Backgrounder: John Eastman's Trial Before the State Bar Court of California

Updated September 26, 2023

John Eastman is a lawyer licensed in California and Washington, D.C., who represented former President Trump in late 2020 and early 2021. Eastman was a key architect of Trump's unlawful plan to stay in power after he lost the 2020 presidential election.

On Jan. 26, 2023, the State Bar of California filed a Notice of Disciplinary Charges against Eastman. The State Bar alleges that Eastman violated his ethical obligations by engaging in a course of conduct to plan, promote, and assist then-President Trump in executing a strategy, unsupported by facts or law, to overturn the legitimate results of the 2020 presidential election by obstructing the count of electoral votes of certain states.

The Latest

The disciplinary trial against Eastman proceeded June 20-23, June 29-30, August 24-25, Sept 5-8, and Sept 12-15 in the State Bar Court of California. It resumed on Tuesday, September 26, 2023.

Following the August 1 federal indictment of Trump for his efforts to overturn the 2020 election, Eastman confirmed he is the unnamed, unindicted Co-Conspirator 2 in the federal indictment.

On August 4, Eastman filed a motion seeking to postpone his disciplinary trial, as a result of Trump's indictment. The State Bar opposed Eastman's motion, seeking to proceed with the trial as scheduled.

On August 14, Eastman was indicted in Fulton County, Georgia for his alleged participation in a scheme to overturn the results of the 2020 presidential election in the state. The State Bar argued that the trial should continue as scheduled. Eastman argued it should not.

On August 21, the court delayed the trial slightly to allow Eastman to surrender in Fulton County, Georgia, which he did on August 22.

On August 23, the court denied Eastman's motion to exclude evidence that he conspired to create fake elector slates.

On August 25, the court denied Eastman's request to postpone the trial, reasoning, in part, "if Respondent is culpable of the conduct alleged, public protection necessitates that this case be disposed of in a timely manner, particularly as there is an upcoming election in 2024." In the same order, the court concluded that Eastman had waived his Fifth Amendment privilege against self-incrimination because he already testified for over eight hours at the trial without invoking it.

The 11 counts in the State Bar's [Notice of Disciplinary Charges](#) are:

- **Count 1** – [Failing](#) to uphold the Constitution and laws of the United States by planning, promoting, executing, and assisting Trump in executing a strategy for Trump to overturn the legitimate results of the election by obstructing the counting of electoral votes of certain states, which strategy Eastman knew, or was grossly negligent in not knowing, was not supported by either the facts or law. *Business and Professions Code section 6068(a).*

- **Count 2** – Seeking to mislead the U.S. Supreme Court when he, on behalf of Trump, filed pleadings in *[Texas v. Pennsylvania,](#)* seeking to block the counting of electoral votes from four states carried by President Biden. In doing so, Eastman adopted Texas's false and misleading factual allegations. *Business and Professions Code section 6068(d).*

- **Count 3** – Committing an act involving moral turpitude, dishonesty, and corruption by, in his [two-page memo](#), falsely stating that seven states "have transmitted dual slates of electors to the President of the Senate." *Business and Professions Code section 6106.*

- **Count 4** – Seeking to mislead the court in the Northern District of Georgia by filing a [pleading](#) on behalf of Trump in *[Trump v. Kemp](#)*, seeking an emergency injunction to decertify Georgia's election results, which contained factual allegations Eastman knew were false and misleading. *Business and Professions Code section 6068(d).*

- **Count 5** – Committing an act involving moral turpitude, dishonesty, and corruption when he [appeared](#) on the "Bannon's War Room" radio program and made statements about absentee ballot fraud that he knew, or was grossly negligent in not knowing, were false and misleading. He made these false and misleading statements with the intent to encourage the public to question the legitimacy of the election results. *Business and Professions Code section 6106.*

- **Count 6** – Committing an act involving moral turpitude, dishonesty, and corruption by, in his [six-page memo](#), making various false and misleading statements about the 2020 election. *Business and Professions Code section 6106.*

