IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

EASTMAN ON DISCIPLINE	)	Case No. S292011

THE STATE BAR OF CALIFORNIA'S PETITION FOR REVIEW

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I. INTRODUCTION

Based on an extensive record developed over a 34-day trial with voluminous documentary evidence and extensive briefing by the parties, in a 97-page opinion, designated for publication, the State Bar Court Review Department correctly affirmed the Hearing Department's culpability findings against John Charles Eastman ("Eastman") for 10 counts of misconduct, agreeing that, in his professional capacity as a lawyer for then-presidential candidate Donald Trump, and in a joint effort with Trump to obstruct Congress's counting of electoral votes, Eastman made multiple false and misleading statements in court filings, written statements, conversations with others, and public remarks. (RD Opinion, p. 80.) The Review Department also correctly affirmed the Hearing Department's recommendation for disbarment, recognizing the grave and unprecedented nature of Eastman's misconduct in advancing legal theories he knew to be baseless; intentionally misrepresenting material facts in court and in public; and exploiting his professional standing to lend credibility to false claims that undermined the electoral process, reduced faith in election professionals, lessened respect for the courts, and

threatened the peaceful transfer of power following the 2020 presidential election. (RD Opinion, p. 95.)

The State Bar agrees with both the Review Department's culpability findings and its disbarment recommendation. Nevertheless, the State Bar respectfully petitions this Court for review of two legal errors that, while they did not affect the outcome in this case, may significantly impact future cases. (See California Rules of Court, rule 9.16(a)(1).)

First, the Review Department erred in holding that, if subject to First Amendment protection, all of Eastman's relevant statements were core political speech triggering strict scrutiny. The United States Supreme Court, the Ninth Circuit, and the State Bar Court have all recognized that when lawyers speak in their professional capacity, including in particular when engaging in client advocacy that relates to a pending case, regulation of their statements may be subject to the more deferential intermediate scrutiny that balances the attorney's speech rights against the state's regulatory and public protection interests. (See, e.g., *Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030; *Standing Committee on Discipline v. Stephen Yagman* (9th Cir 1994) 55 F.3d 1430; *In the Matter of Anderson* (1997) 3

Cal. State Bar Ct. Rptr. 775.) Here, the statements at issue were made by Eastman, acting in his professional capacity while engaging in advocacy on behalf of a client, then-candidate Trump, including in relation to pending cases. Accordingly, discipline for all or at least some of Eastman's statements would be subject only to intermediate scrutiny. The standard to be applied to speech subject to First Amendment protection is not crucial in this case, because the Review Department ultimately and appropriately found that Eastman's false, misleading, and unlawful statements did not enjoy First Amendment protection. (RD Opinion, pp. 79–82.) Review to clarify the correct standard is important, however, because, as future citable authority, the Review Department's incorrect identification of strict scrutiny as the standard applicable to all of Eastman's relevant statements stands in stark contrast to extensive jurisprudence to the contrary.

Second, the Review Department erred in declining to find significant harm as an aggravating factor. The Review Department incorrectly reasoned that harm was subsumed in the various culpability findings and that there was no evidence to directly connect Eastman as the cause of any harm that was not

subsumed in the culpability findings. (RD Opinion, pp. 86–88.) To the contrary, harm was not an element of any of the found misconduct, and the record amply demonstrates that Eastman's repeated and intentional promulgation of statements he knew to be false and legal theories he knew to be baseless had tangible, devastating consequences for public confidence in the integrity of our democratic institutions, the orderly administration of justice, and the safety of those charged with carrying out the lawful certification of a presidential election. As Judge Ribas noted, writing separately to explain why the record supported aggravation for significant harm, that others might also be responsible does not diminish Eastman's contribution to, and resulting responsibility for, these significant harms:

> Eastman was not simply one of many voices. As a prominent figure closely associated with the President, Eastman was a leader and influencer in a collective effort that included the dissemination of falsehoods to overturn the outcome of the presidential election. This resulted in a level of distrust of the electoral process that empowered members of the public to attempt to sabotage a pillar of democracy—the peaceful transfer of power.

(RD Opinion, p. 102, conc. opn. of Ribas, J.)

