919 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (2021) (“First, the record shows [the Wisconsin Elections Commission] acted consistently with, and as expressly authorized by, the Wisconsin Legislature [in issuing their guidance on indefinitely confined voters and other absentee ballot procedures]. Second, their guidance was not a significant or material departure from legislative direction.”). Yet Mr. Eastman mentions neither case in his discussion of these alleged statutory violations.

⁴⁵ Mitchell Schmidt, *Trump Lawyer Advised Lawmaker Ahead of Failed Resolution to ‘Reclaim’ Wisconsin’s Electoral Votes*, *Wisconsin State Journal* (Feb. 8, 2022), https://madison.com/news/local/govt-and-politics/trump-lawyer-advised-lawmaker-ahead-of-failed-resolution-to-reclaim-wisconsins-electoral-votes/article_a596bf99-5fc2-5556-9613-1a3fa879dcca.html.

⁴⁶*Id.* (internal quotation marks omitted).

⁴⁷ Supplemental Submission, *supra* note 8, at 8-15.

respectfully request an opportunity to review and respond to that response prior to any final decision on the appeal.

Respectfully submitted,

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University of California, Berkeley *and*
Former Chair of the State Bar of California's
Committee on Professional Rules and
Conduct

*Titles and affiliations
for identification purposes only

STATES UNITED DEMOCRACY CENTER

/s/ Christine Sun

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**Not admitted to the California Bar

cc:

George S. Cardona, Chief Trial Counsel (*via Email*)

William Todd, Assistant Chief Trial Counsel (*via Email*)