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September 22, 2022

CONFIDENTIAL SUBMISSION AND COMMUNICATION

(California Bus. and Prof. Code, § 6086.1(b) and State Bar Rule 2302

VIA EMAIL ONLY
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Angie Esquivel, Staff Counsel
Charlie Hummell, Investigator
The State Bar of California
845 S. Figueroa Street
Los Angeles, CA 90017

RE: Respondent: John C. Estman
State Bar Case No.: 21-O-11801

Ms. Esquivel and Mr. Hummell,

Thank you for the opportunity to address the State Bar's investigation.

Please consider this Attorney John C. Eastman's ("Dr. Eastman") written response to the State Bar's Investigation Letter dated May 11, 2022 ("Initial Investigation Letter"). As set forth in my emails to both of you on September 6 and September 16, 2022,[1] Mr. Eastman's response

[1] Though not necessary to recite the entirety of the communications between our offices, which largely speak for themselves, the bases for Dr. Eastman's *separate* responses to the Bar's Initial and Supplemental Investigation Letters relate mostly to the volume, length, and complexity of the Bar's requests, and the timeline imposed on this office and Dr. Eastman to research, draft, and complete a comprehensive response to a broad array of questions, inquires, and document requests. Though the Bar responded to Dr. Eastman's requests (and the bases therefore) for additional time in which to prepare his response(s) (which courtesies were appreciated), the time to do so remains insufficient. Nonetheless, Dr. Eastman used his best efforts within that timeline to provide the Bar with information that, hopefully, assists it (the Bar) in its investigation and inquiries. As always, Dr. Eastman and this office remain available to the Bar for any other related questions, inquiries or needs.

herein responds to the Initial Investigation Letter. Dr. Eastman will respond separately to the State Bar's Supplemental Investigation Letter dated June 27, 2022 ("Supplemental Investigation Letter") in due course.

Throughout the Bar's Investigation(s), and in this Initial and Supplemental written responses, it is Dr. Eastman's intention that his participation in this process is not only responsive to the issues and questions raised by the Bar, but provides the State Bar with the facts and circumstances as to why the investigation need not further proceed. Dr. Eastman and this office remain available to respond to your questions, requests for information or documents, and anything else which would assist the State Bar in its inquiry. Dr. Eastman's cooperation, and that of our office, is assured. [2]

Before responding to the Bar's substantive requests in its Initial Investigation Letter, we observe that the characterization contained in the opening of that letter appears to have pre-judged the primary matter in dispute. The Bar asserts, for example, that the investigation related to Dr. Eastman's alleged involvement in attempting "to *overturn* the results of the 2020 presidential election," and his efforts "to prevent or delay the counting of "*lawful* electoral votes." Dr. Eastman vehemently disputes this characterization, as the central issue is more aptly described as whether the electoral votes that had been certified *were legally certified* after state election officials violated numerous provisions of state election law that had been adopted by the legislatures of the several states at issue, violations that unconstitutionally intruded on the legislatures' plenary power to direct the manner of choosing electors. As will be evident from the detailed response to the Bar's Initial Investigation Letter, Dr. Eastman did not "engag[e] in, assis[t], counse[l], and induc[e] a client and others to engage in conduct that is criminal, fraudulent, or a violation of any law, including the United States Constitution, rule, ruling of a tribunal, or obligation under the State Bar Act or the Rules of Professional Conduct;" did not "fil[e] frivolous lawsuits, pleadings, and contentions;" and did not mak[e] false statements in furtherance thereof." Dr. Eastman is confident that upon careful consideration of the relevant facts, most all of which are not materially disputed, the Bar will retract its characterization, and find that his role, actions, and work product were lawful, proper, in good faith, consistent with the facts and circumstances extant in the relevant time period(s) (or reasonable inferences therefrom), manifestly compliant with his ethical obligations as a zealous advocate for his clients' rights and interests, ***and*** complied with the applicable standards of care ***in all respects***.

[2] In doing so, Dr. Eastman is complying with the compulsory requests for information and documentation in accordance with the Bar's investigatory authority. Otherwise, Dr. Eastman fully preserves any and all rights in any form against self-incrimination, as guaranteed by the 5th Amendment.

Responses to the Bar's Inquiries and Questions

In the following, Dr. Eastman repeats and responds, in order, to the Bar's inquiries and questions in its Initial Investigation Letter. Links to responsive documents are in the text or footnotes. The Bars questions are **in bold**.

***

In response to each inquiry below, please provide the information requested and legible copies of all requested or referenced documents:

I. CURRICULUM VITAE

Please provide a copy of respondent's current Curriculum Vitae and a list of the books, articles, law review articles, and other publications respondent authored or co-authored.

Attached as Exhibit A.

II. SIX-PAGE AND TWO-PAGE MEMORANDA

It is alleged that respondent prepared a six-page and two-page memoranda, which provided scenarios for former Vice President Pence to disregard or delay recognition of electoral college votes from several different states, including but not limited to Georgia, Pennsylvania, Wisconsin, Michigan, Arizona, Nevada and New Mexico. The six-page and two-page memoranda are attached for your reference as Exhibits 1 and 2 respectively.

A. With regard to the six-page memorandum please answer the following:

1. Did respondent draft the memorandum? If not, who did, and what role did respondent play in the preparation and drafting of the memorandum?

Dr. Eastman was retained by former President Trump and his campaign committee to represent the former President in several litigation matters related to the 2020 election and also to provide advice about the constitutional role of the Vice President, the Congress, and the state legislatures in the electoral college processed. In furtherance of this representation, and fulfilling his ethical duty to zealously advocate on behalf of his clients, Dr. Eastman prepared a memorandum outlining all of the possible scenarios for the counting of disputed electoral votes. His role was that of legal advocate, consultant, and adviser.

And with that role came the concomitant duty (obligation) to zealously and competently advance the interests of his client. While enumeration of ***all*** the duties a lawyer in this role is unachievable, it is clear that they include ***fulsome and unfiltered*** advice, recitation of ***all*** the means by which the client's interests and legal objectives can be met, a robust and honest assessment of the merit of the client's legal options, and clear communication. Indeed, the ***failure*** to do so might fall below the duty of competence owed to the client, or fail to comply with the standard(s) of care required of reasonable practitioners under the same or similar circumstances. It is absolutely critical that Dr. Eastman's asserted actions raised herein by the Bar be viewed through that aperture. [3]

Of equal importance to Dr. Eastman's legal and fiduciary ***obligation*** of zealous, spirited, undivided, and partisan representation is his right to rely on information, evidence, and facts from the client and or third parties. While perhaps not explicit, but clearly inferred in the Bar's investigation, is the insinuation that Dr. Eastman's work product, including the memo raised in this first question, was not based on credible information and therefore flawed. [4] Here, too, it is *critical* for the Bar to understand the context of the engagement -- to assess, relentlessly and fulsomely, all tenable avenues available to his clients, advocate for the clients' interests, and present the options. And, in doing so, a lawyer is entitled to rely on information from the client and others. [5] This foundational entitlement, also sourced in an attorney's duty of unflinching advocacy, has been repeated for 60 years, but best captured in *Marijanovic v. Gray York* (2006) 137 Cal.App.4th 1262:

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[3] See, ABA Canons of Professional Ethics (1908):

Canon 15: "[A] lawyer owes entire devotion to the interest of the client, *warm zeal* in the maintenance and defense of his rights and the exertion of his utmost learning and ability."

***

See also, ABA Model Rules of Professional Conduct 1.3:

"A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with **zeal in advocacy** upon the client's behalf.

***

[4] Of course, the information considered or relied on by the attorney must be viewed at the time of that consideration, not after. *Antounian v. Louis Vuitton Malletier* (2010) 189 Cal.App.4th 438, 453-454.

[5] As will be apparent from Dr. Eastman's response, information he relied upon from clients, co-counsel, and third parties included investigative reports, sworn testimony before courts, regulatory authorities, and legislative bodies, and verified pleadings in state and federal courts.

"A litigant or attorney who possesses ***competent evidence*** to substantiate a legally cognizable claim for relief does not act tortiously by bringing the claim, even if also aware of evidence that will weigh against the claim. Plaintiffs and their attorneys are not required, on penalty of tort liability, to attempt to predict how a trier of fact will weigh the competing evidence, or to abandon their claim if they think it likely the evidence will ultimately weigh against them. They have the right to bring a claim they think unlikely to succeed, so long as it is arguably meritorious." (*Id.* at p. 822.) "Counsel who receives interrogatory answers appearing to present a complete defense might act reasonably by going forward with the defendant's deposition in light of the possibility that the defense will, on testimonial examination, prove less than solid. The reasonableness of counsel's persistence is, of course, a question of law to be decided on a case-by-case basis. . . ." (*Zamos v. Stroud, supra*, 32 Cal.4th at p. 970, fn. 9.)"

Id. at 1272 (emphasis added).

And in, *Litinsky v. Kaplan* (2019) 40 Cal.App.5th 970:

Additional policies come into play when a malicious prosecution action is brought against a *lawyer* who prosecuted a prior action. *Unless a lawyer discovers that his or her client has provided false information, the lawyer is generally entitled to rely on information from his or her client in filing or prosecuting a lawsuit.* (*Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 223 (*Daniels*).) That reliance is grounded on the attorney's duty to act as an advocate on behalf of his or her client. (See *Marijanovic v. Gray, York & Duffy* (2006) 137 Cal.App.4th 1262, 1272, fn. 5 (*Marijanovic*) [noting that "it could well constitute malpractice for an attorney to drop a lawsuit, for which supporting evidence existed, merely because opposing counsel asserted the action was baseless"].)

Id. at 981 (italics added) [6]

Consistent with the foregoing, it is essential Dr. Eastman's memo (raised in numerous Bar questions throughout), or anything else surrounding that advocacy, be evaluated with these principles in mind.

Dr. Eastman is the primary drafter of the memo, which was based on several scholarly articles and historical debates addressing the role that the 12th Amendment (and its predecessor text in Article

[6] Other cases similarly hold that an attorney may rely upon information supporting a client's claim unless the information is indisputably false. (See *Morrison, supra,* 103 Cal.App.4th at p. 513 [lawyers could reasonably rely on client's "account of misrepresentation, reliance, and ensuing damages"]; *Marijanovic, supra,* 137 Cal.App.4th at pp. 1271-1272 [probable cause to pursue indemnification lawsuit against a subcontractor was not negated by the subcontractor's "bald assertion" that the scope of his work was limited]; *Antounian v. Louis Vuitton Malletier* (2010) 189 Cal.App.4th 438, 453-454 [117 Cal.Rptr.3d 3] [discovery of mistakes in investigative reports did not negate probable cause to continue the prosecution of a counterfeiting lawsuit where other evidence of counterfeiting remained]; cf. *Daniels, supra,* 182 Cal.App.4th at p. 224 [factual dispute existed on the issue of probable cause where it was unclear whether the client personally witnessed alleged defamation and there was an "absence of any witnesses, documents, or other evidence" in support of the client's allegations].)

II of the Constitution) assigns to the Vice President in the opening and counting of electoral votes, including Bruce Ackerman and David Fontana, *Thomas Jefferson Counts Himself Into the Presidency*, 90 Va. L. Rev. 551 (2004)[7]; Vasan Kesavan, *Is the Electoral Count Act Unconstitutional*. 80 N.C. L. Rev. 1653 (2002) ("The Framers clearly thought that the counting function was vested in the President of the Senate alone")[8]; Edward B. Foley, *Preparing for A Disputed Presidential Election: An Exercise in Election Risk Assessment and Management*, 51 Loyola Chi. L. J. 309 (2019)[9]; Nathan L. Colvin and Edward B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb*, 64 U. Miami L. Rev. 475 (2010) ("from 1789 to 1821, the power [to count and/or determine the validity of votes] was generally thought vested in the states or the President of the Senate"). It was intended as an internal document drafted for ***purposes of discussion*** among members of President Trump's legal team, exploring the ***possible*** scenarios of action on January 6 at the joint session of Congress to ensure that electoral votes illegally certified after election laws were unconstitutionally altered by non-legislative election officials did not affect the outcome of the presidential election.

2. Identify all persons who participated or assisted or were consulted in the preparation and drafting of the memorandum or in the gathering or provision of information that was used in the preparation and drafting of the memorandum.

Dr. Eastman does not recall anyone in particular participating or assisting in the drafting of the 6-page memo, but the ideas contained in it were the topic of discussion, both internally among members of the Trump legal and campaign teams (which communications are protected work product), as well as publicly. *See, e.g.*, Neil Buchanan, Michael C. Dorf, and Laurence Tribe, *No, Republicans Cannot Throw the Presidential Election into the House so that Trump Wins*, Verdict.Justia.com (Sept. 30, 2020)[10]; Barton Gellman, *The Election That Could Break America*, The Atlantic (Sept. 23, 2020 online; Nov. 2020 print)[11]; John Yoo and Robert Delahunty, *What Happens if No One Wins?*, American Mind (Oct. 19, 2020).[12] Kenneth Chesebro did provide input on the one section of the memo that was carried over from the 2-page draft, which as noted below, set out just one of the scenarios that were being discussed. Jenna Ellis forwarded a memo to Dr. Eastman and Rudy Giuliani on December 31, 2020, outlining thoughts about the Vice President directing a question to state legislatures to determine which slates of electors had been appointed in the "manner" directed by the

[7] At https://openyls.law.yale.edu/bitstream/handle/20.500.13051/399/ThomasJeffersonCountsHimselfintothePresidency.pdf?sequence=2&isAllowed=y

[8] Available at https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=4003&context=nclr.

[9] https://www.luc.edu/media/lucedu/law/students/publications/llj/pdfs/vol-51/issue-2/7_Foley%20(309-362).pdf

[10] https://verdict.justia.com/2020/09/30/no-republicans-cannot-throw-the-presidential-election-into-the-house-so-that-trump-wins

[11] https://www.theatlantic.com/magazine/archive/2020/11/what-if-trump-refuses-concede/616424/

[12] https://americanmind.org/salvo/what-happens-if-no-one-wins/.

legislature pursuant to its Article II powers. That email is protected work product and, to our knowledge, has not been publicly disclosed.

a. Specify each person's role in the preparation and drafting of the memorandum and the information gathered or provided by them.

Kenneth Chesebro had prepared several memos articulating some of the same issues that were addressed in the memo, and identified several relevant law review articles.
Jenna Ellis forwarded an email from a lawyer/partner at Baker McKenzie proposing that Vice President Pence refer a question to state legislatures regarding which slate of electors "had in fact been chosen in the manner the legislature has provided under Section 1 of Art. II of the U.S. Constitution."

In addition, the several legal scholars identified above published scholarly articles on the subject in recent years addressing the ambiguities in the text of the 12th Amendment and the various interpretations of it. Those articles cited significant historical sources as well, including:

- The unanimous resolution attached by the Constitutional Convention to the draft of the Constitution being transmitted to the states for ratification, which provided "that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President." 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 666 (Max Farrand ed., 1911); *see also* 1 ANNALS OF CONG. 16-17 (Joseph Gales ed., 1789) (noting the election of Senator John Langdon as President of the Senate "for the sole purpose of opening and counting the votes for President of the United States.");

- The 1800 debate in Congress over the Grand Committee Bill, and particularly the opposition to the bill by Senator Charles Pinckney, who successfully argued that the bill was unconstitutional because it claimed powers for *Congress* that the Constitution did not assign to it. *E.g.,* 10 Annals of Congress 130.

- Chancellor James Kent, *Commentaries on American Law* (1826-30) ("The Constitution does not expressly declare *by whom* the votes are to be counted and the result declared. In the case of questionable votes, and a closely contested election, this power may be all-important; and I presume, in the absence of all legislative provision on the subject, that the President of the Senate counts the votes, and determines the result, and that the two houses are present only as spectators, to witness the fairness and accuracy of the transaction, and to act only if no choice be made by the electors.");

- Debates over the Electoral Count Act of 1887, specifically including remarks by Senator Henry Wilson, 17 Cong. Rec. 1059 (1886) (contending that the counting function is vested in the President of the Senate and the Necessary and Proper Clause "does not confer on Congress the power to assume unto itself the duty which the Constitution imposes on that officer"), and Representative Charles Baker, 18 Cong. Rec. 74 (1886) ("If the

Constitution... does.., by fair implication, vest in the President of the Senate the power and duty not only to open, but also to count, the votes, then Congress cannot, by this or any other legislation, take away or transfer to any other person or officer that power and duty").

b. Identify the date and time at which respondent had any discussions with any of the persons identified regarding the memorandum or its contents and describe the nature of the discussions.

To the best of his recollection, Dr. Eastman received input and proposed edits from Kenneth Chesebro on the 2-page memo, which became one subsection of the 6-page memo, between 9:16 am MST and 9:35 am MST on December 23, 2020.

c. Provide contact information for each person identified.

Kenneth Chesebro, kenchesebro@msn.com, (617) 895-6196

3. What was the purpose of the memorandum?

The memo was the product of President Trump and his team members' inquiries regarding assessment of options following the election, specifically regarding certification of the electoral count, the 12th Amendment, and Electoral Count Act. The memo was intended to place ***all*** options on the board for internal discussion purposes, summarizing the various scenarios under discussion. It was the expression of expansive thinking, grounded in the work of constitutional scholars, academics, members of Congress, constitutional intent and interpretation, and legislation extant for decades.

4. Did anyone request or direct the preparation and drafting of the memorandum and, if so, who? Please provide contact information for any person identified.

Dr. Eastman does not recall who requested the memo, and has not located any written request. He suspects that he probably received a request by telephone, most likely from Boris Epshteyn, who was working with the Trump legal team.

Boris Epshteyn, bepshteyn@donaldtrump.com, (609) 529-9982

5. To whom, if anyone, did respondent provide the memorandum? Identify the date and time at which the memorandum was provided to each such person and specify the purpose for which the memorandum was provided to each such person. Please provide contact information for each person identified.

Dr. Eastman provided the 6-page memo to Boris Epshteyn via email at 5:19 pm MST on Jan. 3, 2021. He has no record or recollection of having provided the memo to anyone else at the time.

Boris Epshteyn, bepshteyn@donaldtrump.com, (609) 529-9982

6. **What investigation did respondent complete and on what information did respondent rely on to validate the factual allegations supporting the memorandum? Please provide all such information and identify the source from which it was obtained.**

Dr. Eastman reviewed and relied upon sworn testimony, sworn affidavits, and expert analysis submitted in several court actions and before state legislative committees, as well as personal interviews, in support of the factual assertions made in the memorandum. Specifically:

Allegation #1 (as an aside): "traditional ballot stuffing".

- Statistical evidence of significant vote spikes in Georgia, Pennsylvania, and Michigan suggesting likely ballot stuffing. *See*, *e.g.*, Pennsylvania 2020 Voting Analysis Report[13]; Michigan 2020 Voting Analysis Report.[14]

- Sworn testimony of Jesse Morgan, a postal subcontractor truck driver in Pennsylvania regarding the transport of 24 bins (two hundred thousand or more) of ballots from Long Island, New York to Lancaster, Pennsylvania. Affidavit of Jesse Morgan, *Metcalfe v. Wolf*, No. 636 MD 2020 (Commonwealth Ct. of PA, filed Dec. 4, 2020).[15]

- Video evidence of ballots being scanned multiple times at the State Farm Arena in Atlanta, Georgia, after election observers were advised to go home because counting had been halted for the evening. Jack Phillips, *Georgia State Farm Arena Footage Shows Poll Workers Staying Behind, Pulling Out Suitcases With Ballots*, Epoch Times (Dec. 3, 2020).[16] Portions of the original video[17] were played at a "Hearing to Assess Election Improprieties and to Evaluate the Election Process to Ensure the Integrity of Georgia's Voting System" held by the Georgia Senate Judiciary Committee, Subcommittee on State Election Processes, on December 3, 2020.

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[13] Available at https://election-integrity.info/PA_2020_Voter_Analysis_Report.pdf.

[14] Available at https://election-integrity.info/MI_2020_Voter_Analysis_Report.pdf.

[15] https://www.pacourts.us/Storage/media/pdfs/20210603/212420-file-10836.pdf; *see also* https://cleverjourneys.com/2021/07/12/testimony-of-truck-driver-who-delivered-ballots-from-new-york-to-pennsylvania-wont-go-away/ ; https://www.thegatewaypundit.com/2020/12/driving-completed-ballots-ny-pennsylvania-decided-speak-update-usps-contract-truck-driver-transferred-288000-fraudulent-ballots-ny-pa-speaks-presser/; https://www.breitbart.com/politics/2020/12/02/usps-driver-says-trailer-thousands-ballots-disappeared/.

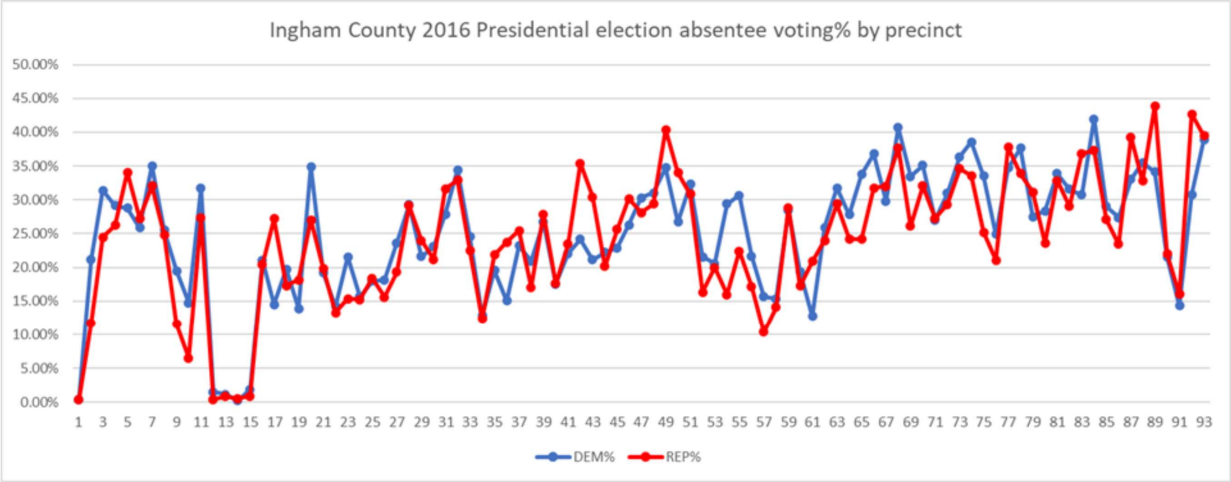
[16] https://www.theepochtimes.com/state-farm-arena-footage-shows-poll-workers-staying-behind-pulling-out-suitcases-with-ballots_3603293.html

[17] The video was initially available at https://www.youtube.com/watch?v=keANzinHWUA, but that link is no longer available.

- Sworn testimony by Grace Lennon, a Georgia Tech college student, in the Georgia Senate committee hearing, indicating that someone had applied for and voted an absentee ballot in her name, after having the ballot redirected to an address unknown to her without her knowledge or consent. The Chairman's Report of the Election Law Study Committee of the Standing Senate Judiciary Committee, *Summary of Testimony from December 3, 2020 Hearing*, p. 12.[18]

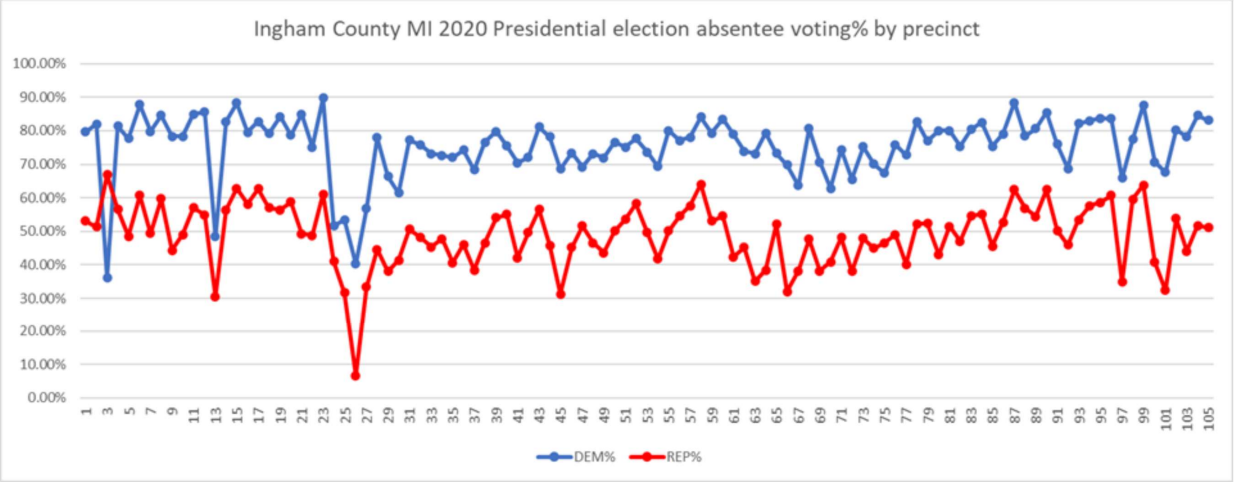
Allegation #2 (as an aside): "electronic manipulation of voting tabulation machines".

- Expert statistical analysis of absentee ballot patterns conducted by Thomas Davis and Dr. William M. Briggs, *Irrational MI Absentee Ballots Findings* (Nov. 28, 2020), in Michigan 2020 Voting Analysis Report, pp. 18-22,[19] contrasting 2016 and 2020 absentee ballot results that provided "*very* strong evidence that the absentee voting counts in some counties in Michigan have likely been manipulated by a computer algorithm." The anomalous "parallel snakes" phenomenon was observed in several Michigan counties, including Ingham County, depicted below.