While disbarment is warranted with or without a finding of significant harm in aggravation, it is important for future cases

that the State Bar Court recognize and assign appropriately aggravating weight for harm, particularly when, as here, the harm brings disrepute to the legal profession and has a significant and profound impact on the public at large. This recognition is essential to guide future cases and deter similar misconduct.

For these reasons, the State Bar requests that this Court grant review, affirm the findings of culpability and recommendation of disbarment, and clarify that: (1) strict scrutiny was not the appropriate standard for all of Eastman's statements, all of which were made by Eastman in representing a client, and at least some of which related to pending cases; and (2) Eastman's misconduct caused significant harm. Upholding disbarment while correcting these two points will further public protection, maintain trust in the rule of law, and ensure that disciplinary rules and standards are applied consistently and in line with constitutional principles.[1]

[1] On September 3, 2025, without consulting with the State Bar regarding its position, Eastman filed a motion seeking additional time to file his own petition for review. Based on the issues for review identified in this motion, the State Bar anticipates opposing Eastman's petition for review. Because the two issues

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Review Department erred in stating that, if Eastman's statements were protected by the First Amendment, strict rather than intermediate scrutiny would apply to discipline for all his statements.

2. Whether the Review Department erred in declining to find significant harm as an aggravating factor.

III. ARGUMENT

A. Regulation of Speech by Lawyers Engaging in Client Advocacy Should be Subject to Intermediate Rather than Strict Scrutiny

Lawyers speaking in their professional capacity while engaging in client advocacy do not enjoy the same breadth of free speech rights as private citizens because their speech is intertwined with their duties as officers of the court, fiduciaries to their clients, and participants in the justice system. They do not lose all First Amendment rights, but their speech may be

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identified in this petition did not affect the ultimate outcome in the Review Department, the Court may determine that they do not independently warrant review if Eastman's petition is denied. For all the reasons set forth herein, however, they warrant review if Eastman's petition is granted.

restricted based on the countervailing regulatory interests in protecting the public, the profession, the courts, and the administration of justice. The United States Supreme Court has recognized that these interests may justify regulation under an intermediate scrutiny framework. (*Gentile, supra,* 501 U.S. 1030; see also *Yagman, supra,* 55 F.3d 1430.) This intermediate scrutiny properly balances lawyer speech rights with the state's regulatory and public protection interests.

1. *Gentile* Set Forth an Intermediate Scrutiny Test

The Review Department erroneously found that, if Eastman's statements were protected by the First Amendment, discipline for all his statements would be analyzed using strict, rather than intermediate, scrutiny, labeling Eastman's statements as core political speech and citing *Gentile*. (RD Opinion, at p. 78, *citing Gentile, supra*, 501 U.S. at pp. 1075–1076.) Although portions of Justice Kennedy's opinion in *Gentile* referred to the speech at issue in that case as core political speech because it was speech critical of the government, those portions did not command a majority of the Court. (*Id*. at pp. 1034–1035.) As discussed below, the majority in *Gentile* found that

intermediate scrutiny is the appropriate standard for regulation of lawyers speaking in a professional, representative capacity, at least in connection with pending cases.

In *Gentile*, a Nevada criminal defense lawyer held a press conference the day after his client was indicted, professing his client's innocence, calling the police corrupt and politically motivated, and suggesting that a police officer actually committed the crime with which his client was charged. (*Id*. at p. 1063.) The lawyer later faced disciplinary action for a violation of Nevada Supreme Court Rule 177(1), a "trial publicity" rule, which prohibited lawyers from making extrajudicial statements that they "knew or reasonably should know" would have a "substantial likelihood of materially prejudicing an adjudicative proceeding." (*Id*. at p. 1033.) The rule also contained a "safe harbor" provision that allowed lawyers to state, without elaboration, the basis for their defense.[2]

Gentile argued that, because his statements were made at a press conference to counter pre-trial publicity that might prejudice his client, he was entitled to the same First

[2] The Court found the "safe harbor" provision unconstitutionally vague. (*Id*. at p. 1048.)

