

No. 26-336

IN THE
Supreme Court of the United States

JOHN C. EASTMAN,

Petitioner,

v.

STATE BAR OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

**SEPARATE APPENDIX VOLUME FOR THE
BRIEF OF SEVENTEEN CURRENT AND FORMER
ATTORNEYS OF PRESIDENT DONALD J. TRUMP
AND HIS ASSOCIATES TARGETED BY BARFARE
AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER**

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APPENDIX A — LIST OF AMICUS CURIAE

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**APPENDIX B — COPIES OF BAR
COMPLAINTS AGAINST AMICUS CURIAE**

March 7, 2022

VIA ELECTRONIC MAIL: [REDACTED]

Hamilton P. Fox, III
Office of Disciplinary Counsel
Board of Professional Responsibility
District of Columbia Court of Appeals
515 5th Street NW Building A, Suite 117
Washington, DC 20001

Dear Mr. Fox:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

We write to request that the Office of Disciplinary Counsel investigate the actions taken by Cleta D. Mitchell relating to a concerted effort to overturn the legitimate 2020 presidential election results. Ms. Mitchell served as a lawyer and advisor to Donald Trump and his presidential campaign, working alongside Rudy Giuliani, John Eastman, Lin Wood, and Sidney Powell in an effort to overturn the 2020 presidential election.

On January 2, 2021, Ms. Mitchell participated in a telephone call in which she and Mr. Trump sought to convince Georgia's Secretary of State to "find" enough

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votes for Mr. Trump to win that state and offered knowingly false facts and allegations as part of their pressure campaign.

Ms. Mitchell's conduct violated numerous Rules of Professional Conduct, including Rule 3.3 (Candor to Tribunal), Rule 4.1 (Truthfulness in Statements to Others), and Rule 8.4 (Misconduct). A full investigation by the Office of Disciplinary Counsel office will demonstrate the egregious nature of Ms. Mitchell's actions, especially when considered in light of her purposes, the direct and possible consequences of her behavior, and the serious risk that Ms. Mitchell will repeat such conduct unless your office acts on this matter.

BACKGROUND

Donald Trump lost the 2020 presidential election.¹ He also lost Georgia and its 16 electoral votes.² Having anticipated his loss, Mr. Trump and his allies began questioning the election's legitimacy months before even one voter had cast a ballot.³ In fact, this fit a pattern of

1. See United States National Archives, Electoral College Results — 2020, available at <https://www.archives.gov/electoral-college/2020>.

2. See Certificate of Ascertainment, State of Georgia, available at <https://www.archives.gov/files/electoralcollege/2020/ascertainment-georgia.pdf>.

3. Kevin Liptak, *A List of the Times Trump Has Said He Won't Accept the Election Results or Leave Office if He Loses*, CNN (Sept. 24, 2020), <https://www.cnn.com/2020/09/24/politics/trump-election-warnings-leaving-office/index.html>.

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Mr. Trump declaring fraud or a rigged election any time he lost or expected to lose.

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.⁴ Mr. Trump’s head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, announced that the “November 3rd election was the most secure in American history. . . . There is no evidence that any voting system deleted or lost votes or changed votes or was in any way compromised.” Mr. Trump fired him. William Barr, Mr. Trump’s own Attorney General, declared that the Department of Justice has “not seen fraud on a scale that could have effected a different outcome in the election.” Attorney General Barr announced his resignation less than two weeks later, but not before again confirming that the 2020 elections had been free and fair.⁵

Many of Mr. Trump’s own senior advisors agreed with Attorney General Barr and Mr. Krebs.⁶ Indeed,

4. See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

5. M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://perma.ce4U8N-SMB5>.

6. See Deposition of Jason Miller (Feb. 3, 2022), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%207s%20Privilege%20Claims%20>

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Deputy (and later Acting) Attorney General Jeffrey Rosen and Associate (and later Acting) Deputy Attorney General Richard Donoghue regularly refuted the false information and allegations that Mr. Trump and his allies asserted about a fraudulent election.⁷ Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, that he and others told Mr. Trump that the information he was receiving from his political allies was not correct.⁸ And Mr. Donoghue has testified to the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee) that on December 27, 2020, he told Mr. Trump “in very clear terms” that after “dozens of investigations, hundreds of interviews” looking at “Georgia, Pennsylvania, Michigan, and Nevada,” the Department of Justice — Mr. Trump’s own Department of Justice — had concluded that “the major allegations are not supported by the evidence developed.”⁹

%28Redacted%29.pdf; Interview of Jeffrey Rosen (Aug. 7, 2021), United States Senate Committee on the Judiciary, 117th Cong. 30, available at <https://www.judiciary.senate.gov/rosen-transcript-final>.

7. See Interview of Jeffrey Rosen *see also* Interview of Richard Donoghue (Oct. 1, 2021), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20PlaintiffP/027s%20Privilege%20Claims%20%28Redacted%29.pdf>

8. Interview of Jeffrey Rosen.

9. Interview with Richard Donoghue.

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Despite clear proof that no fraud occurred, and that no one stole the election from him, Mr. Trump and his lawyers sought to overturn the legitimate results by filing 65 baseless lawsuits across the country.¹⁰ None succeeded and, in fact, courts have imposed sanctions on the lawyers who participated in these suits and referred them for sanctions to their respective state bars.¹¹

FACTS GIVING RISE TO COMPLAINT

Failing to achieve their desired ends through the courts, Mr. Trump's supporters turned to pressuring public officials to violate the laws and their oaths. On January 2, 2021, Mr. Trump, his chief of staff, Mark Meadows, and three of Mr. Trump's attorneys, including Ms. Mitchell, spoke with Georgia Secretary of State Brad Raffensperger, Mr. Raffensperger's general counsel, Ryan Germany, and the Deputy Secretary of State Jordan Fuchs. A full transcript of the call is attached as Exhibit 1.

At the outset, Mr. Meadows introduced Ms. Mitchell as one of Mr. Trump's attorneys. During the call, Mr. Trump repeated false allegations that had repeatedly

10. W Cummings, J. Garrison & J. Sergent, *By the numbers: President Donald Trump's failed efforts to overturn the election*, USA Today (Jan. 6, 2021), available at <https://www.usatoday.com/indepth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

11. *See, e.g., King v. Whitmer*, No. 20-13134 (U.S. Dist. Ct. E. Dist. Mich. Aug. 25, 2021), available at https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf.

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been debunked. Ms. Mitchell also misrepresented facts, which she knew to be false. Consider the alleged suitcase stuff with ballots conspiracy:

- On December 3, 2020, the Trump campaign posted an edited video to its YouTube channel that the campaign alleged showed Georgia election officials hiding suitcases of ballots under a table were counted after poll workers left for the day.¹²
- On December 4, 2020, a Georgia election official tweeted that investigators for the Secretary of State’s office had watched the hours-long video in its entirety and that the unedited version showed “normal ballot processing.”¹³ A local Georgia news station fact-checked and debunked the Trump campaign’s claim about the video. An election official tweeted: “You can watch the @wsbtv report to show that the President’s team is intentionally misleading the public about what happened at State Farm Arena on election night. They had the whole video too and ignored the truth.”¹⁴

12. Available at <https://www.youtube.com/watch?v=keANzinfINVUA>.

13. Available at <https://twitter.com/gabrielsterling/status/1334827098637291520>.

14. J. Gray, *Georgia Election Officials Show Frame-By-Frame What Happened in Fulton Surveillance Video*, WSB-TV (Dec. 4, 2020), available at <https://www.wsbtv.com>.

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- On December 5, 2020, the Georgia Secretary of State's office released the full video to news outlets, which then again debunked the Trump campaign's claims.¹⁵
- On December 6, 2020, the Chief Investigator in the Georgia Secretary of State's office signed a sworn statement affirming that:

[T]here were no mystery ballots that were brought in from an unknown location and hidden under tables as has been reported by some. Video taken hours before shows the table being brought into the room at 8:22 a.m. Nothing was underneath the table them [sic]. Around 10 p.m., with the room full of people, including official monitors and the media, the video shows ballots that had already been opened but not counted placed in boxes, sealed up, stored under the table. This was done because employees thought that they were done for the night and were closing up and ready to leave. When the counting continued into later in the night, those boxes were opened

[com/news/politics/georgia-election-officials-show-frame-by-frame-what-really-happened-fulton-surveillance-video/T5M3PY1BYFHFF0D3CIB2ULDVDE/](https://www.foxnews.com/news/politics/georgia-election-officials-show-frame-by-frame-what-really-happened-fulton-surveillance-video/T5M3PY1BYFHFF0D3CIB2ULDVDE/).

15. *Id.*

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so that the ballots inside could then be counted.¹⁶

- On December 7, 2020, Georgia election officials held a press conference and stated: “what you saw, the secret suitcases with magic ballots, were actually ballots that had been packed into those absentee ballot carriers by the workers in plain view of the monitors and the press.”¹⁷
- Acting Attorney General Jeffrey Rosen and Acting Deputy Attorney General Donoghue also directly addressed these claims in mid- to late-December.¹⁸

When speaking with the Georgia officials on January 2, Mr. Trump raised the topic of the video and Ms. Mitchell bolstered Mr. Trump’s false statements.¹⁹

16. Decl. of Frances Watson 117, ECF No. 72-1, *Pearson, et al. v. Kemp, et al.*, 20-cv-4809 (N.D. Ga. Dec. 6, 2020).

17. Georgia Election Officials Briefing Transcript December 7: Will Recertify Election Results Today (Dec. 7, 2020).

18. R. Donoghue Tr. 43 (informing President Trump that the “allegations about ballots being smuggled in a suitcase and run through the machines several times, it was not true, that we had looked at it, we looked at the video, we interviewed the witnesses, and it was not true”).

19. The full transcript of the audio recording of the January 2, 2021 call is available at <https://www.washingtonpost.com/politics/trump-raffensperger-call-transcript-georgia-vote/2021/01/03/2768e0cc-4ddd-11eb-83e3-322644d82356> story.html.

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Trump: I mean, look. Brad. We have a new tape that we're going to release. It's devastating. And by the way, that one event, that one event is much more than the 11,000 votes that we're talking about. It's, you know, that one event was a disaster. And it's just, you know, but it was, it was something, it can't be disputed. And again, we have a version that you haven't seen, but it's magnified. It's magnified, and you can see everything. For some reason, they put it in three times, each ballot, and I don't know why. I don't know why three times. Why not five times, right? Go ahead.

Raffensperger: You're talking about the State Farm video. And I think it's extremely unfortunate that Rudy Giuliani or his people, they sliced and diced that video and took it out of context. The next day, we brought in WSB-TV, and we let them show, see the full run of tape, and what you'll see, the events that transpired are nowhere near what was projected by, you know —

Trump: But where were the poll watchers, Brad? There were no poll watchers there. There were no Democrats or Republicans. There was no security there.