[18] http://www.senatorligon.com/THE_FINAL%20REPORT.PDF

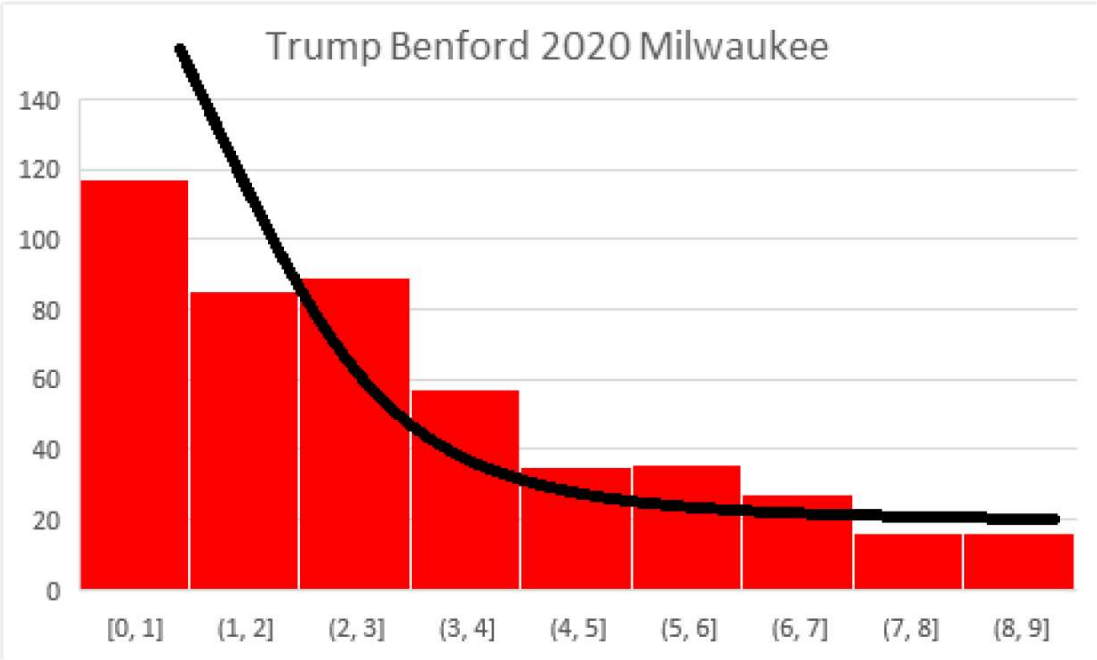
[19] Available at https://election-integrity.info/MI_2020_Voter_Analysis_Report.pdf.

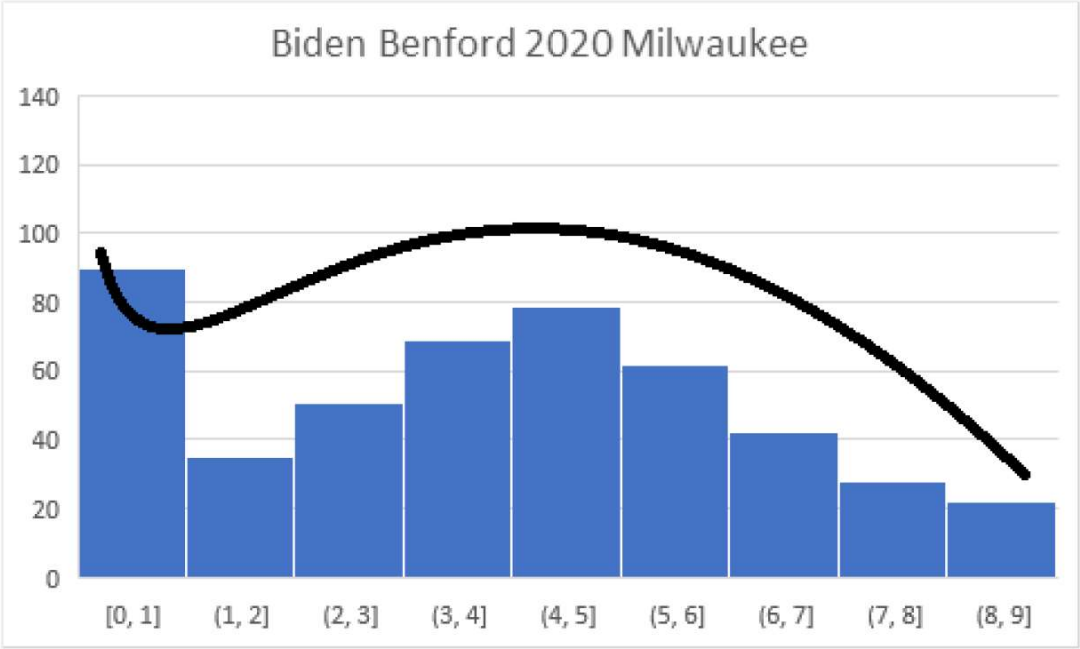


This same group of experts, with whom Dr. Eastman was working, identified the same "parallel snakes" phenomenon in the January 5, 2021 Georgia Senate Runoff Election, noting that it "reeks of a computer algorithm." See Chapman063479.[20]

- Benford's Law analysis conducted by Samuel Culper III (pseudonym), *Statistical Analysis and Hypothesis* (Nov. 12, 2020), which found that the precinct data in a number of key swing counties, including Milwaukee, Wisconsin (reprinted below) exhibited a "statistically impossible signature" that "heavily indicates human intervention" for Biden's results, which "certainly does not" follow Benford's law (although Trump's result did). See Chapman015611.

[20] This reference is the Bates number, and the document (as well as those below bearing similar Chapman0xxxx bates numbers) is part of the document production made to the House of Representatives January 6 Committee, and which has also been provided to the State Bar of California pursuant to this investigation.





Allegation #3: "important state election laws were altered or dispensed with altogether in key swing states and/or cities and counties."

- The memo itself includes specifics from six states: Georgia, Pennsylvania, Wisconsin, Michigan, Arizona, and Nevada. The items cited in the first three states were drawn

explicitly from pending court actions in those states, and additional detail for each is provided below.

Allegation #4: Georgia - "SOS altered signature verification requirements via an unauthorized settlement agreement."

- Georgia Secretary of State Brad Raffensperger entered into a "Compromise Settlement Agreement and Release" on March 6, 2020.[21] The Agreement altered several provisions of Georgia law, specifically including the requirement that the registrar must compare an absentee ballot signature with both "the signature or mark on the absentee elector's voter registration card … *and* application for absentee ballot…." O.C.G.A. § 21-2-386 (eff. 4/2/2019 to 6/30.202, Laws 2019, Act 24, § 32) (emphasis added); *compare* Agreement ¶ 3 (providing that an absentee ballot signature is valid unless "the voter's signature on the mail-in absentee ballot envelope does not match *any* of the voter's signatures on file in eNet *or* on the absentee ballot application," and then only if at least two of three registrars, deputy registrars, or absentee ballot clerks agree that the signature does not match "any" of the signatures on file "or" on the absentee ballot application (emphasis added)). The alterations were not approved by the legislature and were therefore "unauthorized" because the U.S. Constitution assigns "plenary" authority to the legislatures of the States to direct the manner of choosing presidential electors. U.S. Const. art. II, § 1, cl. 2; *McPherson v. Blacker*, 146 U.S. 1, 35 (1892); *see also, Conservation Nw. v. Sherman*, 715 F.3d 1181, 1185 (9th Cir. 2013) ("a district court may not approve a consent decree that 'conflicts with or violates' an applicable statute") (quoting *Loc. No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 526 (1986)).

Allegation #5: Georgia - "Portable 'polling places' targeted to heavily democrat areas"

- Fulton County purchased two "mobile voting precinct" vehicles prior to the November 2020 election and deployed them around the county for early voting in October 2020. *See* Ben Brasch, *Want to vote in Fulton's fancy new mobile voting bus? See the schedule*, Atlanta Journal-Constitution (Oct. 19, 2020).[22] Although Georgia does not have voter registration by party, Fulton County consistently votes overwhelmingly for Democrat candidates. *See*, *e.g.*, 2020 Election Results for President (72.65% for Joe Biden (D); 26.16% for Donald Trump (R));[23] 2016 Election Results for President (68.99% for Hillary Clinton (D); 27.35% for Donald Trump (R)).[24]

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[21] https://storage.courtlistener.com/recap/gov.uscourts.gand.270516/gov.uscourts.gand.270516. 56.1.pdf.

[22] https://www.ajc.com/news/atlanta-news/want-to-vote-in-fultons-fancy-new-mobile-voting-bus-see-the-schedule/OXPVK4Y3ENAIRKOMYA43673ZLM/.

[23] https://results.enr.clarityelections.com/GA/105369/web.264614/#/detail/5000

[24] https://results.enr.clarityelections.com/GA/Fulton/64052/Web02/#/cid/5

Allegation #6: Georgia - "Refusal by the state judiciary to even assign a judge to hear the statutorily-authorized election challenge brought by the Trump campaign on Dec. 4."

- The case, *Trump v. Raffensperger*, No. 2020CV343255 (Fulton Cnty Super. Ct.), was filed on December 4, 2020. The specific details of the failure of the Superior Court to appoint an eligible judge to hear the election challenge are spelled out in a subsequent federal complaint, *Trump v. Kemp*, No. 1:20-cv-05310-MHC, Verified Complaint ¶¶ 18-37 (N.D. Ga., filed Dec. 31, 2020).[25] At the time the memo was drafted, both cases were still pending.

Allegation #7: Pennsylvania – "Following a collusive suit brought by the League of Women Voters against the Democrat Secretary of the Commonwealth seeking to require that absentee ballots not passing the signature verification process be given notice and an opportunity to cure, the Secretary unilaterally abolished the signature verification process altogether, issuing a directive that not only was it not required, it was not even permitted. She then filed an emergency writ action with the partisan-elected Supreme Court to ratify her elimination of that statutory requirement."

- The case is *League of Women Voters of Pennsylvania, et al. v. Boockvar, et al.*, No. 2:20-cv-03850 (E.D. Pa., filed Aug. 7, 2020).[26] The League alleged in the suit that Pennsylvania's existing signature verification process was constitutionally defective because it did not provide voters whose signatures were deemed not to match with notice or an opportunity to cure. *Id.*, Complaint ¶¶ 37-39, 52, 56, 62. In its prayer for relief, the League sought a declaratory judgment "that Pennsylvania *existing signature verification procedures* for mail-in voting unlawfully infringe the right to due process," and an injunction ordering Defendants "to establish a procedure by which voters may cure deficiencies in their absentee or mail-in ballots, to include providing timely and reasonable notice of such deficiencies and a meaningful opportunity to cure…." *Id.*, Complaint, Prayer for Relief, ¶¶ (a), (e) (emphasis added). Anticipating that the Secretary of State would not adequately defend against the League's suit,[27] the Donald J. Trump for President, Inc. campaign committee, together with the Pennsylvania and national Republican party organizations, sought to intervene, alleging, *inter alia*, that "the requested relief would have the Court or the Defendants—

[25] https://storage.courtlistener.com/recap/gov.uscourts.gand.285271/gov.uscourts.gand.285271.1.0_4.pdf

[26] https://storage.courtlistener.com/recap/gov.uscourts.paed.574233/gov.uscourts.paed. 574233.1.0_1.pdf

[27] Their concern was well founded, as Secretary Boockvar had already initiated court action to eviscerate other provisions of Pennsylvania election law. *See* Secretary Boockvar's Application For The Court To Exercise Extraordinary Jurisdiction*, Pa. Dem. Party v. Boockvar,* No. 133 MM 2020 (Aug. 16, 2020) (Ex. A) (requesting an alteration of the statutory deadline for return of mail-in ballots). Although the Supreme Court of the United States declined to grant a motion for expedited review of the Pennsylvania Supreme Court's decision in the case altering the statutory deadline, three Justices wrote separately to note that "there is a strong likelihood that the State Supreme Court decision violates the Federal Constitution." *Republican Party v. Boockvar*, 141 S.Ct. 1, 2 (2020) (Statement of Alito, J., joined by Thomas and Gorsuch, JJ.).

not the General Assembly—create new laws governing the conduct of elections in Pennsylvania," contrary to the delegation of that authority to the State Legislature by Article II, Section 1, Clause 2 of the U.S. Constitution. As they anticipated, instead of defending against the League's Due Process allegations about Pennsylvania's "existing signature verification process," Secretary Boockvar issued a Guidance asserting that "The 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." Pennsylvania Department of State, *Guidance Concerning Examination of Absentee and Mail-In Ballot Return Envelopes*, p. 3 (Sept. 11, 2020).[28] Having obtained more relief than it had sought, the League then voluntarily dismissed its complaint. *League*, Dkt. #39 (Sept. 14, 2020). Although a resolution was introduced in the General Assembly describing Boockvar's Guidance regarding signature verification as "clearly erroneous," H. Res. 1032, Session of 2020,[29] Secretary Boockvar applied for and obtained from the partisan-elected Pennsylvania Supreme Court[30] an Invocation of the Court's "King's Bench Power" to declare that the "existing signature verification" process was neither required nor permitted by Pennsylvania law. *In re November 3, 2020 General Election*, No. 149 MM 2020 (PA S.Ct. Middle Dist., filed Oct. 4, 2020).[31] Contrary to the premise contained in the League's lawsuit and decades of historical practice, that Court held that the Election Code did not allow for signature comparison and "never allowed for signature challenges." *In re Nov. 3, 2020 Gen. Election*, 240 A.3d 591, 608, 611 (Pa. 2020). A petition for writ of certiorari challenging that decision was pending at the Supreme Court of the United States at the time the memo was drafted. *Donald J. Trump for President, Inc. v. Boockvar*, No. 20-845 (filed Dec. 21, 2020), *cert denied*, 141 S. Ct. 1451 (Feb. 22, 2021).

Allegation #8: Pennsylvania – "The PA Supreme Court agreed with the Secretary, but went further, also eliminating the statutory right of candidates to challenge illegal ballots during the absentee ballot canvassing."

- *In re Nov. 3, 2020 Gen. Election*, 240 A.3d 591, 610 and n.24 (Pa., Oct. 23, 2020) (holding that the Election Code does not allow for the challenging of illegal ballots during canvassing, despite acknowledging provisions of the Code that set out procedures for such

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[28] https://campaignlegal.org/sites/default/files/2020-09/Examination%20of%20Absentee%20and%20Mail-In%20Ballot%20Return%20Envelopes.pdf

[29] https://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2019&sessInd=0&billBody=H&billTyp=R&billNbr=1032&pn=4432

[30] In Pennsylvania, Justices of the Supreme Court are elected at a general election following a partisan primary election. Pa. Const. art. V, § 13(a). 5 of the Justices at the time of the 2020 election challenges were Democrats; 2 were Republicans.

[31] https://electionlawblog.org/wp-content/uploads/PA-In-re-Nov-20201004-petition.pdf

challenges). A petition for writ of certiorari challenging this decision was, like the decision above regarding signature verification, still pending at the Supreme Court at the time Dr. Eastman prepared his memo. *Donald J. Trump for President, Inc. v. Boockvar*, No. 20-845 (filed Dec. 21, 2020), *cert denied*, 141 S. Ct. 1451 (Feb. 22, 2021).

Allegation #9: Pennsylvania – "The PA Supreme Court next eviscerated the statutory requirement that candidates be allowed to have election observers, holding that 1 individual "in the room"—even if at the entrance of the football field-sized Philadelphia Convention Center—was sufficient."

- *In re: Canvassing Observation*, 241 A.3d 339 (PA, Nov 17, 2020). Overturning a decision by the Commonwealth Court of Pennsylvania holding that the Election code required meaningful observation by campaign representatives lest the requirement that observers be allowed to be "present" and "in the room" produce absurd results in the context of a room as large as the Philadelphia convention center, *In re Canvassing Observation*, No. 1094 C.D. 2020, 2020 WL 6551316, at *3 (Pa. Commw. Ct. Nov. 5, 2020), the Pennsylvania Supreme Court held that the statutory phrase, "in the room," did not require meaningful observation of individual ballot infirmities, only that the canvassing process itself was being conducted by election officials. The decision was based in part on its decision a month earlier holding that ballots could not be challenged during the canvassing process. *In re Canvassing Observation*, 241 A.3d 339, 348 (Pa. 2020) (citing *In re: November 3, 2020 General Election*, 240 A.3d 591 (2020). As with the prior decision, a petition for writ of certiorari challenging the Pennsylvania Supreme Court's decision was still pending at the time Dr. Eastman drafted his memo. *Donald J. Trump for President, Inc. v. Boockvar*, No. 20-845 (filed Dec. 21, 2020), *cert denied*, 141 S. Ct. 1451 (Feb. 22, 2021).

Allegation #10: Pennsylvania – "The PA Supreme Court then eviscerated the remaining validation requirements in state law, holding that the statutory requirement that a voter 'fill in, sign, and date' the absentee ballot certificate was unenforceable because 'fill in' was ambiguous, and because the date requirement served no purpose, in its view."

- The case is *In re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election*, 241 A.3d 1058, 1074 (PA S.Ct., Nov. 23, 2020), in which the Pennsylvania Supreme Court expressly held that "the term 'fill out' is ambiguous." The Court also held that the statutory requirement to "date" the absentee ballot envelope was a "directory, rather than a mandatory, instruction" that "does not require that ballots lacking a date be excluded from counting" and, further, that "[t]he date … is irrelevant." *Id.* at 1076-77.

Allegation #11: Wisconsin – "The use of unmanned drop boxes, not authorized in Wisconsin law."

- In *Trump v. Wisconsin Elections Comm'n*, 983 F.3d 919, 923 (7th Cir. 2020), the Seventh Circuit observed that the Wisconsin Elections "Commission issued guidance

in August 2020 endorsing the use of drop boxes for the return of absentee ballots" and "explained that drop boxes could be 'staffed or unstaffed, temporary or permanent'…." Even before that guidance was issued, and after the Legislature had rejected requests by the Governor to authorize the use of unmanned drop boxes,[32] Mayors in Wisconsin's five largest cities applied for and obtained more than $6 million in grants to, among other things, "[u]tilize secure drop-boxes to facilitate return of absentee ballots." *See* "The 5 Mayors' Voting Plan";[33] CTCL Press Release: *CTCL Partners with 5 Wisconsin Cities to Implement Safe Voting Plan* (July 7, 2020).[34] As noted in the cert petition challenging the Seventh Circuit's decision, which was still pending at the time Dr. Eastman's memo was prepared, "[o]ver 500 unmanned, absentee ballot drop boxes were used haphazardly across Wisconsin in the 2020 presidential election," including at drop boxes used for tax, utility bill, and parking ticket payments and library book returns. Petition for Writ of Certiorari, *Trump v. Wisconsin Elections Commission*, No. 20-883, pp. 13-14[35] (filed Dec. 30, 2020), *cert denied*, 141 S. Ct. 1516 (2021). The Wisconsin Supreme Court subsequently confirmed that "Ballot Drop Boxes Are Unauthorized by Law." *Teigen v. Wisconsin Elections Comm'n*, 2022 WI 64, ¶¶ 55-72 (July 8, 2022).

Allegation #12: Wisconsin – "The use of so-called 'human drop boxes,' also not authorized in Wisconsin law, and utilized in 'Democracy in the Park' efforts coordinated by Dane County (Madison) election officials and the Biden campaign."

- In the post-election legal challenges, the fact that "human drop boxes" were utilized in the "Democracy in the Park" effort was not disputed. *See*, *e.g.*, *Trump v. Biden*, 2020 WI 91, ¶ 96, 394 Wis. 2d 629, 673, 951 N.W.2d 568, 590 (Dec. 14, 2020) (citing Affidavit of Maribeth Witzel-Behl, Madison City Clerk). The only dispute was whether the effort was legal; the 4-member majority of the Wisconsin Supreme Court dismissed the count on laches grounds, but the three justices who dissented from that ruling found that the effort was unauthorized under Wisconsin law. A cert petition

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[32] Wisconsin Gov. Executive Order No. 73, ¶ 4 (April 3, 2022), available at https://evers.wi.gov/Documents/COVID19/EO073-SpecialSessionElections%20searchable.pdf; Bill Glauber and Patrick Marley, *In matter of seconds, Republicans stall Gov. Tony Evers' move to postpone Tuesday election*, Milwaukee Journal Sentinel (April 4, 2020), available at https://www.jsonline.com/story/news/2020/04/04/wisconsin-legislature-adjourns-special-session-monday-voting-track-tuesday-election/2948444001/. *See also Wisconsin Legislature v. Evers*, No. 2020AP608-OA

(Wis. April 6, 2020) (enjoining Governor's second executive order attempting to suspend in-person voting).

[33] Available at https://www.techandciviclife.org/wp-content/uploads/2020/07/Approved-Wisconsin-Safe-Voting-Plan-2020.pdf. at 4.

[34] Available at: https://www.techandciviclife.org/wisconsin-safe-voting-plan/.

[35] Available at https://www.supremecourt.gov/DocketPDF/20/20-883/165018/20201230144119028_20-___PetitionForWritOfCertiorari.pdf

challenging the Wisconsin Supreme Court's laches decision was still pending before the U.S. Supreme Court at the time Dr. Eastman's memo was drafted. *Trump v. Biden*, 141 S. Ct. 1387 (cert. denied, Feb. 22, 2021). Biden campaign ads supporting the event aired shortly before the "Democracy in the Park" events.[36]

Allegation #13: Wisconsin – "Allowed election officials to add missing information to absentee voter or witness declarations, contrary to law, which says such ballots must not be counted."

- As noted in the *Trump v. Biden* cert petition, "employees of the municipal clerks' offices in Milwaukee and Dane Counties took it upon themselves to search for missing information on the internet and write it on the ballot envelope." No. 20-882 at p. 14 and n.9 (citing, *inter alia*, Youtube.com, Milwaukee Central Count Training Video (April 1, 2020), https://youtu.be/hbm-pPaYIqk (City of Milwaukee training video indicating, from 10:40 to 11:15 of the video, that election officials may insert a missing witness address in "red ink," which is contrary to Wisc. Stat. §§ 6.87(6d), (9)).

Allegation #14: Wisconsin – "Dane and Milwaukee County clerks recommended that voters fraudulently claim to be 'indefinitely confined' in order to avoid voter id requirements."

- As noted by the Wisconsin Supreme Court, the Dane and Milwaukee County Clerks both issued directives on March 25, 2020 via their respective Facebook accounts that advised voters they could claim to be "indefinitely confined (and therefore avoid the statutory requirement to submit proof of identification) merely because of the Governor's "Safer at Home" Covid recommendations, even if they were not themselves "indefinitely confined because of age, physical illness or infirmity," as Wisc. Stat. § 6.86(2)(a) required. *Jefferson v. Dane Cnty.*, 951 N.W.2d 556, 558-59 (Dec. 14, 2020). Although the Wisconsin Supreme Court preliminarily enjoined the clerks from "posting advice [inconsistent with] the … WEC guidance, there was a nearly four-fold increase in the number of people claiming such status in the Spring primary elections from 55,334 in 2016 to 194,544 in 2020. *Id.* at 560. The Court ultimately held that the Clerks' "interpretation of Wisconsin's election laws is erroneous," though not until December 14, 2020—more than a month after the election. *Id.* at 565.

[36] The campaign add is available at https://empowerwisconsin.org/wp-content/uploads/2020/09/Joe-Biden-Campaign-Ad-Vote-in-the-Park.mp3; *see also* M. D. Kittle, *Is Biden sponsoring Madison city voter event?,* Empower Wisconsin (Sept. 25, 2020), available at https://empowerwisconsin.org/is-biden-sponsoring-madison-city-voter-event/.

Allegation #15: Michigan – "Mailed out absentee ballots to every registered voter, contrary to statutory requirement that voter apply for absentee ballots."

- This allegation was incorrectly stated in the memo. It should have read that the Secretary of State mailed out absentee ballot *applications* to every registered voter. *See, e.g.*, Ken Haddad, *Michigan voters to receive application to vote by mail for August, November elections,* ClickOnDetroit.com (May 19, 2020).[37] Michigan law provides that applications for absentee ballots may be made (a) by a written request signed by the voter; (b) On an absent voter application form provided for that purpose by the clerk of the city or township; or (c) On a federal postcard application. Mich. Comp. Laws Ann. § 168.759. There is no explicit provision in the law for the Secretary of State to provide the application forms or mail them to every voter in the State, and the Michigan Courts had held that even county clerks had no authority to send absentee ballot applications unsolicited. *Taylor v. Currie*, 277 Mich. App. 85, 97, 743 N.W.2d 571, 578 (2007). The Secretary's action was challenged in a Senate Elections Committee hearing by state Senator (and former Secretary of State) Ruth Johnson, who described as "truly alarming" the Secretary's "changes and attempts to centralize certain election functions." *See* Riley Beggin, *Michigan GOP lawmakers claim Jocelyn Benson's absentee ballot mailings illegal*, Bridge Michigan (June 24, 2020).[38] The action was also challenged in litigation. An intermediate court of appeals had held that the holding in *Taylor* dealt with the authority of county clerks and therefore did not control the issue of the Secretary of State's authority. *Davis v. Sec'y of State*, 333 Mich. App. 588, 601, 963 N.W.2d 653, 660 (Sept. 16, 2020). Over a strong dissent, which found that the statutory language unambiguously does not support that the Secretary had the authority to distribute unsolicited applications for absentee ballots, *id*. 963 N.W.2d at 664 (Meter, J., dissenting in part), the Court held that the Secretary had "inherent authority" to send unsolicited applications to all registered voters. *Id.* at 660 (majority opinion). An appeal of that decision to the Michigan Supreme Court was pending when Dr. Eastman began preparing his memo, and although the appeal was denied six days before Eastman's memo was finalized (a decision of which Dr. Eastman was unaware at the time), Justice Viviano dissented from that denial, contending that the Court should have agreed to hear the case because Judge Meter's partial dissent concluding that the Secretary had "exceeded her authority" "raise[d] a number of issues that this Court should address." *Davis v. Sec'y of State*, 506 Mich. 1040, 951 N.W.2d 911 (2020).

[37] https://www.clickondetroit.com/news/politics/2020/05/19/michigan-voters-to-receive-application-to-vote-by-mail-for-august-november-elections/

[38] https://www.bridgemi.com/michigan-government/michigan-gop-lawmakers-claim-jocelyn-bensons-absentee-ballot-mailings-illegal.

Allegation #16: Michigan – "Established remote drop boxes only in heavily Democrat precincts, without the statutorily mandated video surveillance."

