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15 *Attorneys for Plaintiff*

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

18 JOHN C. EASTMAN,
19 *Plaintiff,*
20 vs.
21 BENNIE G. THOMPSON, *et al.*
22 *Defendants*

Case No.: 8:22-cv-00099-DOC-DFM

**DECLARATION OF JOHN C.
EASTMAN IN SUPPORT OF
PRIVILEGE ASSERTIONS
("2nd Eastman Decl.")**

Date: March 9, 2022
Time: 9:00 a.m.
Judge: Hon. David O. Carter

Magistrate Judge: Hon. Douglas F.
McCormick
Crtrm.: 9D
Trial Date: not set

1 I, John C. Eastman, declare as follows, pursuant to 28 U.S.C. § 1746:

2 1. I am an attorney/partner with Constitutional Counsel Group and a
3 Senior Fellow at the Claremont Institute, where I also serve as Director of the
4 Institute’s public interest law component, the Center for Constitutional
5 Jurisprudence. I am the plaintiff in this matter and have personal knowledge of the
6 facts and matters referred to by me herein.

7
8 **Chapman University’s Common Practice on Clinical and Outside Legal Work**

9 2. During the time period that is the subject of the subpoena at issue in
10 this case (until January 14, 2021), I was a tenured professor at Chapman
11 University’s Dale E. Fowler School of Law, holding the Henry Salvatori Professor
12 of Law & Community Service endowed professorship. In that capacity, I taught
13 doctrinal courses in constitutional law and property, among other subjects. I also
14 co-directed the law school’s Constitutional Jurisprudence Clinic, which
15 represented clients before the Supreme Court and various intermediate appellate
16 courts, and in trial-level litigation.

17 3. My employment agreement with Chapman University, dated April 9,
18 1999 and executed on May 25, 1999 and June 15, 1999, expressly acknowledged
19 that, “separate and apart from [my] employment as a Faculty Member,” I may also
20 “direct a Center for Constitutional Litigation, a program jointly sponsored by the
21 Chapman University School of Law and the Claremont Institute for the Study of
22 Statesmanship and Political Philosophy.” That authorization was exercised by me
23 with the creation of the Center for Constitutional Jurisprudence at the Claremont
24 Institute in August 1999, through which Chapman law students were provided
25 opportunities to assist in the representation of the Claremont Institute’s Center for

1 Constitutional Jurisprudence as *amicus curiae* or in the representation of other
2 clients in cases of constitutional significance.

3 4. One such matter arose following the November 2000 presidential
4 election, when I was invited to testify before the Florida Legislature’s Select Joint
5 Committee on the Manner of Appointment of Presidential Electors, was formally
6 retained by the Florida Legislature to assist in the drafting of legislation that would
7 protect that State’s electoral votes, and participated as an attorney in trial-level
8 litigation in one of the several election challenges.

9 5. My post-election work addressing constitutional issues before the
10 Florida legislature and in the district court in Florida was in support of presidential
11 candidate George W. Bush and his campaign committee. With the knowledge and
12 approval of the Law School’s then-Dean, Parham Williams, and the then-Director
13 of the Law School’s library, Sheryl Kramer, I engaged several Chapman law
14 students, using the Chapman University email system, to assist with the research
15 for my testimony before the Florida legislature and my ultimate retention by the
16 Florida legislature for the drafting of legislation to protect Florida’s electoral votes.
17 That effort was not only supported by the Chapman Law School Dean, it was
18 applauded by top University officials, including (to the best of my recollection) the
19 then-President of the University, James Doti. And it was touted in the faculty
20 Rank and Tenure Committee’s report recommending me for the award of tenure,
21 which acknowledged my “status as one of a very few law professors viewed as
22 expert in the area of election law,” adding:

23 Professor Eastman spent considerable time in the Fall semester of
24 2000 testifying and preparing to testify before the Florida legislature
25 in connection with the presidential election debacle. This was a
historic event, and a once in a lifetime opportunity for a scholar with

1 this expertise to build a truly national reputation. It was in the Law
2 School's interest that Professor Eastman pursue this opportunity to
the fullest

3 6. From 2000 to 2002, I represented The Lincoln Club of Orange County
4 in a constitutional challenge to the City of Irvine, California's campaign finance
5 restrictions on independent expenditures, both in the U.S. District Court for the
6 Central District of California and then, successfully, in the U.S. Court of Appeals
7 for the Ninth Circuit. The Lincoln Club is an explicitly partisan organization
8 devoted to electing conservative Republicans to office. Chapman students worked
9 with me on the case, helping with discovery requests and motions in the district
10 court, and then participating in a moot court that was held in the Law School's
11 courtroom in October 2001, which would have been reserved using Chapman's
12 room reservation and approvals system.