It was late in the evening, late in the, early in the morning, and there was nobody else in the room. Where were the poll watchers, and why

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did they say a water main broke, which they did and which was reported in the newspapers? They said they left. They ran out because of a water main break, and there was no water main. There was nothing. There was no break. There was no water main break. But we're, if you take out everything, where were the Republican poll watchers, even where were the Democrat pollwatchers, because there were none.

And then you say, well, they left their station, you know, if you look at the tape, and this was, this was reviewed by professional police and detectives and other people, when they left in a rush, everybody left in a rush because of the water main, but everybody left in a rush. These people left their station.

When they came back, they didn't go to their station. They went to the apron, wrapped around the table, under which were thousands and thousands of ballots in a box that was not an official or a sealed box. And then they took those. They went back to a different station. So if they would have come back, they would have walked to their station, and they would have continued to work. But they couldn't do even that because that's illegal, because they had no Republican pollwatchers. And remember, her reputation is — she's known all over the Internet, Brad. She's known all over.

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I'm telling you, "Where's [name]" "was one of the hot items . . . [name] They knew her. "Where's [name]?" So Brad, there can be no justification for that. And I, you know, I give everybody the benefit of the doubt. But that was — and Brad, why did they put the votes in three times? You know, they put 'em in three times.

Raffensperger: Mr. President, they did not put that. We did an audit of that, and we proved conclusively that they were not scanned three times.

Trump: Where was everybody else at that late time in the morning? Where was everybody? Where were the Republicans? Where were the security guards? Were the people that were there just a little while before when everyone ran out of the room. How come we had no security in the room. Why did they run to the bottom of the table? Why do they run there and just open the skirt and rip out the votes. I mean, Brad. And they were sitting there, I think for five hours or something like that, the votes.

Raffensperger: Mr. President, we'll send you the link from WSB.

Trump: I don't care about the link. I don't need it. Brad, I have a much better —

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Mitchell: I will tell you. I've seen the tape. The full tape. So has Alex. We've watched it. And what we saw and what we've confirmed in the timing is that they made everybody leave — we have sworn affidavits saying that. And then they began to process ballots. And our estimate is that there were roughly 18,000 ballots. We don't know that. If you know that —

Ms. Mitchell's statement was false, as independent observers and media who viewed the tape know. Either she did not watch the full tape or she deliberately misstated what the tape showed. It continued:

Mitchell: I've watched the entire tape.

Trump: — but nobody can make a case for that, Brad. Nobody. I mean, look, that's, you'd have to be a child to think anything other than that. Just a child. I mean you have your never-Trumper U.S. attorney there —

Mitchell: — how many ballots, Mr. Secretary, are you saying were processed then?

Raffensperger: We had GBI . . . investigate that.

Germany: We had our — this is Ryan Germany. We had our law enforcement officers talk to everyone who was, who was there after

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that event came to light. GBI was with them as well as FBI agents.

Trump: Well, there's no way they could — then they're incompetent. They're either dishonest or incompetent, okay?

Mitchell: Well, what did they find?

Trump: There's only two answers, dishonesty or incompetence. There's just no way. Look. There's no way. And on the other thing, I said too, there is no way. I mean, there's no way that these things could have been, you know, you have all these different people that voted, but they don't live in Georgia anymore. What was that number, Cleta? That was a pretty good number, too.

Mitchell: The number who have registered out of state after they moved from Georgia. And so they had a date when they moved from Georgia, they registered to vote out of state, and then it's like 4,500, I don't have that number right in front of me.

Trump: And then they came back in, and they voted.

Mitchell: And voted. Yeah.

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Trump: I thought that was a large number, though. It was in the 20s.

Germany: We've been going through each of those as well, and those numbers that we got, that Ms. Mitchell was just saying, they're not accurate. Every one we've been through are people that lived in Georgia, moved to a different state, but then moved back to Georgia legitimately. And in many cases —

Trump: How may people do that? They moved out, and then they said, "Ah, to hell with it, I'll move back." You know, it doesn't sound like a very normal . . . you mean, they moved out, and what, they missed it so much that they wanted to move back in? It's crazy.

Germany: They moved back in years ago. This was not like something just before the election. So there's something about that data that, it's just not accurate.

Trump: Well, I don't know, all I know is that it is certified. And they moved out of Georgia, and they voted. It didn't say they moved back in, Cleta, did it?

Mitchell: No, but I mean, we're looking at the voter registration. Again, if you have additional records, we've been asking for that, but you

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haven't shared any of that with us. You just keep saying you investigated the allegations.

In addition to repeated falsehoods, Ms. Mitchell sought to convince the officials to provide the Trump campaign with private records of individual voters:

Trump: Because what's the difference between winning the election by two votes and winning it by half a million votes. I think I probably did win it by half a million. You know, one of the things that happened, Brad, is we have other people coming in now from Alabama and from South Carolina and from other states, and they're saying it's impossible for you to have lost Georgia. We won. You know in Alabama, we set a record, got the highest vote ever. In Georgia, we set a record with a massive amount of votes. And they say it's not possible to have lost Georgia.

And I could tell you by our rallies. I could tell you by the rally I'm having on Monday night, the place, they already have lines of people standing out front waiting. It's just not possible to have lost Georgia. It's not possible. When I heard it was close, I said there's no way. But they dropped a lot of votes in there late at night. You know that, Brad. And that's what we are working on very, very stringently. But regardless of those votes, with all of it being said, we lost by essentially 11,000 votes, and

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we have many more votes already calculated and certified, too.

And so I just don't know, you know, Mark, I don't know what's the purpose. I won't give Dominion a pass because we found too many bad things. But we don't need Dominion or anything else. We have won this election in Georgia based on all of this. And there's nothing wrong with saying that, Brad. You know, I mean, having the correct — the people of Georgia are angry. And these numbers are going to be repeated on Monday night. Along with others that we're going to have by that time, which are much more substantial even. And the people of Georgia are angry, the people of the country are angry. And there's nothing wrong with saying that, you know, that you've recalculated. Because the 2,236 in absentee ballots. I mean, they're all exact numbers that were done by accounting firms, law firms, etc. And even if you cut 'em in half, cut 'em in half and cut 'em in half again, it's more votes than we need.

Raffensperger: Well, Mr. President, the challenge that you have is the data you have is wrong. We talked to the congressmen, and they were surprised.

But they — I guess there was a person named Mr. Braynard who came to these meetings and presented data, and he said that there was dead

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people, I believe it was upward of 5,000. The actual number were two. Two. Two people that were dead that voted. So that's wrong.

Trump: Well, Cleta, how do you respond to that? Maybe you tell me?

Mitchell: Well, I would say, Mr. Secretary, one of the things that we have requested and what we said was, if you look, if you read our petition, it said that we took the names and birth years, and we had certain information available to us. We have asked from your office for records that only you have, and so we said there is a universe of people who have the same name and same birth year and died.

But we don't have the records that you have. And one of the things that we have been suggesting formally and informally for weeks now is for you to make available to us the records that would be necessary [interrupted by Mr. Trump]

As Mr. Germany informed the group, "I don't think we can give access to data that's protected by law."

Ms. Mitchell then sought to circumvent the courts, falsely claiming not to know about the outcomes of investigations into the concerns Mr. Trump was raising, and then alluded to refuted allegations regarding Dominion voting machines:

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Mitchell: Mr. Secretary, Mr. President, one of the things that we have been, Alex can talk about this, we talked about it, and I don't know whether the information has been conveyed to your office, but I think what the president is saying, and what we've been trying to do is to say, look, the court is not acting on our petition. They haven't even assigned a judge. But the people of Georgia and the people of America have a right to know the answers. And you have data and records that we don't have access to.

And you can keep telling us and making public statement that you investigated this and nothing to see here. But we don't know about that. All we know is what you tell us. What I don't understand is why wouldn't it be in everyone's best interest to try to get to the bottom, compare the numbers, you know, if you say, because . . . to try to be able to get to the truth because we don't have any way of confirming what you're telling us. You tell us that you had an investigation at the State Farm Arena. I don't have any report. I've never seen a report of investigation. I don't know that is. I've been pretty involved in this, and I don't know. And that's just one of 25 categories. And it doesn't even. And as I, as the president said, we haven't even gotten into the Dominion issue. That's not part of our case. It's not part of, we just didn't feel as though we had any to be able to develop —

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The January 2 call also included a direct request by Mr. Trump to Secretary Raffensperger and Mr. Germany to “find 11,780 votes, which is one more than we have because we won the state.” Given that Mr. Trump trailed Mr. Biden by 11,779 votes, he was demanding that seeking to have the officials alter the election in his favor.

Mr. Trump also subtly threatened Secretary Raffensperger and Mr. Germany: “you are going to find that they are – which is totally illegal – it is more illegal for you than it is for them because you know what they did and you’re not reporting it.” Mr. Trump then added it is a “big risk to you and to Ryan, your lawyer.”

Secretary Raffensperger and Mr. Germany did not succumb to the pressure. They upheld the rule of law in the face of Mr. Trump’s and Ms. Mitchell’s subversive efforts.

**APPLICABLE STANDARDS AND
RULES OF PROFESSIONAL CONDUCT**

Rule 3.3(a) of the Rules of Professional Conduct provides:

A lawyer shall not knowingly: (2) Counsel or assist a client to engage in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning, or application of the law. . .

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Rule 4.1(a) states that, “In the course of representing a client, a lawyer shall not knowingly. . . make a false statement of material fact or law to a third person.”

Rule 8.4 provides that it constitutes professional misconduct to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) Commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

...

(g) Seek or threaten to seek criminal charges or disciplinary charges solely to obtain an advantage in a civil matter.

**A SUBSTANTIAL BASIS EXISTS FOR THE
OFFICE OF DISCIPLINARY COUNSEL TO
INVESTIGATE MS. MITCHELL’S CONDUCT AND
TO IMPOSE APPROPRIATE DISCIPLINE**

The Office of Disciplinary Counsel should investigate on the following bases:

*Appendix B***1. Ms. Mitchell knowingly counseled and assisted her client in criminal and fraudulent behavior.²⁰**

Mr. Trump engaged in criminal behavior when he sought to pressure public official to “find” him votes that would allow him to declare victory in Georgia. Specifically, Mr. Trump violated, at least, the following Georgia statutes:²¹

- O.C.G.A. § 21-2-604(a): solicitation to commit election fraud;²²

20. It is known that Mr. Trump engaged with other election officials, including an investigator for the Georgia Secretary of State’s office, prior to the January 2, 2021 call. The accounts of those interactions reveal additional criminal conduct by Mr. Trump. It is not known, however, whether Ms. Mitchell participated in those calls and so for purposes of this complaint, we limit ourselves to discussing Mr. Trump’s actions on the January 2, 2021 call.