- Dr. Eastman does not recall the source of the allegation regarding drop boxes being established "only in heavily Democrat precincts"; it may have been personal conversation with one of the Trump attorneys in Michigan, in which case it would be protected work product. A lawsuit contending, *inter alia*, that "local election jurisdictions locate ballot drop-off boxes without opportunity for challenges to observe the process" had been filed on November 4, 2020. Complaint ¶16, *Donald J. Trump for President v. Benson*, No. 20-000225-MZ (Mich. Ct. Cl.).[39] The motion for preliminary injunctive relief was denied days later, largely on the ground that the Secretary was the wrong defendant. Opinion and Order, *Id*.[40]

- Dr. Eastman likewise does not recall the source of the allegation that the drop boxes did not have the statutorily mandated video surveillance, but it, too, may have been derived from a personal conversation with one of the Trump attorneys, and hence would be work product. The *Trump v. Benson* lawsuit also alleged that statutorily-authorized election challengers were denied access to the video surveillance, contending that the requirement in Mich. Comp. Laws Ann. § 168.761d(4)(c) that drop boxes located outdoors "must use video monitoring of that drop box to ensure effective monitoring of that drop box," together with the statutory authorities given to poll challengers, mandated such access. Complaint ¶¶ 14, 17-18. Although the Court of Claims rejected the claim (in part because the Secretary was the wrong defendant), and the intermediate appellate court denied the appeal as moot, Order, *Donald J. Trump for President, Inc. v. Benson*, Nos. 355378, 355397 (Mich. Ct. App., Dec. 4, 2020),[41] Judge Meter dissented, disagreeing with the determination of mootness and, more importantly, contending that "the right of plaintiff to election inspectors and to observe video of ballot drop boxes is self-evident under state law, thus entitling plaintiff to, at the least, declaratory relief." *Id.* at 2 (Meter, J., dissenting). The Michigan Supreme Court denied the application for leave to appeal without discussion of the merits of the claim. *Donald J. Trump for President, Inc. v. Sec'y of State*, 506 Mich. 1022, 951 N.W.2d 353 (Dec. 11, 2020).

Allegation #17: Michigan – "Absentee ballots delivered at 3 am were counted without affording candidates the opportunity to observe, contrary to state law."

- Dr. Eastman does not recall the source for the allegation that ballots were delivered at 3 am, but does recall news accounts at the time describing that allegation. It was also an allegation in *King v. Benson*, No. 2:20-cv-13134 (E.D. Mich.), filed by the Trump

[39] https://drive.google.com/file/d/1qRkqWwIkoOXDwvAdkrPjm8BsteYK0MIb/view

[40] https://electionlawblog.org/wp-content/uploads/MI-DJT-20201105-opinion.pdf

[41] https://www.courts.michigan.gov/4966ae/siteassets/case-documents/uploads/coa/public/orders/2020/355378_17_01.pdf

campaign on November 25, 2020. Complaint, ¶ 15.F, *King v. Benson*, No. 2:20-cv-13134 (E.D. Mich.). The Complaint also alleged that "tens of thousands of new ballots" were brought into the counting room at 4:30 am on November 4, 2020 from the rear of the room (unlike other ballots that had arrived previously), having been delivered by "several vehicles with out-of-state license plates." *Id.* ¶ 83 (citing Ex. 4, Complaint ¶¶ 38-39 and Ex. C, *Costantino v. City of Detroit*, No. 20-014780-AW (Wayne Cty. Cir. Ct.)). In a related account, a Detroit poll challenger stated in an interview with One America News reporter Christina Bobb that he observed unmarked private vehicles delivering trays of ballots to the TCF Center in Detroit without any chain of custody. The interview is no longer on the OAN website but is available at the Wayback web archive.[42]

The *Costantino* trial court rejected the complaint's allegations, which were supported by sworn affidavits, without an evidentiary hearing, crediting instead competing affidavits submitted by the government. Opinion and Order, *Costantino v. City of Detroit*, No. 20-014780-AW (Nov. 13, 2020).[43] The intermediate appellate court denied leave to appeal the denial of preliminary injunctive relief, and the Michigan Supreme Court denied review as moot. *Costantino v. City of Detroit*, 950 N.W.2d 707, 707 (Mich. 2020). But two Justices on that Court nevertheless found that "troubling and serious allegations of fraud and irregularities" had been asserted by the affiants, among whom was State Senator Ruth Johnson, Michigan's immediate past Secretary of State. *Id.* at 708 (Zahra, J., joined by Markman, J., concurring). "Plaintiffs' affidavits," Justices Zahra and Markman concluded, "present evidence to substantiate their allegations, which include claims of ballots being counted from voters whose names are not contained in the appropriate poll books, instructions being given to disobey election laws and regulations, the questionable appearance of unsecured batches of absentee ballots after the deadline for receiving ballots, discriminatory conduct during the counting and observation process, and other violations of the law. *Id.* at 708-09. A third Justice on that 7-member court took issue with the fact that the trial court had determined that the "allegations were not credible" based on the "bare affidavits," without benefit of an evidentiary hearing, which "[o]rdinarily … is required where the conflicting affidavits create factual questions that are material to the trial court's decision on a motion for a preliminary injunction under MCR 3.310." *Costantino v. City of Detroit*, 950 N.W.2d 707, 710 and n.2 (Mich. 2020) (Viviano, J., dissenting) (citing 4 Longhofer, Michigan Court Rules Practice, Text (7th ed., 2020 update), § 3310.6, pp. 518-519, and *Fancy v. Egrin*, 177 Mich. App. 714, 723, 442 N.W.2d 765 (1989) (an evidentiary hearing is mandatory "where the circumstances of the individual case so require")).

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[42] https://web.archive.org/web/20211202191935/https://www.oann.com/mich-poll-challengers-say-ballots-dropped-off-in-unmarked-vehicles/

[43] https://web.archive.org/web/20210108201310/https://www.democracydocket.com/wp-content/uploads/sites/45/2020/11/Scanned-from-a-Xerox-Multifunction-Printer.pdf

- As for the allegation that the ballots "were counted without giving candidates the opportunity to observe, contrary to State law," Michigan law permits political parties to appoint challengers, Mich. Comp. Laws § 168.730, and further provides that an election challenger may "[r]emain during the canvass of votes and until the statement of returns is duly signed and made." Mich. Comp. Laws §168.733(1)(f). Indeed, it is a felony under Michigan law, punishable by a fine of up to $1,000, imprisonment for up to 2 years, or both, to prevent the presence of challengers or to deny them conveniences necessary to the performance of their authorized duties. Mich. Comp. Laws § 168.734. The Complaint in *King v. Benson* included hundreds of pages of sworn affidavits by election challengers attesting to efforts made by election officials to prevent observation of the ballot canvassing process. Complaint ¶¶ 59, 63-64, 67-71 and Ex. 3.[44] The trial court denied preliminary injunctive relief on multiple jurisdictional grounds, and an appeal was ultimately voluntarily dismissed as moot. *King v. Whitmer*, 505 F. Supp. 3d 720, 727 (E.D. Mich., Dec. 7, 2020), *appeal dismissed*, No. 20-2205, 2021 WL 688804 (6th Cir. Jan. 26, 2021).

Allegation #18: Arizona – "Federal court reduced Arizona's 29-day-before-election registration requirement."

- The case is *Mi Familia Vota v. Hobbs*, 492 F. Supp. 3d 980, 989 (D. Ariz. 2020), in which the district court extended the statutory deadline for voter registration from October 5 to October 23. On October 13, the Ninth Circuit granted a stay pending appeal, though it ordered that the stay would not take effect until October 15, thus sanctioning voter participation in the November 3, 2020 election for those who registered up to ten days after the statutory deadline. *Mi Familia Vota v. Hobbs*, 977 F.3d 948, 955 (9th Cir. 2020). Judge Bybee dissented, noting that "By law, those who registered after October 5 'shall not vote' because their registration was not received 'before midnight of the twenty-ninth day preceding the date of the election.' Ariz. Rev. Stat. § 16-120(A). They are not eligible to vote in this election, and adding thousands of ineligible voters to the rolls compromises Arizona's election." *Id.* at 956 (Bybee, J., dissenting).

Allegation #19: Nevada – "Machine inspection of signatures, rather than the [h]uman inspection of signatures mandated by state law, was allowed."

- At the time of the November 3, 2020 election, Nevada law required that mail ballot signatures be checked against the voter registration records by "the clerk or an employee in the office of the clerk." NV Rev. Stat. § 293.8874(1) (2020).[45] As alleged in the complaint filed in *Law v. Whitmer*, the Clark County Elections Department utilized machine software to verify 30% (about 130,000) of the mail ballot signatures without any human review. Complaint ¶¶ 16, 38-41, *Law v. Whitmer*, No. 20-OC-

[44] Paragraph 59 of the Complaint mistakenly cited Exhibit 1, but the election challenger affidavits are Exhibit 3.

[45] https://law.justia.com/codes/nevada/2020/chapter-293/statute-293-8874/.

001631B (Nev. Dist. Ct., Carson City, filed Nov. 17, 2020).[46] The Court acknowledged that machine software was used to validate approximately 30% of the mail ballot signatures without human review, but rejected the complaint without mentioning the statute that the machine validation was alleged to have violated. Order Granting Mot. To Dismiss Statement of Contest, *Law v. Whitmer*, *supra,* at ¶¶ 9, 15 (Dec. 4, 2020).[47] The Nevada Supreme Court affirmed, but likewise did not mention that statute. *Law v. Whitmer*, 477 P.3d 1124 (Nev. Dec. 8, 2020).

Allegation #20: "Because of these illegal actions by state and local election officials (and, in some cases, judicial officials, the Trump electors in the above 6 states (plus in New Mexico) met on December 14, cast their electoral votes, and transmitted those votes to the President of the Senate (Vice President Pence). There are thus dual slates of electors from 7 states."

- The "illegal actions" are outlined above.

- Numerous news accounts reported that Trump electors from Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin met on Dec. 14, 2020 (the date designated by 3 U.S.C. § 7 pursuant to Congress's authority under Article II, Section 1, Clause 4 of the U.S. Constitution to set a "uniform" day on which electors shall meet and cast their votes), cast electoral votes, and transmitted those votes to the President of the Senate, the Secretary of State of their respective states, the National Archivist, and the federal district court in the respective places of voting, as specified in 3 U.S.C. § 11. *See, e.g.*, Haisten Willis, et al., *As electoral college formalizes Biden's win, Trump backers hold their own vote*, Washington Post (Dec. 14, 2020).[48] The electoral votes from Pennsylvania and New Mexico were explicitly contingent on the results of still-pending litigation or other authoritative determination. *See* Certificate of the Votes of the 2020 Electors From Pennsylvania (Dec. 14, 2020) (certification based "on the understanding that if, as a result of a final non-appealable Court Order or other proceeding prescribed by law, we are ultimately recognized as being the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Pennsylvania");[49] Certificate of the Votes of the 2020 Electors from New Mexico (Dec. 14, 2020) (certification based "on the understanding that it might later be determined that we are the duly elected and qualified Electors for President and Vice President of the United States of America from the State of New Mexico").[50] The electoral votes from the other states were

[46] https://web.archive.org/web/20210112151720/https://www.democracydocket.com/wp-content/uploads/sites/45/2020/11/nov-17-doc-2.pdf.

[47] https://web.archive.org/web/20210108205906/https://www.democracydocket.com/wp-content/uploads/sites/45/2020/11/20-OC-00163-Order-Granting-Motion-to-Dismiss-Statement-of-Contest.pdf.

[48] https://www.washingtonpost.com/politics/trump-backers-electoral-college/2020/12/14/f0fcc59c-3e52-11eb-9453-fc36ba051781_story.html.

[49] https://s3.documentcloud.org/documents/21177777/fake-pa-electoral-votes-2020.pdf.

[50] https://s3.documentcloud.org/documents/20493986/nara-records-regarding-invalid-elector-slates-nara-

accompanied by contemporaneous public statements to the same effect. *See*, *e.g.*, Ronn Blitzer, *Republican electors in Pennsylvania, Georgia cast votes for Trump, hoping for court victories*, Fox News (Dec. 14, 2020) (noting that the Georgia electors declared at the time of casting their votes that "the contest of the election is ongoing").[51]

- As noted in a press release issued by the Pennsylvania Republican Party that day, the casting of votes was "fashioned after the 1960 Presidential election, in which [Vice-President] Nixon was declared the winner in Hawaii. While Democrat legal challenges were pending, Democratic presidential electors met to cast a conditional vote for John F. Kennedy to preserve their intent in the event of future favorable legal outcomes." PAGOP Press Release, *Republican Electors Cast Procedural Vote* (Dec. 14, 2020).[52] At the time the memo was written, there were thus "dual slates of electors from 7 states," with the slates of Trump electors still contingent on pending litigation or other authoritative determination.

Allegation #21: "The Electoral Count Act of 1887, which is likely unconstitutional"

- A number of scholars have opined that the Electoral Count Act of 1887 is unconstitutional. *See, e.g.*, Vasan Kesavan*, Is the Electoral Count Act Unconstitutional?*, 80 N.C. L. Rev. 1653, 1661 (2002) (contending that the "Electoral Count Act violates the text and structure of the Constitution in multiple ways"); Chris Land and David Schultz, *On the Unenforceability of the Electoral Count Act,* 13 Rutgers J. L. & Pub. Pol'y 340 (Fall 2016) (identifying several "grave constitutional defects" of the Act); Nathan L. Colvin and Edward B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb*, 64 U. Miami L. Rev. 475 (2010) ("the Electoral Count Act … is inadequate, unwieldy, and arguably unconstitutional"); Edward B. Foley, *Preparing for A Disputed Presidential Election: An Exercise in Election Risk Assessment and Management*, 51 Loyola Chi. L. J. 309 (2019) (noting that, during debate over the Electoral Count Act, the claim was made that the Act was "unconstitutional because it interferes with the exclusive authority vested in the President of the Senate to determine which electoral votes from the states to count")[53]; Lawrence H. Tribe, *Bush v. Gore and its Disguises: Freeing Bush v. Gore From Its Hall of Mirrors*, 115 Harv. L. Rev. 170, 277 (noting that the "labyrinthine procedure" of the Electoral Count Act, "untested in the 114 years during which it has been in place, was shadowed by constitutional doubt over the power of one Congress to bind its successors"). *See also* Jack Beermann and Gary Lawson, *The Electoral Count Mess: The Electoral Count Act of 1887 Is Unconstitutional, and Other Fun Facts (Plus a Few Random Academic Speculations) about Counting Electoral Votes*, Boston Univ. School of Law,

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21-0174-a.pdf, p. 25.

[51] https://www.foxnews.com/politics/republican-electors-pennsylvania-georgia-vote-for-trump

[52] https://s3.documentcloud.org/documents/20423829/pa-gop-electors.pdf.

[53] https://www.luc.edu/media/lucedu/law/students/publications/llj/pdfs/vol-51/issue-2/7_Foley%20(309-362).pdf

Public Law Research Paper No. 21-07 (March 1, 2021) ("The Constitution allows no role for Congress in this process, and thus, the provisions of the Electoral Count Act purporting to grant Congress the power, by concurrent resolution, to reject a state's electoral votes, are unconstitutional").[54]

7. What specific legal research did respondent conduct or rely upon in preparing or drafting or assisting in preparing or drafting the memorandum? Please provide all legal authority relied on to support the memorandum.

Dr. Eastman has conducted extensive research about the meaning of the Article II Electors Clause, both in the aftermath of the 2000 contested election in Florida (when he was invited by the Select Committee on the Election in the Florida legislature to provide expert testimony) and in the aftermath of the 2020 election. That research included historical materials from the time of the framing of the Constitution, the election controversy of 1876, and the debate over the adoption of the Electoral Count Act of 1887. It also included extensive review of the legal scholarship about the Electors Clause and the Twelfth Amendment (see examples cited in Response 6, Allegation #21, above). In particular, Dr. Eastman researched the following legal points:

Legal Point #1: "Article II, § 1, cl. 2 of the U.S. Constitution assigns to the legislatures of the states the plenary power to determine the manner for choosing presidential electors." The text of the Constitution specifies that the legislatures shall direct the manner of choosing presidential electors. The Supreme Court described the authority as "plenary" in McPherson v. Blacker, 146 U.S. 1, 25 (1892).

Legal Point #2: "Modernly, that is done via statutes that establish the procedures pursuant to which an election must be conducted." See, e.g., Bush v. Gore, 531 U.S. 98, 111 (2000) (discussing the requirements of Florida election law in determining presidential electors); id. at 112-13 (Rehnquist, C.J., jointed by Scalia and Thomas, JJ) (noting that because of the power conferred on state legislatures by Article II, § 1, cl. 2 of the Constitution, "the text of the election law itself, and not just its interpretation by the courts of the States, takes on independent significance.").

8. Prior to January 6, 2021, did respondent discuss the memorandum with former President Trump, former Vice President Mike Pence, or Greg Jacob? If so, for each such discussion, when did it occur, who was present, and what was the substance of the discussion? If the discussion was in writing, or was memorialized, please provide the writing or memorialization.

As noted above, the memorandum was prepared for *internal discussion purposes* among members of the Trump legal team. Dr. Eastman did not provide it to former President Trump, former Vice President Pence, or Greg Jacob, and he is not aware that anyone else did, either. He therefore did

[54] Available at SSRN: https://ssrn.com/abstract=3795421

not discuss "the memorandum" with any of the above. He did discuss the Vice President's role under the 12th Amendment with former President Trump, former Vice President Pence, Pence Chief of Staff Marc Short, and Pence General Counsel Greg Jacob at an Oval Office meeting on January 4, 2021, and continued the discussion the next day at the Eisenhower Executive Office Building with Greg Jacob at a meeting at which Marc Short was present intermittently.

9. **Prior to January 6, 2021, did respondent discuss the memorandum with anyone other than the above-named individuals? If so, for each such discussion, please identify when it occurred, who was present, their contact information, and the substance of the discussion. If the discussion was in writing, or was memorialized, please provide the writing or memorialization.**

Dr. Eastman does not recall speaking directly with anyone about the memo. His records reflect that he emailed the memo to campaign attorney Boris Epshteyn at 7:19 pm on January 3, 2021. bepshteyn@donaldtrump.com. Epstein acknowledged receipt but there was no discussion about the substance. He has no record or recollection of having transmitted the memo to anyone else.

10. **The memorandum at page two, section ll(a)(i) states that there is "solid legal authority and historical precedent, for the view that the President of the Senate does the counting, including the resolution of disputed electoral votes (as Adams and Jefferson did while Vice President, regarding their own election as President), and all the Members of Congress can do is watch."**

    a. **Please indicate what legal authority the memorandum refers to and provide proof thereof.**

The 12th Amendment itself (and its precursor language in Article II) is the primary legal authority. It provides, in relevant part: "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted." The issue is not whether that legal authority exists, but how it is properly interpreted. The text unambiguously provides that the President of the Senate (i.e., the Vice President of the United States) is the person who "opens" the ballots. It also unambiguously provides that the House and Senate are merely to be "presen[t]." Who actually does the counting is ambiguous, because the text shifts from the active voice ("the President of the Senate shall … open all the certificates") to the passive voice ("and the votes shall then be counted"). Yet despite the ambiguity, several legal scholars have contended that the clause as originally understood gives the Vice President the authority to "count" the electoral votes and, further, "the inextricably intertwined responsibility for judging the validity of those votes." John Yoo and Robert Delahunty, *What Happens if No One Wins?*, American Mind (Oct. 19, 2020)[55]; *see also* Bruce Ackerman and David Fontana, *Thomas Jefferson Counts Himself Into the Presidency*, 90 Va. L. Rev. 551 (2004)[56]; Vasan

[55] https://americanmind.org/salvo/what-happens-if-no-one-wins/.

[56] Available at

Kesavan, *Is the Electoral Count Act Unconstitutional*. 80 N.C. L. Rev. 1653 (2002) ("The Framers clearly thought that the counting function was vested in the President of the Senate alone.")[57]; Edward B. Foley, *Preparing for A Disputed Presidential Election: An Exercise in Election Risk Assessment and Management*, 51 Loyola Chi. L. J. 309 (2019)[58]; Nathan L. Colvin and Edward B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb*, 64 U. Miami L. Rev. 475 (2010) ("from 1789 to 1821, the power [to count and/or determine the validity of votes] was generally thought vested in the states or the President of the Senate").

Additional "solid legal authority" for the position that the President of the Senate does the counting as a continuation of his clear authority to open the certificates is found in the resolution adopted by the Constitutional Convention transmitting the proposed Constitution to the States for ratification. In that resolution, the Convention expressly recommended, for the first election of President (i.e., before there was a Vice President to serve as President of the Senate to fulfill the functions set out originally in Article II and then reiterated verbatim in the Twelfth Amendment), "that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening *and counting* the Votes for President." Resolution of the Constitutional Convention (Sept. 17, 1789) (emphasis added), *reprinted in* 2 Max Farrand, *The Records of the Federal Convention of 1787*, p. 665-66 (Yale Univ. Press 1911). This recommendation of the Constitutional Convention was adopted by the first Senate, which on April 6, 1789, elected Senator John Langdon as President of the Senate "for the sole purpose of opening *and counting* the votes for President of the United States." 1 ANNALS OF CONG. 16-17 (Joseph Gales ed., 1789) (emphasis added). That the President of the Senate was understood to do the counting is further confirmed by the language employed from 1793 to 1805 in messages from the two Houses announcing that there were ready "to attend *at* the opening and counting of the votes." C. C. Tansill, *Congressional Control of the Electoral System*, 34 Yale L.J. 511, 520 (1925) (citing Poore, *Federal and State Constitutions* p. 1107 (1877)).[59]

b. Please indicate what "historical precedent" the memorandum refers to and provide proof thereof.

There are several historical precedents of the Vice President both counting and determining which contested electoral votes to count, including:

1) The very first Congress, acting upon a resolution of the Constitutional Convention, elected

https://openyls.law.yale.edu/bitstream/handle/20.500.13051/399/ThomasJeffersonCountsHimselfintothePresidency.pdf?sequence=2&isAllowed=y

[57] Available at https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=4003&context=nclr.

[58] https://www.luc.edu/media/lucedu/law/students/publications/llj/pdfs/vol-51/issue-2/7_Foley%20(309-362).pdf

[59] Beginning in 1817, the messages indicate that the respective Houses were ready "to proceed to open and count the votes," *id.*, a clear usurpation of the Vice President's unambiguous authority to "open" the certificates and, by comparison to the prior messages, also a usurpation of his authority to "count."

Senator John Langdon as a temporary President of the Senate (there being no Vice President yet) "for the sole purpose of opening *and counting* the votes for President of the United States." 1 ANNALS OF CONG. 16-17 (Joseph Gales ed., 1789) (emphasis added);

2) In 1797, Vice President Adams determined to count electoral votes from Vermont over which there was some dispute[60];

3) In 1801, Vice President Thomas Jefferson determined to count electoral votes from Georgia despite them having been improperly certified;

4) In 1857, President Pro Tem of the Senate James Mason (the office of Vice President being vacant) determined to count electoral votes from Wisconsin that had not been cast on the date designated by Congress; and,

5) In 1961 Richard Nixon determined to count the Kennedy electors rather than the Nixon electors, despite the fact that the Nixon electors had been the ones certified to cast their votes on the date designated by Congress pursuant to its authority under Article II, Section 1, Clause 4 of the Constitution.

As Yale law professor Bruce Ackerman and George Washington University law professor David Fontana stated in a 2004 law review article, "[t]he fact Jefferson exercised the (textually arguable) authority [to determine the validity of votes] as Senate President on the Georgia matter seems very significant as a legal matter," and the fact that his determination "might well have made a difference to the outcome…greatly enhances the precedential significance of his ruling." "After all, the Constitution delegated to Jefferson, and only Jefferson, an affirmative role in the vote-counting ritual." Bruce Ackerman and David Fontana, *Thomas Jefferson Counts Himself Into the Presidency*, 90 Va. L. Rev. 551 (2004).[61]

11. The memorandum at page three, section ll(b)(i) states that the Electoral Count Act of 1887 "is likely unconstitutional" since it allows the two houses, "acting separately," to decide the question of the counting of [electoral votes], whereas the 12th Amendment provides only for a joint

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[60] *See*, *e.g.*, C. C. Tansill, Congressional Control of the Electoral System, 34 Yale L.J. 511, 516 (1925) ("The Vermont certificate representing the four votes of that state [which had been cast by the Legislature without first adopting a law prescribing the manner of election] was accepted without question by the Vice-President, John Adams, who thus insured his own election to the presidency."); L. Kinvin Wroth, Election Contests and the Electoral Vote, 65 Dick. L. Rev. 321, 326 n.23 ("In 1797 John Adams did not hesitate to count for himself the four votes of Vermont, which apparently had been improperly cast by the state legislature.") https://ideas.dickinsonlaw.psu.edu/cgi/viewcontent.cgi?article=2175&context=dlra; Kesavan, at 1706 ("In the electoral count of 1797, President of the Senate John Adams purportedly counted 'improper votes' from Vermont").

[61] Available at https://openyls.law.yale.edu/bitstream/handle/20.500.13051/399/ThomasJeffersonCountsHimselfintothePresidency.pdf?sequence=2&isAllowed=y

session.

a. Please explain and provide proof of what legal authority supported the memorandum's assertion that the Electoral Count Act of 1887 was "likely unconstitutional" on the basis that it allowed the two houses to act separately.

The legal authority[62] is the Twelfth Amendment and its precursor language in Article II, both of which refer only to the "presence" of the House and Senate in a joint session of Congress. Even if the passive voice for the counting function is to be interpreted as allowing Congress rather than the President of the Senate to do the counting, the Twelfth Amendment has no provision for the two houses of Congress to act separately for electoral count purposes. The historical evidence that a single body was envisioned (albeit with a few examples of members of Congress who thought the contrary) is discussed at length in Kesavan, pp. 1723-29. Of particular note is Albert Gallatin's motion in the Sixth Congress, in which that signer of the Constitution proposed that any determination of the legality of electoral votes be made by a majority of the Senators and Representatives present at the joint session,[63] and Senator James George's remarks in 1886, noting that counting:

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[62] If by legal authority the Bar means only a judicial decision, there is no court case holding either that the Electoral Count Act is constitutional or unconstitutional. As one law review article noted, after its passage in 1887, "[t]he Electoral Count Act was then consigned to the dustbin of history by everyone except the most astute election law scholars until the United States again faced a razor-thin presidential contest in 2000." Chris Land and David Schultz, *On the Unenforceability of the Electoral Count Act,* 13 Rutgers J. L. & Pub. Pol'y 340, 341 (Fall 2016). Indeed, there is little case law about the 12th Amendment itself, which the Act is purported to implement. *See, e.g.*, Nathan L Colvin and Edward B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb,* 64 U. Miami L. Rev. 475, 477 ("There is little substantive case law on the subject, due in part to these ambiguities [in the 12th Amendment], the gravity of the topic (election of the President), and the scarcity of close presidential elections."). Furthermore, whether or not the Act is constitutional may well be a non-justiciable political question. *See, e.g.,* 115 Cong. Rec. 203-04 (1969) (statement of Sen. Muskie) (stating that although the issue had not yet been "settled in the courts," the validity of an elector's vote could be a political question); *see also* Beverly J. Ross & William Josephson, *The Electoral College and the Popular Vote*, 12 J.L. & Pol. 665, 716 (1996) ("It is possible the Supreme Court would decline to review any challenge to Congress's counting of the elector votes on the basis of either the separation of powers or the political question doctrine."); Jack Beermann & Gary Lawson, *The Electoral Count Mess: The Electoral Count Act of 1887 is Unconstitutional, and Other Fun Facts (Plus a Few Random Academic Speculations) about Counting Electoral Votes* 5 (Boston Univ. Sch. L. Pub. L. Rsch. Paper, Paper No. 21-07, 2021) ("It is even conceivable that the Supreme Court would decide, contrary to our view, that the Vice President's actions are not subject to judicial review, perhaps based on the political question doctrine…."). In any event, prior to the 2020 election, to our knowledge no dispute over the validity of the Act had been brought before any court.