13 7. I was selected as Professor of the Year in 2002 and received expedited
14 tenure and promotion to Full Professor in Spring 2002 and October 2003,
15 respectively. On information and belief, that was in part because of my high
16 profile work and engagement with students on the 2000 election and the *Lincoln*
Club cases.

17 8. Chapman Law School's promotion and tenure guidelines expressly
18 allowed for academically-oriented legal briefs to be considered in fulfilling the
19 scholarship requirement for promotion and tenure. As the Rank and Tenure
20 committee noted in its report recommending me for tenure:

21 In addition to law review articles and chapters in books, the Law
22 School Rank and Tenure Guidelines explicitly treats Amicus Curiae
23 ("friend of the court") briefs as a form of scholarship, if written at the
24 same level of quality and with the same depth of research as more
25 traditional forms of published work. Professor Eastman has been
prolific in this regard as well, having filed six such briefs before the
United States Supreme Court since beginning his career at the Law

1 School. ... These briefs were written in association with the
2 Claremont Institute Center for Constitutional Jurisprudence, and with
the aid of Chapman law students.

3 9. Standard 402(c) of the American Bar Association, which was
4 incorporated by reference into the Law Faculty Handbook, defines a full-time
5 professor as follows:

6 A full-time faculty member is one who, during the academic year, devotes
7 substantially all working time to teaching and legal scholarship, participates
8 in law school governance and service, has no outside office or business
9 activities, and whose outside professional activities, if any, are limited to
10 those that *relate to major academic interests or enrich the faculty member's*
11 *capacity as scholar and teacher, are of service to the legal profession and*
12 *the public generally*, and do not unduly interfere with one's responsibilities
as a faculty member. (Emphasis added).

13 10. My outside work on behalf of the Center for Constitutional
14 Jurisprudence, including my post-election work following the November 2000
15 presidential election, related (as the Rank & Tenure Committee acknowledged) to
16 my “major academic interests” in constitutional law, enriched my “capacity as
17 scholar and teacher,” and were “of service to the legal profession and the public
18 generally.” Indeed, the post-2000 election work helped resolve one of the most
19 contentious election challenges in our nation’s history.

20 11. In my November 15, 2002, Disclosure of Outside Professional
21 Activities, submitted to the Law School’s Dean, I noted in the section titled
22 “Outside law practice” that I was the Director of the Claremont Institute’s Center
23 for Constitutional Jurisprudence, which at the time afforded Chapman law students
24

1 an opportunity to earn directed research credit for working on the Center’s trial and
2 appellate litigation.

3 12. In 2003, at the request of the Law Faculty, the Center for
4 Constitutional Jurisprudence became more formally engaged with the Law School
5 by sponsoring a constitutional jurisprudence clinic at the Law School, offered at
6 first one semester a year and then both semesters. Among the work undertaken by
7 that clinic was involvement in post-election litigation over the constitutionality of a
8 2008 ballot initiative in California.

9 13. The brief we filed in that post-election challenge contained a signature
10 block with my official bar address at Chapman University School of Law, as well
11 as the main Law School phone extension, as follows:

12 David L. Llewellyn, Jr., SBN 71706
13 John Eastman, SBN 193726
14 Anthony T. Caso, SBN 88561
15 Karen Lugo, SBN 241268
16 *Of counsel,*
17 Center for Constitutional Jurisprudence
18 c/o Chapman University School of Law
19 One University Drive
20 Orange, California 92866
21 (714) 628-2500

22 14. Although the brief addressed an important issue of state constitutional
23 law, namely, whether an amendment to the state constitution adopted by initiative
24 could be “unconstitutional” under the very same state constitution that was just
25 amended, it was contentious because the initiative at issue was Proposition 8, by
which the voters of California defined marriage as an institution between a man
and a woman. In response, a number of law faculty, administrators, and student
organizations filed a brief on their own, explicitly on behalf of “individual

1 Chapman University organizations, faculty, staff, and students,” among others.
2 Although the signature block of the brief contained the same “c/o Chapman
3 University School of Law” formulation, together with the Chapman mailing
4 address and law school general phone number, it was not filed under the auspices
5 of any Law School clinic (as mine had been), and by claiming to be representing
6 Chapman University organizations, it conveyed the impression that the University
7 itself was taking a position in the post-election legal challenge.