21. The Brookings Institute has completed a full, comprehensive review of the potential criminal acts relating to the January 2, 2021 call. The Brookings full report is important reading and is available at <https://www.brookings.edu/wp-content/uploads/2021/10/Fulton-County-Trump-Investigation-Brookings-Report-October2021.pdf>.

22. A person engages in first-degree criminal solicitation to commit election fraud “when, with intent that another person engage in conduct constituting a felony under this article, he or she solicits, requests, commands, importunes, or otherwise attempts to cause the other person to engage in such conduct.

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- O.C.G.A. § 21-2-597: intentional interference with performance of election duties;
- O.C.G.A. § 21-2-603: conspiracy to commit election fraud;
- O.C.G.A. § 16-10-20: making false statements; and
- O.C.G.A. § 16-10-93: improperly influencing government officials.

The evidence demonstrates that Mr. Trump sought to induce Georgia election officials to disregard their legal obligations and instead “give [him] a break” and “find 11,780 votes.” The President of the United States threatened a “big risk” if the officials disregarded him and said it would be “very dangerous” for them not to heed his request. The actions Mr. Trump solicited from the election officials would have required those officials to take illegal steps to secure Mr. Trump the victory that the Georgia voters denied him.

He also made clear his intent to interfere with the officials’ performance of their election duties. Georgia law prescribes specific requirements on the Secretary of State, including “receiv[ing] from the superintendent the returns of primaries and election,” “canvass[ing] and comput[ing] the votes cast for candidates,” and “perform[ing] . . . other duties as may be prescribed by law.”²³

23. O.C.G.A. § 21-2-50.

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Secretary Raffensberger could not “find” Mr. Trump 11,780 votes without implicating his responsibility to “tabulate, compute, and canvass the votes cast for each slate of presidential electors”²⁴ and “certify the votes for all candidates.”²⁵

Mr. Trump also broke Georgia law by making repeatedly false statements in a “matter within the jurisdiction of any department or agency of state government or of the government of any county, city, or other political subdivision.”²⁶ In other words, the question of certifying the presidential election in Georgia rested with the Secretary of State’s office and Mr. Trump made intentionally false statements to Secretary Raffensberger and Mr. Germany during the January 2, 2021 call. He knew these statements to be false based on the repeated efforts of his own staff — including Attorney General Barr, Deputy Attorney General Rosen, and Associate Deputy Attorney General Donoghue — to apprise him of their investigations and to dissuade him from continuing to make baseless claims regarding the 2020 election. He ignored their briefings and advice, disregarded the facts and investigations, and instead sought to extol and extort Secretary Raffensberger and Mr. Germany into changing the election outcome.

24. O.C.G.A. § 21-2-499.

25. *Id.*

26. O.C.G.A. § 16-10-20.

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Mr. Trump took these actions in Ms. Mitchell's presence, and based on her active participation in furthering his claims, with her support. As such, Ms. Mitchell violated Rule 3.3(a) by assisting Mr. Trump in his criminal and fraudulent actions.

2. Ms. Mitchell engaged in illegal conduct that reflects adversely on her honesty and trustworthiness

As president, Mr. Trump's conduct on the phone call is more aggressive and problematic, but Georgia's criminal code applies to more than just sitting presidents. Ms. Mitchell's actions and statements during the January 2, 2021 call constitute their own violations of the Georgia statutes discussed above. As such, she violated Rule 8.4(b) as she deliberately disregarded known facts to aid her client in subverting the election. She violated Rule 8.4(g) by threatening, through Mr. Trump, Secretary Raffensberger and Mr. Germany with criminal charges for advantage in a civil matter.

Ms. Mitchell violated Rule 4.1 by making her own false statements during the call, as Mr. Germany pointed out. For example, she alleged that about 4,500 people voting illegally after moving out of state. Mr. Germany corrected her. When Secretary Raffensberger discussed the suitcase of ballots video, Ms. Mitchell insisted that she had watched the entire video and that it showed something different than what all the Secretary of State office staff and news media saw. Further, Ms. Mitchell proposed that the Secretary of State's office provide Mr. Trump's legal

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team with voters' private personal information, which would have violated the law.

3. Ms. Mitchell engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation

As discussed above, the entire enterprise that Ms. Mitchell participated in involved dishonesty, fraud, deceit, and misrepresentation. Further, this ethical standard applies to conduct that occurs outside of a tribunal.

4. Ms. Mitchell assisted others to engage in conduct that violated the Rules of Professional Conduct

The call to Secretary Raffensberger and Mr. Germany was part of a larger, concerted effort to prevent Congress from counting the electoral votes from Georgia and a handful of other states. The basis for this strategy rested in two memoranda written by John Eastman, one of Mr. Trump's attorneys.²⁷

Mr. Eastman's memoranda, which has been shown to be to grounded in neither law nor fact, recommended that Mr. Pence take "BOLD" action to secure Mr. Trump's victory.²⁸ Mr. Pence would preside over the January 6, 2021 Joint Session of Congress, during which the electoral

27. The main Eastman memorandum is available at <https://www.cnn.com/2021/09/21/politics/read-eastman-full-memo-pence-overturn-election/index.html>.

28. *Id.*

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votes cast and certified in each state on December 14, 2020 would be opened and confirmed. Established law and precedent limited Mr. Pence's role to opening the Certificates of Votes and announcing the results of each, as well as the outcome. Mr. Eastman sought to have Mr. Pence disregard the vice president's constitutional and statutory obligations, and to instead claim unto himself the authority to invalidate seven states' electoral votes and unilaterally declare Mr. Trump the victor, without turning the matter over to Congress. The scheme required an existing controversy over which slate of electors should be viewed as valid from the seven states.²⁹ In other words, for Mr. Pence to throw out the electoral votes cast and certified by the seven states, there needed to be an alternative slate of electors who claimed to be the legitimate electors.

Individuals from those seven states obliged and created false slates of electors. And thus, Mr. Eastman's scheme became a conspiracy. A conspiracy that Ms. Mitchell participated in through joining Mr. Trump's call to pressure the Georgia Secretary of State's office.

It is well-documented what happened a few days later. Mr. Trump and several members of his legal team spoke at a rally on January 6, and repeated the same type of claims that Mr. Trump and Ms. Mitchell made during the January 2 call. Members of that crowd then marched to the Capitol, breached security, vandalized the building, assaulted police officers, and sought to hunt

29. *Id.*

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down members of Congress and Mr. Pence. Nine people died as a result of the insurrection, including four police officers who committed suicide within seven months of responding to the attack.³⁰ The insurrectionists injured over 138 police officers.³¹ To date, 769 people have been charged in connection with the January 6 insurrection, with 165 of those defendants pleading guilty, and courts have imposed sentences reaching over 60 months.³²

Thus, Ms. Mitchell aided Mr. Eastman's effort to pressure Mr. Pence to disregard his constitutional and statutory duties so that Mr. Trump could reclaim the presidency. Mr. Eastman is under investigation by the State Bar of California for his actions seeking to overturn the 2020 The Rules establish that aiding others to violate such standards constitutes its own misconduct. Ms. Mitchell's efforts to assist Mr. Eastman violated Rule 8.4(a).

30. Wolfe, Jan, *Four Officers Who Responded to U.S. Capitol Attack Have Died by Suicide*, Reuters (Aug. 2, 2021), available at <https://www.reuters.com/world/us/officer-who-responded-us-capitol-attack-is-third-die-by-suicide-2021-08-02/>.

31. Schmidt, Michael S.; Broadwater, Luke, *Officers' Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. Times (Feb. 12, 2021), available at <https://www.nytimes.com/2021/02/11/us/politics/capitol-riot-police-officer-injuries.html>.

32. See <https://www.insider.com/all-the-us-capitol-pro-trump-riot-arrests-charges-names-2021-1>.

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The United States Supreme Court has long recognized in upholding disciplinary actions that “speech by an attorney is subject to greater regulation than speech by others.”³³ As officers of the court an attorney is “an intimate and trusted and essential part of the machinery of justice” and a “crucial source of information and opinion.”³⁴ Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech. Indeed, disciplinary boards and courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

That members of our esteemed profession would engage in such actions — conduct that contributed to substantial harm to American democracy — should cause considerable distress within the entire legal community.

False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of free society. When those false statements are made by an attorney, it also erodes the public’s confidence in the integrity of attorneys admitted to our bar and damages the

33. *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

34. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

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profession's role as a crucial source of reliable information.³⁵

Ms. Mitchell abused her place of trust and played a significant role in fomenting discord, violence, and death, all through spreading lies and misinformation.

For the reasons set forth above, The 65 Project respectfully requests that the Office of Disciplinary Counsel investigate Ms. Mitchell's conduct and impose appropriate discipline. And, because she has demonstrated a willingness to engage in the same problematic behaviors, we ask that you treat this matter with urgency.

Sincerely,

/s/ Michael Teter

Michael Teter
Managing Director, The 65 Project
[REDACTED]

35. *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courtslad1/calendar/ListWord/2021/06Jun/24/PDF/Matter%2003/020Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courtslad1/calendar/ListWord/2021/06Jun/24/PDF/Matter%2003/020Giuliani%20(2021-00506)%20PC.pdf).

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OKLAHOMA BAR ASSOCIATION
Office of the General Counsel

March 4, 2021

Cleta Deatherage Mitchell
Attorney at Law
139 National Drive
Pinehurst, NC 28374-8166

RE Grievance by Edward L. White and Others, DC-21-36

Dear Ms. Mitchell:

We have received the attached grievances filed against you. A copy of the grievances are enclosed. We have opened this matter for formal investigation, and you are required to respond within twenty (20) days as set forth in Rule 5.2, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. Ch. 1, App. 1-A.

This grievance will be presented to the Professional Responsibility Commission. along with your response and the results of our independent investigation. The Commission will then decide what action, if any, to take concerning the grievance.

Our investigation will address, but is not limited to, the alleged violation of the following Rules of Professional Conduct, 5 O.S. Ch. 1, App. 3-A:

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Rules 1.2, 3.3 and 8.4

A copy of your response will be furnished to the complainant, if appropriate. No particular form is prescribed for responding to the grievance. Please include copies of any documents you have or statements of others that are relevant to the grievance so that this matter may be promptly concluded. If you choose to fax your response in order to meet the twenty (20) day deadline, **you must still mail or deliver your original response, endorsed with your signature, to this office.**

If you need additional time to respond, have questions regarding the procedure, or simply wish to talk to an attorney about your grievance, please contact our office.