Amendment protection as the press—and that his speech could only be restricted if it presented a "clear and present danger" of a malfunction of the criminal justice system, as set forth in *Nebraska Press Assn v. Stuart* (1976) 427 U.S. 539, *Bridges v. California* (1976) 314 U.S. 252, *Pennekamp v. State of Florida* (1948) 328 U.S. 331, and *Craig v. Harney* (1947) 331 U.S. 367. The Court rejected application of the clear and present danger standard, holding that "speech of lawyers representing clients in pending cases may be regulated under a less demanding standard" than that of the press. (*Id*. at p. 1074, citations omitted.) The Court explained that "lawyers representing clients in pending matters are key participants in the criminal justice system, and the State may demand some adherence to the precepts of that system in regulating their speech as well as their conduct." (*Id*.) It went on to apply to the Nevada rule an intermediate scrutiny balancing test, weighing First Amendment rights "against the State's legitimate interest in regulating the activity in question," and upholding the constitutionality of the "substantial likelihood of material prejudice" standard in the Nevada rule because "it is designed to protect the integrity and

fairness of a State's judicial system, and it imposes only narrow and necessary limitations on lawyers' speech." (*Id.* at p. 1075.)

2. The Ninth Circuit Has Applied Lesser Scrutiny to Regulation of Lawyer Speech

In *Standing Committee on Discipline v. Stephen Yagman* (9th Cir 1994) 55 F.3d 1430, in addressing a local rule prohibiting any conduct that "impugns the integrity of the Court," the Ninth Circuit rejected application of the *New York Times* subjective malice standard in lawyer disciplinary proceedings, noting the "significant differences between the interests served by defamation law and those served by rules of professional conduct," the latter "not designed to shield judges from unpleasant or offensive criticism, but to preserve public confidence in the fairness and impartiality of our system of justice." (*Id.* at p. 1437.) Instead, consistent with intermediate scrutiny and a balancing of the countervailing regulatory interests, the Ninth Circuit held lawyer disciplinary proceedings concerning this rule to be "governed by an objective standard" pursuant to which the "inquiry focuses on whether the attorney had a reasonable factual basis for making the statements,

considering their nature and the context in which they were made." (*Id.*)[3]

In addressing a different local rule prohibiting conduct that "interferes with the administration of justice," the Ninth Circuit recognized *Gentile*'s application of intermediate scrutiny in its holding that the "clear and present danger" standard "does not apply to statements made by lawyers participating in pending cases." (*Id.* at p. 1442.) The Ninth Circuit declined to extend *Gentile* "beyond the confines of a pending matter" and concluded that, under this local rule, "lawyers' statements unrelated to a matter pending before the court may be sanctioned only if they pose a clear and present danger to the administration of justice." (*Id*. at p. 1443.) Even under *Yagman*'s narrow application of *Gentile*, intermediate scrutiny would apply to many of Eastman's statements, including in particular those underlying Counts Two and Four, which involved statements made by Eastman in court

[3] In *Anderson*, the Review Department followed *Yagman* in adopting the objective standard for determining whether false statements could support discipline if they were made with reckless disregard for their truth or falsity. (*Matter of Anderson, supra,* 3 Cal. State Bar Ct. Rptr. at p. 786.)

pleadings, because they were client advocacy related to matters pending before various courts.

3. The Review Department Incorrectly Relied on *Parish* as Support for Application of Strict Scrutiny

The Review Department relied on *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370 as support for application of strict scrutiny. This reliance was misplaced for two reasons. First, *Parish* involved speech by a lawyer running for judicial office that the court found to fall within a "a category of speech that is 'at the core of our First Amendment freedoms'—speech about the qualifications of candidates for public office." (*Id.* at p. 375.) Even in this context, however, recognizing the special policy interests served by lawyer discipline, the court declined to apply to Parish's false statement the stricter *New York Times* subjective malice test, instead applying *Yagman*'s more deferential objective malice test. (*Id.* at p. 375.) Second, *Parish* recognized that, unlike the lawyer speech before it, "attorney representations to clients and to judges in the courtroom" fall outside "core First Amendment speech."

At issue in *Parish* was former rule 1-700(a) of the California Rules of Professional Conduct, which required a

lawyer running for judicial office to comply with Canon 5 of the Code of Judicial Ethics, the relevant portion of which prohibited a judicial candidate from "knowingly, or with reckless disregard for the truth," misrepresenting "the identity, qualifications, present position, or any other fact regarding the candidate or his or her opponent." (*Id.* at p. 372 & n.1.)