[63] Subcomm. on Compilation of Precedents, Counting Electoral Votes, H.R. Misc. Doc. No. 44-13, at 26 (1877); Kesavan, p. 1725 n.6.

> is not a legislative function which ought to be considered separately by the two Houses, but it is rather in the nature of a judicial function; ... it would be an anomaly surely in Anglo-Saxon jurisprudence, ... [that] the rendering of an operative judgment upon the ascertainment of a fact should be committed to two separate tribunals [(the House and the Senate)], each acting independently of the other, and each having a veto upon the other.[64]

12. **The memorandum at page three, section ll(b)(i) states that "under the Act, the slate certified by the 'executive' of the state is to be counted, regardless of the evidence that exists regarding the election, and regardless of whether there was ever fair review of what happened in the election, by judges and/or state legislatures. That also places the executive of the state above the legislature, contrary to Article II."**

    a. **Please indicate what legal authority supported this assertion in the memorandum and provide proof thereof.**

Section 6 of Title 3 of the U.S. Code provides in part that "[i]t shall be the duty of the executive of each State … to communicate … to the Archivist of the United States a certificate of [the] ascertainment of the electors appointed." Section 15 of the same Title provides in part that, in the case of a disagreement between the House and Senate as to which slate of electors to count if two or more have been received, then "the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted," even if the alternate slate was certified by the Legislature of the State. Article II, Section 1, Clause 2 of the Constitution, in contrast, provides that "Each State shall appoint, in such Manner as the Legislature thereof may direct," the number of electors to which it is entitled. The Supreme Court has described the authority thus given to the Legislature over the appointment of electors as "plenary." *McPherson v. Blacker*, 146 U.S. 1, 25 (1892); *Bush v. Gore*, 531 U.S. 98, 104 (2000); *cf. id.* at 115 (Rehnquist, C.J., concurring) (describing that the "explicit requirements of Article II" required the Court to "respect … the constitutionally prescribed role for state *legislatures*" rather than attaching "definitive weight to the pronouncement of a state court, when the very question at issue is whether the court has actually departed from the statutory meaning" set out by the Legislature).

13. **The memorandum at page four, section III (c) under "War Gaming Alternatives" presents different scenarios for former Vice President Pence to unilaterally act, under the 12th Amendment and pursuant to "the Adams and Jefferson precedents," to throw out certain electoral votes in order to announce former President Trump as the winner of the 2020 election.**

    a. **Please indicate what legal authority supported the "War Gaming Alternatives" set forth at page four, section III (c) of the memorandum and provide proof thereof.**

[64] 17 Cong. Rec. 2429 (1886).

See responses 10.a and 10.b above. But we call your attention to the fact that in more than half of the scenarios depicted in the memo (5 of 9), "Biden WINS."

b. Were the "War Gaming Alternatives" based on an assertion that the Electoral Count Act was unconstitutional? If so, please indicate what legal authority supported that assertion and provide proof thereof.

See responses 11 and 12 above. In addition, legal scholars have identified several provisions of the Electoral Count Act they believe to be unconstitutional. Edward B. Foley, *Preparing for a Disputed Presidential Election: An Exercise in Election Risk Assessment and Management*, 51 Loyola U. Chi. L. Rev. 309, 326 (2019) (noting that opponents of the Act argued at the time and subsequently that the Act was "unconstitutional because it interferes with the exclusive authority vested in the President of the Senate to determine which electoral votes from the states to count"); Chris Land & David Schultz, *On the Unenforceability of the Electoral Count Act*, 13 Rutgers J.L. & Pub. Pol'y 340, 343 (2016) ("the ECA unconstitutionally impinges on Congress's internal procedural authority and is unenforceable"); *id.* at 348 (Section 17 of the ECA, which provides for the House and Senate to decide on objections separately, "could represent an unconstitutional delegation of the Joint Session's authority"); *id.* at 385 (describing the ECA as "facially unenforceable"); Colvin & Foley, *Ticking Time Bomb* ("the statutory effort (the Electoral Count Act) to address the problem [of ambiguities in the 12th Amendment] is inadequate, unwieldy, and arguably unconstitutional."). *See also* Jack Beermann & Gary Lawson, *The Electoral Count Mess: The Electoral Count Act of 1887 is Unconstitutional, and Other Fun Facts (Plus a Few Random Academic Speculations) about Counting Electoral Votes* 5 (Boston Univ. Sch. L. Pub. L. Rsch. Paper, Paper No. 21-07, 2021).[65]

c. Please explain where, specifically, in the 12th Amendment and/or the Electoral Count Act, former Vice President Pence was authorized to unilaterally determine which electoral votes to count and not count. Please indicate what legal authority supported such a position and provide proof thereof.

The 12th Amendment gives the Vice President exclusive authority to "open" the "certificates" of "electors." As several legal scholars have noted, that implies the authority to determine which "certificates, from which "electors," to open and hence which electoral votes will be counted. *See* response 10.a, *supra.*

d. Please provide the legal authority for the memorandum's contention provided at page five, section lII(d), that former Vice President Pence, could unilaterally make the determination that the time restrictions set out in the Electoral Count Act were contrary to the Vice President's authority under the 12th Amendment and therefore void.

[65] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3795421.

The 12th Amendment sets forth three separate actions to be taken during the process for choosing a President in the joint session of Congress and (in the event no one obtains a majority) in the House: 1) the *opening* of certificates; the *counting* of votes; and 3) the *choosing* by the House, voting by state, from among the top 3 candidates if no one obtains a majority. The first, the authority for which is exclusively and unambiguously assigned to the "President of the Senate" (that is, the Vice President), has no time constraint. The second sets out an obvious temporal sequence ("the votes shall *then* be counted"), which could plausibly imply a time constraint but more likely merely means that the votes are to be counted *after* the certificates have been opened. Only the third has an explicit time constraint ("the House of Representatives shall choose *immediately* by ballot"). During the debate in the House over the 1800 election, Senator Pickney argued that the word "immediately" in the 12th Amendment's precursor provision in Article II meant "instantly, and on the spot, without leaving the House in which they are then assembled, and without adjournment."[66] But even there, as Vince Kesavan has noted, language contained elsewhere in the 12th Amendment "seems to significantly soften—if not quash—Senator Pickney's immediacy principle." Unlike its precursor language in Article II, the 12th Amendment provides that "if the House of Representatives shall not choose a President whenever the choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President." Because, at the time, federal law specified that the counting was to take place on the second Wednesday of February, this provision "seems to countenance up to two weeks of deliberation," according to Kesavan. Alexander Duer made the same point in his *Commentaries*:

> Although the Constitution directs that when no person is found to have a majority of Electoral votes, the choice shall be *immediately* made by the House of Representatives, yet it is not held obligatory upon that House to proceed to the election directly upon the separation of the two Houses; but that it may proceed either at that time and place, or omit it until afterwards. This construction was adopted before the [Twelfth Amendment], and there can now be no doubt of its correctness, as the amendment expressly declares the choice of the House to be valid, if made before the fourth of March following the day on which the Electoral votes are counted."

William Alexander Duer, *Course of Lectures on the Constitutional Jurisprudence of the United States* 89-90 (Lenox Hill Pub. & Dist. Co. 1971) (1843), quoted in Kesavan at p. 1718 n. 271. Because even the explicit timetable for "immediate" choice by the House is viewed as not "obligatory," then the Electoral Count Act's imposition of a timetable on the Vice President, in the performance of his role to "count" (without a timetable identified in the text) would unconstitutionally interfere with the Vice President's exercise of his constitutionally-assigned role to the extent he determined he required additional time to make any judgement about whether, or which, electoral votes to count. *See also* Nathan L. Colvin and Edward B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb*, 64 U. Miami L. Rev. 475, 480 (2010) ("from 1789 to 1821, the power [to count and/or determine the validity of votes] was generally thought

[66] 10 Annals of Cong. 137 (1800), cited in Kesavan

vested in the states or the President of the Senate"); *id.* at 518 ("questions remain about whether the ECA is constitutional, or whether Congress is actually bound by its provisions").

Other scholars have likewise noted that the timetables imposed elsewhere in the Electoral Count Act (the limitation on debate, for example), are an unconstitutional infringement by one Congress on the authority of a subsequent Congress to determine its own rules of proceeding. *See, e.g.*, Kesavan, p. 1719 and n. 275 (describing the time limits as "*patently* unconstitutional" under Art. I, § 5, cl. 2, which provides that "Each House may determine the Rules of its Proceedings").

14. The analysis and contentions in the memorandum appear to be inconsistent with respondent's testimony before the Select Joint Committee on the Manner of Appointment of Presidential Electors in Florida on November 29, 2000. At that hearing, respondent stated, in part, that under the Electoral Count Act, returns from a state "must be counted by Congress unless both the House and the Senate meeting separately concurrently reject that return." Respondent further stated 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 in Congress do not agree."

a. Based on respondent's statements reflected above, please explain why these principles, consistent with respondent's prior testimony were not included and discussed in the memorandum?

The Florida dispute did not involve disagreement between the Executive and the Legislative branches of the state government, but between both the Executive and the Legislative branches, on the one hand, and the Judicial branch, on the other, so the constitutionality of the Electoral Count Act's default recognition of the Executive certification was not at issue. Moreover, the testimony Dr. Eastman provided at that time was based on the same presumption of constitutionality of a federal statute that has long been applied by courts. *United States v. Morrison*, 529 U.S. 598, 607 (2000); *United States v. Harris*, 106 U.S. 629, 635 (1883). Only after reviewing the scholarship addressing the constitutionality of the Electoral Count Act—much of which had been generated *after* the 2000 Florida election controversy—did Dr. Eastman come to the conclusion that the Electoral Count Act was indeed unconstitutional in relevant part. Because the circumstances were different, the prior testimony dealing with potential judicial alteration of an executive certification that had been issued in accord with state election law (and the pending legislative ratification of the executive certification) was not particularly relevant to the issue presented in 2020, which involved executive alteration of state election law and therefore an intrusion on the legislature's plenary authority under Article II of the federal constitution.

b. Why does the analysis in the memorandum differ from respondent's testimony on November 29, 2000?

See response 14.a, *supra*.

15. Please provide the basis, and proof thereof, for respondent's assertion at page five, section IV of the memorandum, that the election was "stolen."

See response 6, Allegations #1 to #19, *supra.*

16. Did respondent advise the former President that the opinions provided in the memorandum were likely not legally sound or might not be upheld?

This question would be protected by attorney-client privilege, to the extent any such conversation occurred, but we take issue with the characterization that the "opinions provided in the memorandum were likely not legally sound." *See* responses 7, 10-13. That said, aside from "advis[ing] the former President…" [which we presume meant in writing or verbally], the memo (and multiple other communications, conversations, and discussions) make clear that it contains on objective legal assessment of the alternatives available to President Trump and his campaign (***the client***), each with factual and legal support and each with a transparent assessment. That was Dr. Eastman's legal and ethical obligation to his client, and clearly within the scope of his engagement. In this (or *any*) attorney-client relationship, the attorney is the ***advisor***, and the client is the ***decision-maker***. California Rule of Professional Conduct 1.2 ("…the lawyer shall abide by the clients decision…") [67] In this regard, the memo speaks for itself – not as absolute legal certainty, but as objectively sound and supported advice and assessment *presented for consideration*. So long as that assessment was tenable (i.e., not something that ***all*** reasonable attorneys would agree it was totally and completely devoid of merit (*Roberts v. Sentry Life Ins.* (1999) 76 Cal.App.4th 375, 382)), it is neither actionable nor disciplinable. And, of course, in evaluating the nature of any advice or assessment, one much consider the audience – here, the client is the President of the United States, hardly a neophyte – and teams of lawyers, advisors, elected officials, and scholars. The memo was one view, among many. *See also*, response to question 17, *infra*.

a. If so, when?

This question would be protected by attorney-client privilege, to the extent any such conversation occurred.

b. If so, how was the advice conveyed, verbally or in writing? If in writing, please provide a copy of the writing.

[67] ABA Model Rules of Professional Conduct, Preamble: [2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

This question would be protected by attorney-client privilege, to the extent any such conversation occurred.

c. Please indicate whether the former President was provided different options to obtain re-election other than for the Vice President to act unilaterally. If so, when? If so, how were the options provided, verbally or in writing? If in writing, please provide a copy of the writing.

This question would be protected by attorney-client privilege, to the extent any such conversation occurred.

17. Did respondent advise the former Vice President that the opinions provided in the memorandum were likely not legally sound or might not be upheld?

There are numerous scenarios, and hence numerous opinions, conveyed in the memorandum. Some, such as the Vice President simply open and count the certificates that had been received by the Biden electors in the contested states, was certainly in line with historical practice in *uncontested* elections. Others, such as the role of the Vice President in determining the validity of contested certifications, is hotly disputed, has been hotly disputed throughout history, and remains so. The characterization of those opinions as not "legally sound" improperly presumes the very thing in dispute, therefore. It is, moreover, an inaccurate characterization of the memorandum, *which simply set out a number of scenarios for discussion.* And it incorrectly assumes that Dr. Eastman discussed the memorandum with the Vice President. Moreover, the memo itself does not make a recommendation. Indeed, several of the scenarios set out, such as the first one (in which the Vice President merely acts in a ministerial role and counts only the electoral votes that had been transmitted along with a governor's certification) result in a Biden win. Nevertheless, the New York Times provided an accurate account of the advice Dr. Eastman provided to Vice President Pence during the Oval Office meeting on January 4, 2021. The Vice President had asked Dr. Eastman whether he thought the Vice President had the unilateral authority to determine the validity of electoral votes. Dr. Eastman responded that it was an open question, but that even if he had such authority, it would be foolish to exercise it in the absence of certification of alternate electors by the legislatures of the contested states. Eastman's account to the New York Times was confirmed in the same article by an anonymous source (most likely Greg Jacob), who also confirmed that Eastman's advice was to accede to requests by state legislators to delay proceedings so that the legislatures could look into the matter. Michael S. Schmidt and Maggie Haberman, *The Lawyer Behind the Memo on How Trump Could Stay in Office*, NY Times (Oct. 2, 2021).[68]

a. If so, when?

See above.

b. If so, how was the advice conveyed, verbally or in writing? If in writing,

[68] https://www.nytimes.com/2021/10/02/us/politics/john-eastman-trump-memo.html.

please provide a copy of the writing.

See above.

c. Please indicate whether the former Vice President was provided different options to achieve the former President's re-election other than for the Vice President to unilaterally act. If so, when? If so, how were the different options provided, verbally or in writing? If in writing, please provide a copy of the writing.

As noted above, Dr. Eastman did *not* advise the Vice President "to unilaterally act." His advice was that the Vice President accede to requests from numerous state legislators to ***delay*** the proceedings temporarily so that their state legislatures could address the serious allegations of illegality in the conduct of the election. *See, e.g.,* John C. Eastman, *Setting the Record Straight on the POTUS "Ask,"* American Mind (Jan. 18, 2021).[69] That Eastman advised delay to allow time for the state legislatures to consider the impact of illegality on the election results rather than unilateral rejection of electors by the Vice President was confirmed by the anonymously sourced "person close to the Vice President" (who was likely one of the two advisors present during the January 4, 2021 oval office meeting) cited in the New York Times article referenced above, but also by Dr. Eastman's own brief remarks on the Ellipse on the morning of January 6, 2021, *see* User Clip, *John Eastman at January 6 Rally*, C-SPAN (Jan. 6, 2021, clip created March 24, 2021) ("And all we are demanding of Vice President Pence is, this afternoon at 1:00 o'clock, he let the legislatures of the states look into this so we get to the bottom of it!).[70]

As accurately described in the New York Times article, the President began the discussion on January 4, 2021 by referencing law review articles contending that "the vice president has ultimate authority to reject invalid electoral votes," but Dr. Eastman noted that the issue was "a little bit more complicated than that," and while "that's certainly one of the arguments that's been put out there, it's never been tested." Dr. Eastman was not aware at the time of other opinions that may or may not have been provided to the Vice President, but he has subsequently learned that former Fourth Circuit Judge J. Michael Luttig provided a cursory opinion at the time, via Twitter, to the effect that the Vice President's role was only ministerial. @judgeluttig Twitter thread (Jan. 5, 2021)[71]; *see also, e.g.,* Jamie Gangel and Jeremy Herb, *Anatomy of a tweet: The behind-the-scenes story of how retired federal judge Michael Luttig used Twitter to try to stop an insurrection*, CNN (Feb. 20, 2022).[72] He also has subsequently learned that the Vice President's General Counsel noted in a December 8, 2020 memo to the Vice President that "[s]ome scholars argue that under the text of the Twelfth Amendment, it is the sole responsibility of the Vice President to count electoral votes, and that it is accordingly also the Vice President's sole responsibility to determine

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[69] https://americanmind.org/memo/setting-the-record-straight-on-the-potus-ask/.

[70] https://www.c-span.org/video/?c4953961/user-clip-john-eastman-january-6-rally (begins at 2:29).

[71] https://twitter.com/judgeluttig/status/1346469787329646592.

[72] https://www.cnn.com/2022/02/20/politics/judge-michael-luttig-pence-tweet/index.html. Of course, Dr. Eastman disputes the headline's characterization of his advice as an "insurrection."

whether or not disputed electoral votes should be counted." Information Memorandum, Gregory Jacob to Vice President Pence (Dec. 8, 2020).[73]

18. Did respondent advise anyone else (other than the former President and Vice President) that the opinions provided in the memorandum were likely not legally sound or might not be upheld

As noted in response 17 above, the characterization of the opinions as "likely not legally sound" presumes the very, hotly contested, thing in dispute. Dr. Eastman did address the constitutional role of the Vice President with Greg Jacob (and, intermittently, Marc Short) during a meeting on January 5, 2021, and also via email on January 5 and 6, 2021. He did not contend during that meeting that the advice to accede to the requests of numerous state legislators to delay the proceedings in order that the state legislators in the several contested states, returning to normal session, might assess the impact of illegality on the election results was "likely not legally sound," though he did acknowledge that had the Vice President unilaterally decided to reject electors, the Supreme Court would likely have rejected that determination.

a. If so, who? Please provide contact information for each person identified.

Greg Jacob, current contact information unknown.

Marc Short, current contact information unknown.

b. If so, for each such person, when was the advice conveyed?

January 5 and 6, 2021.

c. If so, for each such person, how was the advice conveyed, verbally or in writing? If in writing, please provide a copy of the writing.

Orally, during a meeting on January 5, 2021. And via email on January 5 and 6, 2021. See Chapman005439.

B. With regard to the election fraud claims made in the six-page memorandum against Georgia, Pennsylvania, Wisconsin, Michigan, Arizona and Nevada, please answer the following:

a. GEORGIA

i. At the time the memorandum was prepared, what information and/or evidence, if any, did respondent

[73] Available at https://www.politico.com/f/?id=0000017f-daf9-d522-ab7f-def9bf4d0000.

have or rely on that supported that (l) the Georgia Secretary of State ("GSS") altered signature verification requirements via an unauthorized settlement agreement; (2) portable polling places were targeted to heavy democrat areas; and (3) the state judiciary refused to assign a judge to hear the statutorily authorized election challenge brought by former President Trump? Please provide proof thereof.

See response 6, *supra*, Allegations 4-6.

ii. What investigation or research, if any, did respondent conduct to ensure the accuracy of his assertion of the alleged voting fraud in Georgia as set forth in the memorandum? Please provide proof of the results of any such investigation or research.

Dr. Eastman did not allege "voting fraud" in the Memorandum except as an aside. *See* Memorandum ¶ 1 ("Quite apart from outright fraud (both traditional ballot stuffing, and electronic manipulation of voting tabulation machines"). Rather, he alleged that "important state election laws were altered or dispensed with altogether in key swing states and/or cities and counties," and then listed a "sampling of the more significant violations." *Id.* Prior to filing his motion to intervene on behalf of President Trump in *Texas v. Pennsylvania*, No. 22O155 (filed Dec. 7, 2020), Dr. Eastman reviewed the "Compromise Settlement Agreement and Release" that was executive by Georgia Secretary of State Raffensberger on March 6, 2020.[74] He also reviewed the Georgia statutory provisions that were affected by the agreement, and determined, based on his extensive review, that the Settlement Agreement deviated from the statutory provisions, as noted in Response 6, Allegation 4, above. Dr. Eastman also recalls confirming with members or staff of the Georgia legislature that the Settlement Agreement had not been approved by the Legislature, but the precise communications would be protected by the attorney-client privilege and/or work product doctrine. The results of Dr. Eastman's research and investigation on this issue were summarized in the Bill of Complaint in Intervention at p. 15 ¶4, attached to the Motion to Intervene in the *Texas* original action. Numerous other allegations of violations of state law, and illegal ballots cast and counted as a result, were contained in the *Trump v. Raffensberger* lawsuit filed in Fulton County Superior Court on December 4, 2020. Dr. Eastman reviewed the allegations in that complaint in great detail.

The allegation about portable polling places was based on news accounts, as described above in Response 6, Allegation #5.

iii. Why was *Trump v. Raffensperger,* No. 2020CV343255

[74] https://storage.courtlistener.com/recap/gov.uscourts.gand.270516/gov.uscourts.gand.270516. 56.1.pdf.

(Ga. Ct., Fulton Cnty.) voluntarily dismissed on January 7, 2021?

Dr. Eastman did not have direct involvement with the decision to dismiss the case on January 7, 2020, but subsequently learned that it was dismissed because the certification of the presidential election in Congress on January 6, 2020 rendered it moot.

iv. At the Georgia Senate Election hearing on December 3, 2020, respondent claimed that the 2020 settlement agreement, entered with the GSS, altered the signature verification process for absentee ballots contrary to statutory law and the U.S. Constitution. As a result, respondent claimed that approximately 40,000 ballots were cast and counted, which would have been historically discounted, therefore contributing to an invalid election.

1. What evidence did respondent have or rely upon in making the claim that the GSS altered the signature verification process for absentee ballots contrary to statutory law and the U.S. Constitution?

Prior to filing his motion to intervene on behalf of President Trump in *Texas v. Pennsylvania*, No. 22O155 (filed Dec. 7, 2020), Dr. Eastman reviewed the "Compromise Settlement Agreement and Release" that was executive by Georgia Secretary of State Raffensberger on March 6, 2020.[75] He also reviewed the Georgia statutory provisions that were affected by the agreement, and determined, based on his extensive review, that the Settlement Agreement deviated from the statutory provisions, as noted in Response 6, Allegation 4, above. Dr. Eastman also recalls confirming with members or staff of the Georgia legislature that the Settlement Agreement had not been approved by the Legislature, but the precise communications would be protected by the attorney-client privilege and/or work product doctrine. The results of Dr. Eastman's research and investigation on this issue were summarized in the Bill of Complaint in Intervention at p. 15 ¶4, attached to the Motion to Intervene in the *Texas* original action.

a. Provide any and all such evidence respondent had or relied upon.

The Settlement Agreement was filed in the case of *Democratic Party of Georgia v. Raffensberger*, No. 19-cv-05028, Dkt. #56-1 (March 6, 2020), and is available at: https://storage.courtlistener.com/recap/gov.uscourts.gand.270516/gov.uscourts.gand.270516.56.1

[75] https://storage.courtlistener.com/recap/gov.uscourts.gand.270516/gov.uscourts.gand.270516. 56.1.pdf.

.pdf. The relevant statutes are set out in Response 6, Allegation 4, *supra.*

b. List all steps respondent took in advance of making those claims, to validate the accuracy of the claims.

As noted above, Dr. Eastman personally reviewed the Settlement Agreement and the Georgia statutes affected by it.

2. What evidence did respondent have or rely upon in making the claim that 40,000 ballots were casted and counted which would have historically been discounted?

The information noted by Dr. Eastman in his testimony before the Georgia legislature regarding the likely impact of the alteration of the signature verification process was based on expert analysis included in the verified complaint that was filed in *Trump v. Raffensberger* on December 4, 2020, and which had been provided to Dr. Eastman in advance of the filing. That expert analysis compared ballot disqualification rates from prior elections (prior to the enactment of the Settlement Agreement) to the ballot disqualification rates in the November 2020 election (after enactment of the Settlement Agreement).

a. Provide any and all such evidence respondent had or relied upon.

The expert analysis, Complaint Ex. 10, *Trump v. Raffensperger*, No. 2020CV343255 (Fulton Cnty Super. Ct.) is available here.

b. List all steps that respondent took in advance of making those claims, to validate the accuracy of the claims.

Dr. Eastman reviewed the expert analysis and consulted with the attorneys who were counsel for Plaintiffs in the case in which it was offered. He also relied on his own expertise in signature verification procedures, including expertise gained as lead counsel in *Gleason v. Bowen*, No. 34-2014-80001786 (Sacramento Super. Ct. 2014).

3. What evidence did respondent have or rely upon in making the claim that the counting of those ballots contributed to an invalid election.