Sincerely,

/s/ Gina Hendryx
Gina Hendryx
General Counsel

GLH/mf

Enclosure

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Jay Dunham, Esq. 2800 Bank of America Center 15 W. 6th Street Tulsa OK 74119 elamer@swbell.net OBA No. 2532	Greg Haubrich Foshee & Yaffe 12231 S. May Ave. Oklahoma City, OK 73170 GregH@fosheeyaffe.com OBA No. 11854

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 OBA No. 21063

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January 22, 2021

Oklahoma Bar Association
Office of the General Counsel
1901 North Lincoln Blvd.
PO Box 55036
Oklahoma City, OK 73152-2036

Re. Bar Complaint Against Cleta Deatherage Mitchell
("Mitchell")—OBA No. 2255

Ladies & Gentlemen:

The above-noted counsel licensed in Oklahoma file this bar complaint consistent with their duties under Okla. Rule of Prof. Cond. ("Rule") 8.3(a). This complaint is also filed consistent with our duties under our oath taken upon admission to the bar to "support, protect and defend the Constitution of the United States and the Constitution of the State of Oldahoma." 5 O.S. § 2.

Cleta Deatherage Mitchell ("Mitchell") is a DC-based attorney formerly with the large national law firm of Foley & Lardner in their Washington, D.C. office.¹ She is from

1. Foley & Lardner expressed "concern" over Mitchell's participation in the call. See <https://www.jsonline.com/story/news/investigations/daniel-bice/2021/01/04/foley-lardner-concerned-attorneys-role-trumps-georgia-call/4127755001/> and Foley & Lardner's web site at <https://www.foley.com/en/insights/news/2021/01/firm-response-reports-partner-cleta-mitchells>. Mitchell has since resigned. See <https://www.nytimes.com/2021/01/05/us/politics/cleta-mitchell-foley-lardner-trump.html>

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Oklahoma, and she is still licensed with the OBA (OBA No. 2255). Her practice has included significant election law for many decades.

Mitchell was on the call when President Trump committed arguable state and federal crimes by seeking to subvert Georgia's election, and she was representing him at that time.² See call transcript attached as Exhibit 1. Democratic representatives Ted Lieu (CA) and Kathleen Rice (NY) are both former prosecutors, and they submitted a criminal referral to the FBI related to the call. See criminal referral attached as Exhibit 2. The President's conduct is alleged to violate both federal and state statutes. Experts in Georgia election law have also opined that the President's conduct discernably violates Georgia law. See letter from member of Georgia election board attached as Exhibit 3 and a New York Times article attached as Exhibit 4. Any lawyer familiar with general principles of election law, and particularly one like Mitchell who has been involved with election law at a high level for decades, would have known that Trump's statements likely were criminal.

2. Chief of Staff Mark Meadows asserted initially that Mitchell "is not the attorney of record [in the ongoing litigation] but has been involved." Exhibit 1 at p.1. Later, Mitchell reinforces her knowledge of the ongoing litigation by noting that a judge had not been assigned to the case yet. *Id.* at p.15. During the call, Mitchell was asking for documents that would be relevant to the litigation, so she should not be heard to argue that she was not acting as counsel in this instance.

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Trump threatened criminal prosecution and infamy to Georgia election officials who are in litigation with Trump over the election.³ Trump indicates that the negative outcome (criminal liability or ignominy or, in Trump's words, a "big risk to you") can be avoided if the Georgia officials can "just find" enough votes to change the outcome of the presidential election. See highlighted text in Exhibit 1 at p.6, for example. In this context, Trump was clearly threatening criminal prosecution or other unspecified risks to state officials if they refused to "just find" enough votes to change the election.

As an opening proposition, we offer the following regarding the function and duties of members of bars in our constitutional republic:

It is absolutely necessary that each member of the bar comprehends the great responsibility that every person who has the privilege to practice law must strive for: to be a person of unquestionable integrity as he or she deals with the rights of people before the bar. A practitioner of the legal profession does not have the liberty to flirt with the idea that the end justifies the means, or any other rationalization that would excuse less than complete honesty in the practice of the profession. Certainly, our Rules of Professional Conduct allow no such flirtation. INTEGRITY! INTEGRITY!

3. <https://www.bloomberg.com/news/articles/2021-01-04/trump-georgia-call-preceded-by-fresh-suit-over-election-results>

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INTEGRITY! It must be in the hearts of the members of our bar if our profession is going to continue to be a force in preserving the freedoms and constitutional rights of our citizens that have been established by those who preceded us often with the ultimate sacrifice, their lives. If an attorney allows pride or greed or any other human weakness to destroy his or her ability to be anything less than truthful and forthright in the practicing of the profession, then the profession will suffer and it is questionable whether this nation that was founded on the principle of liberty and justice for all can survive.

In re Discipline of Mines, 523 N.W. 2d 424, 427 (Sup. Ct. S. Dak. 1994).

Rule 1.2(d) prohibits a lawyer from counseling the client regarding conduct the lawyer knows is criminal or fraudulent. Accord Rule 3.3 (b) (requiring counsel representing a client in an adjudicative proceeding and who knows that a person is or has engaged in criminal or fraudulent conduct to “take reasonable remedial measures”). Comment 9 to Rule 1.2 provides that -

When the client’s course of action has already begun and is continuing, the lawyer’s responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by

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suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

Rule 2.1 relates to counsel's role as an advisor to a client. A lawyer must "exercise independent professional judgment and render candid advice."⁴ In so doing, the lawyer may refer to other considerations such as "moral, economic, social and political factors that may be relevant to the client's situation.

Rule 3.3 requires candor toward a tribunal. While the Georgia state election officials and counsel on the phone were adverse parties in litigation filed by Mitchell's client, they were also officials who were actively adjudicating election disputes. See for example, Exhibit 5, January 6, 2021 letter from Georgia Sec. of State Raffensperger.

4. Mitchell did at least once correct President Trump's misstatement. See Exhibit i at pp. 10, 11. President Trump denied that he had asked for investigation of a specific issue in Cobb County, and Mitchell corrected him. This demonstrates that she knew how to correct the President's lies and was capable of doing so.

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Therefore, 3.3(b) which covers duties in an “adjudicative proceeding” seems applicable. It provides that where a person is engaging...in criminal or fraudulent conduct related to the proceeding,” the lawyer must “take all reasonable remedial measures” to address that wrongful conduct by the client.

Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client’s wishes. This duty is premised on the lawyer’s obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence....

Similarly Rule 4.1 requires a lawyer to disclose material facts to avoid assisting a client’s crime or fraud.

Trump made untrue statements to state election officials while engaged in litigation with those officials and were administratively challenging the election. See, for example, fact checking in a *Washington Post* article attached as

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Exhibit 6. However, even if Trump's allegations were true, threatening criminal prosecution to leverage an official act, particularly where undertaken by the most powerful person in the world to reverse a Presidential election, is an improper act.

One discrete example of Mitchell's failures relates to voting by dead people. President Trump asserted that "upward of 5,000" dead people voted and asked Mitchell, "how do you respond to that?" See Exhibit 1 at p.6. In response, Mitchell observed that "there is a universe of people who have the same name and same birth year and died." What Mitchell was saying was, as an example, that a certain voter named Mike Smith with a birth year of 1945 died before the election, but there was also a person with that same name and birth year that also voted in the presidential election. The universe of people where that happened was circa 5,000 people. Mitchell did not clarify for her client, the President of the United States, or for the election officials that in a database of circa 10 million voters the idea that there could be duplicate identical names and birth YEARS (not the day and month) is obvious. In fact, that universe of 5,000 duplicates could all, 100% of them, be explained by the fact that common names and birth years recur among lots of people from among millions of voters. Mitchell never attempted to give candid and meaningful advice to her client to indicate that in such a large database, the likelihood of the repetition of names was high.

Another discrete example is military ballots. See Exhibit 1 at p.13. Trump asserted that 100% of military ballots

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came in for Eiden which was contrary to the President's assertion that he "won the military by a lot." The election officials asserted that there did not appear to be criminality and no validity to Trump's assertion, and Trump responded that it's "very dangerous for you to say that." *Id.* at p.14. When the subject was raised, Mitchell said "I know about it, but —," before Trump cut her off.⁵ She never endeavored to later correct the record on this subject.

The highest standards of professionalism must be applied to counsel acting in this context. As we have seen in recent days, the continued existence and functioning of our democratic republic is at stake. As counsel for the President of the United States, Mitchell had an ethical duty to disclose material facts to negate the President's lies to protect the interests of our system of governance. Lawyers have duties to their clients, to their opponents, and to the larger system of justice. "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." Preamble to the Okla. Rules of Prof. Cond. In the context of a lawyer representing the President of the United States regarding

5. Trump interrupts everyone on the call repeatedly. Mitchell will likely assert that she could not correct the record because of the President's interruptions. However, Mitchell has been in the corridors of our nation's power brokers for decades. She has been in the big leagues and knows how the game is played. Even if Trump's interruptions prevented her from doing her ethical duty during the call, she could have done so later.

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a presidential election, the duties to the “legal system” are at their apex.

Mitchell owed the highest of ethical duties to the American system of governance, but she failed to deliver even a minimum standard of ethical conduct. Her actions allowed the President of the United States to make unfounded representations and to threaten a state official and party opponent with criminal charges if those officials refused to falsify election results. Mitchell let President Trump’s falsehoods stand unchallenged. Mitchell lent the heft of her nationally known firm to the lies and threats of the President. Mitchell’s failure to exercise independent professional judgment and render candid advice to the President regarding his total misunderstanding of the facts of Georgia’s election could be argued to have contributed to the tragic events that took place on January 6, 2021 in the United States Capitol. Mitchell thus violated her duties under the above-noted Rules, and signatories ask for an investigation into her conduct and imposition of an appropriate sanction for any improprieties identified.

Respectfully Submitted,

Signatures for Mitchell Bar-Complaint (OBA No. 2255)

<u>/s/</u>	<u>/s/</u>
Ketyatta R. Bethea	Michael Carr
OBA No. 18650	OBA No. 22520

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<u>/s/</u> Jay Dunham, Esq. OBA No. 2532	<u>/s/</u> Michael D. Parks OBA No. 6904
<u>/s/</u> Frank Frasier OBA No. 17864	<u>/s/</u> Tim Reese OBA No. 14389
<u>/s/</u> Fletcher Handley OBA No. 3797	<u>/s/</u> John Paul Truskett OBA No. 20550
<u>/s/</u> Roy Dickinson OBA No. 13266	<u>/s/</u> Matthew B. Wade OBA No. 20883 [by ELW with permission]
<u>/s/</u> Greg Haubrich OBA No. 11854	<u>/s/</u> Daniel G. Webber, Jr. OBA No. 16332
<u>/s/</u> Timothy B. Hummel OBA No. 16511	<u>/s/</u> Ed White OBA No. 16549
<u>/s/</u> Stephanie Jackson OBA No. 33537 [by ELW with permission]	<u>/s/</u> Alex Yaffe OBA No. 21063 [by ELW with permission]
<u>/s/</u> Laurie Koller OBA No. 16857 [by ELW with permission]	<u>/s/</u> Eliot Yaffe OBA No. 19723

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/s/_____
Jack Zurawik
OBA No. 11588

/s/_____
Paul Harris
OBA No. 14733

/s/_____
Mark A. Engel
OBA No. 10796
[by ELW with permission]

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APPENDIX B

**THE STATE BAR
OF CALIFORNIA**

OFFICE OF CHIEF TRIAL COUNSEL

845 S. Figueroa Street, Los Angeles, CA 90017
213-765-1244
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June 28, 2023

**PERSONAL AND CONFIDENTIAL
DELIVERED VIA MY STATE BAR PROFILE**

Christina G. Bobb, Esq.
One America News (OAN)
101 Constitution Avenue NW
Washington, DC 20001

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Re: Case Number: 22-0-12246
State Bar Investigation

Dear Christina G. Bobb:

This letter is sent to you based upon information that you are not currently represented by counsel in this matter. If this is incorrect, please advise me within five days so that future communications may be directed to your counsel.