8 15. That controversy yielded some proposed guidelines for clinical and
9 non-clinical legal work by law professors that were circulated by the University’s
10 general counsel. Although to my knowledge the guidelines were never formally
11 adopted, they did provide that a professor working with the legal clinics should
12 ensure that legal filings make clear that the filings were being made on behalf of a
13 clinic client and not on behalf of the University. “The words ‘Chapman
14 University’ may not appear on the brief except as part of a c/o address for the
15 author,” the proposed guidelines stated, with the following provided as an
16 example:

17 Professor Name
18 Counsel for Client Name
19 c/o Chapman University
20 One University Drive, Dept 25##
21 Orange, CA 92866

22 16. Though never formally adopted, that policy was followed by the
23 clinical professors as common practice. Non-clinical professors, filing briefs for
24 outside clients that were not part of any clinical program, also submitted court
25 pleadings using their professional Chapman University address, sometimes with
“c/o” before the Chapman name and sometimes without even that. *See, e.g.*, Brief

1 of the National Association of Counties *et al.*, *Elijah Manuel v. City of Joliet et al.*,
2 No. 14-9496 (S.Ct. 2016), which was filed by non-clinical law professor Lawrence
3 Rosenthal using his Chapman address, phone number, and email, as follows:

4 Lawrence Rosenthal
5 *Counsel of Record*
6 Chapman University
7 Fowler School of Law
8 One University Drive
9 Orange, CA 92866
10 (714) 628-2650
11 rosentha@chapman.edu

12 *See also* Brief of the National League of Cities, *et al.*, *New York State Rifle &*
13 *Pistol Assoc., et al., v. Kevin P. Bruen, et al.*, No. 20-843 (S.Ct. 2021), which was
14 filed by non-clinical law professor Lawrence Rosenthal using his Chapman
15 address, phone number, and email (though without Chapman University’s name),
16 as follows:

17 Lawrence Rosenthal
18 *Counsel of Record*
19 One University Drive
20 Orange, CA 92866
21 (714) 628-2650
22 rosentha@chapman.edu

23 17. Following that well-established and common practice, I prepared my
24 complaint in intervention on behalf of President Trump using my official bar
25 address at Chapman University, and I included in the draft a “c/o” before
“Chapman University.” I also consulted with the then-Dean of the Law School,
Matthew Parlow, about the brief, and he requested that, given the contentiousness
of the post-election litigation, I exclude the “c/o Chapman University” from the
signature block altogether, which I did. The rest of the signature block remained in

1 place, however, including the street address of Chapman University and my
2 Chapman office phone number and email—both of which were the official address
3 for my bar membership at the Supreme Court, as well as the California bar, the
4 annual dues for which were paid *by Chapman*. That signature block is as follows:

5 John C. Eastman
6 *Counsel of Record*
7 One University Drive
8 Orange, CA 92866
9 (714) 628-2587
10 jeastman@chapman.edu

11 *Counsel for Plaintiff in Intervention*

12 18. Far from being “unauthorized,” therefore, the brief was submitted in
13 line with prior precedent and common practice at the University and with the
14 advance knowledge of the Law School’s Dean. As I had in 2000 in that post-
15 election controversy, I even enlisted two Chapman Law Students to assist with the
16 representation, which given the high national—even international—profile of the
17 case, they were thrilled to do.

18 **Representation of President Trump**

19 19. The cover letter sent by Select Committee Chairman Bennie
20 Thompson to my attorney, which accompanied the subpoena that the Committee
21 issued to me on November 8, 2021, acknowledged that I “served as an attorney for
22 President Trump in his capacity as a candidate for re-election.” That letter has
23 already been made part of the record in this proceeding, at the initial hearing on
24 January 24, 2022.

25 20. My formal appearances on behalf of Candidate Trump and the Donald
J. Trump for President Committee, Inc., are a matter of public record. *See* Motion
of Donald J. Trump, President of the United States, To Intervene in his Personal

1 Capacity as Candidate for Re-Election, Proposed Bill of Complaint in Intervention,
2 and Brief in Support of Motion to Intervene, *State of Texas v. Commonwealth of*
3 *Pennsylvania, et al.*, No. 22O155 (S.Ct., filed Dec. 9, 2020) (Counsel of Record)¹;
4 Petition for a Writ of Certiorari, *Donald J. Trump for President, Inc. v. Kathy*
5 *Boockvar, Secretary of the Commonwealth of Pennsylvania, et al.*, No. 20-845
6 (S.Ct., filed Dec. 21, 2020) (Counsel of Record)²; Verified Complaint for
7 Emergency Injunctive and Declaratory Relief, *Donald J. Trump, in his capacity as*
8 *a candidate for President of the United States v. Brian P. Kemp, in his official*
9 *capacity as Governor of the State of Georgia, et al.*, No. 1:20-cv-05310 (N.D. Ga.,
10 filed Dec. 31, 2020) (co-counsel).³

11 21. Those formal representations were undertaken well in advance of the
12 documents generated between January 4, 2021 and January 7, 2021 at issue here,
13 over which I have asserted Attorney-Client privilege and Work-Product protection.