Georgia law expressly provides that an election may be challenged if, *inter alia*, there was "[m]isconduct, fraud, or irregularity" by election officials "sufficient to change or *place in doubt* the result," or [w]hen illegal votes have been received or legal votes rejected at the polls sufficient

to change or *place in doubt* the result." Ga. Code Ann. § 21-2-522(1), (3). The Georgia courts have confirmed that challengers "only [have] to show that there were enough irregular ballots to place in doubt the result." *Mead v. Sheffield*, 278 Ga. 268, 271, 601 S.E.2d 99, 101 (2004) (citing *Howell v. Fears*, 275 Ga. 627, 628, 571 S.E.2d 392, 393 (2002)). The expert analysis was based on an extrapolation from historical disqualification rates. Such statistical extrapolations have been utilized previously by courts to ascertain the impact of illegality in the election. *See, e.g., Marks v. Stinson*, No. CIV. A. 93-6157, 1995 WL 20441, at *1 (E.D. Pa. Jan. 17, 1995) (utilizing statistical expert to analyze election results), *aff'd in part*, *rev'd in part*, 60 F.3d 816 (3d Cir. 1995). Because the number of ballots deemed by expert analysis to have been improperly counted far exceed the margin, the results were "place[d] in doubt" under Georgia law.

a. Provide any and all such evidence respondent had or relied upon

The expert analysis, Complaint Ex. 10, *Trump v. Raffensperger*, No. 2020CV343255 (Fulton Cnty Super. Ct.) is available here.

b. List all steps that respondent took in advance of making this claim, to validate the accuracy of the claim.

Dr. Eastman reviewed the expert analysis and consulted with the attorneys who were counsel for Plaintiffs in the case in which it was offered. He also relied on his own expertise in signature verification procedures, including expertise gained as lead counsel in *Gleason v. Bowen*, No. 34-2014-80001786 (Sacramento Super. Ct. 2014).

v. At the time that the memorandum was prepared and provided, was any litigation ongoing regarding the election fraud claims made against Georgia? Please provide case names and numbers.

Trump v. Raffensperger, No. 2020CV343255 (Fulton Cnty Super. Ct., filed Dec. 4, 2020)
Trump v. Kemp, No. 1:20-cv-5310 (N.D. Ga., filed Dec. 31, 2020).

b. PENNSYLVANIA

i. At the time the memorandum was prepared, what information and/or evidence, if any, did respondent have or rely on that supported that (1) the Democrat Secretary of Commonwealth unilaterally abolished the signature verification process for absentee ballots; and (2) that the Pennsylvania Supreme Court (i) eliminated the statutory right of candidates to challenge illegal ballots during the absentee ballot

canvassing; (ii) eliminated the statutory requirement that candidates be allowed to have election observers; and (iii) eliminated the statutory requirement that a voter "fill in, sign and date" the absentee ballot certificate?

See Response to II.A.6, Allegations 7-10, above.

1. Please provide proof thereof.

See Response to II.A.6, Allegations 7-10, above.

ii. What investigation or research, if any, did respondent conduct to ensure the accuracy of respondent's assertions regarding the election in Pennsylvania in the six page memorandum? Please provide proof of the results of any such investigation or research.

See Response to II.A.6, Allegations 7-10, above.

iii. At the time that the memorandum was prepared, had the issue regarding election observers been resolved in Commonwealth Court of Pennsylvania, Docket Number 1094 CD 2020?

The Commonwealth Court entered its judgment on November 5, 2020; the Supreme Court of Pennsylvania entered its judgment on November 17, 2020; a petition for writ of certiorari appealing that decision was submitted to the Supreme Court of the United States on December 21, 2020, *Donald J. Trump for President, Inc. v. Broockvar*, No. 20-845. That petition was still pending at the time the memo was prepared.

iv. At the time that the memorandum was prepared and provided, was any litigation ongoing regarding the election fraud claims made against Pennsylvania? Please provide case names and numbers.

The claims were of illegality. Litigation on those claims was still pending in several cases, including:

Donald J. Trump for President, Inc. v. Boockvar, No. 20-845 (S.Ct., filed Dec. 21, 2020, *cert. denied* Feb. 22, 2021).

Republican Party of Pennsylvania v. Boockvar, No. 20-542 (S.Ct., filed Oct. 23, 2020, *cert. denied* Feb. 22, 2021).

Bognet v. v. Boockvar, No. 3:20-cv-00215 (W.D. Pa., filed Oct. 22, 2020, preliminary injunction denied Oct. 28, 2022), *aff'd*, No. 20-3214 (3rd Cir., Nov. 13, 2020), *cert. denied*, No. 20-3214 (S.Ct.,)

Kelly v. Pennsylvania, No. 620 MD 2020 (PA. Commonwealth Ct., filed Nov. 25, 2020, injunction issued Nov. 25, 2020), *injunction vacated*, No. 68 MAP 2020 (Penn. Sup. Ct., Nov. 28, 2020), *cert. denied*, No. 20-810 (S.Ct., Feb. 22, 2021).

c. WISCONSIN

i. At the time the memorandum was prepared, what information and/or evidence, if any, did respondent have or rely on that supported that the election in Wisconsin allowed: (1) The use of unauthorized unmanned drop boxes; (2) The use of unauthorized "human drop boxes"; (3) election officials to add missing information to absentee voter or witness declarations; and (4) that voters were recommended by Dane and Milwaukee County clerks to fraudulently claim to be "indefinitely confined" in order to avoid voter ID requirements? Please provide proof thereof.

See Response to II.A.6, Allegations 11-14, above.

ii. What investigation or research, if any, did respondent conduct to ensure the accuracy of respondent's assertions regarding the election in Wisconsin in the six-page memorandum? Please provide proof of the results of any such investigation or research.

See Response to II.A.6, Allegations 11-14, above.

iii. At the time that the memorandum was prepared and provided, was any litigation ongoing regarding the election fraud claims made against Wisconsin? Please provide case names and numbers.

Donald J. Trump, et al. v. Joseph R. Biden, et al., No. 20-882 (S.Ct., filed Dec. 29, 2020, *cert.*

denied Feb. 22, 2021)

Donald J. Trump v. Wisconsin Elections Commission, et al., No. 20-883 (S.Ct., filed Dec. 30, 2020, *cert. denied* Feb. 22, 2021)

d. MICHIGAN

i. At the time the memorandum was prepared, what information and/or evidence, if any, did respondent have or rely on that supported that in Michigan: (1) absentee ballots were mailed out to every registered voter, contrary to a statutory requirement that voter apply for absentee ballots; (2) remote drop boxes were established only in heavily Democrat precincts, without the statutorily mandated video surveillance; and that (3) absentee ballots delivered at 3 am were counted without affording candidates the opportunity to observe? Please provide proof thereof.

See Response to II.A.6, Allegations 15-17, above.

ii. What investigation or research, if any, did respondent conduct to ensure the accuracy of his assertion regarding the election in Michigan in the six-page memorandum? Please provide proof of the results of any such investigation or research.

See Response to II.A.6, Allegations 15-17, above.

iii. At the time that the memorandum was prepared and provided, was any litigation ongoing regarding the election fraud claims made against Michigan? Please provide case names and numbers.

Davis v. Benson, No. 1:20-cv-00981 (W.D. Mich., filed Oct. 14, 2020, preliminary injunction denied Oct. 30, 2020, stipulated dismissal Feb. 23, 2021)

Bailey v. Antrim County, No. 20-9238-C2 (Antrim Michigan Circuit Court, filed Nov. 25, 2020, dismissed May 2021), *dismissal aff'd*, No. 357838 (Mich. Ct. App. Apr. 21, 2022)

King v. Whitmer, No. 2:20-cv-13134-LVP-RSW (E.D. Mich., filed Nov. 25, 2020, dismissed Dec. 7, 2020), *cert. petition in advance of appeal denied*, No. 20-815 (S.Ct., Feb. 22, 2021)

e. ARIZONA

i. At the time the memorandum was prepared, what information and/or evidence, if any, did respondent have or rely on that supported that the Federal Court in Arizona reduced Arizona's 29- day-before-election registration requirement? Please provide proof thereof.

See Response to II.A.6, Allegation 18, above.

ii. What investigation or research, if any, did respondent conduct to ensure the accuracy of his assertion regarding the above made against Arizona in the six-page memorandum? Please provide proof of the results of any such investigation or research.

See Response to II.A.6, Allegation 18, above.

iii. At the time that the memorandum was prepared and provided, was any litigation ongoing regarding the election fraud claims made against Arizona? Please provide case names and numbers.

Ward v. Jackson, No. CV2020-015285 (Ariz. Superior Court, Maricopa County, filed Nov. 30, 2020), *aff'd*, No. CV-20-0343-AP/EL (Ariz. Sup. Ct., Dec. 8, 2020), *cert. denied*, No. 20-809 (S.Ct., Feb. 22, 2021).

Burk v. Ducey, No. CV202001869 (Ariz. Super. Ct., Pinal Cnty., filed Dec. 7, 2020, dismissed Dec. 15, 2020), *appeal dismissed*, No. CV-20-0349-AP/EL (Ariz. Sup. Ct., Jan. 5, 2021), *cert. denied,* No. 20-1243 (S.Ct., May 3, 2021).

Mi Familia Vota v. Hobbs, No. 2:20-cv-01903 (D.Az., filed Sept. 30, 2020, injunction granted Oct. 5, 2020), *order stayed*, No. 20-16932 (9th Cir., Oct. 13, 2020), *appeal dismissed* (9th Cir. Feb. 2, 2021).

f. NEVADA

i. At the time the memorandum was prepared, what information and/or evidence, if any, did respondent have or rely on which supported that machine inspection of signatures instead of human inspection

of signatures as mandated by Nevada state law was allowed in the state of Nevada? Please provide proof thereof.

See Response to II.A.6, Allegation 19, above.

ii. What investigation or research, if any, did respondent conduct to ensure the accuracy of his assertion regarding the election in Nevada discussed in the six-page memorandum? Please provide proof of the results of any such investigation or research.

Dr. Eastman reviewed the allegations in the complaint filed in *Law v. Whitmer*, No. 20-OC-001631B (Nev. Dist. Ct., Carson City, filed Nov. 17, 2020), the order granting the motion to dismiss, and the decision of the Nevada Supreme Court affirming the dismissal, *Law v. Whitmer*, 477 P.3d 1124 (Nev. Dec. 8, 2020). He also reviewed the relevant Nevada statute, NV Rev. Stat. § 293.8874(1) (2020). His review indicated that the court decisions had not addressed the statute.

iii. At the time the memorandum was prepared, had the issue regarding the machine inspection of signatures been decided by the court in *Kraus v. Cegavske,* No. 82018 (Nev. Sup. Ct.)?

The district court held that the plaintiffs lacked standing. *Kraus v. Cegavske*, No. 20 OC 00142 1B (Nev. Dist. Ct., Carson City, filed Oct. 23, 2020, dismissed Oct. 29, 2020.) On appeal, the Nevada Supreme Court denied preliminary relief on November 3, 2020 due to a likely lack of standing. As reported in a subsequent decision on November, 10, 2020, the appeal was dismissed pursuant to a stipulated dismissal.

iv. Additionally, at the time the memorandum was prepared, had the issue regarding the machine inspection of signatures been decided by the court in *Law v. Whitmer,* No. 10 OC 00163 1B (Nev. Dist. Ct., Carson City) and on appeal in *Law v. Whitmer,* No. 82178 (Nev. Sup. Ct.)?

As noted above in subpart ii, neither the order of dismissal by the District Court nor the affirmance by the Nevada Supreme Court addressed the statute relied on in the complaint.

v. At the time that the memorandum was prepared and provided, was any litigation ongoing regarding the election fraud claims made against Nevada? Please provide case names and numbers.

Law v. Whitmer, No. 10 OC 00163 1B (Nev. Dist. Ct., Carson City, filed Nov. 17, 2020, dismissed

Dec. 4, 2020), *aff'd* No. 82178 (Nev. Sup. Ct., Dec. 8, 2020), time to petition for writ of certiorari expired March 6, 2021.

C. With regard to the two-page memorandum, please answer the following:

a. Did respondent draft the memorandum? If not, who did, and what role did respondent play in the preparation and drafting of the memorandum?

Dr. Eastman is the primary drafter of the memo, which was a preliminary draft component of the later, 6-page memo.

b. Identify all persons who participated or assisted or were consulted in the preparation and drafting of the memorandum or in the gathering or provision of information that was used in the drafting of the memorandum.

Dr. Eastman does not recall anyone in particular participating or assisting in the drafting of the 2-page memo, but the ideas contained in it were the topic of discussion, both internally among members of the Trump legal and campaign teams (which communications are protected work product), as well as publicly. *See, e.g.*, Neil Buchanan, Michael C. Dorf, and Laurence Tribe, *No, Republicans Cannot Throw the Presidential Election into the House so that Trump Wins*, Verdict.Justia.com (Sept. 30, 2020)[76]; Barton Gellman, *The Election That Could Break America*, The Atlantic (Sept. 23, 2020 online; Nov. 2020 print)[77]; John Yoo and Robert Delahunty, *What Happens if No One Wins?*, American Mind (Oct. 19, 2020).[78] Kenneth Chesebro did provide input on the 2-page draft, which set out just one of the scenarios that were being discussed and which formed part of the subsequent 6-page memo.

i. Specify each person's role in the preparation and drafting of the memorandum and the information gathered or provided by them.

Kenneth Chesebro had prepared several memos articulating some of the same issues that were addressed in the memo, and identified several relevant law review articles.

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[76] https://verdict.justia.com/2020/09/30/no-republicans-cannot-throw-the-presidential-election-into-the-house-so-that-trump-wins

[77] https://www.theatlantic.com/magazine/archive/2020/11/what-if-trump-refuses-concede/616424/

[78] https://americanmind.org/salvo/what-happens-if-no-one-wins/.

In addition, the several legal scholars identified above published scholarly articles on the subject in recent years addressing the ambiguities in the text of the 12th Amendment and the various interpretations of it. Those articles cited significant historical sources as well, including:

- The unanimous resolution attached by the Constitutional Convention to the draft of the Constitution being transmitted to the states for ratification, which provided "that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President." 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 666 (Max Farrand ed., 1911); *see also* 1 ANNALS OF CONG. 16-17 (Joseph Gales ed., 1789) (noting the election of Senator John Langdon as President of the Senate "for the sole purpose of opening and counting the votes for President of the United States.");

- The 1800 debate in Congress over the Grand Committee Bill, and particularly the opposition to the bill by Senator Charles Pinckney, who successfully argued that the bill was unconstitutional because it claimed powers for *Congress* that the Constitution did not assign to it. *E.g.,* 10 Annals of Congress 130.

- Chancellor James Kent, *Commentaries on American Law* (1826-30) ("The Constitution does not expressly declare *by whom* the votes are to be counted and the result declared. In the case of questionable votes, and a closely contested election, this power may be all-important; and I presume, in the absence of all legislative provision on the subject, that the President of the Senate counts the votes, and determines the result, and that the two houses are present only as spectators, to witness the fairness and accuracy of the transaction, and to act only if no choice be made by the electors.");

- Debates over the Electoral Count Act of 1887, specifically including remarks by Senator Henry Wilson, 17 Cong. Rec. 1059 (1886) (contending that the counting function is vested in the President of the Senate and the Necessary and Proper Clause "does not confer on Congress the power to assume unto itself the duty which the Constitution imposes on that officer"), and Representative Charles Baker, 18 Cong. Rec. 74 (1886) ("If the Constitution... does.., by fair implication, vest in the President of the Senate the power and duty not only to open, but also to count, the votes, then Congress cannot, by this or any other legislation, take away or transfer to any other person or officer that power and duty").

ii. Identify the date and time at which respondent had any discussions with any of the persons identified regarding the memorandum or its contents and describe the nature of the discussions.

Dr. Eastman does not recall discussing the 2-page memo with any of the identified persons, and has no records indicating that he did so.

iii. Provide contact information for each person

identified.

N/A

d. What was the purpose of the memorandum?

The memo was for internal discussion purposes, the first portion of the longer memo summarizing the various scenarios that were under discussion.

e. Did anyone request or direct the drafting of the memorandum and, if so, who? Please provide contact information for each person identified.

Dr. Eastman does not recall who requested the memo, and has not located any written request. He suspects that he probably received a request by telephone, most likely from Boris Epshteyn, who was working with the Trump legal team.

Boris Epshteyn, bepshteyn@donaldtrump.com, (609) 529-9982

f. To whom, if anyone, did respondent provide the memorandum? Identify the date and time at which the memorandum was provided to each such person and specify the purpose for which the memorandum was provided to each such person. Please provide contact information for each person identified.

Dr. Eastman transmitted the memo to Boris Epshteyn and Kenneth Chesebro on December 23, 2020, at approximately 9:30 am MST. As with respect to the 6-page memo discussed above, the memo was for internal discussion of various scenarios that were being discussed both within the campaign and in public. The 2-page memo was simply the first draft of one of the scenarios that got incorporated into the 6-page memo. Epshteyn posed a question about timetable, and Chesebro responded with some substantive comments. Both emails are attorney-client privileged.

Boris Epshteyn, bepshteyn@donaldtrump.com, (609) 529-9982

Kenneth Chesebro, kenchesebro@msn.com, (617) 895-6196

He also provided a copy on January 2, 2021, to one other person who had request a legal analysis from Dr. Eastman. That communication is attorney-client privileged.

g. What investigation did respondent complete and on what information did respondent rely on to validate the factual allegations supporting the memorandum? Please provide all

such information and identify the source from which it was obtained

The 2-page memo is a component of the 6-page memo. *See*, therefore, the response in II.A.6 above.

h. What specific legal research did respondent conduct or rely upon in preparing or drafting or assisting in preparing or drafting the memorandum? Please provide all legal authority relied on to support the memorandum.

See response to II.A.7 above.

i. Prior to January 6, 2021, did respondent discuss the memorandum with former President Trump, former Vice President Mike Pence, or Greg Jacob? If so, for each such discussion, when did it occur, who was present, and what was the substance of the discussion? If the discussion was in writing, or was memorialized, please provide the writing or memorialization.

See response to II.A.8 above.

j. Prior to January 6, 2021, did respondent discuss the memorandum with anyone other than the above-named individuals? If so, for each such discussion, please identify when it occurred, who was present, their contact information, and the substance of the discussion. If the discussion was in writing, or was memorialized, please provide the writing or memorialization.

As noted above, Dr. Eastman provided a copy of the memo to one other person on January 2, 2021. They had no discussion about the content of the memo.

Dr. Eastman also transmitted the memo to Boris Epshteyn and Kenneth Chesebro on December 23, 2020, at approximately 9:30 am MST. Epshteyn posed a question about timetable, and Chesebro responded with some substantive comments. Both emails are attorney-client privileged.

k. At the time the memorandum was drafted, were the scenarios set forth in the memorandum supported by legal authority? Please identify all legal authority that supported the scenarios and provide proof thereof.

See response to II.A.13 above.

l. The bottom of page one of the memorandum states "here is the scenario we propose." Please name the individuals to whom the "we" refers. Please provide contact information for each person identified.

As noted above, the 2-page memo was a partial draft of what became the 6-page memo. Dr. Eastman had been asked to begin with the most aggressive of the scenarios that were under discussion. He does not recall who made that request, and his records to not reflect that a request had been made in writing. He suspects, therefore, that the request had been made orally over the phone, by someone on the campaign legal team. Although the 2-page memo includes the language identified, it was for internal discussion purposes only, and the actual scenario that would ultimately be proposed had not yet been determined. Additional elaboration on those discussions would encroach on the attorney-client privilege.

m. The memorandum at page two, item two, provides a scenario for former Vice President Pence to defer the decision of the slate of electors for Arizona since he received multiple slates of electors. At the time the two-page memorandum was written or any time prior, had Arizona actually submitted multiple slates of electors? What information formed the basis of this assertion? Please provide proof thereof.

The 2-page memo's reference to "7 states have transmitted dual slates of electors" was subsequently corrected in the 6-page memo to remove any implication that the states themselves had submitted dual slates. As clarified in the 6-page memo, Trump electors had met and cast votes on the designated date. For more elaboration, see response to II.A.6, Allegation #20, above.

n. The memorandum at page two, item three, provides a scenario for former Vice President Pence to announce that no slate of electors could validly be appointed in seven states because of ongoing disputes.

i. At the time of the memorandum, what was the legal authority supporting the scenario that Vice President Pence could unilaterally announce that no slate of electors could validly be appointed in seven states because of ongoing disputes? Please provide all such legal authority.

See response to II.A.13 above.

ii. Does the memorandum refer to Georgia, Pennsylvania, Wisconsin, Michigan, Arizona, Nevada and New Mexico as the "[seven] states"? If not, which states does the memorandum refer to?

Yes.

iii. At the time the two-page memorandum was prepared, were there in fact ongoing disputes regarding electoral votes in the seven states? If so, please specify the ongoing dispute(s) for each state mentioned and provide all information, including case names and/or numbers and dates of dispute(s)/case resolution, demonstrating the existence of any such dispute.

Among others, the following court actions were still pending at the time the memo was drafted:

Arizona:

Ward v. Jackson, No. CV2020-015285 (Ariz. Superior Court, Maricopa County, filed Nov. 30, 2020), *aff'd*, No. CV-20-0343-AP/EL (Ariz. Sup. Ct., Dec. 8, 2020), *cert. denied*, No. 20-809 (S.Ct., Feb. 22, 2021).

Burk v. Ducey, No. CV202001869 (Ariz. Super. Ct., Pinal Cnty., filed Dec. 7, 2020, dismissed Dec. 15, 2020), *appeal dismissed*, No. CV-20-0349-AP/EL (Ariz. Sup. Ct., Jan. 5, 2021), *cert. denied,* No. 20-1243 (S.Ct., May 3, 2021).

Mi Familia Vota v. Hobbs, No. 2:20-cv-01903 (D.Az., filed Sept. 30, 2020, injunction granted Oct. 5, 2020), *order stayed*, No. 20-16932 (9th Cir., Oct. 13, 2020), *appeal dismissed* (9th Cir. Feb. 2, 2021).

Georgia:

Trump v. Raffensperger, No. 2020CV343255 (Fulton Cnty. Ga. Super. Ct., filed Dec. 4, 2020, *dismissed as moot,* Jan. 7, 2021)

Trump v. Kemp, No. 1:20-cv-05310-MHC (N.D.Ga., filed Dec. 31, 2020, *dismissed* Jan. 7, 2021)

Wood v. Raffensperger, No. 1:20-cv-05310-MHC (N.D. Ga., filed Nov. 13, 2020, *dismissed* Nov. 19, 2020), *aff'd for lack of standing*, No. 20-14418 (11th Cir., Dec. 5, 2020), *cert. denied*, No. 20-799 (S.Ct., Feb. 22, 2021)

Pearson v. Kemp, No. 1:20-cv-04809-TCB (N.D. Ga., filed Nov. 25, 2020, partial preliminary injunction granted Nov. 30, 2020), *appeal dismissed for lack of jurisdiction*, No. 20-14480 (11th Cir. Dec. 7, 2020), *cert. dismissed sub nom. In re Coreco Ja'Qan Pearson,* No. 20-816 (Sup. Ct., Jan. 19, 2021)

Still v. Raffensperger, No. 2020CV343711 (Fulton Cnty. Super. Ct., filed Dec. 12, 2020, dismissed

Jan. 7, 2021)

Favorito v. Cooney, No. 2020CV343938 (Fulton Cnty. Super. Ct., filed Dec. 23, 2020, still pending as of Jan. 7, 2022)

Michigan:

Davis v. Benson, No. 1:20-cv-00981 (W.D. Mich., filed Oct. 14, 2020, preliminary injunction denied Oct. 30, 2020, stipulated dismissal Feb. 23, 2021)

Bailey v. Antrim County, No. 20-9238-C2 (Antrim Michigan Circuit Court, filed Nov. 25, 2020, dismissed May 2021), *dismissal aff'd*, No. 357838 (Mich. Ct. App. Apr. 21, 2022)

King v. Whitmer, No. 2:20-cv-13134-LVP-RSW (E.D. Mich., filed Nov. 25, 2020, dismissed Dec. 7, 2020), *cert. petition in advance of appeal denied*, No. 20-815 (S.Ct., Feb. 22, 2021)

Nevada:

Law v. Whitmer, No. 10 OC 00163 1B (Nev. Dist. Ct., Carson City, filed Nov. 17, 2020, dismissed Dec. 4, 2020), *aff'd* No. 82178 (Nev. Sup. Ct., Dec. 8, 2020), time to petition for writ of certiorari expired March 6, 2021.

New Mexico:

Trump v. Toulouse Oliver, No. 1:20-cv-01289 (D.N.M., filed Dec. 14, 2020, voluntarily dismissed Jan. 11, 2021)

Pennsylvania:

Donald J. Trump for President, Inc. v. Broockvar, No. 20-845 (S.Ct., filed Dec. 21, 2020, *cert. denied* Feb. 22, 2021).

Republican Party of Pennsylvania v. Boockvar, No. 20-542 (S.Ct., filed Oct. 23, 2020, *cert. denied* Feb. 22, 2021).

Bognet v. Boockvar, No. 3:20-cv-00215 (W.D. Pa., filed Oct. 22, 2020, preliminary injunction denied Oct. 28, 2022), *aff'd*, No. 20-3214 (3rd Cir., Nov. 13, 2020), *cert. denied*, No. 20-3214 (S.Ct.,)

Kelly v. Pennsylvania, No. 620 MD 2020 (PA. Commonwealth Ct., filed Nov. 25, 2020, injunction issued Nov. 25, 2020), *injunction vacated*, No. 68 MAP 2020 (Penn. Sup. Ct., Nov. 28, 2020), *cert. denied*, No. 20-810 (S.Ct., Feb. 22, 2021).

Wisconsin:

Donald J. Trump, et al. v. Joseph R. Biden, et al., No. 20-882 (S.Ct., filed Dec. 29, 2020, *cert. denied* Feb. 22, 2021)

Donald J. Trump v. Wisconsin Elections Commission, et al., No. 20-883 (S.Ct., filed Dec. 30, 2020, *cert. denied* Feb. 22, 2021)

o. The two-page memorandum states that through the power assigned to Vice President Pence he was the ultimate arbiter. Please provide all legal authority (including any specific language in the Constitution or Electoral Count Act) that supports this position.

See response to II.a.10 above.

p. The analysis and contentions in the memorandum appear to be inconsistent with respondent's testimony before the Select Joint Committee on the Manner of Appointment of Presidential Electors in Florida on November 29, 2000. At that hearing, respondent stated, in part, that under the Electoral Count Act, returns from a state "must be counted by Congress unless both the House and the Senate meeting separately concurrently reject that return." Respondent further stated 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 in Congress do not agree."

i. Based on respondent's statements reflected above, please explain why these principles, consistent with respondent's prior testimony were not included and discussed in the memorandum?