Please be aware that the State Bar of California has opened an investigation concerning the following:

Our understanding is that you are one of several attorneys who is representing or has previously represented former President Donald J. Trump related to his possession of classified government documents post-presidency at his Mar-a-Lago estate in Florida (“Mar-a-Lago”).

This letter is regarding alleged material misrepresentations made by you, and actions allegedly taken by you, related to the investigation by the U.S. Department of Justice (“USDOJ”) and Federal Bureau of Investigation (“FBI”) into Mr. Trump’s post-presidency possession of classified government documents. Specifically, there are two primary issues of concern – i) your execution on June 3, 2022, of a certification that contained misleading information and that you and another attorney representing Mr. Trump delivered to the USDOJ and FBI; and ii) your conduct in cooperating

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and responding to the USDOJ's investigation and access to discoverable information/documents.

1. Misleading June 3, 2022, Certification:

In response to a USDOJ subpoena requesting that Mr. Trump return all classified documents that remained in his possession to the government, on or about June 3, 2022, you and another attorney representing Mr. Trump, Evan Corcoran, turned over to USDOJ and FBI a sealed folder containing approximately 38 (thirty-eight) documents bearing classification markings that had been located in boxes stored by Mr. Trump at Mar-a-Lago. The evening prior to the production of these documents to USDOJ and FBI, Mr. Corcoran had contacted you and asked if you would come to Mar-a-Lago the next morning to act as a custodian of records and sign a certification regarding the search for documents with classification markings. Though you had no role in that search, you agreed to do so. The next day, June 3, 2022, you signed a certification (copy attached) as the custodian of records for "The Office of Donald J. Trump" and took the certification to Mar-a-Lago to provide to the USDOJ and FBI. In the certification, you stated that, "[b]ased upon the information that [had] been provided to" you: (a) "A diligent search was conducted of the boxes that were moved from the White House to Florida"; (b) "This search was conducted after receipt of the subpoena, in order to locate any and all documents that are responsive to the subpoena"; and (c) "Any and all responsive documents accompany this certification."

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This certification was false in that after the FBI subsequently executed a search warrant at Mar-a-Lago, they discovered and seized approximately 11,000 additional government records, which included approximately 100 additional classified documents, from Mar-a-Lago on August 8, 2022. In addition, your certification was materially false and misleading in that, as you knew at the time: (a) you had performed no search of any boxes at Mar-a-Lago; (b) you had not reviewed the May 11 subpoena; and (c) you had not reviewed the contents of the sealed folder that accompanied your certification.

2. Suppression of Evidence/Obstruction of Justice:

The USDOJ has alleged that you or others, “explicitly prohibited government personnel from opening or looking inside any of the boxes that remained in the storage room ... and that efforts were likely taken to obstruct the government’s investigation” (see attached United States’ Response to Motion for Judicial Oversight and Additional Relief, at pp. 8-10).

Your written response to these allegations, along with any supporting documentation, is requested. If possible, please forward your written response as an attachment to an email addressed to the undersigned at charlie.hummell@calbar.ca.gov. Please be aware that all documents that you send to the State Bar, whether copies or originals, become State Bar property and are subject to destruction.

In addition to your written response, please provide the information requested below and legible copies of any referenced documents:

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1. Without divulging any attorney-client privileged communication, please explain the sequence of events and timeline of events regarding the drafting and submission of your June 3, 2022, Certification? Who drafted the Certification?
2. If you did not draft the Certification, please explain whether you requested that any edits be made to the document before signing? If yes, please explain the edits requested and why you requested any such edits?
3. Please explain who, if anyone, asked you to sign the Certification as Custodian of Records?
4. If the Certification was drafted by someone other than you, please explain why that individual did not sign the Certification themselves?
5. Please explain why you were willing to sign the Certification as the “Custodian of Records” if you did not personally conduct the search for the records?
6. Please explain whether you personally performed due diligence to confirm the validity of the statements made in the Certification regarding the status of classified documents at Mar-a-Lago. Did you ever personally conduct any search of Mar-a-Lago for the documents in response to the USDOJ subpoena? If so, when? If you did not make any efforts, please explain why not?

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7. Please explain the involvement, if any, that attorneys M. Evan Corcoran and/or Boris Epshteyn had in your signing and submission of the Certification. Did they have any role in drafting the Certification? Did they guide you as to how to draft the Certification? Did they make any edits to your Certification?
8. Please explain all steps you took to cooperate with the USDOJ during the June 3, 2022 Mar-a-Lago meeting and whether you in any way prohibited government personnel from opening or looking inside any of the boxes that remained in the storage room at Mar-a-Lago.
9. Please explain whether you helped Mr. Trump, directly or indirectly, hide government or classified documents at Mar-a-Lago at any time, for any reason.
10. Please provide an unredacted copy of the June 3, 2022 Certification signed by you. Please explain whether you requested that your name and/or signature be redacted when the document was made public. If yes, please explain why you requested that your name and/or signature be redacted?
11. Please provide a copy of the transcript of your reported October 2022 voluntary interview with the USDOJ regarding the signed Certification.

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**FAILURE TO PROVIDE THE DOCUMENTS
REQUESTED IN THIS LETTER MAY RESULT IN
THE ISSUANCE OF A SUBPOENA DUCES TECUM.**

In addition, pursuant to Business and Professions Code section 6086.10, you may be subject to a cost assessment for the expenses incurred by the State Bar if this matter results in public discipline.

We must receive your written response, and the requested information and documents, by **July 14, 2023**. Please also be reminded that Business and Professions Code Section 6068(i) states that it is the duty of an attorney to cooperate with and participate in any State Bar investigation.

Upon request, the Office of Chief Trial Counsel will consider granting you additional time within which to submit a written response to the allegations and the requested information and documents. A request for an extension of time must be in writing and state good cause as to the specific constraints on your practice which are claimed to necessitate the additional time. Any request for extension of time must be received by the undersigned on or before **July 14, 2023**.

Please feel free to call me at 213-765-1244 if you have any questions.

Respectfully,

/s/ Charlie Hummell
Charlie Hummell
Investigator

55a

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THE 65 PROJECT

February 15, 2023

VIA ELECTRONIC MAIL: [REDACTED IN
ORIGINAL]

State Bar of Georgia
Office of the General Counsel
104 Marietta Street, N.W., Suite 100
Atlanta, GA 30303

Dear General Counsel's Office:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

We write to request that the Office of General Counsel investigate the actions taken by Kurt Hilbert relating to his effort to overturn the 2020 presidential election. Mr. Hilbert served as part of a coordinated attempt to abuse the judicial system to promote and amplify bogus, unsupported claims of fraud to discredit an election that Mr. Trump lost.

Mr. Hilbert worked on four matters, all in the state of Georgia: *Boland v. Raffensperger*, *Trump v. Raffensperger*, *Still v. Raffensperger*, and *Trump v. Kemp*. All of these actions, in which Mr. Hilbert filed similar complaints, lacked any basis in law or fact. Indeed, they were nearly copies of litigation filed in other battleground states, as lawyers sought to create a false narrative about

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voter fraud that was based on conjecture and conspiracy theories.

A full investigation by the Office of General Counsel will demonstrate the egregious nature of Mr. Hilbert's actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior, and the serious risk that Mr. Hilbert will repeat such conduct unless disciplined.

BACKGROUND

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.¹ Mr. Trump's head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, announced that the "November election was the most secure in American history. . . . There is no evidence that any voting system deleted or lost votes or changed votes or was in any way compromised." Mr. Trump fired him. William Barr, Mr. Trump's own Attorney General, declared that the Department of Justice has "not seen fraud on a scale that could have effected a different outcome in the election." Attorney General Barr announced his resignation less than two weeks later, but not before again confirming that the 2020 elections had been free and fair.²

1. See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

2. M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, *Associated Press* (Dec. 1, 2020), <https://perma.cc/4U8N-SMB5>.

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Many of Mr. Trump’s own senior advisors agreed with Attorney General Barr and Mr. Krebs.³ Indeed, Deputy (and later Acting) Attorney General Jeffrey Rosen and Associate (and later Acting) Deputy Attorney General Richard Donoghue regularly refuted the false information and allegations that Mr. Trump and his allies asserted about a fraudulent election.⁴ Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, he and others told Mr. Trump that the information he was receiving from his political allies was not correct.⁵ And Mr. Donoghue has testified to the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee) that on December 27, 2020, he told Mr. Trump “in very clear terms” that after “dozens of investigations, hundreds of interviews” looking at “Georgia, Pennsylvania, Michigan, and Nevada,” the Department of Justice – Mr. Trump’s own Department of

3. See Deposition of Jason Miller (Feb. 3, 2022), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>; Interview of Jeffrey Rosen (Aug. 7, 2021), United States Senate Committee on the Judiciary, 117th Cong. 30, available at <https://www.judiciary.senate.gov/rosen-transcript-final>.

4. See Interview of Jeffrey Rosen *see also* Interview of Richard Donoghue (Oct. 1, 2021), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>

5. Interview of Jeffrey Rosen.

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Justice – had concluded that “the major allegations are not supported by the evidence developed.”⁶

Despite clear proof that no fraud occurred, and that no one stole the election from him, Mr. Trump and his lawyers sought to overturn the legitimate results by filing 65 baseless lawsuits across the country.⁷ None succeeded and, in fact, courts have imposed sanctions on the lawyers who participated in these suits and referred them for sanctions to their respective state bars.⁸

CONDUCT GIVING RISE TO THE COMPLAINT

Mr. Hilbert helped lead the charge on behalf of Mr. Trump in Georgia.

On November 30, 2020, Mr. Hilbert initiated *Boland v. Raffensperger* in the Superior Court of Georgia in Fulton County. Then, on December 4, 2020, Mr. Hilbert filed *Trump v. Raffensperger* in the Superior Court of Georgia in Fulton County. Mr. Hilbert subsequently filed *Still v. Raffensperger* in the Superior Court of Georgia in

6. Interview with Richard Donoghue.

7. W. Cummings, J. Garrison & J. Sargent, *By the numbers: President Donald Trump’s failed efforts to overturn the election*, USA Today (Jan. 6, 2021), available at <https://www.usatoday.com/indepth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

8. See, e.g., *King v. Whitmer*, No. 20-13134 (U.S. Dist. Ct. E. Dist. Mich. Aug. 25, 2021), available at https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf.