Parish was a deputy district attorney running against an incumbent judge in Yolo County. (*Id.* at p.372.) Parish sent out a campaign mailer containing one statement that the court found was "actually false," namely, a statement that his opponent was involved in bribery and corporate fraud. (*Id.* at pp. 373, 375.) Parish acknowledged the falsity, but urged the court to adopt the *New York Times* subjective malice test and reject culpability because he "did not know the statement was false or subjectively entertain serious doubt as to its truth." (*Id.* at p. 375.)

The court rejected this approach. Instead, recognizing the "special status" of lawyers, who "perform an essential function in the administration of justice" and "are officers of the court with a special responsibility to protect the administration of justice," the court followed *Yagman* and *Anderson* in holding that the more

deferential objective malice standard should apply in lawyer disciplinary proceedings:

> In *In the Matter of Anderson, supra,* 3 Cal. State Bar Ct. Rptr. 775, we adopted the Ninth Circuit Court of Appeal's reasoning found in *Yagman, supra,* 55 F.3d at p. 1437 and U.S. Dist. Court for E.D. of *Wash. v. Sandlin* (9th Cir.1993) 12 F.3d 861, 867 (*Sandlin*), that the purely subjective standard applicable to defamation cases is not suited to attorney disciplinary proceedings. Under the objective standard, a court must determine "what the reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances." (*Sandlin, supra,* 12 F.3d at p. 867; accord, *Yagman, supra,* 55 F.3d at p. 1437.) Reckless disregard is shown if "the attorney had no reasonable factual basis for making the statements, considering their nature and the context in which they were made." (*Yagman, supra,* 55 F.3d at p. 1437.) The inquiry "may take into account whether the attorney pursued readily available avenues of investigation." (*Ibid.*, fn. 13.)
>
> We agree with the Ninth Circuit's conclusion that the "objective malice standard strikes a constitutionally permissible balance between an attorney's right to criticize the judiciary and the public's interest in preserving confidence in the judicial system. Lawyers may freely voice criticisms supported by a reasonable factual basis even if they turn out to be mistaken." (*Yagman, supra,* at p. 1438.)

(*Parish, supra,* 5 Cal. State Bar Ct. Rptr. at p. 375 [footnote omitted].)

Another portion of the *Parish* opinion demonstrates that the Review Department was simply wrong in concluding that all of Eastman's statements constituting misconduct were "core

political speech" subject to strict scrutiny. At all relevant times, Eastman was acting in a representative capacity as candidate-Trump's lawyer. Certain of his relevant statements were made in court pleadings and memoranda to other members of Trump's legal team. Others were public, out-of-court, statements in which Eastman nevertheless was making assertions of fact or advancing legal theories in support of a particular outcome for his client. (See e.g., Ex. 28, pp. 1,4 [Eastman's January 2, 2021 appearance on Bannon's War Room, referring to Eastman as "the President's constitutional lawyer"]; Ex. 30, p. 1 [transcript of Giuliani and Eastman's speeches on January 6, 2021, where Giuliani introduces Eastman, "[E]very single thing that has been outlined as the plan for today is perfectly legal. I have Professor Eastman here with me to say a few words about that. He's one of the preeminent constitutional scholars in the United States."].)

Eastman, as a lawyer engaging in client advocacy, is subject to greater regulation than a lawyer candidate for office, a distinction recognized in *Parish*:

> OCTC argues an attorney is required to refrain from misleading and deceptive acts without qualification and cites to cases that find no distinction is to be made among concealment, half-truth, and false statement of

> fact. However, these discipline cases consider attorney representations to clients and to judges in the courtroom—they are not cases that consider the regulation of core First Amendment speech.

(*Parish, supra*, 5 Cal. State Bar Ct. Rptr. at p. 376 [citations omitted].) While speech by lawyers in their capacity as candidates for office may be core First Amendment speech subject only to regulations that meet strict scrutiny, Eastman was not the candidate here—Trump was. Eastman spoke as a lawyer representing a client, including in connection with pending cases, and as such, his relevant statements would not all trigger strict scrutiny.