See response to II.A.14.a above.

ii. Why does the analysis in the memorandum differ from respondent's testimony on November 29, 2000?

See response to II.A.14.a above.

q. Did respondent advise the former President that the opinions provided in the memorandum were likely not legally sound or might not be upheld?

See response to II.A.16 above.

i. If so, when?

See response to II.A.16.i above.

ii. If so, how was the advice conveyed, verbally or in writing? If in writing, please provide a copy of the writing.

See response to II.A.16.ii above.

r. Did respondent advise the former Vice President that the opinions provided in the memorandum were likely not legally sound or might not be upheld?

See response to II.A.17 above.

i. If so, when?

See response to II.A.17 above.

ii. If so, how was the advice conveyed, verbally or in writing? If in writing, please provide a copy of the writing.

See response to II.A.17 above.

s. Did respondent advise anyone else (other than the former President and Vice President) that the opinions provided in the memorandum were likely not legally sound or might not be upheld?

See response to II.A.18 above.

i. If so, who? Please provide contact information for each person identified.

Greg Jacob, current contact information unknown.

Marc Short, current contact information unknown.

ii. If so, for each such person, when was the advice conveyed?

January 5 and 6, 2021.

iii. If so, for each such person, how was the advice

conveyed, verbally or in writing? If in writing, please provide a copy of the writing.

Orally, during a meeting on January 5, 2021. And via email on January 5 and 6, 2021. See Chapman005439.

III. ALLEGATIONS REGARDING FILING FRIVOLOUS LAWSUITS

Dr. Eastman strongly objects to the characterization of the lawsuits he filed (or was involved with filing) as "frivolous."

a. *Texas v. Pennsylvania,* 141 S. Ct. 1230 (2020)

i. In the Motion of Donald J. Trump, President of the United States, to Intervene in his Personal Capacity as Candidate for Re-Election, Proposed Bill of Complaint in Intervention, and Brief in Support of Motion to Intervene filed by respondent in *Texas v. Pennsylvania,* 141 S. Ct. 1230 (2020) (collectively, the Motion), it was alleged that election officials in the Defendant States (Pennsylvania, Georgia, Michigan and Wisconsin) failed to enforce state election laws in the conduct of the 2020 election, which "illegal conduct" greatly affected the margin between former President Trump and President Biden, and it was argued that elections rules were changed without approval by the legislatures of the Defendant States as required by Article II of the Constitution.

1. Did respondent draft the Motion? If not, who did, and what role did respondent play in the preparation and drafting of the Motion?

Dr. Eastman was the primary person responsible for drafting the Motion, though it was a collaborative effort and based in part on prior work that had been done in anticipation of an original action being filed by one or more States.

2. Identify all persons who participated or assisted or were consulted in the preparation and drafting of the Motion or in the gathering or provision of information that was used in the drafting of the Motion.

Kurt Olsen, ko@klafterolsen.com
Mark.D.Martin, Mark.D.Martin@protonmail.com
Mike Farris, mfarris@adflegal.org
Harold Johnson, hej@pacificlegal.org
Jay Sekulow, Sekulow.jay@gmail.com
Justin Clark, jclark@donaldtrump.com
Matthew Morgan, mmorgan@donaldtrump.com

a. Specify each person's role in the preparation and drafting of the Motion and the information gathered or provided by them.

Joseph, Kobach, Olsen, Martin, and Farris all participated in research and drafting of sections of the motion. Johnson provided suggestions regarding international law standards for the conduct of elections. Sekulow, Clark, and Morgan reviewed the work product.

b. Identify the date and time at which respondent had any discussions with any of the persons identified regarding the Motion or its contents and describe the nature of the discussions.

Numerous emails back and forth among the main team of Joseph, Kobach, Olsen, Martin and Farris between December 3 and December 9, 2020. Those emails have already been determined by a federal judge in the *Eastman v. Thompson* case to be protected work product.

c. Provide contact information for each person identified.

See above.

3. What investigation did respondent complete and on what information did respondent rely on to validate the factual allegations supporting the Motion? Please provide all such information and identify the source from which it was obtained.

Dr. Eastman reviewed the relevant state statutes, complaints and accompanying affidavits and expert analysis filed in a number of election challenges, election results posted by state election officials, and news accounts, specifically including the following:

On the claim that state election officials failed to conduct the election in compliance with state law, see Response II.A.6 Allegations 3, 4, and 7-19 above.

On the claim that nearly half of all Americans believed that the election was "likely" or "very likely" stolen, Leah Barkoukis, *What Do Democrats Think About the Integrity of the Election?*

One Poll Shows Surprising Findings, Townhall.com (Dec. 1, 2020).[79]

On the claim that former President Trump won both Ohio and Florida, official election results from those states.[80]

On the claim that former President Trump won most of the "bellweather" counties, John McCormick, *Bellwether Counties Nearly Wiped Out by 2020 Election*, Wall Street Journal Online (Nov. 13, 2020); *Bellwether Counties Dry Up*, Wall Street Journal, print edition (Nov. 14, 2020).

On the claim that former President Trump won the highest percentage of non-white voters since 1960, Matthew Impelli, "Trump Wins Highest Percent of Nonwhite Voters of Any Republican in 60 Years," Newsweek (Nov. 5, 2020).[81]

On the claim that former President Trump had coattails that helped Republican candidates outperform expectations, election results from state election officials and pre-election polling summaries published at RealClearPolitics.com.

On the claim that state election officials flooded their states with millions of absentee ballots, allowed use of unmanned drop boxes, provided little or no chain of custody, and weakened security measures such as signature verification, see Response II.A.6 Allegations 4, 10-12, 15, and 19 above. *See also, e.g.*, Tiffany Morgan, *DeKalb County Cannot Find Chain of Custody Records for Absentee Ballots Deposited in Drop Boxes*, The Georgia Star News (Dec. 5, 2020),[82] as well as Bill of Complaint, *Texas v. Pennsylvania et al.*. No. 22O155, *e.g.* pp. 1-2, 13-14 (S.Ct., filed Dec. 7, 2020).

On the claim that efforts to weaken security measures were part of a nationwide campaign through hundreds of lawsuits filed by partisan operatives, *see* Amy Sherman, *2020 election lawsuits and*

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[79] Available at https://townhall.com/tipsheet/leahbarkoukis/2020/12/01/30-percent-of-dems-think-their-party-cheated-n2580862.

[80] The Motion mistakenly asserts that no candidate in history had won both Ohio and Florida and lost the election. It should have said "only once in history," as Vice President Richard Nixon won both states in 1960 yet Senator Kennedy was certified as the winner of the election nationwide. Although the error was relatively immaterial—the point being that most of the historical indicators of elector success favored former President Trump—it was corrected in the next filing Dr. Eastman made to the Court. *See* Petition for Writ of Certiorari, *Donald J. Trump for President, Inc. v. Boockvar*, No. 20-845, p. 27 (S.Ct., filed Dec. 21, 2020).

[81] Available at https://www.newsweek.com/trump-wins-highest-percent-nonwhite-voters-any-republican-60-years-doubles-lgbtq-support-2016-1545294.

[82] Available at https://georgiastarnews.com/2020/12/05/dekalb-county-cannot-find-chain-of-custody-records-for-absentee-ballots-deposited-in-drop-boxes-it-has-not-been-determined-if-responsive-records-to-your-request-exist/.

ballot access: what you need to know," Politifact (Nov. 2, 2020).[83] Dr. Eastman also reviewed a number of the pre-election lawsuits referenced in that article, and summarized at the Stanford-MIT Healthy Elections Project litigation tracker, https://healthyelections-case-tracker.stanford.edu/cases.

On the claim that the Georgia Secretary of State entered into a Compromise Settlement Agreement without legislative approval that materially altered the signature verification requirements of Georgia law, see Response II.A.6 Allegation #4, and Response II.B.a.ii above.

On the claim that the alternation of signature verification requirements on absentee ballots appeared to materially benefit Biden over Trump because Biden received nearly double the number of absentee votes that Trump received, election results published by the Georgia Secretary of State's office.

On the claim that absentee voting is the largest source of potential voter fraud, the report issued by the commission headed by former President Jimmy Carter and former Secretary of State James Baker, Building Confidence In U.S. Elections: Report of the Commission On Federal Election Reform 46 (Sept. 2005).

4. What specific legal research did respondent conduct or rely upon in preparing or drafting or assisting in preparing or drafting the Motion? Please provide all legal authority relied on to support the Motion.

On the right of a third party to intervene in a state vs state original action, Dr. Eastman reviewed the relevant case law, including: *Maryland v. Louisiana*, 451 U.S. 725, 745, fn. 21 (1981) ("[I]t is not unusual to permit intervention of private parties in original actions"); *Arizona v. California*, 460 U.S. 605, 614 ([O]ur judicial power over the controversy is not enlarged by granting leave to intervene, and the States' sovereign immunity, protected by the Eleventh Amendment, is not compromised"); *Texas v. Louisiana*, 416 U.S. 965 (1974) (city in Texas permitted to intervene); *Arizona v. California*, 373 U.S. 546 (1963) (state agencies); *Oklahoma v. Texas*, 258 U.S. 574, 581 (1922) (noting that numerous parties intervened to make claims to the property over which the Court had taken control and that "ancillary" jurisdiction over such claims was proper "although independent suits to enforce the claims could not be entertained in that court").

On the legal claim that violations of state election law by non-legislative officials violated article II of the Constitution, Dr. Eastman reviewed the relevant case law, including *McPherson v. Blacker*, 146 U.S. 1 (1892), and *Bush v Gore*, 531 U.S. 98 (2000).

On whether former President Trump had an interest in the case that warranted intervention, Dr. Eastman reviewed relevant case law, including *New Jersey v. New York*, 345 U.S. 369 (1953) (per

[83] Available at https://www.politifact.com/article/2020/nov/02/2020-election-lawsuits-and-ballot-access-what-you-/

curiam); *Hoblock v. Albany Cty. Bd. of Elections*, 233 F.R.D. 95 (N.D.N.Y. 2005); *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Bullock v. Carter*, 405 U.S. 134 (1972), as well as case law applying Rule 24 of the Federal Rules of Civil Procedure (to which the Supreme Court looks as a "guide" in addressing original actions, S.Ct. Rule 17.2; *Arizona v. California*, 460 U.S. 605, 614 (1983); *Utah v. United States*, 394 U.S. 89, 95 (1969)), including *State v. City of Chicago*, 912 F.3d 979 (7th Cir. 2019); *United States v. City of Los Angeles*, 288 F.3d 391 (9th Cir. 2002); *Trbovich v. United Mine Workers*, 404 U.S.528 (1972); *Beckman Industries, Inc. v. International Ins. Co.*, 966 F.2d 470 (9th Cir. 1992); *U.S. Postal Service v. Brennan*, 579 F.2d 188 (2nd Cir. 1978). He also review the relevant case law on standing, including *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992); *Storer v. Brown*, 415 U.S. 724 (1974); *Ass'n of Data Processing Serv. Org., Inc. v. Camp*, 397 U.S. 150 (1970); *Wesberry v. Sanders*, 376 U.S. 1 (1964).

On the claim that international law and the U.S. Department of State recognizes the importance of political contestants being allowed to monitor and observe election processes, Declaration of Principles for International Election Observation, Principal 14, p. 5 (Oct. 27, 2005),[84] Michael Pompeo, *Press Statement: Presidential Elections in Belarus* (Aug. 10, 2020).[85]

5. What was the purpose of the Motion?

The purpose of the motion was to intervene in the original action that had been filed by the State of Texas to address violations of election laws that occurred in a number of states in the November 2020 election.

6. Did anyone request or direct the drafting of the Motion and, if so, who? Please provide contact information for each person identified.

Yes. Attorney-client and/or Work Product privileged.

7. With regard to the specific Defendant States, the Motion states that "Pennsylvania's Secretary of State issued guidance purporting to suspend the signature verification requirements, in direct violation of state law. In Michigan, the Secretary of State illegally flooded the state with absentee ballot applications mailed to every registered voter despite the fact that state law strictly limits the ballot application process. In Wisconsin, the largest cities all deployed hundreds

[84] At https://www.cartercenter.org/resources/pdfs/peace/democracy/des/declaration_code_english_revised.pdf.

[85] At https://www.state.gov/presidential-elections-in-belarus/

of unmanned, unsecured absentee ballot drop boxes that were all invalid means of returning absentee votes under state law. In Georgia, the Secretary of State instituted a series of unlawful policies, including processing ballots weeks before election day and destructively revising signature and identity verification procedures."

a. What evidence did respondent rely upon for each of these contentions? Please provide all such evidence.

See Response II.A.6, allegations Nos. 4, 7, 11, 12, and 15. As for the allegation that the Secretary of State instituted an unlawful policy of allowing the processing of ballots weeks before election day, that policy was implemented pursuant to a rule adopted by the Board of Election purporting to authorize the opening of the outer oath envelope of absentee ballots "[b]eginning at 8:00 A.M. on the third Monday prior to the day of the" election. Georgia election law at the time provided that election officials were not "authorized to open the outer oath envelope" until "[a]fter the opening of the polls on the day of the" election. Ga. Code Ann. § 21-2-386(2)(a) (prior to 2021 amendment).

b. What investigation or research did respondent conduct to validate these allegations? Please provide proof of all such investigation or research.

Dr. Eastman reviewed the various legal challenges that had been filed addressing these issues, as well as the state statutes involved.

8. The Motion states that "In all cases, absentee ballots were mailed to people without even a perfunctory attempt to verify the recipient's identity or eligibility to vote, including residency, citizenship, and criminal records. When returned and counted, the ballots were typically separated from their security envelopes, divorcing them from any information that could have helped determine whether the votes were legally cast."

a. What evidence did respondent rely upon for these contentions? Please provide all such evidence.

As a member of the board of the Public Interest Legal Foundation, Dr. Eastman has been involved in, or made aware of, numerous legal challenges against states failing to conduct adequate list maintenance on their voter rolls. In *American Civil Rights Union v. Philadelphia City Commissioners,* 872 F.3d 175, 178 (3d Cir. 2017), for example, the City of Philadelphia Commissioners acknowledged that "they do not remove persons incarcerated due to felony conviction from the rolls or otherwise make note of registrants that are currently incarcerated due to felony conviction."

b. What investigation or research did respondent conduct to validate these contentions? Please provide proof of all such investigation or research.

See above.

ii. Had the arguments raised in the Motion already been resolved by way of litigation in each of the Defendant States at the time the Motion was filed? If so, why did the Motion reraise those arguments and what was the legal basis for doing so? Please provide all legal authority supporting any asserted legal basis for doing so.

Most of the legal challenges had been dismissed on various jurisdictional grounds without resolution of the merits of the claims. Even in the few cases where the merits were addressed, the appellate process (including petitions for writ of certiorari) had not concluded by the time the Motion to Intervene in *Texas v. Pennsylvania* on December 9, 2020.

iii. At the time the Motion was filed, was respondent aware that the State of Texas lacked standing to file the lawsuit? If so, what was the legal basis for filing the Motion? Please provide all legal authority supporting any asserted legal basis.

Whether or not Texas had standing was one of the issues in dispute. Dr. Eastman reviewed Texas's original action as well as the case law on which its claims of standing were based, particularly *Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983), and determined that the assertion of standing was at least colorable. Two Justices of the Supreme Court argued in dissent from the dismissal of the case that the Court did "not have discretion to deny the filing of a bill of complaint in a case that falls within [its] original jurisdiction." *Texas v. Pennsylvania*, No. 22O155, Statement of Justice Alito, joined by Justice Thomas, dissenting from denial of motion for leave to file bill of complaint (Dec. 11, 2020).

iv. The Motion asserts that that former President Trump had a distinct interest separate and apart from Texas that justified intervention. What separate and distinct interest did former President Trump have other than seeking to ensure a fair election, the interest purportedly pursued by Texas?

President Trump's interest was that of a *candidate* who was assertedly deprived of an electoral victory because of illegality in the conduct of the election. Texas's interest was in ensuring that its citizens did not have their votes diluted by that illegal conduct, and also that its own equal vote in the U.S. Senate was not diluted should the "President of the Senate" – that is, the Vice President – have been certified as the victor as a consequence of such illegality in the conduct of the election.

v. At page 31, the Motion states that "President Trump's claims about the illegal violations of the state law ... is identical to the principal claim made by Texas and is based on the same set of facts asserted by Texas." What justified the filing of the Motion if the same facts and claims were already being raised/argued by Texas? Please provide all legal authority supporting any asserted justification.

Supreme Court Rule 17.2 provides that "[i]n other respects [than the form of pleadings and motions], those [Federal] Rules [of Civil Procedure] and the Federal Rules of Evidence may be taken as guides." That includes the rule on intervention, Federal Rule of Civil Procedure Rule 24, although the Court often applies a "heightened standard for intervention in original actions" by

non-state parties, though not an "insurmountable" standard. *South Carolina v. North Carolina*, 558 U.S. 256, 268 (2010). Rule 24(b)(1)(B) actually requires, as one of the grounds for permissive intervention, that the party seeking intervention "has a claim or defense that shares with the main action a common question of law or fact."

vi. At page 38, the Motion states that the Defendant States "changed the rules in an unauthorized manner". Please specify how each Defendant State purportedly changed the rules in an unauthorized manner, provide the facts and legal authority relied upon to support this assertion, and provide proof thereof.

See response to II.A.6, allegation Nos. 3, 4, 7-19 above.

b. *Trump v. Ra/fensperger,* No. 2020CV343255 (Fulton County), review sought in the Supreme Court of Georgia, No. S21M0561

In the Verified Petition to Contest Georgia's Presidential Election Results for Violations of the Constitution and Laws of the State of Georgia, and Request for Emergency Declaratory and Injunctive Relief in this matter, filed on or about December 4, 2020 (collectively, the Complaint), the petitioners, former President Donald Trump and a Georgia voter, requested a new presidential election on the basis of alleged violations of the Georgia Election Code and state constitution. Petitioners alleged, among other things, that respondents, county elections officials, allowed unqualified people to vote, sent unsolicited absentee ballots to voters, entered into a consent decree that allocated more personnel to conduct signature verification, and that the number of absentee ballots was higher than in previous elections.

i. Did respondent draft the Complaint? If not, who did, and what role did respondent play in the preparation and drafting of the Complaint?

Dr. Eastman did not draft the complaint and does not know who did, and although he was provided with advance copies of portions of the complaint (particularly including some of the expert affidavits) by other attorneys affiliated with the Trump campaign legal team who were involved with that complaint, he had no role in the preparation or drafting of the Complaint.

ii. Identify all persons who participated or assisted or were consulted in the preparation and drafting of the Complaint or in the gathering or provision of information that was used in the drafting of the Complaint.

Dr. Eastman does not know who participated or assisted in the drafting of the complaint. He was provided with advance copy of some of the allegations by Cleta Mitchell, whom he understood to be working with the Trump campaign legal team in Georgia.

iii. Specify each person's role in the preparation and drafting of the Complaint and the information gathered or provided by them.

Because Dr. Eastman was not involved in the preparation or drafting of the Complaint, he does not know the role that any of those who might have been involved had.

iv. Identify the date and time at which respondent had any discussions with any of the persons identified regarding the Complaint or its contents and describe the nature of the discussions.

Numerous email communications from and to Cleta Mitchell, cmitchell@foley.com, between November 29 and December 4, 2020. Emilie O. Denmark, edenmark@smithliss.com, and Ray S. Smith, rsmith@smithliss.com, were copied on one of the communications. Victoria Toensing, vt@digenovatoensing.com, was copied on another. The content and nature of the discussions are attorney-client and/or work product privileged.

v. Provide contact information for each person identified.

See above.

vi. What investigation did respondent complete and on what information did respondent rely on to validate the factual allegations supporting the Complaint? Please provide all such information and identify the source from which it was obtained.

As Dr. Eastman was not involved in the preparation or drafting of the Complaint in *Trump v. Raffensperger*, and did not make an appearance in that case, this question is inapplicable.

vii. What specific legal research did respondent conduct or rely upon in preparing or drafting or assisting in preparing or drafting the Complaint? Please provide all legal authority relied on to support the Complaint.

See above.

viii. What was the purpose of the Complaint?

As Dr. Eastman was not involved in the preparation or drafting of the Complaint in *Trump v. Raffensperger*, and did not make an appearance in that case, this question is inapplicable. He can surmise that the purpose of the complaint was to challenge the illegality of the election.

ix. Did anyone request or direct the drafting of the Complaint and, if so, who? Please provide contact information for each person identified.

Inapplicable.

x. Please explain the legal analysis set forth in the key points regarding the questionable election results alleged against Georgia, Pennsylvania, Wisconsin, Michigan, Arizona made in *Trump v. Raffensperger.*

Inapplicable.

xi. Please provide evidence/information that respondent relied upon in making his arguments regarding the alleged questionable election results in Georgia, Pennsylvania, Wisconsin, Michigan, Arizona made in *Trump v. Raffensperger.*

Inapplicable.

c. *Trump v. Kemp,* 511 F. Supp. 3d 1325 (NOGA, Jan. 5, 2021)

In the Complaint for Emergency Injunctive and Declaratory Relief signed by respondent as "Proposed Co-Counsel for President of the United States, as Candidate for President" in the above captioned matter (the Complaint), it is alleged, among other things, that fraudulent election practices occurred in Georgia, specifically that "Georgia election officials allowed unqualified individuals to register and vote in violation of OCGA section 21-20216; allowed convicted felons still serving their sentence to vote in violation of OCGA section 21-2-216(b); allowed underage individuals to register and then vote, in violation of OCGA section 21-2-216(c); allowed unregistered or late-registered individuals to vote in violation of OCGA section 21-2-224(a)..."

i. Did respondent draft the Complaint? If not, who did, and what role did respondent play in the preparation and drafting of the Complaint?

Dr. Eastman participated in the drafting of the Complaint. Others involved are listed below.

ii. Identify all persons who participated or assisted or were consulted in the preparation and drafting of the Complaint or in the gathering or provision of information that was used in the drafting of the Complaint.

Kurt Hilbert khilbert@hilbertlaw.com
Cleta Mitchell, CMitchell@foley.com
Alex Kaufman, AKaufman@foxrothschild.com
Brue Marks, marks@mslegal.com
Nina Khan, nkhan@mslegal.com
Tom Sullivan, tsullivan@mslegal.com
Eric Herschmann, eric.herschmann1@gmail.com

iii. Specify each person's role in the preparation and drafting of the Complaint and the information gathered or provided by them.

Each of the individuals (other than Herschmann) participated in the research, drafting, and/or editing of the Complaint. Herschmann was consulted regarding the complaint, reviewed the complaint, authorized its filing, and was the point person for communication with the client (former President Trump) and the obtaining of the verification signature.

iv. Identify the date and time at which respondent had any discussions with any of the persons identified regarding the Complaint or its contents and describe the nature of the discussions.

Dr. Eastman had hundreds of communications with one or more of the above individuals about this case between December 29, 2020 and December 31, 2020, when the complaint was filed. The content and nature of those discussions are attorney-client or work-product privileged.

v. Provide contact information for each person identified.

See response ii above.

vi. What investigation did respondent complete and on what information did respondent rely on to validate the

factual allegations supporting the Complaint? Please provide all such information and identify the source from which it was obtained.

The legal team with which Dr. Eastman was working included several of the attorneys involved in the *Trump v. Raffensperger* state court election challenge. Together, they had carefully reviewed the allegations in the verified complaint filed in that case, together with the supporting affidavits and expert analysis. In addition, because that lawsuit had been filed nearly a month earlier, they also reviewed updates to the expert analysis that had been filed in the case as well as counterpoints that had been filed by defendants in the case. Those filings are all available at the *Raffensperger* docket.[86]

vii. What specific legal research did respondent conduct or rely upon in preparing or drafting or assisting in preparing or drafting the Complaint? Please provide all legal authority relied on to support the Complaint.

As noted above, Dr. Eastman reviewed the relevant case law, the Georgia statutes, and the affidavits and expert reports that were submitted and/or cited in the *Raffensperger* case.

viii. What was the purpose of the Complaint?

The purpose is stated in the preamble of the Complaint.

ix. Did anyone request or direct the drafting of the Complaint and, if so, who? Please provide contact information for each person identified.

Dr. Eastman does not recall who on the Trump legal team first suggested or requested the drafting of the complaint.

x. The Complaint states "At about 10:00 p.m. on the evening of the November 3, 2020 election day, Fulton County election officials falsely informed observers at the State Farm Arena in Atlanta, which was serving as the vote tabulation center, that counting of ballots was being stopped for the evening and would recommence the next morning at 8:00 a.m. Observers and members of the media departed, but several election officials then proceeded to remove suitcases full of ballots from under a table where they had been hidden and processed these

[86] Available at https://publicrecordsaccess.fultoncountyga.gov/Portal/Home/WorkspaceMode?p=0.

ballots without open viewing by the public in violation of OCGA section 21-2-483."

1. **At the time the Complaint was filed, what evidence, if any, did respondent rely on to support his claims of election fraud in Georgia? Please provide all such evidence.**

There is no allegation of "election fraud" in the quoted statement contained in subsection x. above. Rather, that statement references statements made by Fulton County election officials that the counting was being suspended for the evening and would continue the next morning, and that election officials then proceeded to count additional ballots after observers had departed, in violation of Georgia law. The evidence in support of those statements was contained in two affidavits that had been submitted in the *Trump v. Raffensperger* litigation as Exhibits 12 (Affidavit of Mitchell Harrison[87]) and 13 (Affidavit of Michelle Branton[88]), as well as video depicting the canvassing activities at the State Farm Arena on the evening of November 3, 2020 (*Raffensperger* complaint Exhibit 14).[89]

2. **Was the evidence respondent relied on filed in *Trump v. Kemp?* If not, why not?**

Rule 8 of the Federal Rules of Civil Procedure requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." That standard was met. Nevertheless, the *Raffensperger* complaint, together with its accompanying evidentiary exhibits, were incorporated by reference in the *Trump v. Kemp* matter.

3. **What investigation or research did respondent conduct and on what information did respondent rely before making this statement? Please provide proof of the results of any such investigation or research and any information relied on.**

Dr. Eastman reviewed the allegations in the *Raffernsperger* complaint, its exhibits, and portions of the State Farm Arena video. He also interviewed another member of the Trump legal team who had reviewed the State Farm Arena in its entirety.

xi. The Complaint states that the "facts and figures set forth" regarding the claims of election fraud were "based on information publicly available" and were

[87] Available at https://tinyurl.com/bdd7n5m6.