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Fulton County on December 12, 2020. Finally, Mr. Hilbert initiated *Trump v. Kemp* on December 31, 2020 in the United States District Court for the Northern District of Georgia. The complaints Mr. Hilbert filed in these four cases all rely solely on unfounded conspiracy theories, easily proven false, with no basis in law or fact.

For example, in *Trump v. Kemp*, the Plaintiffs stated:

[T]he most egregious violation is by the conduct of Fulton County Election Officials. At about 10:00 pm on the evening of 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 those ballots without open viewing by the public in violation of O.C.G.A § 21-2-483. Whether the ballots were properly placed under the table is not the question, or is whether the ballots were fraudulent, rather, the actus reus was processing the ballots after fraudulently informing the public that counting was to stop and then restarting counting, without open viewing by the public.⁹

9. *Trump v. Kemp*, Case No. 20-CV-05310-MHC (N.D. Ga.) Dec. 31, 2020, Compl. at 10-11.

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Nothing in the above assertion is true. This “suitcases full of ballots” myth was promoted directly after the election and has no factual basis. There were no suitcases of ballots, but simply regular ballots storage containers, no announcement was made to get people to leave, and even if there was it is not against Georgia law to count ballots once some observers have left.¹⁰ And Mr. Hilbert knew this allegation was false. This conspiracy theory was debunked weeks before he even filed his complaint in *Trump v. Kemp*, and yet he filed it anyway.

In *Boland v. Raffensperger*, Mr. Hilbert argues that an “expert analysis identified 20,312 ballots cast by individuals in the 2020 General Election who do not reside in Georgia.” This is a stunning allegation. Not only is this claim false, but this so called “expert” is really just a conspiracy theorist with a YouTube channel. In fact, Judge Emily K. Richardson of the Superior Court of Georgia in Fulton County, found that “Count I, which alleges that 20,312 people may have voted illegally in Georgia, relies upon a YouTube video which purportedly is based upon United States Postal Service mail forwarding information,” and that [e]ven if credited, the Complaint’s factual allegations do not plausibly support his claims.¹¹ Judge Richardson simply found that “[t]he allegations in the Complaint rest on speculation rather than duly

10. Angelo Fichera, *Video Doesn’t Show “Suitcases “ of Illegal Ballots in Georgia*, FACTCHECK.ORG (Dec. 4, 2020), <https://www.factcheck.org/2020/12/video-doesnt-show-suitcases-of-illegal-ballots-in-georgia/>.

11. *Boland v. Raffensperger*, Case No. 2020CV343018 (Ga. Sup. Ct.), Dec. 8, 2020, Final Order at 5.

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pled facts. They cannot, as a matter of law, sustain this contest.”¹²

Further, in *Trump v. Raffensperger*, Mr. Hilbert alleged, without providing evidence, that “thousands of unqualified persons” were allowed to register to vote, including, “2,560 felons” and “66,247 underage-and therefore unqualified-people.”¹³ This is not the only woefully deficient complaint filed by Mr. Hilbert. In *Trump v. Kemp*, not only did Judge Mark H. Cohen of the United States District Court for the Northern District of Georgia find that the lawsuit lacked standing, and that the court lacked jurisdiction over the suit, but that the plaintiffs failed to find any law that supports their claim.¹⁴

In fact, Judge Cohen held that the *Trump v. Kemp* lawsuit must fail because “Plaintiff offers no authority to support a federal court hijacking a pending state election contest case under any circumstances,” and that the “Plaintiff has failed to cite any statute or case that provides for any mode of challenging electoral votes already certified and counted by the Electoral College outside the congressional method outlined in 3 U.S.C. § 15. Thus, this Court finds no grounds upon which to independently order the decertification of Georgia’s

12. *Id.*

13. *Trump v. Raffensperger*, Case No. S21M0561 (Ga. Sup. Ct.), Dec. 4, 2020, Compl. at 16-17.

14. *Trump v. Kemp*, Case No. 20-CV-05310-MHC (N.D. Ga.) Dec. 31, 2020, Order at 9, 15.

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election results.”¹⁵ Furthermore, Judge Cohen found that “[t]he Complaint does not elaborate specifically how the Electors Clause was violated. Plaintiffs brief in support of his Motion for Expedited Declaratory and Injunctive Relief does little to clarify the matter. Plaintiff argues in conclusory fashion that because Defendants violated the Georgia Election Code they thereby violated the Electors Clause.”¹⁶

Including these types of allegations to support any lawsuit would be problematic. More troubling, though, is that Mr. Hilbert sought to disqualify every vote in Georgia so that Mr. Trump would prevail. Mr. Hilbert knew he had neither the law nor the facts on his side, and yet he filed numerous lawsuits anyway. He did this to undermine faith in our electoral system.

After a flurry of activity on these cases, Mr. Hilbert voluntarily dismissed each one of his cases on January 7th 2021. The day after a violent mob attempted an insurrection on the Capitol, Mr. Hilbert withdrew all four of his cases.

Oddly enough, Mr. Hilbert lied to the court in all four of the voluntary dismissals he filed in court. In each one, Mr. Hilbert said he was dismissing his case because of an “out of court agreement” with the Defendants.¹⁷

15. *Id.* at 17, 19.

16. *Id.* at 19-20.

17. *See e.g. Trump v. Raffensperger*, Case No. S21M0561 (Ga. Sup. Ct.), Jan. 7, 2021, Notice of Voluntary Dismissal at 1.

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However, no agreement had ever been reached. In fact, defense counsel stated that “inquiries [into settling] were repeatedly rebuffed by Defendants on the grounds that Plaintiffs’ litigation efforts were frivolous.”¹⁸ Defense counsel even filed in the response emails between Mr. Hilbert and the defense attorneys where the defense attorneys completely reject any settlement and make it plain that no settlement is on the table.¹⁹

These lawsuits had the intended effect of undermining our democracy. In *Still v. Raffensperger*, Mr. Hilbert lied to the court and alleged that his client, Shawn Still was an “Official Presidential Elector.”²⁰ This was false, and now Shawn Still is under criminal investigation for posing as a fake elector.²¹ Mr. Hilbert used this lawsuit to attack the Coffee County Board of Elections in Georgia. Then, on January 7th, 2021, the same day he withdrew the lawsuit, another fake elector helped pro-Trump operatives break into voting machines in Coffee County, Georgia.²²

18. See e.g. *Trump v. Raffensperger*, Case No. S21M0561 (Ga. Sup. Ct.), Jan. 7, 2021, Response to Voluntary Dismissal at 1.

19. *Id.* at 14.

20. *Still v. Raffensperger*, Case No. 2020CV343711 (Ga. Sup. Ct.), Dec. 12, 2020, Compl. at 2.

21. Mark Niesse, *Republicans Back Fake Elector for State Senate*, ATLANTA-JOURNAL CONSTITUTION (Aug. 2, 2022), <https://www.ajc.com/politics/republicans-back-fake-electors-for-georgia-statesenate/GTXWF7YSZ5COPEE3UDOEMM5IEE/>.

22. Zachary Cohen and Jason Morris, *Newly Obtained Surveillance Video Shows Fake Trump Elector Escorted*

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Mr. Hilbert's actions warrant discipline.

**A SUBSTANTIAL BASIS EXISTS FOR THE
DISCIPLINARY COMMISSION TO INVESTIGATE
MR. HILBERT'S CONDUCT AND TO IMPOSE
APPROPRIATE DISCIPLINE**

The Office of General Counsel should investigate Mr. Hilbert's actions on the following basis:

**1. Mr. Hilbert Violated Rule 3.1 By Bringing and
Defending a Matter He Knew Lacked Merit**

Rule 3.1 provides, in part, as follows: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."

Comment 2 states that: "The action is frivolous. . .if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law."

"Knowledge" under the Rules of Professional Conduct can be "inferred from circumstances."²³

Operatives Into Georgia County 's Elections Office Before Voting Machine Breach, CNN (Sept. 6, 2022), <https://www.cnn.com/2022/09/06/politics/surveillance-video-voting-machine-breach-coffee-county-georgia/index.html>.

23. Rule 1.0(f).

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Ample evidence demonstrates that Mr. Hilbert knew of the frivolous nature of the litigation he initiated. In *Trump v. Kemp*, the complaint was based on debunked conspiracy theories, and the complaint in *Boland v. Raffensperger* was so deficient that Judge Richardson said that the complaint rested on “speculation rather than duly pled facts.” Further, no reasonable person would consider the cited “evidence” a sufficient basis for throwing out millions of votes in Georgia.

In fact, the pleadings themselves make clear that when filing the claims, Mr. Hilbert did not have a proper basis for bringing them because the Plaintiffs did not have even a shred of the evidence they claimed they would produce.

Furthermore, Mr. Hilbert knew his claims lacked merit, because he was concerned that allowing former President Trump to sign a verification would open him up to perjury.²⁴ In the runup to the *Trump v. Kemp* filing, Mr. Hilbert became aware that allegations in his previous lawsuit, *Trump v. Raffensperger*, had been inaccurate, and yet continued with the lawsuit with the knowledge he was promoting debunked conspiracy theories.²⁵ These

24. Jonathan Swan and Zachary Basu, *Exclusive Emails: Inside Trump ‘s Botched Georgia Fight*, AXIOS (Nov. 4, 2022), https://www.axios.com/2022/11/04/trump-georgia-lawsuit-cletamitchell?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosam&stream=to.

25. *Id.*

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communications detailing the concern over perjury caused Judge David O. Carter of the United States District Court for the Central District of California to find that Trump “knew that the specific numbers of voter fraud were wrong but continued to tout those numbers, both in court and to the public.”²⁶

Finally, the fact that Mr. Hilbert’s complaints were a part of a broad system of filings in states that Mr. Biden won helps confirm that the efforts were part of a larger effort to undermine the legitimacy of the entire 2020 presidential election.

Mr. Hilbert knew the claims he was advancing in *Trump v. Kemp*, *Still v. Raffensperger*, *Trump v. Raffensperger*, and *Boland v. Raffensperger* lacked any basis in law or fact.

In short, for the many reasons provided above, Mr. Hilbert’s conduct violated Rule 3.1.

2. Mr. Hilbert Violated Rule 4.2 for Communicating with Defendants Without Seeking Approval from Counsel

Under Rule 4.2 of the Georgia Rules for Professional Conduct, “A lawyer who is representing a client in a matter shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the

26. *Id.*

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lawyer has the consent of the other lawyer or is authorized to do so by law or court order.”