In sum, while the Review Department ultimately came to the correct conclusion that Eastman's false, misleading, and unlawful statements did not enjoy First Amendment protection, it incorrectly stated that strict scrutiny would otherwise apply to all of Eastman's statements when it should have found that the appropriate framework for analyzing lawyer speech while engaged in client advocacy, at the very least in connection with a pending case, is intermediate scrutiny as set forth by the majority in *Gentile*.

B. Eastman's Misconduct Caused Significant Harm, Warranting a Finding of Aggravation

The Review Department unequivocally found harm (RD Opinion p. 86), but improperly declined to consider it in aggravation, finding that 1) the harm that was "intertwined with the various culpability findings" could not provide a basis for aggravation and 2) the record lacked evidence "to directly connect" Eastman to the harms resulting from "sowing doubt" in the electoral process, including harassment and threats directed at election workers. (RD Opinion, p. 86, citing Bus. & Prof. Code §§ 6068, subds. (a) and (d), and 6106.) The Review Department is wrong on both accounts.

1. Harm is Distinct from Culpability

This Court has consistently rejected a harm requirement in evaluating culpability for lawyer misconduct and instead has directed that harm be analyzed as an aggravating factor in the discipline phase. (*In re Bradshaw* (2025) 17 Cal.5th [culpability for moral turpitude does not require harm for fraudulent and deceitful acts, and culpability for breach of fiduciary duty does not turn on actual harm to the client, monetary or otherwise, but harm is relevant in aggravation], citing *Connor v. State Bar*

(1990) 50 Cal.3d 1047, 1057 [actual injury to client is not an element of breaching the duty against self-dealing]; *Allen v. State Bar* (1977) 20 Cal.3d 12, 17 [no harm requirement in finding fraudulent and deceitful acts]; *Barreiro v. State Bar* (1970) 2 Cal.3d 912, 926 [same for willful misrepresentations].) Accordingly, the Review Department should have separately evaluated harm as an aggravating factor, not treated it as intertwined with the various culpability findings.

2. Eastman's Misconduct Caused Actual, Cognizable Harm

The Review Department determined that there was no evidence that Eastman himself was the cause of any actual harm. This focus on tort-like causation is misplaced, as the record amply demonstrates that Eastman's misconduct alone, and in concert with others, contributed to significant and tangible injury. (See also *In re Bradshaw, supra*, 17 Cal.5th at p. 1105 [dishonest conduct that does not necessarily give rise to criminal liability or cause monetary loss still sufficient for culpability under 6106].) For example, the delay of the electoral process on January 6, 2021, by itself, constitutes significant harm. The delay harmed the lawmakers, the administration of justice, and the

nation, which endured six hours of uncertainty over the result of the election and whether the rule of law and democracy would prevail. (RT II–86:8–89:12 [Greg Jacob's testimony], Ex. 165, pp. 32, 491–495 [January 6th Select Committee Final Report]; see also *United States v. Klein* (D.D.C. 2021) 539 F.Supp.3d 145, 153 [The assault "was a singular and chilling event in U.S. history, raising legitimate concern about the security—not only of the Capitol building—but of our democracy itself."].). Greg Jacob, Vice President Pence's lawyer, was a witness to Eastman's activities and directly attributed the harm to Eastman, telling Eastman it was gravely irresponsible for him to entice Trump with a theory that had no legal viability, and that the knowing amplification of that theory through numerous surrogates, whipping large numbers of people into a frenzy over something with no chance of ever attaining legal force led to the January 6 siege. (RD Opinion, p. 102; Ex. 69, p. 3 [email from Jacob to Eastman on January 6].) Those events were the natural and foreseeable result of Eastman's explicit and overarching conspiratorial goal to disrupt the electoral count.

Moreover, the evidence shows that Eastman also caused significant harm to election officials, who endured harassment

and threats as the result of Eastman's baseless claims of a stolen election through rampant election fraud and illegalities. Speaking as then-candidate Trump's lawyer, Eastman repeatedly propagated this false narrative with the intent to subvert and cause distrust of the election and of election officials, and his tactics predictably contributed to election officials receiving threats of harm. These election officials testified in this proceeding and detailed the threats and harassments they endured as a result of the unsubstantiated claims of election fraud related to the 2020 election. (Sambo Dul, Arizona [RT XXXII-124-125, 128, 130]; Stephen Richer, Arizona [Ex. 323]; Jonathan Marks, Pennsylvania [RTXXXI-193, 195, 197, 202]; Julian Rollow, Michigan [RT X-23]; Mark Wlaschin, Nevada [RT IV-96, 171, 174].) While it is true that the election officials had no information that anyone contacted their office specifically in reaction to anything that Eastman himself said, Sambo Dul (the former Arizona State Elections Director) explained the common sense point that lawyers and other people in positions of public trust, who "fan the flames of the election misinformation and disinformation and lies, are causing this environment of threats

and harassment and harm to elections offices." (RT XXXII–139:3–140:4.)