[88] Available at https://tinyurl.com/533f25p3.

[89] Available at https://tinyurl.com/ye77hbyn.

made "without having access to the actual information..."

This is a highly selective quotation from the Complaint, which omits the references to "affidavits" and "expert opinions/reports."

1. **Prior to filing the Complaint and making factual-assertions in support thereof, did respondent fact-check the allegations made regarding election fraud?**

Several of the attorneys who participated in the drafting of this complaint were also involved with the *Trump v. Raffensperger* case. Dr. Eastman himself reviewed the allegations in the complaint and the evidentiary support for them, as did the several other members of the team.

   a. **If so, what did respondent do to ensure that the Complaint was based upon accurate information? Please provide proof of any steps taken by respondent to ensure the accuracy of the information on which the Complaint was based.**

Dr. Eastman had extensive email exchanges with other members of the legal team regarding the factual allegations in the verified complaint and those incorporated by reference contained in the verified complaint filed in the *Trump v. Raffensperger* state court challenge. The California federal district court in the *Eastman v. Thompson* litigation has already determined that those communications are protected by attorney-client privilege and/or work product protection.

2. **Did respondent know, prior to filing the Complaint, that any of the Complaint's allegations had been resolved and/or discredited prior to the filing of the complaint?**

Dr. Eastman did not "know" that the allegations had been resolved or discredited. He was aware that several of the allegations had been disputed, including in unsworn media statements made by the Secretary of State or others in his office. But none of the disputed allegations had been "resolved" through an adversarial proceeding and, because the case was dismissed as moot before any evidentiary hearing or issuance of findings of fact, never were "resolved."

   a. **If so, why did respondent permit the Complaint to continue to make allegations that had already been resolved or discredited?**

As noted above, the allegations had not been "resolved," and although some of them had been disputed, they had not been "discredited." Indeed, several of the statements made by the Secretary of State or members of his office that supposedly "discredited" the allegations mischaracterized

the allegations that were actually made. These matters are discussed at greater length in the reply brief filed on Dr. Eastman's behalf in *Eastman v. Thompson*, No. 8:22-cv-00099, Dkt. #354, pp. 2-6 (C.D. Cal., filed 5/31/22).[90]

xii. The Complaint states that "President Trump has significant and overwhelming evidence that shows that purported results of the Presidential election in Georgia (and in other states) are not accurate as they contain illegal votes and should have been invalidated had the state contest proceeding been properly conducted and properly allowed to proceed to conclusion."

1. What evidence did respondent rely upon in making these assertions?

See Response II.A.6 Allegations 1, 3 and 4; Response II.B.a.ii; and Response II.B.a.iv above.

2. Please provide all evidence on which respondent relied on in making these assertions.

See above.

3. Provide a list of all steps respondent took to verify the accuracy of these assertions before filing this complaint and proof of any such steps.

See above.

d. *Davis v. Secretary of State,* Michigan Court of Claims No. 20-000099-MM, on appeal 963 N.W. 2d 653 (Mich. Ct. App. 2020)

1. Did respondent draft the complaint in this matter (the Complaint)? If not, who did, and what role did respondent play in the preparation and drafting of the Complaint?

Dr. Eastman had no involvement with this litigation.

2. Identify all persons who participated or assisted or were consulted in the preparation and drafting of the Complaint or in the gathering or provision of information that was used in the drafting of the Complaint.

[90] Available at https://storage.courtlistener.com/recap/gov.uscourts.cacd.841840/gov.uscourts.cacd.841840.354.0_2.pdf.

Dr. Eastman had no involvement with this litigation.

a. Specify each person's role in the preparation and drafting of the Complaint and the information gathered or provided by them.
b. Identify the date and time at which respondent had any discussions with any of the persons identified regarding the Complaint or its contents and describe the nature of the discussions.

c. Provide contact information for each person identified.

3. What investigation did respondent complete and on what information did respondent rely on to validate the factual allegations supporting the Complaint? Please provide all such information and identify the source from which it was obtained.

Dr. Eastman had no involvement with this litigation.

4. What specific legal research did respondent conduct or rely upon in preparing or drafting or assisting in preparing or drafting the Complaint? Please provide all legal authority relied on to support the Complaint.

Dr. Eastman had no involvement with this litigation.

5. What was the purpose of the Complaint?

Dr. Eastman had no involvement with this litigation.

6. Did anyone request or direct the drafting of the Complaint and, if so, who? Please provide contact information for each person identified.

Dr. Eastman had no involvement with this litigation.

7. What was the factual basis for the Complaint's claim that the Secretary of the State sent unsolicited absentee ballot applications to registered voters in Detroit, Michigan? Please explain and provide proof thereof.

Dr. Eastman had no involvement with this litigation.

8. What was the legal basis for the Complaint's allegation that the defendant, Secretary of the State, lacked the authority to send unsolicited absentee voter ballot applications to the registered voters of Michigan? Please explain and provide all legal authority supporting this allegation.

Dr. Eastman had no involvement with this litigation.

IV. ALLEGATIONS REGARDING MISREPRESENTATIONS & ATTEMPT TO OVERTURN THE ELECTION RESULTS

Dr. Eastman strongly disputes that allegation that he made misrepresentations, and the allegation that he "attempt[ed] to overturn the election results." On numerous occasions, he made clear that he was supporting further investigation—by courts and/or state legislatures—to determine the impact of illegality in the conduct of the election and to thereby ensure that whoever was the actual winner of the election was the person sworn into office on January 20, 2021.

a. Respondent's Statements made on the Steve K. Bannon Radio Show on January 2, 2021

i. Respondent stated that on December 4, 2020 an election contest was brought in Georgia and that a month later (as of the date of the show) a judge had not been assigned yet. At the time respondent made this statement, was the election contest still pending? Had a judge been assigned? Were there cases pending before the courts regarding the election fraud claims raised against Georgia? Please provide all evidence known to respondent at the time that supported this statement.

The election contest in *Trump v. Raffensperger* was still pending on January 2, 2021, and Dr. Eastman was unaware at the time (though subsequently learned), that a judge had been appointed on December 30, 2020, and issued an order on December 31, 2020 setting an initial hearing for January 8, 2021. Electronic notification of the appointment and order setting the hearing was not provided to counsel in the case until the morning of January 4, 2021.

ii. During respondent's interview, respondent told individuals to put pressure on the legislatures in Georgia, Pennsylvania, Wisconsin, or Arizona and demand that they call themselves into session and that they make an assessment of what happened in their

states and whether they needed to decertify the existing slate electors. Respondent informed listeners that it was imperative to do so before Wednesday of the week of January 2, 2021.

1. **At the time respondent told listeners to call their state legislatures to apply pressure to decertify existing slate electors, what States had not yet sent their electoral slates to former Vice President Pence?**

Every state had sent electoral votes to Congress. In seven states, where election challenges were still pending (and where allegations of illegality in the conduct of the election were demonstrable), Trump electors had also met on December 14, 2020 (the date designated by Congress pursuant to its constitutional authority), cast contingent votes, and transmitted those votes to Congress, just as electors for Senator John Kennedy from Hawaii had met on the designated date in 1960 despite the election having already been certified for Vice President Nixon.

2. **At the time respondent made these statements, had the legislatures of these states (Georgia, Pennsylvania, Wisconsin and Arizona) already determined that there was no illegal and/or fraudulent conduct in the manner the electoral votes were counted/cast in their respective states?**

No. The legislatures had not been in session, and the Governors of these states had refused requests to call them into special session. Numerous legislators in each of these states had raised concerns about the conduct of the election, however. In Georgia, a report issued by Senator Ligon, Chairman of the Election Law Study Subcommittee of the Standing Senate Judiciary Committee, concluded after receiving extensive testimony that the results of the election "cannot be trusted," and that the Secretary of State and State Elections Board "failed to enforce the law as written" and "created policies that contravene State law." It urged the Legislature to rescind the certification of the election if a majority of the legislature agreed with the report's findings.[91] On December 14, 2020, twenty members of the Arizona Legislature signed a joint resolution finding that the 2020 election in that State "was marred by irregularities so significant as to render it highly doubtful whether the certified results accurately represent the will of the voters." It noted that a forensic audit had just been requested and that litigation over the election was still pending, and as a result requested that Congress consider all electoral votes from Arizona to be "nullified completely" until a full forensic audit could be completed.[92] On December 4, 2020, fifteen members of the Pennsylvania House of Representatives transmitted a letter to Congress advising Congress that a

[91] Available at http://www.senatorligon.com/THE_FINAL%20REPORT.PDF.

[92] *See Gohmert v. Pence,* No. 6:20-cv-00660, Complaint Ex. A (E.D. Tex., filed Dec. 27, 2020), available at *https://storage.courtlistener.com/recap/gov.uscourts.txed.203073/gov.uscourts.txed.203073.1.1.pdf*.

resolution had been introduced to contest the selection of electors because the mail-in ballot process in the Commonwealth of Pennsylvania in the November 2020 election "was so defective that it is essential to declare the selection of presidential electors for the Commonwealth to be in dispute" and that the system of controls over voting was "so flawed as to render the results of the mail-in ballot process incapable of being relied upon."

iii. During respondent's interview, respondent indicated that there were pending petitions in certain courts regarding the allegations of election fraud, specifically respondent indicated "certain petitions pending in the Supreme Court on this very question from Pennsylvania and Georgia. A new case was filed New Year's Eve in, I'm-I'm sorry from Pennsylvania and Wisconsin. A new case was filed Christmas uh, New Year's Eve in Georgia raising the same thing."

Dr. Eastman did not contend that the pending cert petitions regarded "allegations of election fraud," but rather allegations that state laws had been ignored or altered by election officials without legislative approval, contrary to the Constitution's assignment of plenary authority to state legislatures to direct the manner of choosing presidential electors.

1. **Please indicate which cases, as of January 2, 2021, were still pending before the U.S. Supreme Court and/or before the State courts in Pennsylvania, Georgia and Wisconsin.**

The cases referenced by Dr. Eastman in the Jan. 2 interview are:

Donald J. Trump for President, Inc. v. Boockvar, No. 20-845 (S.Ct., filed Dec. 21, 2020, *cert. denied* Feb. 22, 2021).

Donald J. Trump, et al. v. Joseph R. Biden, et al., No. 20-882 (S.Ct., filed Dec. 29, 2020, *cert. denied* Feb. 22, 2021).

Donald J. Trump v. Wisconsin Elections Commission, et al., No. 20-883 (S.Ct., filed Dec. 30, 2020, *cert. denied* Feb. 22, 2021).

Trump v. Kemp, No. 1:20-cv-05310-MHC (N.D.Ga., filed Dec. 31, 2020, *dismissed* Jan. 7, 2021)

In addition, numerous other cases were still pending at the time, including:

Trump v. Raffensperger, No. 2020CV343255 (Fulton Cnty. Ga. Super. Ct., filed Dec. 4, 2020, *dismissed as moot,* Jan. 7, 2021)

Republican Party of Pennsylvania v. Boockvar, No. 20-542 (S.Ct., filed Oct. 23, 2020, *cert. denied*

Feb. 22, 2021).

Bognet v. v. Boockvar, No. 3:20-cv-00215 (W.D. Pa., filed Oct. 22, 2020, preliminary injunction denied Oct. 28, 2022), *aff'd*, No. 20-3214 (3rd Cir., Nov. 13, 2020), *cert. granted, vacated, and remanded to dismiss as moot*, No. 20-740 (S.Ct., April 19, 2021).

Kelly v. Pennsylvania, No. 620 MD 2020 (PA. Commonwealth Ct., filed Nov. 25, 2020, injunction issued Nov. 25, 2020), *injunction vacated*, No. 68 MAP 2020 (Penn. Sup. Ct., Nov. 28, 2020), *cert. denied*, No. 20-810 (S.Ct., Feb. 22, 2021).

Wood v. Raffensperger, No. 1:20-cv-05310-MHC (N.D. Ga., filed Nov. 13, 2020, *dismissed* Nov. 19, 2020), *aff'd for lack of standing*, No. 20-14418 (11th Cir., Dec. 5, 2020), *cert. denied*, No. 20-799 (S.Ct., Feb. 22, 2021)

Pearson v. Kemp, No. 1:20-cv-04809-TCB (N.D. Ga., filed Nov. 25, 2020, partial preliminary injunction granted Nov. 30, 2020), *appeal dismissed for lack of jurisdiction*, No. 20-14480 (11th Cir. Dec. 7, 2020), *cert. dismissed sub nom. In re Coreco Ja'Qan Pearson,* No. 20-816 (Sup. Ct., Jan. 19, 2021)

Still v. Raffensperger, No. 2020CV343711 (Fulton Cnty. Super. Ct., filed Dec. 12, 2020, dismissed Jan. 7, 2021)

Favorito v. Cooney, No. 2020CV343938 (Fulton Cnty. Super. Ct., filed Dec. 23, 2020, still pending as of Jan. 7, 2022)

2. Please provide all evidence known to respondent at the time that supported this statement.

The violations of state law are identified in detail in the first 4 above-referenced cases.

b. President Trump's telephone call to Brad Raffensperger on January 2, 2021

i. On January 2, 2021, President Trump held an hour-long telephone call with Brad Raffensperger, Georgia's Secretary of State, in which he repeatedly urged Raffensperger to alter the outcome of the presidential vote in the state. News reports have stated that respondent was on the call, along with Mark Meadows, Peter Navarro, John Lott, Rudy Giuliani, Cleta Mitchell and Kurt Hilbert, as well as Raffensperger's general counsel Ryan Germany and Deputy Secretary of State Jordan Fuchs.

1. Did respondent participate in this telephone call?

Dr. Eastman did not participate in this telephone call. The news report is incorrect. Please let us know the news source of this statement so that we can request a retraction.

2. What role did respondent play in the call?

None, as Dr. Eastman was not on the call.

3. Who else, other than the individuals listed above, was present?

Dr. Eastman has no knowledge of who was on the call other than from news accounts.

4. Did respondent have or control any notes, documents, or recordings regarding this call? If so, please provide them.

No.

c. Respondent's Statements made on the Larry Elder Show on January 4, 2021

i. During an interview on the Larry Elder Show on January 4, 2021, respondent stated that election officials were illegally harvesting ballots in Dane County, Wisconsin.

1. At the time of making this assertion, what evidence did respondent have to support this claim? Please provide all such evidence.

See response II.A.6, Allegation #12.

2. What investigation or research had respondent conducted regarding this statement? Please provide proof of the results of any such investigation or research.

Dr. Eastman had reviewed the news accounts of the "Democracy in the Park" ballot harvesting scheme, the relevant state election laws, and the lawsuit filed challenging the scheme (among other things), *Trump v. Biden*, 2020 WI 91, 394 Wis. 2d 629, 951 N.W.2d 568 (Wisc. Dec. 14, 2020), *cert. denied,* 141 S. Ct. 1387 (2021).

3. At the time respondent made the statements regarding the alleged election fraud in Wisconsin on the Larry Elder Show, had the election fraud

claims regarding Wisconsin been resolved through litigation in Wisconsin?

Dr. Eastman's statements were that there was illegality in the conduct of the election. Those allegations of illegality had not been resolved at the time Dr. Eastman made his Jan. 4 statement on the Larry Elder show. See response II.A.6, Allegation #12.

4. Please provide information regarding any complaints filed in Wisconsin regarding election fraud claims, including case name(s) and number(s) and date of resolution(s), if any.

See response II.A.6, Allegation #12. See also:

Trump v. Evers, No. 2020AP1971-OA (Wis. Sup. Ct., filed Dec. 1, 2020, request to file original action denied Dec. 3, 2020)

Trump v. Wisconsin Elections Commissions, No. 2:20-cv-01785 (E.D. Wis., filed Dec. 2, 2020, dismissed Dec. 12, 2020), *aff'd on laches grounds*, No. 20-3414 (7th Cir. Dec. 24, 2020), *cert. denied*, No. 20-883 (S.Ct. Mar. 8, 2021).

Trump v. Biden, No. 2020CV007092 (Wis. Super. Ct., Milwaukee Cnty. filed Dec. 3, 2020, aff'd recount Dec. 11, 2020), *aff'd*, No. 2020AP2038 (Wis. S.Ct. Dec. 14, 2020), *cert. denied,* No. 20-882 (S.Ct., Feb. 22, 2021).

Jefferson v. Dane County, No. 2020AP000557 – OA (Wis. S.Ct., filed Mar. 27, 2020, TRO granted Mar. 31, 2020, order aff'g, Dec. 14, 2020)

Mueller v. Jacobs, No. 2020AP1958-OA (Wis. Sup. Ct., filed Nov. 27, 2020, request to file original action denied Dec. 3, 2020)

Feehan v. Wisconsin Elections Commission, No. 2:20-cv-1771 (E.D. Wis., filed Dec. 1, 2020, dismissed on jurisdictional grounds Dec. 9, 2020)

ii. Additionally, during the Larry Elder Show, respondent stated that on the date of his interview, Georgia had finally assigned a judge to hear the election content that was filed on September 4, [2020] with a volume of evidence introducing fraud and illegal actions of election officials violating state law. During the interview, respondent further claimed that by failing to appoint a judge for a full month, the court had not allowed the statutory challenge to the election to occur. Respondent stated that as a result the state election laws were not complied with.

The Georgia lawsuit Dr. Eastman referenced was filed on December 4, 2020, not September 4, 2020.

1. **What was respondent's legal and factual basis for claiming that the state election laws had not been complied with? Please provide all facts and legal authority supporting this claim that were known to respondent at the time.**

The Verified complaint filed in the case of *Trump v. Raffensperger* identifies numerous violations of state law. It is available at https://tinyurl.com/3jhb6ym6. Ga. Code Ann. § 21-2-523 provides for "immediate" and "prompt" action in the appointment of a judge to hear election challenges.

2. **What investigation or research did respondent conduct before making this statement? Please provide proof of the results of any such investigation or research.**

Dr. Eastman reviewed the Verified Complaint in *Trump v. Raffensperger*, relevant provisions of Georgia election law, and a settlement agreement that had been entered into by Georgia Secretary of State Raffensperger without legislative approval.

3. **Is it true that Georgia did not assign a judge until January 4, 2021 to hear the election fraud issues? Please explain and provide proof that this occurred.**

The case was finally transferred to the seventh judicial district on December 30, 2020.[93] A judge was apparently appointed shortly thereafter, but notice of that appointment was not given to counsel in the case until the morning of January 4, 2021.

4. **Please provide the "volume of evidence" respondent claimed to have introduced for the court to consider with regards to the election fraud claims made against Georgia.**

The evidence consists of more than 600 pages of affidavits and expert reports submitted as exhibits to the Verified Complaint in *Trump v. Raffensperger*, all available at https://tinyurl.com/5n9afp9d.

5. **Prior to respondent's statements made on the Larry Elder Show, had the alleged election fraud claims relating to the State of Georgia been heard and decided in December 2020 by the courts in**

[93] Order available at https://tinyurl.com/mr3t4fba.

Georgia?

No.

d. Respondent's Statements made at the January 6, 2021 "Stop the Steal Rally"

i. It is alleged that respondent made comments at the "Stop the Steal Rally" that among other things, (1) there were petitions before the Supreme Court regarding the violations of elections laws; (2) fraud occurred during the election, specifically, that deceased people voted; (3) there was a "secret folder" of ballots on the voting machines that were used to steal the presidency from Former President Trump; and (4) unvoted ballots were matched with unvoted voters in the machine to help get over the "finish line".

1. **At the time respondent made the statements above:**

a. What evidence did respondent have that fraud occurred during the election, specifically, that deceased people voted, that there was a "secret folder" of ballots on the voting machines that were used to steal the presidency from Former President Trump, and that unvoted ballots were matched with unvoted voters in the machine to help get over the "finish line"? Please provide all such evidence.

There were several cert petitions pending at the Supreme Court, including:

Donald J. Trump for President, Inc. v. Boockvar, No. 20-845 (S.Ct., filed Dec. 21, 2020, *cert. denied* Feb. 22, 2021).

Republican Party of Pennsylvania v. Boockvar, No. 20-542 (S.Ct., filed Oct. 23, 2020, *cert. denied* Feb. 22, 2021).

Bognet v. v. Boockvar, No. 3:20-cv-00215 (W.D. Pa., filed Oct. 22, 2020, preliminary injunction denied Oct. 28, 2022), *aff'd*, No. 20-3214 (3rd Cir., Nov. 13, 2020), *cert. petition filed*, No. 20-740 (S.Ct., Nov. 20, 2020), *cert. granted, vacated, and remanded to dismiss as moot*, No. 20-740 (S.Ct., Apr. 19, 2021).

Kelly v. Pennsylvania, No. 620 MD 2020 (PA. Commonwealth Ct., filed Nov. 25, 2020, injunction issued Nov. 25, 2020), *injunction vacated*, No. 68 MAP 2020 (Penn. Sup. Ct., Nov.

28, 2020), *cert. denied*, No. 20-810 (S.Ct., Feb. 22, 2021).

Trump v. Wisconsin Elections Commissions, No. 2:20-cv-01785 (E.D. Wis., filed Dec. 2, 2020, dismissed Dec. 12, 2020), *aff'd on laches grounds*, No. 20-3414 (7th Cir. Dec. 24, 2020), *cert. denied*, No. 20-883 (S.Ct. Mar. 8, 2021).

Trump v. Biden, No. 2020CV007092 (Wis. Super. Ct., Milwaukee Cnty. filed Dec. 3, 2020, aff'd recount Dec. 11, 2020), *aff'd*, No. 2020AP2038 (Wis. S.Ct. Dec. 14, 2020), *cert. denied,* No. 20-882 (S.Ct., Feb. 22, 2021).

King v. Whitmer, No. 2:20-cv-13134-LVP-RSW (E.D. Mich., filed Nov. 25, 2020, dismissed Dec. 7, 2020), *cert. petition in advance of appeal denied*, No. 20-815 (S.Ct., Feb. 22, 2021)

Ward v. Jackson, No. CV2020-015285 (Ariz. Superior Court, Maricopa County, filed Nov. 30, 2020), *aff'd*, No. CV-20-0343-AP/EL (Ariz. Sup. Ct., Dec. 8, 2020), *cert. denied*, No. 20-809 (S.Ct., Feb. 22, 2021).

Burk v. Ducey, No. CV202001869 (Ariz. Super. Ct., Pinal Cnty., filed Dec. 7, 2020, dismissed Dec. 15, 2020), *appeal dismissed*, No. CV-20-0349-AP/EL (Ariz. Sup. Ct., Jan. 5, 2021), *cert. denied,* No. 20-1243 (S.Ct., May 3, 2021).

The claim that deceased people voted (or, rather, that votes were cast on behalf of deceased people) was supported by expert analysis submitted as Exhibit 3 to the Verified Complaint in *Trump v. Raffensperger*, ¶ 101.[94] It was also supported by the unrebutted expert analysis submitted in the Nevada case of *Law v. Whitmer*, No. 10 OC 00163 1B (Nev. Dist. Ct., Carson City). *See id.*, Report of Jesse Kamzol,[95] Contestant's Designation of Expert Witness – Jesse Kamzol (submitted Nov. 30, 2020).

Dr. Eastman was personally advised on the evening of January 5, 2021 of the existence of suspense folders in the electronic voting machines by forensic experts who had been involved in the forensic audit conducted in Antrim County, Michigan. That information is also contained in an affidavit submitted by one of those experts, Russell Ramsland, in the case of *Wood v. Raffensperger*, No. 20-cv-04651, Dkt. #70-1, ¶ 14 (N.D. Ga. Nov. 25, 2020) (noting that "Dominion also has a 'Blank Ballot Override' function that is essentially a 'save for later' bucket that can be manually populated by the operator later").[96] Those same experts advised Eastman that an increase in the total number of ballots cast (the "denominator" in the calculation for percentage of votes reported), plus a suspension of counting, late in the evening on election day, would strongly indicate that pre-scanned ballots were being loaded from the suspense folder and then matched to voters on the voter rolls who had not voted. Those experts observed that phenomenon during the U.S. Senate

[94] Available at https://tinyurl.com/37zhct2e.

[95] Available at https://nevadagop.org/wp-content/uploads/2020/12/kamzol-data-report.pdf.

[96] Available at https://storage.courtlistener.com/recap/gov.uscourts.gand.283580/gov.uscourts.gand.283580.70.1.pdf.

runoff election in Georgia on January 5 and reported their conclusions to Dr. Eastman. Subsequent to his speech, Dr. Eastman also confirmed the "increase in the denominator" phenomenon with a separate set of experts. *See* Chapman062955.

b. What investigation or research did respondent perform before making those statements? Please provide proof of the results of any such investigation or research.

Personal conversations with experts involved in the forensic audit in Antrim, Michigan.

c. 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?

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.

A. If not, what was the purpose of these statements?

See above.

e. Respondent's Statements made at the Sandy Rios in the Morning Show, October 15, 2021

i. During an interview on Sandy Rios in the Morning on October 15, 2021, regarding respondent's statements at the Stop the Steal Rally, respondent stated, "The experts that had reviewed, uh, conducted an audit of the machines up in Michigan advised me what they saw the machines were capable of and they saw happening in Georgia the night before... At the time, I met with the actual experts and they provided that information."

1. Please provide the names and contact information for the experts that respondent referred to in this statement.

2. Also, please identify any document(s) which support respondent's answer or response, specifying which documents relate to the particular facts stated in the response.

Antrim County, Michigan audit, available at https://tinyurl.com/ytk9hv43

Affidavit of Russell Ramsland, available at https://tinyurl.com/43h395cd

Jan. 9, 2021 Email from John Droz, Chapman062955.

3. For each document identified, please provide it if it is in respondent's possession or otherwise available to respondent.

See links above, and produced bates-stamped document.

4. If a document is not in respondent's possession or otherwise available to respondent, please identify the name, address, telephone number, and email of the individual(s) or entity/entities in possession or control of each document.

ii. In the same October 15, 2021, interview with Sandy Rios in the Morning, regarding the percentage of votes and whether the denominator was based on an estimate and adjusted over time, respondent stated, "My statistician said it can't possibly be that they were as far off on that estimate as they ended up being. No mathematician worth his salt would be that far off."

1. Please provide the name and contact information for the statistician that respondent referred to in this statement.

Eric Quinnell, eric.quinnell@gmail.com

2. Please identify any individual(s) who have knowledge of the facts stated in respondent's responses by stating their name, address, telephone number(s), email and by specifying which persons have knowledge of each particular fact.