Mr. Hilbert, however, ignored this rule and contacted Defendant Raffensperger without first seeking approval from Raffensperger’s counsel or even notifying defense counsel of the phone conversation.²⁷

3. Mr. Hilbert Violated Rule 4.4 Command That Lawyers Respect the Rights of Third Parties

Pursuant to Rule 4.4, “In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person.”

Comment 1 to the Rule states, “Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons.”

In the interests of his clients, Mr. Hilbert sought to have millions of voters lose their right to decide the 2020 presidential election. Every court addressing the complaint filed by Mr. Hilbert highlighted the extraordinary remedy they sought and the effect it would have on millions of Americans, with Judge Cohen stating that “Plaintiff seeks an extraordinary and unprecedented remedy: the

27. See e.g. *Trump v. Raffensperger*, Case No. S21M0561 (Ga. Sup. Ct.), Jan. 7, 2021, Response to Voluntary Dismissal at 1.

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decertification of the votes cast in the presidential election, after millions of people lawfully cast their ballots. To interfere with the result of an election that has already concluded and has been audited and certified on multiple occasions would be unprecedented and harm the public in countless ways.”

Mr. Hilbert disregarded the potential consequences of his proposed remedy – showing no respect for the rights of millions of third persons whose votes would be invalidated – and his actions warrant discipline.

4. Mr. Hilbert Engaged in Misconduct that Violates Rule 8.4

Under Rule 8.4, “It is professional misconduct for a lawyer to. . .violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; [or] engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or] engage in conduct that is prejudicial to the administration of justice.”

Mr. Hilbert participated in a purposefully dishonest effort to undermine the 2020 election. He brought frivolous claims that the Constitution, prior court decisions, and relevant statutes barred. The bare “factual” bases he relied on were supported by false statements and wild speculation from discredited sources.

Mr. Hilbert misrepresented the availability of expert evidence to support the Verified Complaint’s allegations.

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He knew that expert testimony did not exist and yet purported to rely on them anyway.

It all amounted to a dishonest attempt to undermine the public confidence in the 2020 election. It is easy – indeed, necessary – to also recognize the direct link between the use of the courts to sow these seeds of doubt and confusion and the events of January 6, 2021, when people believing that the 2020 was stolen stormed the Capitol in a violent insurrection.

His actions must be scrutinized and disciplined.

* * *

The United States Supreme Court has long recognized in upholding disciplinary actions that “speech by an attorney is subject to greater regulation than speech by others.”²⁸ As officers of the court an attorney is “an intimate and trusted and essential part of the machinery of justice” and a “crucial source of information and opinion.”²⁹ Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech. Indeed, disciplinary boards and courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

28. *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

29. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

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That members of our esteemed profession would engage in such actions – conduct that contributed to substantial harm to American democracy – should cause considerable distress within the entire legal community.

False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of free society. When those false statements are made by an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession's role as a crucial source of reliable information.³⁰

Mr. Hilbert chose to offer his professional license to an assault on our democracy. He pursued litigation that lacked any basis in law or fact. He participated in an organized effort to sow discord and doubt about the 2020 elections. He helped lead the charge in Georgia to disenfranchise millions of his fellow citizens because he did not like how they voted.

For the reasons set forth above, we respectfully request that the Office of General Counsel investigate Mr. Hilbert's conduct and pursue appropriate discipline.

30. *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021 at 30-31.

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Sincerely,

/s/ _____
Managing Director
[REDACTED IN ORIGINAL]
On behalf of The 65 Project

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Appendix B

THE 65 PROJECT

March 7, 2022

VIA ELECTRONIC MAIL: [REDACTED]

Keith Sellen, Director
Wisconsin Office of Lawyer Regulation
P.O. Box 1648
Madison, WI 53701

Dear Mr. Sellen:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

We write to request that the Office of Lawyer Regulation (“OLR”) investigate the actions taken by James Troupis (Bar No. 1005341) and Andrew Hitt (Bar No. 1064340) relating to a concerted effort to overturn the legitimate 2020 presidential election results.

Mr. Troupis’s and Mr. Hitt’s conduct violated numerous Rules of Professional Conduct, as well as the oath taken to be admitted to the State Bar of Wisconsin. A full investigation by OLR will demonstrate the egregious nature of Mr. Troupis’s and Mr. Hitt’s actions, especially when considered in light of the direct and possible consequences of their behavior.

*Appendix B***BACKGROUND**

Donald Trump lost the 2020 presidential election.¹ He also lost Wisconsin and its 10 electoral votes.² Following the election, Mr. Trump and his allies filed multiple lawsuits in the state, seeking to prevent the Wisconsin from certifying Mr. Biden as the winner of the state's electoral votes. By December 14, 2020, Wisconsin's courts, including the state supreme court, had rejected all such efforts.³

Failing to achieve their desired ends through the courts, Mr. Trump's supporters turned to pressuring Vice President Mike Pence to usurp Congress's power by throwing out the electoral votes of seven states that Joe Biden won and thereafter declaring Mr. Trump (and, incidentally, Mr. Pence) victorious. The basis for this strategy began with Mr. Trump's advisors, and Mr. Troupis, an attorney for Mr. Trump, played a significant role in orchestrating the effort.

1. See United States National Archives, Electoral College Results – 2020, available at <https://www.archives.gov/electoral-college/2020>.

2. See Certificate of Ascertainment, State of Wisconsin, available at <https://www.archives.gov/files/electoral-college/2020/ascertainment-wisconsin.pdf>.

3. See, e.g., *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, No. 2020AP1930-OA; *Mueller v. Jacobs*, No. 2020AP1958-OA; and *Trump v. Evers*, No. 2020AP1971-OA.

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On November 18, 2020, Mr. Troupis received a *memorandum* from Kenneth Chesebro, another attorney for Mr. Trump, outlining a plan to create slates of false electors from several states, who would claim that they were the legitimate electors. The memorandum relied on factual and legal misstatements and absurdities, and relegated to footnotes (if at all) the critical statutes, rules, and facts that disproved the memorandum's contentions.

Mr. Troupis, a longstanding lawyer and former judge, who should be well-equipped to discern valid legal arguments from political propaganda, took the memorandum and advanced its cause throughout Mr. Trump's legal team. Mr. Chesebro's memorandum became the basis for an all-out effort by lawyers surrounding Mr. Trump to overturn the legitimate election results and to make a farce out of American democracy.

Mr. Chesebro's memorandum appears to have made its way to John Eastman, another of Mr. Trump's attorneys.⁴ Mr. Eastman then drafted two memoranda of his own, which have been shown to be grounded in neither law nor fact, and that recommended that Mr. Pence take "BOLD" action to secure Mr. Trump's victory.⁵ Mr. Pence would preside over the January 6, 2021 Joint Session of Congress, during which the electoral votes cast and

4. The main Eastman memorandum is available at <https://www.cnn.com/2021/09/21/politics/read-eastman-full-memo-pence-overturn-election/index.html>.

5. *Id.*

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certified in each state on December 14, 2020 would be opened and confirmed. Established law and precedent limited Mr. Pence's role to opening the Certificates of Votes and announcing the results of each, as well as the outcome. Mr. Eastman sought to have Mr. Pence disregard the vice president's constitutional and statutory obligations, and to instead claim unto himself the authority to invalidate seven states' electoral votes and unilaterally declare Mr. Trump the victor, without turning the matter over to Congress. The scheme required an existing controversy over which slate of electors should be viewed as valid from the seven states.⁶ In other words, for Mr. Pence to throw out the electoral votes cast and certified by the seven states, there needed to be an alternative slate of electors who claimed to be the legitimate electors.

Individuals from those seven states obliged and created false slates of electors.⁷ And thus, the scheme orchestrated by Mr. Chesebro, Mr. Troupis, Mr. Eastman, and other lawyers for Mr. Trump became a conspiracy.

Unfortunately, as documented in the *February 15, 2021 letter from Law Forward to OLR*, Andrew Hitt, another Wisconsin lawyer, chose not only to participate, but to lead the effort in the state.

6. *Id.*

7. American Oversight obtained the false elector certificates. They are available at <https://www.americanoversight.org/american-oversight-obtains-seven-phony-certificates-of-pro-trump-electors>.

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On December 14, ten false electors met.⁸ Mr. Hitt acted as chairperson. The individuals declared themselves the “duly elected and qualified Electors for President and Vice President of the United States of America from the State of Wisconsin” and certified that Wisconsin’s ten electoral votes were cast for Mr. Trump.

They then transmitted these false documents, stating:

“Pursuant to 3 U.S.C. § 11, enclosed please find duplicate originals of Wisconsin’s electoral votes for President and Vice President, as follows: two (2) duplicate originals for the President of the Senate and the Archivist, and one (1) duplicate original for the Secretary of State and Chief Judge.”

These false electors acted without any legal authority or mandate. Indeed, their acts contradicted federal and state statutes, as well as federal and state court rulings. The individuals who signed these documents did so knowing that they were false at the time they signed and transmitted them, nor did they ever act to correct or retract the fraudulent papers.

Mr. Hitt identified himself as “Chairperson, Electoral College of Wisconsin” and signed the letter.

8. One of the original electors, Thomas Schreibel, thought better of the scheme and did not attend. Interestingly, Mr. Schreibel works at the same law firm as Mr. Hitt. *See* <https://www.americanoversight.org/american-oversight-obtains-seven-phony-certificates-of-pro-trump-electors>.

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It is particularly noteworthy that by December 14, 2020, courts had rejected all pending litigation efforts to halt the Wisconsin Elections Commission from certifying the election for Joe Biden. Thus, Mr. Hitts claim to be a legitimate Wisconsin elector demonstrated significant contempt for the Wisconsin Supreme Court and the federal courts.

**APPLICABLE STANDARDS AND RULES OF
PROFESSIONAL CONDUCT**

Rule 3.3(a)(1) of the Rules of Professional Conduct provides that: “A lawyer shall not knowingly ... make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”

The Rule 1.0 defines tribunal to include legislative bodies acting in adjudicative capacities:

“Tribunal” denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a legal judgment directly affecting a party’s interests in a particular matter.

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Rule 8.4 provides that it constitutes professional misconduct to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other aspects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- ...
- (g) violate the attorney's oath ...

The oath that Mr. Troupis and Mr. Hitt took to gain admission to the State Bar of Wisconsin states, in part:

I will support the constitution of the United States and the constitution of the state of Wisconsin...I will employ, for the purpose of maintaining the causes confided in me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law ... So help me God.

Additionally, the Preamble to the Wisconsin Rules of Professional Conduct provides:

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A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

...

[A] lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.