As Judge Ribas aptly pointed out in her concurring opinion, that witnesses did not identify Eastman by name is beside the point, as he was the primary architect of a strategy to change the election's outcome by, in part, exerting pressure on government officials. He was touted as the President's "constitutional lawyer," which lent credibility to the unsupported claims he presented. (RD Opinion, pp. 98–99; see also Ex. 28, pp. 1, 4.) Judge Ribas also cited to examples of the public believing false claims of election fraud by Trump and his lawyers, including Georgia Secretary of State official Gabriel Sterling's frustration that false claims of fraud in Georgia were being spread by "people in positions of authority and respect." (*Id.* at pp. 99-100; see also Ex. 99, p. 2.) With regard to the State Farm arena election workers video, Sterling pointed out that the President's legal team had the entire tape. (*Ibid.*; Ex. 99, p. 4)

3. Eastman's Misconduct Caused Institutional and Reputational Harm

The purpose of lawyer discipline extends beyond client protection and includes protection of the public, the courts and

the legal profession; the maintenance of the high professional standards for lawyers; and the preservation of public confidence in the legal profession. (*In re Morse* (1995) 11 Cal.4th 184, 205; Rules of Procedure of the State Bar, Title IV, Standards for Attorney Sanctions for Professional Misconduct ("Standards"), Std. 1.1.) Institutional and reputational harms are central to the rationale for lawyer discipline. Even where there is no direct personal, legal, or economic injury, when a lawyer's actions undermine the administration of justice, erode trust in legal institutions, or damage the profession's standing in the eyes of the public, those consequences constitute significant aggravating factors. Indeed, the Standards make clear that aggravating circumstances include "significant harm to the client, *the public, or the administration of justice*." (Std. 1.5(j).) The Review Department failed to consider these broader and sometimes intangible injuries in its aggravation analysis—including the negative impact of Eastman's misconduct on the legal profession and the public's trust in the profession and our democratic institutions. In doing so, the Review Department ignored case law that consistently acknowledges and recognizes institutional and reputational harm.

In *In re Rivas* (1989) 49 Cal.3d 794, a lawyer knowingly and unlawfully provided the registrar of voters with false residency information in an attempt to qualify as a candidate for judge of a municipal court. Although there was no evidence that the lawyer's fraudulent candidacy affected the outcome of the election, this Court still found aggravation for harm to the public and the administration of justice:

> Through the use of these false documents, [Rivas] exposed voters to an unqualified candidate and presumably drew votes away from candidates legitimately on the ballot. While the record does not reflect whether [Rivas's] candidacy actually affected the election's outcome, his conduct seriously undermines public confidence in the integrity of the legal profession and the election process.

(*In re Rivas, supra,* 49 Cal.3d at p. 801.)

This Court took the same approach to analyzing harm in aggravation in *In re Lamb* (1989) 49 Cal.3d 239. There, a lawyer impersonated her husband and sat for the bar examination in his stead. She passed the examination, but an anonymous telephone tip to the State Bar triggered an investigation and disciplinary proceeding. Importantly, this Court found substantial aggravating harm to the public and the administration of justice, even though actual harm (the unauthorized practice of law) was

narrowly averted by the anonymous tip. (*Id.* at p. 246.) This Court noted the "public danger inherent in bar exam cheating" (*Id.* at p. 242), and found that such deceitful acts: "threatened innumerable clients with significant injury through unknowing exposure to an unqualified practitioner[] [and] undermined the integrity of the State Bar's admission system, on which public confidence in the competence of attorneys is founded." (*Id.* at pp. 245–246.)