- **Count 7** – Committing an act involving moral turpitude, dishonesty, and corruption when he, on Jan. 6, 2021, with the intent of promoting doubt about the results of the election, [told](#) thousands of people at the rally that preceded the attack on the Capitol that Dominion electronic voting machines fraudulently manipulated results. He knew or was grossly negligent in not knowing that his statements were false and misleading. *Business and Professions Code section 6106.*

- **Count 8** – Committing an act involving moral turpitude, dishonesty, and corruption by [stating](#) to former Vice President Mike Pence's attorney, with the intent of pressuring Pence to adjourn the joint session of Congress, that there was "compelling" and "overwhelming" evidence that the election was "stolen," when he knew the statement was false and misleading. *Business and Professions Code section 6106.*

- **Count 9** – Committing an act involving moral turpitude, dishonesty, and corruption when, with the intent to encourage the general public to question the legitimacy of the election results, he published an article in the American Mind, a publication of the Claremont Institute, regarding the 2020 presidential election containing false and misleading statements. *Business and Professions Code section 6106.*

- **Count 10** – Committing an act involving moral turpitude, dishonesty, and corruption when he proposed to Pence that Pence had the legal authority to and should act unilaterally to resolve purported disputes regarding electoral votes on Jan. 6, 2021, or that Pence had the legal authority unilaterally to delay certification of the votes. Eastman advanced a radical and incorrect theory of constitutional law and election law, based on misinterpreted historical sources, misinterpreted law review articles, and law review articles which he knew, or was grossly negligent in not knowing, were themselves fundamentally flawed, and on the false premise that the seven states at issue had transmitted alternate slates of electors, such that no reasonable attorney with expertise in constitutional law or election law would conclude that Pence was legally authorized to take the actions that respondent proposed. *Business and Professions Code section 6106.*

- **Count 11** – Committing an act involving moral turpitude, dishonesty, and corruption when he made false and misleading statements that contributed to provoking the crowd to assault and breach the Capitol in an effort to intimidate Pence and prevent the electoral count from proceeding, when such harm was foreseeable. *Business and Professions Code section 6106.*

Key Takeaways from the Parties' **Joint Pretrial Statement:**

- The State Bar of California Office of Chief Trial Counsel (OCTC) seeks disbarment.
- Eastman seeks dismissal of the case. Eastman contends that his conduct was reasonable under the circumstances and protected by the First Amendment.
- After three settlement conferences, the parties did not agree to a settlement.

What to Expect at the Bar Court Trial:

The case is before State Bar Court Judge Yvette Roland. The Court reconvened on September 26 at 10 a.m. PT in Hearing Department – Los Angeles Courtroom B and continues from September 26-29, with additional trial dates set for October 3 and October 6. **It will be livestreamed here.**

1. **Procedure:** The bar trial will proceed very similarly to a standard civil trial, but with no jury. Both parties will have the opportunity to provide an opening statement and closing argument. The bar has the burden of proof (clear and convincing evidence) and will present its case first by calling witnesses to testify and providing documents for the court to consider. Eastman's lawyers will then have the opportunity to cross-examine the bar's witnesses. After the bar finishes presentation of its case, Eastman will have an opportunity to put on his defense by calling witnesses and offering documents for the court's review. The bar's attorneys will then have the opportunity to cross-examine Eastman's witnesses. As with any complicated civil trial, the bar trial will take multiple weeks to complete.

2. **Ruling:** A ruling is not expected immediately after trial. The court will likely allow the parties three weeks to submit post-trial briefs, which is common in more complex disciplinary cases. Judge Roland will issue a written decision, which could take up to 90 days after the trial concludes.

3. **Appeals:** Either party may request review of the trial court's decision by the State Bar Court's Review Department. In most cases, the parties would have 30 days after Judge Roland's order to request that review. Thereafter, either party may seek review of the State Bar Court's decision by the California Supreme Court.

Overview of Witnesses:

Below is a brief overview of the potential witnesses and their credentials, compiled from publicly available information. Witness lists are subject to change.