Dr. Eastman does not know how many individuals have knowledge of the above facts, but there are several experts with whom he worked, including:

Russell Ramsland, (214) 207-8280. Antrim County audit; "safe for later" folders

Joe Oltmann, joe@pinbusinessnetwork.com. Pre-scanned ballot images; connection to electronic voter rolls.

Eric Quinnell, eric.quinnell@gmail.com. Analysis of late-night increase in total votes in January 5 Georgia Senate runoff election.

3. Also, please idejntify all documents which support respondent's answer or response, specifying which documents relate to the particular facts stated in the response.

See response to e.i.2 above.

4. For each document identified, please provide if it is in respondent's possession or otherwise available to respondent or identify the name, address, telephone number, and email of those individual(s) or entity/entities in possession or control of each document.

See links above, and produced document, in response e.i.2.

f. Peter Navarro Interview

i. In an MSNBC interview, Peter Navarro indicated that there was a plan for a "Green Bay Sweep" that consisted of "100 congressmen and senators on Capitol Hill ready to implement the sweep. The sweep was simply that. We were going to challenge the results of the election in the six battleground states. They were Michigan, Pennsylvania, Georgia, Wisconsin, Nevada."

1. Did respondent play any role in the "Green Bay Sweep"?

Dr. Eastman had never heard of the "Green Bay Sweep." He did have some communications with others on the Trump legal team about objections to the electoral votes in states where election contests were still pending.

a. If so, what role and what were respondent's duties or responsibilities in connection with the "Green Bay Sweep"?

Not applicable.

b. Are there any documents memorializing the "Green Bay Sweep" or respondent's role/responsibilities? If so, please provide all such documents in respondent's possession or otherwise available to respondent or identify the name, address, telephone number, and email of those individual(s) or entity/ies in possession or control of each such document.

Dr. Eastman is unaware of documents memorializing the "Green Bay Sweep."

2. Did respondent discuss this plan with Navarro or anyone else?

No.

a. If so, who and when? Please provide contact information for each person identified.

Not applicable.

b. What was discussed?

Not applicable.

c. Who was present at that/those discussion(s)? Please provide contact information for each person identified.

Not applicable.

d. Are there any documents memorializing any such discussions? If so, please provide all such documents in respondent's possession or otherwise available to respondent or identify the name, address, telephone number, and email of those individual(s) or entity/ies in possession or control of each such document/proof thereof.

Not applicable.

g. Respondent's Statements made in the January 18, 2021 article in the American Mind, "Setting the Record Straight on the POTUS 'Ask"'

i. In this article, respondent made several factual claims regarding election fraud, specifically:

"in Fulton County, Georgia, where suitcases of ballots were pulled from under the table after election observers had been sent home for the night"

The factual claim that election observers had been sent home for the evening are contained in the Verified Complaint filed in *Trump v. Raffensperger*, No. 2020CV343255 (Fulton Cnty Super. Ct.), ¶¶ 187-191[97] and Affidavits of Mitchell Harrison (Ex. 12, ¶¶ 8-10)[98] and Michelle Branton (Ex. 13, ¶¶ 7-10).[99]

"in parts of Wayne County (Detroit), Michigan, where there are more absentee votes cast than had been requested"

Dr. Eastman does not recall the source of this claim. One possible source is Ben Wetmore, *More Suspicious Elections Absentee Data from Detroit: 36% of Absentee Ballots Returned Were From People Who Were Not Listed as Being Sent an Absentee Ballot*, The Gateway Pundit (Nov. 26, 2020). He was also aware at the time that two members of the Wayne County, Michigan Board of Canvassers had voted not to certify the election because "more than 70% of Detroit's 134 Absent Voter Counting Boards (AVCB) did not balance and many had no explanation to why they did not balance." Affidavit of Monica Palmer (Nov. 18, 2020).[100]

"in Dane County (Madison), Wisconsin, where supposedly neutral election officials coordinated with the Biden campaign an illegal ballot harvesting scheme called 'Democracy in the Park"'

See Response II.A.6 Allegation #12 above.

"in Nevada, where people were paid with gift cards to vote"

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[97] Available at https://tinyurl.com/3jhb6ym6.

[98] Available at https://tinyurl.com/bdd7n5m6.

[99] Available at https://tinyurl.com/ybj99znw.

[100] Available at https://www.wymt.com/2020/11/19/two-michigan-election-officials-file-affidavits-to-rescind-certification-of-election-results/.

This was reported in the Washington Examiner. See Paul Bedard, *Pro-Biden effort offered Native Americans $25-$500 Visa gift cards and jewelry to vote*, Washington Examiner (Dec. 3, 2020).[101]

"in Antrim County, Michigan, where votes were electronically flipped from Trump to Biden."

The Antrim County forensic audit conducted by Allied Security Operations Group, available at https://tinyurl.com/ytk9hv43, depicts "the vote 'flip' from Trump to Biden" at p. 2. That votes were flipped from Trump to Biden was confirmed by the State of Michigan's own expert, Alex Halderman, in a report issued in March 2021. J. Alex Halderman, *Analysis of the Antrim County, Michigan November 2020 Election Incident* (March 26, 2021), at https://tinyurl.com/bdfbkh22.

1. **Please provide the factual basis for these statements and all evidence supporting these statements.**

See above.

h. Respondent's Statements made in "Discussing the John Eastman Memo with John Eastman, Another Way" by Lawrence Lessig (September 27, 2021- podcast)

i. During the podcast, respondent, among other things, indicated that he told "everyone" that there was an "open question" about the Vice President's authority in the situation [to count or not count electoral votes], that it was the "weaker argument" and that it would ultimately been "foolish to exercise this option."

1. **Who is "everyone" that respondent refers to? Please provide contact information for each person identified.**

Dr. Eastman does not recall the full universe of people with whom he discussed the Vice President's constitutional authority under the Twelfth Amendment of the Constitution. He does specifically recall making that statement to President Trump, Vice President Pence, Pence's Chief of Staff Marc Short, and Pence's General Counsel Greg Jacob, during the oval office meeting on January 4, 2021. He does not have current contact information.

2. **Did respondent inform these individuals verbally and/or in writing?**

[101] Available at https://www.washingtonexaminer.com/washington-secrets/pro-biden-effort-offered-native-americans-25-500-visa-gift-cards-jewelry-to-vote.

Verbally.

a. **If so, when?**

January 4, 2021.

b. **Are there any documents memorializing these discussions? If so, please provide proof thereof.**

No.

3. Why did respondent not make the disclaimer about the Vice President's authority being the "weaker argument" in the six-page and/or two-page memoranda?

The memos were for internal discussion purposes only, and were not distributed. That the Vice President had authority under the 12th Amendment that Congress did not was not a "weaker" argument; that assertion was with respect to the question whether the Vice President could simply on his own reject electoral votes even absent multiple slates having been certified from the states.

ii. During the podcast, respondent reiterated that significant verification processes were not followed during the vote counting, that significant numbers of· deceased people voted, and that some batches of votes were counted twice, etc. Please provide proof of respondent's assertions.

See Response II.A.6 Allegation Nos. 4, 7-10.

The claim that deceased people voted (or, rather, that votes were cast on behalf of deceased people) was supported by expert analysis submitted as Exhibit 3 to the Verified Complaint in *Trump v. Raffensperger*, ¶ 101.[102] It was also supported by the unrebutted expert analysis submitted in the Nevada case of *Law v. Whitmer*, No. 10 OC 00163 1B (Nev. Dist. Ct., Carson City). *See id.*, Report of Jesse Kamzol,[103] Contestants's Designation of Expert Witness – Jesse Kamzol (submitted Nov. 30, 2020).

The claim that some batches of votes were counted twice was based on representations made directly to Dr. Eastman following a partial audit of voting machines in Fulton County, Georgia, authorized by the court in *Favorito v. Cooney*, No. 2020CV343938 (Ga. Super. Ct., Fulton Cnty., filed Dec. 23, 2020). That partial audit identified over 4,000 ballots in batches that had been scanned and counted in duplicate. See Garland Favorito, Press Release, *New Evidence Reveals GA Audit Fraud and Massive Errors* (July 13, 2021).[104]

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[102] Available at https://tinyurl.com/37zhct2e.

[103] Available at https://nevadagop.org/wp-content/uploads/2020/12/kamzol-data-report.pdf.

[104] Available at https://voterga.org/wp-content/uploads/2021/11/Press-Release-Georgia-Audit-Riddled-by-Massive-Errors-Fraud.pdf.

i. **Respondent's Statements made in "John Eastman: Here's the advice I actually gave Vice President Pence on the 2020 election" - BY JOHN C. EASTMAN SPECIAL TO THE SACRAMENTO BEE OCTOBER 7, 2021, 3:00 PM**

i. **In his statement to the Sacramento Bee, respondent wrote that, during a meeting in the Oval Office on January 4, 2021, he advised then Vice President Pence, among other things, that:**

*(1) **it would be foolish to exercise his unilateral authority to disregard slates of electoral votes from contested states in the absence of certifications of alternate Trump electors from the contested states' legislatures,***

*(2) **there was someone in the Oval Office that was not authorized to speak publicly about the Oval Office conversation who would confirm that respondent acknowledged that the vice president most likely did not have the power to disregard slates of electoral votes from contested states; and***

*(3) **what respondent advised the Vice President to do was to delay the proceedings at the request of the state legislatures so they could look into the matter.***

With regard to these statements, please answer the following:

1. **Was this the first-time respondent informed the Vice President it would be foolish to exercise his unilateral power to not count certain electoral votes?**

The meeting in the oval office on January 4, 2021, was the first and only time Dr. Eastman met with Vice President Pence.

2. **Was this advisement made verbally only?**

Orally.

3. **When else did respondent inform the Vice President or others that it would be foolish to exercise this purported power?**

Dr. Eastman did not meet with or otherwise communicate with Vice President Pence other than at the January 4 oval office meeting.

4. Who is the person respondent referred to as "someone in the Oval Office that was not authorized to speak publicly"?

The New York Times story on which this statement was based quoted an anonymous source—"A person close to Mr. Pence, who was not authorized to speak publicly about the Oval Office conversation."[105] Dr. Eastman does not know who that person was, but notes that only President Trump, Vice President Pence, Pence's Chief of Staff Marc Short, and Pence's General Counsel Greg Jacob, were with him at that Oval Office meeting.

5. When did any state legislature request that the proceedings be delayed? Please identify the individuals who requested that the election be delayed, provide the grounds on which any such individuals made such a request, and provide all evidence supporting your assertions with respect to any such statements.

This statement in the Sacramento Bee column was a quotation from the New York Times article cited above. Dr. Eastman was misquoted in the New York Times, as he stated then (and numerous other times) that state "legislators" had requested that Vice President Pence delay proceedings for a week or 10 days to give them time to assess the impact of illegality in the conduct of the election. Those letters include one dated January 4, 2021 from Pennsylvania Senate President Pro Tem Jake Corman and Senate Majority Leader Kim Ward, joined by all but seven members of the Republican caucus, noting their belief that because of significant violations of state law, the "PA election results should not have been certified" and asking "for more time" and that the Vice President "delay certification."[106] Another letter, dated January 5, 2021 and signed by nearly 100 state legislators from Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin, described the "unprecedented and admitted defiance of state law and procedural irregularities raising questions about the validity of hundreds of thousands of ballots in [their] respective states." Those legislators asked Vice President Pence "to comply with our reasonable request to afford our nation more time to properly review the 2020 election by postponing the January 6th opening and counting of the electoral votes for at least 10 days, affording our respective bodies to meet, investigate, and as a body vote on certification or decertification of the election."[107]

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[105] https://www.nytimes.com/2021/10/02/us/politics/john-eastman-trump-memo.html.

[106] Available at https://www.scribd.com/document/489945100/GOP-Senate-letter-to-Congress#download&from_embed.

[107] *See* John Solomon, *More than 100 state legislators ask Pence to delay certification of electoral votes by 10 days*, Just the News (Jan. 5, 2021), available at https://justthenews.com/politics-

V. CURRENT LITIGATION

a. *John C. Eastman v. Bennie G. Thompson,* 8:22-cv-00099-DOC-DFM

i. The Order Re Privilege of Documents Dated January 4-7, 2021 (filed March 28, 2022 in the above captioned case), refers to an internal Trump Campaign memo (the "Trump Campaign memo") which concluded in November 2020 that the fraud claims relating to Dominion voting machines were baseless. Furthermore, the Order states that by December 27, 2020, Attorney General Barr and Deputy Attorney General Donoghue stated, and advised President Trump; that there was no evidence of fraud.

1. Has respondent ever reviewed the Trump Campaign memo?

No.

a. If so when was the first time and who provided it? Please provide contact information for each person identified.

Not applicable.

b. Please provide the memo.

Dr. Eastman does not have a copy of this memo.

c. Did respondent discuss this memo with anyone else?

No.

A. If respondent discussed the memo with anyone else, please indicate:

Not applicable.

1. The name(s) and contact information of the individual(s);

Not applicable.

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policy/elections/more-100-state-legislators-ask-pence-delay-certification-electoral-votes.

2. When the discussion(s) took place; and

Not applicable.

3. The substance of the conversation(s).

Not applicable.

2. Was respondent aware of Attorney General Barr's and/or Deputy Attorney General Donoghue's findings that there was no evidence of fraud?

Dr. Eastman was aware of Attorney General Barr's public statement, but based on all the evidence of illegality of which he was aware, disagreed with it. He was not aware of any statements to the same effect by Deputy Attorney General Donoghue.

a. If so, when did respondent first learn of the findings? How did respondent learn of the findings? Please identify and provide contact information for any person who advised respondent of the findings.

Dr. Eastman does not recall when he first learned of AG Barr's public statement, but believes it would likely have been through news accounts shortly after the public statement was made in early December 2020.

b. Did respondent discuss these findings with anyone?

Dr. Eastman does not recall discussing the AG Barr statement, and based on the information he had, did not find it credible.

A. If respondent discussed the findings with anyone, please indicate:

A. The name(s) and contact information of the individual(s);

Not applicable.

B. When the discussion(s) took place; and

Not applicable.

C. The substance of the conversation(s).

Not applicable.

3. Was respondent aware of Attorney General Barr's and/or Deputy Attorney General Donoghue's findings prior to pursuing litigation alleging election fraud?

As noted above, Dr. Eastman was not aware of any findings by Deputy AG Donoghue, and although he was aware of AG Barr's public statement, that statement was contradicted by the evidence of illegality in the conduct of the election that was available to Dr. Eastman at the time.

a. If so, why did respondent pursue litigation on behalf of the former President if the findings indicated that there was no evidence of fraud?

AG Barr's public statement provided no description of the investigations that had been conducted (if, indeed, any had been), and it did not address the significant evidence of illegality in the conduct of the election that was known to Dr. Eastman at the time.

ii. The Order Re Privilege of Documents Dated January 4-7, 2021, also indicates that during the January 4, 2021 Oval Office Meeting, respondent only gave the Vice President two options: to reject electors or delay the count.

As Dr. Eastman has repeatedly noted, he did not recommend "reject electors" as an option. *See, e.g.*, John C. Eastman, *Setting the Record Straight on the POTUS "Ask,"* American Mind (Jan. 18, 2021).[108]

1. Who was present at the January 4, 2021 meeting at the Oval Office?

President Trump, Vice President Pence, Dr. Eastman, Marc Short, and Greg Jacob. White House Chief of Staff Mark Meadows was present briefly.

2. What options was former Vice President Pence provided?

The recommendation Dr. Eastman provided to Vice President Pence was that he accede to requests from state legislators to delay proceedings for up to 10 days to all the state legislatures, now

[108] https://americanmind.org/memo/setting-the-record-straight-on-the-potus-ask/.

formally back in session, to assess the impact of the illegality in the conduct of the election and determine whether it affect the election results.

3. Please explain why the Trump Campaign memo and the findings of Attorney General Barr and/or Deputy Attorney General Donoghue that there was no fraud were not addressed or discussed in respondent's six- page and/or two-page memoranda.

As noted above, Dr. Eastman was not aware of the "Trump Campaign memo," but based on the description you provide, he notes that it apparently dealt with fraud claims related to Dominion voting machines. Dr. Eastman's memos dealt with illegality in the conduct of the election. AG Barr's public statement dealt with allegations of fraud, not the allegations of illegality addressed in the memos.

4. Did a meeting with Greg Jacob take place on January 5, 2021?

Yes.

a. If so, what was discussed and who was present at the meeting? Please provide contact information for each person identified.

Greg Jacob and John Eastman were present throughout the meeting. Marc Short was present intermittently. Dr. Eastman does not have contact information for either of them.

b. What was the purpose of the January 5, 2021 meeting with Jacob?

At the conclusion of the Oval Office meeting on January 4, 2021, Vice President Pence informed President Trump that he would continue to discuss his constitutional authority at the Joint Session of Congress and either he or his staff would meet further with Dr. Eastman for that purpose.

iii. The Order Re Privilege of Documents Dated January 4-7, 2021, also references emails between Greg Jacob and respondent on January 6, 2021, in which respondent tried to persuade the Vice President to delay the count and blamed the Vice President for the "siege". In one particular email, respondent informed Jacob to "consider one more relatively minor violation and adjourn for 10 days..."

1. What "relatively minor violation" was

respondent referring to? What would the action contemplated violate? Was the fact that this action would be a violation set out in the six-page and/or two-page memoranda? If not, why not?

Vice President Pence's General Counsel, Greg Jacob, had previously contended that the time constraints set out in the Electoral Count Act precluded any delay. Dr. Eastman had contended (as had numerous other scholars, see Response II.A.13.b above) that the Electoral Count Act was unconstitutional to the extent it constrained authority given directly by the Constitution. The email exchange that includes the above language began with Greg Jacob blaming the riot on Dr. Eastman's legal analysis. It was a bit intemperate, and Jacob later apologized for the rhetoric. After Vice President Pence violated those same time constraints in the Electoral Count Act by allowing debate over objections to extend beyond the 2 hours maximum allowed by the Act (3 U.S.C. § 17, not including the time the Senate was out of session in response to the breach of the Capitol), and further by allowing extended remarks by both Senate Majority Leader Charles Schumer and Senate Minority Leader Mitch McConnell at the conclusion of the debate rather than returning "immediately" to the House as the Act (3 U.S.C. § 15) requires, Eastman noted that they had now recognized that the Act's time constraints were not nearly so sacrosanct as Jacob had previously contended. The additional "violation" was therefore to accede to the requests from over 100 state legislators for additional time to review the impact of the illegality in the conduct of the election. As noted previously, to the extent the Electoral Count Act interfered with authority given directly by the Constitution (including, Dr. Eastman has contended, the authority to delay if necessary for a proper assessment of the validity of electoral votes), the Electoral Count Act is unconstitutional. It is therefore no violation of law to insist on compliance with the Constitution when that is in conflict with a mere statute. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

2. What are the other violations that would make the current action being considered "one more" violation? Was the fact that these other violations had occurred set out in the six-page and/or two-page memoranda? If not, why not?

The "other violations" referenced were Vice President Pence's permitting debate to extend beyond the two hour maximum specified in 3 U.S.C. § 17, and to allow extended remarks to be made by Senators Schumer and McConnell following debate rather than returning to the Joint Session "immediately," as required by 3 U.S.C. § 15. They were not mentioned in the memos because the memos were drafted on December 23, 2020 and January 3, 2021 respectively, before the timing violations occurred on January 6, 2021.

iv. The Order Re Privilege of Documents Dated January 4-7, 2021, also states that despite voiced concerns and opinions from his colleagues that respondent's reading of the Electoral Count Act and 12th Amendment had no basis in law or precedent, respondent pushed forward

with his agenda.

1. **Which colleagues had voiced concerns and opinions that respondent's reading of the Electoral Count Act and 12th Amendment had no basis in law or precedent? When did this occur and what was discussed? Please provide contact information for each colleague identified.**

No one had expressed to Dr. Eastman that his interpretation of the authority conferred on the Vice President by the Twelfth Amendment "had no basis in law or precedent." As noted above, there was significant scholarship as well as historical precedent in favor of such an interpretation, as well as scholarship going the other way. The Court mentioned two people: Greg Jacob and former Circuit Judge J. Michael Luttig. Greg Jacob himself had previously acknowledged that there was disagreement about the scope of authority the Vice President had under the Twelfth Amendment. Here's what he wrote to Vice President Pence in a memo dated December 8, 2020 (in relevant part):

> … The process for counting electoral votes is prescribed by the Twelfth Amendment to the United States Constitution and—to the extent that it is constitutional—by the Electoral Count Act of 1887.
>
> As President of the Senate, it is clear that the sitting Vice President plays a prominent role in the counting of electoral votes, including resolving objections to those votes. There is disagreement, however, whether the text of the Twelfth Amendment privileges the Vice President to play a decisive role in resolving objections to electoral votes on their merits, or whether (pursuant to the Electoral Count Act) the role of the Vice President in resolving dispute is largely ministerial.
>
> … It is undisputed that the Constitution mandates that on January 6, it is the job of the Vice President to "open all certificates." Scholars disagree, however, whether the text of the Constitution also dictates that it is the job of the Vice President to count the electoral votes, as the Twelfth Amendment switches to the passive voice, and further fails to clearly identify a specified actor, when stating that "the votes shall then be counted."
>
> … A letter that was appended to the Constitution by the Framers when it was sent to the States for ratification makes it clear that they envisioned the President of the Senate would both open the electoral vote certificates and personally count the votes. The very first Senate accordingly elected a temporary President of the Senate (there being no sitting Vice President at that time) who filled the role of the Vice President in both opening and counting the electoral votes in the presence of the Senate and the House.
>
> … Some scholars argue that under the text of the Twelfth Amendment, it is the sole

> responsibility of the Vice President to count electoral votes, and that it is accordingly also the Vice President's sole responsibility to determine whether or not disputed electoral votes should be counted. There is some historical evidence that Adams and Jefferson both resolved issues over the validity of electoral votes in their own favor, and in 1857 the President of the Senate (a role filled by Senator John Crittenden, as the Vice Presidency was then vacant) personally overruled an objection to the counting of Wisconsin's electoral votes, and asserted that it was his responsibility to make the validity determination in the first instance, while suggesting that the House and Senate might thereafter jointly overrule him. In a handful of other instances, on the other hand, the House and the Senate played a more active role in resolving objections to electoral votes, and the overall record of historical practice on the point is accordingly muddy.
>
> … A number of scholars have argued that the Electoral Count Act's dispute resolution mechanism is unconstitutional because it relegates the Vice President, as President of the Senate, to a purely ministerial role in resolving such disputes. … Because there are only a few instances of historical practice under the Electoral Count Act, however, the question of its constitutionality remains muddy, and scholars continue to this day to debate the constitutionally appropriate role of the Vice President in resolving objections to electoral votes.

Gregory Jacob, Memo to Vice President Pence, *January 6 Process for Electoral Count Vote* (Dec. 8, 2020).[109]

The statement by Judge Luttig quoted by the Court that Eastman's analysis was "wrong at every turn" was from a "tweet" published on Twitter on September 21, 2021 – months after the events at issue.[110] Judge Luttig is reported to have stated at the time – that is, on the evening of January 4, 2021 – that "John is a brilliant constitutional scholar. Whatever John is telling the President has some basis in the law." Quoted in Carol Leonnig and Philip Rucker, I Alone Can Fix It: Donald J. Trump's Catastrophic Final Year 451 (Penguin Press 2021). And the "tweet" issued on September 21, 2021 was clearly erroneous in significant particulars, as Dr. Eastman has explained elsewhere. *See* John C. Eastman, *Constitutional Statesmanship*, The Claremont Review of Books (Fall 2021).[111]

2. Were the concerns and opinions voiced by these colleagues referenced in the six-page and/or two-page memoranda? If not, why not?

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[109] Available at https://www.politico.com/f/?id=0000017f-daf9-d522-ab7f-def9bf4d0000.

[110] See J. Michael Luttig (@judgeluttig), TWITTER (Sept. 21, 2021, 11:50 PM), perma.cc/ULW5-NRRT.

[111] Available at https://claremontreviewofbooks.com/constitutional-statesmanship/.

As noted above, Judge Luttig's "tweet" was not published until September 2021, long after the memos were drafted. The concerns raised by Greg Jacob during his meeting with Eastman on January 5, 2021 were likewise after the memos were drafted, and they were inconsistent with Jacob's earlier memo of December 8, 2020, acknowledging the legal scholarship and historical precedent that supported the legal analysis in the memos.

3. Were the concerns and opinions voiced by these colleagues otherwise conveyed to Vice President Pence or any member of his staff? If so, two whom, when, and how? Please provide contact information for each person identified. If not, why not?

As noted above, Response II.A.17, Dr. Eastman himself advised the Vice President during the Oval Office meeting on January 4, 2021 that it would be foolish to unilaterally reject electoral votes absent certificate of alternatives from state legislators, even if he had such constitutional authority. Greg Jacob likewise engaged with the Vice President on the topic at that meeting. Dr. Eastman presumes he did so on other occasions as well, but has no direct knowledge of that. Judge Luttig apparently provided short advice to the Vice President as well.

Mike Luttig, (312) 544-2800; judgeluttig@gmail.com.
Greg Jacob. Current contact information unknown.

4. Please explain why respondent continued with a plan to either disregard slates of electoral votes from certain contested states or delay the count and has continued to push his reading of the 12th Amendment and Electoral Count Act despite the concerns and opinions voiced by his colleagues that these positions had no basis in law or precedent.

As noted above, no one had expressed to Dr. Eastman that his legal analysis had no basis in law or precedent. Even Greg Jacob, who ended up advising the Vice President to reject the analysis, had previously recognized that there was both significant scholarly support and historical precedent for the analysis.

v. Please provide all the documents respondent provided the January 6, 2021 congressional committee.

All of the documents produced to the January 6 Committee as of May 27, 2022 have already been provided to the California State Bar investigator. A small number of additional documents that were produced to the January 6 Committee in June have to be recompiled due to an inadvertent deletion in the e-discovery platform and will be produced to the investigator as soon as that process can be completed.

In conclusion, Dr. Eastman and I appreciate the opportunity to address the State Bar's inquiries. Dr. Eastman and I remain committed to cooperating with any additional information the State Bar requests.

We look forward to working with you on this matter.

Randall A. Miller, Esq.
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Counsel for Dr. John Eastman