14 22. Formal approval for the filing of the cert petition in *Donald J. Trump*
15 *for President, Inc. v. Bookvar* (the Pennsylvania cert petition) was obtained from
16 Matthew E. Morgan, counsel and agent for Candidate Trump and the Donald J.
17 Trump for President, Inc. campaign committee, on December 17, 2020.

18 23. A formal engagement letter for the broader representation of
19 Candidate Trump and his campaign committee, dated December 5, 2020, was
20 transmitted to me on December 6, 2020, a few days before I filed the Motion to

21 ¹ Available at https://www.supremecourt.gov/DocketPDF/22/22O155/163234/20201209155327055_No. 22O155 Original Motion to Intervene.pdf.

22 ² Available at <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-845.html>

23 ³ Available at https://storage.courtlistener.com/recap/gov.uscourts.gand.285271/gov.uscourts.gand.285271.1.0_4.pdf

1 Intervene on behalf of the President in the *Texas v. Pennsylvania* original action.
2 That engagement letter expressly stated that both “Donald J. Trump, in his capacity
3 as a candidate for President of the United States, and Donald J. Trump for
4 President, Inc.” were the clients covered by the engagement letter. Attached hereto
5 as Exhibit A.

6 24. The engagement letter also acknowledged that it was setting forth a
7 scope of engagement that “the Client” had already asked me to undertake, namely,
8 representing “the Client in federal litigation matters in relation to the 2020
9 presidential general election, including election matters related to the Electoral
10 College.”

11 25. My actual representation of President Trump as candidate and his
12 campaign committee preceded that engagement letter by approximately three
13 months. On September 3, 2020, I was invited by Cleta Mitchell to join an Election
14 Integrity Working Group, in anticipation of post-election litigation. Ms.
15 Mitchell had been deputized by President Trump himself in late August 2020 to
16 undertake that effort on his behalf.

17 26. As a member of the Election Integrity Working Group and in
18 furtherance of my representation of President Trump as candidate and his
19 campaign committee, I began conducting legal research and collaborating with
20 academic advisors and other supporters of the President about the myriad number
21 of factual and legal issues we anticipated might arise following the election.

22 27. On November 7, 2020, I met with members of Trump’s legal team in
23 Philadelphia to provide legal advice on a complaint that was being prepared to
24 challenge illegal activity in the conduct of the election in Pennsylvania.

1 28. I also provided legal advice on behalf of the President as candidate
2 and his campaign committee in several other legal challenges that were brought in
3 December 2020, including *Donald J. Trump, et al. v. Brad Raffensberger, et al.*,
4 No. 2020CV343255 (Super. Ct. of Fulton Cnty, Ga, filed Dec. 4, 2020); *Donald J.*
5 *Trump, et al. v. Joseph Biden, et al.*, No. 20-882 (S.Ct., filed Dec. 29, 2020); and
6 *Donald J. Trump v. Wisconsin Elections Bd.*, No. 20-883 (S.Ct., filed Dec. 29.
7 2020).

8 29. In furtherance of my representation of President Trump as candidate
9 and his campaign committee and in anticipation of litigation, I communicated
10 extensively with statistical and other experts to analyze voting anomalies that
11 raised serious questions about the validity of the election in a number of key
12 counties and states. Several of those experts requested anonymity, for fear of
13 losing their academic or corporate positions and being threatened with violence
14 were it to become known, in the hyper-partisan atmosphere of the post-election
15 litigation, that they were working on statistical analysis with members of President
16 Trump’s legal team.

17 30. In furtherance of my representation of President Trump as candidate
18 and his campaign committee, I also testified before or otherwise met or
19 communicated with a number of state legislators, to advise them of their
20 constitutional authority under Article II of the Constitution to direct the “manner”
21 of choosing presidential electors, a constitutional authority that was undermined in
22 several states by actions of non-legislative state officials suspending or altering
23 state election laws, which actions we anticipated would result in litigation.

24 I declare under penalty of perjury that the foregoing is true and correct.

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Executed on February 22, 2022.

/s/ John C. Eastman
John C. Eastman

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CERTIFICATE OF SERVICE

I have served this filing on all counsel through the Court’s ECF system.

Respectfully submitted,

/s/ Charles Burnham
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