State Bar Witnesses Who Have Testified

- Jonathan Brater – Director of Elections, Michigan Bureau of Elections.
- Bo Dul – Former State Elections Director and General Counsel, Arizona Secretary of State; currently general counsel to the Arizona governor.
- John Eastman – Respondent.
- Justin Grimmer – Professor of Political Science, Stanford University.
- Greg Jacob – Former chief counsel to former Vice President Mike Pence.
- Jonathan Marks – Deputy Secretary for Elections and Commissions, Pennsylvania Department of State.
- Stephen Richer – County Recorder, Maricopa County (Arizona); in charge of elections.
- Jake Rollow – Former Director of Communications, Michigan Department of State.
- Matthew Seligman – Partner, Stris & Maher LLP, Former Fellow, Constitutional Law Center at Stanford Law School.
- Mark Wlaschin – Deputy Secretary of State for Elections, Nevada Secretary of State's Office.

Eastman Witnesses Who Have Testified

- Garland Favorito – Co-founder of VoterGA. Favorito is a frequent guest on shows hosted by conspiracy theorists, including Mike Lindell's programs "The Lindell Report" and "FrankSpeech," and Steve Bannon's "War Room" show.
- Joseph Fried – Certified public accountant and author of a book that promotes numerous discredited claims of 2020 election irregularities. Per court order, Fried, who was excluded as an expert witness, is limited to testifying "as a percipient witness—excluding any expert opinion testimony."
- Michael Gableman – Former Wisconsin Supreme Court Justice, facing numerous ethics complaints, who was retained by the state legislature to conduct an "audit" of the 2020 election, despite admittedly lacking any prior professional election experience.
- John C. Yoo – Constitutional law scholar and Emanuel S. Heller Professor of Law at the University of California, Berkeley. Longtime friend of Eastman who said, "Unfortunately, he [Eastman] drank the Kool-Aid that President Trump was selling — that the election was a fraud." Per court order, Yoo is precluded from offering certain opinions concerning the tenability of Eastman's advice to former Vice President Pence concerning his authority on January 6.

Upcoming Potential Eastman Witnesses

- Ray Blehar – Gained prominence claiming a [cover-up](#) in the Penn State Sandusky scandal. Had no elections experience prior to 2020. Following 2020, Blehar claimed on his [personal blog](#) that because the Green Party candidate in Pennsylvania—who was not even on the ballot—received very few votes in the general election, the election equipment must have somehow transferred 70-80k Green Party votes to Biden. He has also [written](#) that he believes the Jan. 6 insurrection was a false-flag operation.

- Patrick Colbeck – Former Michigan state senator who [pressured](#) local clerks in the aftermath of the 2020 election, requesting to illegally examine election equipment. Colbeck has [spread](#) election disinformation and conspiracy theories and authored the book, "The 2020 Coup: What Happened. What We Can Do." In a [ruling](#) on a 2020 election challenge, a Wayne County, MI judge said that Colbeck's "predilection to believe fraud was occurring undermines his credibility as a witness." Per court [order,](#) Colbeck is limited to testifying "as a percipient rebuttal witness—excluding any expert opinion testimony."

- John Droz – Although Eastman identified him as a statistician in the parties' [joint pretrial memo](#), Droz holds an MS in physics [focused on energy policy](#) and [critiquing wind energy](#); has no professional experience with elections and [no expertise in statistics](#).

- Doug Frank – Former high school math teacher with a doctorate in chemistry who came to prominence by questioning the accuracy of Covid-19 statistics, and who lacked any professional experience with elections before the 2020 election. [Traveled the country promoting](#) his discredited theory that Dominion voting machines used an algorithm to manipulate election results. The [FBI seized his phone](#) in connection with an investigation into potential security breaches of local elections offices.

- Joseph Oltmann – Far-right, Colorado-based podcaster and digital marketer who gained notoriety by claiming he had personal knowledge that the 2020 election was stolen based on his alleged infiltration of an online Antifa meeting where a Dominion Voting Systems officer purportedly suggested that the company would rig the election. On May 13, 2022, a court overseeing a defamation case against Oltmann concerning this claim issued a [136-page ruling](#) concluding that the plaintiff would be able to establish defamation by clear and convincing evidence.