The Review Department followed suit in *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar. Ct. Rptr. 80, where a lawyer was culpable, among other things, of harassing a juror. Although there was no evidence that the jury pool had been tainted or dissuaded from serving because of the lawyer's misconduct, the Review Department still found significant aggravation for harm to the public and the administration of justice:

> Loftus's actions demonstrate contempt for his ethical responsibilities and further alienate jurors, many of whom are already unwilling to participate in jury service. [Citation Omitted.] Given the importance of the jury system, it is paramount that attorneys interact with jurors in the most professional and ethical manner. [Citation Omitted.]

(*Loftus, supra*, 5 Cal. State Bar. Ct. Rptr. at p. 89.)

Together, these authorities establish that harm, as an aggravating factor, encompasses more than just direct harm to clients, but also institutional harm to the administration of justice and reputational harm to the legal profession and public confidence in the profession. There is no doubt that Eastman's misconduct caused immeasurable and far-reaching harm and disrepute to the profession, the public, and democracy itself, and significant aggravation should have been assigned for these harms under Standard 1.5(j).

IV. CONCLUSION

The Review Department correctly found that Eastman made myriad knowing misrepresentations—in written memoranda, in court filings, in media, and in person—falsely alleging that the 2020 presidential election had been stolen through election fraud and illegalities. After losing arguments in the courts, with election officials, and with state legislatures, Eastman concocted the theory that the Vice President, as president of the Senate, could reject or delay the count of the legally valid, state certified electors from the seven swing states. He then bombarded Vice President Pence, Pence's attorney, and the American public with this baseless legal theory, all the way

through the electoral count on January 6, 2021. On these facts, the Review Department correctly found Eastman culpable of grave misconduct:

> [Eastman] used his skills to push a false narrative in the courtroom, in the White House, and in the media. That false narrative resulted in the undermining of our country's electoral process, reduced faith in election professionals, and lessened respect for the courts of this land.

(RD Opinion at p. 95.)

> In a democracy nothing can be more fundamental than the orderly transfer of power that occurs after a fair and unimpeded electoral process as established by law.

(*Id.* at p. 1.)

The Review Department thus correctly recommended disbarment for Eastman,

> an attorney, who [swore] to uphold the laws and constitutions of the State of California and the United States, [and] attempt[ed] to actively undermine the results of an election to the most powerful office in the United States with the goal of delaying or invalidating the lawful installation of his client's electoral opponent and thereby keep his client in office.

(Id. at p. 1.)

The Review Department's culpability findings and disbarment recommendation should be affirmed by this Court.

Nonetheless, this Court should grant review to clarify that intermediate, rather than strict, scrutiny would apply to some or all of the statements at issue in this case, which were made by Eastman in his professional capacity while representing a client, including in connection with pending cases. This Court should additionally find that Eastman's misconduct was aggravated by the significant harm he caused to election officials and the electoral count itself, as well as by the profoundly damaging impact his actions had on election integrity and the public's trust in the legal profession, government, and our system of democracy. Eastman's actions constituted unprecedented misconduct of the most egregious nature and the harm he caused

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should be recognized and included in the disciplinary analysis to stand as specific and general deterrence for Eastman and other lawyers.

Dated: September 8, 2025

Respectfully submitted,

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WORD COUNT CERTIFICATE PURSUANT TO CALIFORNIA RULE OF COURT 8.520(C)(1)

Pursuant to rule 8.520(c)(1) of the California Rules of Court, I hereby certify that this brief contains 5,181 words. I have relied on the word count of the computer program used to prepare the brief.

Dated: September 8, 2025

/s/Brady R. Dewar
Brady R. Dewar

PROOF OF SERVICE

I, Ryan Sullivan, hereby declare: that I am over the age of eighteen years and am not a party to the within above-entitled action, that I am employed in San Francisco, that my business address is The State Bar of California, 180 Howard Street, San Francisco, California 94105.

On September 8, 2025, following ordinary business practice, I served a copy of the

STATE BAR OF CALIFORNIA'S PETITION FOR REVEW

via email via the Court's Truefiling system, and by U.S. Mail on the party listed as follows:

Randall Allen Miller
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I also served copies of this document electronically (with permission) upon the Clerk of the State Bar Court (kathy.sher@statebarcourt.ca.gov).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Oakland, California this 8th day of September 8, 2025.

*/s/Ryan Sullivan*_____
Ryan Sullivan