- [Kurt Olsen](#) – Attorney in litigation [attempting to overturn](#) the 2020 election; [sanctioned](#) for making "false, misleading, and unsupported factual assertions" in Lake's 2022 election contest. Per court [order](#), "Olsen may testify as a percipient witness as specified on page 64 of the June 5, 2023 joint pretrial statement regarding his involvement with the *Texas v. Pennsylvania* case—excluding any expert opinion testimony."

- S. Stanley Young – Statistician who holds a doctorate but had no professional experience analyzing election data before 2020 and has [no peer-reviewed publications about elections](#).

Excluded Witnesses

The Bar Court granted the State Bar's motions to exclude testimony from several of Eastman's proposed expert witnesses:

- [Rebecca Roiphe](#) was excluded because generally witnesses are not permitted to give expert opinions on legal issues—in this case, First Amendment defenses—that are for the court to decide.

- Judge Janice Rogers Brown was excluded because the court concluded that her opinion regarding the State Bar's decision to pursue charges against Eastman was irrelevant to the court's determination whether Eastman violated the Rules of Professional Conduct or Business and Professions Code.
- Joseph N. Fried and John "Jay" Valentine were excluded because the court concluded that they lacked relevant expertise and that their analyses, because of when they were produced, could not have been relevant to Eastman's actions relating to the 2020 election.

The Bar Court granted the State Bar's motion to exclude testimony from a number of Eastman's other witnesses, because Eastman did not timely disclose them:

- William M. Briggs – Statistician who served as plaintiffs' expert in *King v. Whitmer*, where the judge found the evidence to be an "amalgamation of theories, conjecture, and speculation," sanctioned the plaintiffs' attorneys, and ordered them to get remedial legal education. Also served as expert in *Bowyer v. Ducey*, which was dismissed due to insufficient evidence of fraud. Briggs hosts a blog where he outlined a plan to initiate a violent coup by killing government officials at the State of the Union address, and, in September 2020, recommended that President Trump declare the election invalid and institute a coup should he lose.
- Anthony Cox, Jr. – Associate professor at Colorado University at Denver Business School with no professional experience in elections and no peer-reviewed publications about elections.
- Mark Finchem – Former Arizona state representative and former candidate for secretary of state in Arizona who promoted falsehoods about elections throughout his campaign. He was sanctioned for filing a "baseless" election lawsuit. Finchem is also a self-identified member of the Oath Keepers, the extremist group which played a role in the attack at the Capitol on Jan. 6.
- Heather Honey – Witness in failed Arizona gubernatorial candidate Kari Lake's 2022 election contest, where she admitted she had no election experience. She also worked for the Cyber Ninjas during their so-called forensic audit of the 2020 vote. Recently, Honey has led efforts to encourage states to leave the Electronic Registration Information Center (ERIC), presenting a report at an anti-ERIC summit at the Conservative Partnership Institute.
- Sandy Juno – Former County Clerk of Brown County, Wisconsin, during the 2020 election. She testified in an investigation into the 2020 election claiming the vote count was tainted but didn't offer any evidence. The Wisconsin Elections Commission (WEC) corrected all her claims, and the investigation found no fraud.
- Jeffrey O'Donnell – O'Donnell, who also goes by "The Lone Raccoon" online, runs a website and social media community dedicated to unprofessional, online "investigations" into debunked misinformation topics. He has made several controversial claims on social media, including that the 2020 election was a coup funded by Europeans. He has no professional elections experience.
- Wendy Rogers – Arizona state senator who was censured last year by lawmakers from both parties for her remarks at a white nationalist conference calling for public hangings. She also helped organize Stop the Steal rallies in Arizona.

Resources:

- [Watch livestream of trial](#)
- [State Bar Court of California website](#)
- [States United's bar complaints against Eastman](#)
- [States United's statement on the trial](#)
- American Oversight: [In The Documents: Witnesses For John Eastman's Disciplinary Trial](#)
- The Sacramento Bee: [John Eastman faces the music for trying to swing the 2020 election to Donald Trump (Opinion)](#)
- CNN: [Ex-Trump attorney to face attorney disciplinary proceedings for 2020 election plot aimed at Pence](#)
- The Orange County Register: [John Eastman's Law License Trial Raises Big Questions](#)
- Politico: [Eastman plan to keep Trump in power faces a reckoning, as authorities seek his disbarment](#)