**A SUBSTANTIAL BASIS EXISTS FOR OFFICE OF
LAWYER REGULATION TO INVESTIGATE MR.
TROUPIS'S AND MR. HITT'S CONDUCT AND TO
IMPOSE APPROPRIATE DISCIPLINE**

The Office of Lawyer Regulation should investigate on the following bases:

1. Mr. Hitt engaged in illegal conduct that reflects adversely on his honesty and trustworthiness

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As well-documented in Law Forward's letter to OLR, Mr. Hitt violated several Wisconsin statutes, including:

- Wis. Stat. § 943.38(1), which prohibits forgery;
- Wis. Stat. § 946.69(2), which prohibits falsely assuming to act as a public officer; and
- Wis. Stat. § 939.31, which prohibits conspiracy to commit criminal acts.

These statutes all relate to conduct that, if engaged in, negatively reflect someone's honesty and trustworthiness.

2. Mr. Hitt violated the duty of candor to a tribunal

Mr. Hitt transmitted the false certificate that he signed to the U.S. District Court for the District of Wisconsin. Under Rule 1.0, a court is tribunal, without caveat or exception. Sending the fraudulent documents to the United States District Court implicated Mr. Hitt's duty of candor and he violated those standards.

Additionally, Congress, when acting pursuant to the Electoral Count Act, engages in a proceeding that implicates the Rules' definition of tribunal. As a federal court in one of the January 6 defendants has found:

[I]t is a formal process. In addition, the Vice President, as President of the Senate, serves as presiding officer while the votes cast by Electors are counted. As in a court of law, members of

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Congress may object, which in turn causes the Senate and the House of Representatives to separately consider and render their separate decision[s] on the objection. Further, after the count is finished, the certification must end with a result declared.⁹

Moreover, the Comment [1] to Rule 3.9, addressing non-adjudicative proceedings, specifically states that a legislature, “like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body should deal with the tribunal honestly and in conformity with applicable rules of procedures.” And Comment [2] goes further:

Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

Mr. Hitt’s false and uncorrected assertions to the United States District Court and Congress that he was a duly appointed elector from Wisconsin violated his duty of candor.

9. *United States v. Nordean*, 2021 WL 6134595 (D.C.D.C. 2021), at *6 (citations and quotation marks omitted).

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3. Mr. Hitt engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation

The entire enterprise that Mr. Hitt participated in involved dishonesty, fraud, deceit, and misrepresentation. Further, this ethical standard applies to conduct that occurs outside of a tribunal.

4. Mr. Troupis and Mr. Hitt assisted others to engage in conduct that violated the Rules of Professional Conduct

Mr. Troupis and Mr. Hitt participated in a concerted effort to pressure Mr. Pence to disregard his constitutional and statutory duties so that Mr. Trump could reclaim the presidency. Recent testimony before the January 6 Commission has revealed that the false elector scheme was directed by Mr. Trump's campaign, particularly his lawyers.

When seven separate groups filing false certificates, a condition precedent of Mr. Troupis's and Mr. Eastman's plan had been satisfied. Mr. Eastman and Mr. Trump then continued to apply significant private and public pressure on Mr. Pence to go along with the scheme. And they used Wisconsin and the false certificate as part of that effort. For example, while addressing the January 6, 2021 rally, Rudy Giuliani, another of Mr. Trump's attorneys, stated:

[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

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words about that. He's one of the preeminent constitutional scholars in the United States. It is perfectly appropriate given the questionable constitutionality of the Election Counting Act of 1887 [sic] that the Vice President can cast it aside and he can do what a president called Jefferson did when he was Vice President. He can decide on the validity of these crooked ballots, or he can send it back to the legislators, give them five to 10 days to finally finish the work.

Mr. Eastman, who spoke right before Mr. Trump, said:

[A]ll we are demanding of Vice President Pence is this afternoon at 1:00 he let the legislators of the state look into this so we get to the bottom of it, and the American people know whether we have control of the direction of our government, or not ... And anybody that is not willing to stand up to do it, does not deserve to be in the office. It is that simple.

And Mr. Trump declared:

Despite that, despite that, we won Wisconsin. It's going to see. I mean, you'll see.

...

But the only way that can happen is if Mike Pence agrees to send it back. Mike Pence has to agree to send it back.

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...

And Mike Pence is going to have to come through for us, and if he doesn't, that will be a, a sad day for our country because you're sworn to uphold our Constitution.

Now, it is up to Congress to confront this egregious assault on our democracy. And after this, we're going to walk down, and I'll be there with you, we're going to walk down, we're going to walk down.

Anyone you want, but I think right here, we're going to walk down to the Capitol, and we're going to cheer on our brave senators and congressmen and women, and we're probably not going to be cheering so much for some of them.

Because you'll never take back our country with weakness. You have to show strength and you have to be strong. We have come to demand that Congress do the right thing and only count the electors who have been lawfully slated, lawfully slated.

It is well-documented what happened next. Members of the crowd then marched to the Capitol, breached security, vandalized the building, assaulted police officers, and sought to hunt down members of Congress and Mr. Pence. Nine people died as a result of the insurrection, including four police officers who committed suicide within seven

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months of responding to the attack.¹⁰ The insurrectionists injured over 138 police officers.¹¹ To date, 769 people have been charged in connection with the January 6 insurrection, with 165 of those defendants pleading guilty, and courts have imposed sentences reaching over 60 months.¹²

Thus, Mr. Troupis and Mr. Hitt participated in the effort to pressure Mr. Pence to disregard his constitutional and statutory duties so that Mr. Trump could reclaim the presidency. The Rules establish that aiding others to violate such standards constitutes its own misconduct.

5. Mr. Troupis and Mr. Hitt violated their oaths by failing to support the Constitution and by acting untruthfully and dishonorably

Mr. Troupis helped orchestrate an effort to circumvent the constitutional order and American democracy.

By signing the certificate claiming to be a Wisconsin elector and the transmission letter asserting that he was the “Chairperson, Electoral College of Wisconsin” and

10. Wolfe, Jan, *Four Officers Who Responded to U.S. Capitol Attack Have Died by Suicide*, Reuters (Aug. 2, 2021), available at <https://www.reuters.com/world/us/officer-who-responded-us-capitol-attack-is-third-die-by-suicide-2021-08-02/>.

11. Schmidt, Michael S.; Broadwater, Luke, *Officers’ Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. Times (Feb. 12, 2021), available at <https://www.nytimes.com/2021/02/11/us/politics/capitol-riot-police-officer-injuries.html>.

12. See <https://www.insider.com/all-the-us-capitol-pro-trump-riot-arrests-charges-names-2021-1>.

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that the enclosing Wisconsin's electoral votes "pursuant to 3 U.S.C. § 11," Mr. Hitt disregarded the U.S. Constitution, federal and state law, and the judicial decisions on that very matter. Further, his conduct did not use procedures for legitimate purposes or show the required respect for the legal system or public officials.

And, most certainly, both Mr. Troupis and Mr. Hitt engaged in dishonest and dishonorable conduct.

The United States Supreme Court has long recognized in upholding disciplinary actions that "speech by an attorney is subject to greater regulation than speech by others."¹³ As officers of the court an attorney is "an intimate and trusted and essential part of the machinery of justice" and a "crucial source of information and opinion."¹⁴ Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech. Indeed, disciplinary boards and courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.¹⁵

13. *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

14. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

15. *See In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courts/ad1/calendar/List Word/2021/06 Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List Word/2021/06 Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf).

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By pushing the false elector scheme, Mr. Troupis engaged in conduct worthy of discipline. And by signing the certificate falsely claiming to be a Wisconsin elector and transmitting the false certificate to the United States District Court, the United States Senate, and the Archivist of the United States, Mr. Hitt disregarded the U.S. Constitution, violated federal and state law, and ignored the judicial decisions on that very matter. Further, he failed to conform to the duties the Rules of Professional Conduct place on attorneys.

That members of the Wisconsin State Bar would engage in such actions should cause considerable distress within the entire legal community.

For the reasons set forth above, we respectfully request that the Office of Lawyer Regulation investigate Mr. Troupis's and Mr. Hitt's conduct and impose appropriate discipline.

Sincerely,

/s/ Michael Teter

Michael Teter
Managing Director, The 65 Project
[REDACTED]

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THE 65 PROJECT

August 31, 2022

Indiana Supreme Court Disciplinary Commission
251 N. Illinois Street, Suite 1650
Indianapolis, IN 46204

VIA ELECTRONIC MAIL: DCGrievance@courts.in.gov

Dear Disciplinary Commission:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

We write to request that the Disciplinary Commission investigate the actions taken by Kevin Koons relating to his representation of Donald J. Trump in his effort to overturn the 2020 presidential election. Mr. Koons served as an attorney representing Mr. Trump in litigation commenced in Wisconsin —*Donald J. Trump for President, Inc. v. Wisconsin Election Commission, et al.* and argued the matter at a district court hearing. As a member of Mr. Trump's litigation effort, he worked alongside Sidney Powell, Rudy Giuliani, Lin Wood, and John Eastman as they abused the judicial system to promote and amplify bogus, unsupported claims of fraud to discredit an election that Mr. Trump lost.

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The effort to overturn the 2020 presidential election contained multiple spokes. One involved litigating 65 bogus lawsuits around the country. Another involved arranging a slate of false electors from seven states to submit certificates to Congress declaring themselves to be the duly appointed electors from their respective states. Yet a third spoke focused on pressuring Vice President Pence to rely on the false elector certificates to disregard the votes from those states and declare Mr. Trump the winner of the Electoral College. A fourth sought to convince state legislatures to overturn the will of the voters by holding special sessions to rescind the electoral votes cast for Mr. Biden and instead award them to Mr. Trump. And, of course, a fifth spoke included summoning Mr. Trump's supporters to Washington, D.C. and, having spent months lying to them about fraud and a stolen election, sending them to the Capitol, agitated and armed, to stop the electoral vote count.

These efforts were interconnected — and Mr. Koons lent his Indiana law license to the scheme by filing a frivolous lawsuit untethered to either law or fact and in seeking an extreme remedy unheard of in any court of law. In fact, the litigation Mr. Koons advanced only makes sense when viewed as part of the larger effort to sow such discord and doubt into the election's outcome that Mr. Pence would be justified in disregarding Wisconsin's electoral votes. Read in that light, Mr. Koons's filed complaint — that does not even bother to include a single cause of action — can be understood.

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But it also amplifies why his conduct violated Indiana's Rules of Professional Conduct. Indeed, a full investigation by the Disciplinary Commission will demonstrate the egregious nature of Mr. Koons's actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior, and the serious risk that Mr. Koons will repeat such conduct unless disciplined.

BACKGROUND

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.¹ Mr. Trump's head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, announced that the "November 3rd election was the most secure in American history. . . . There is no evidence that any voting system deleted or lost votes or changed votes or was in any way compromised." Mr. Trump fired him. William Barr, Mr. Trump's own Attorney General, declared that the Department of Justice has "not seen fraud on a scale that could have effected a different outcome in the election." Attorney General Barr announced his resignation less than two weeks later, but not before again confirming that the 2020 elections had been free and fair.²

1. See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

2. M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://perma.cc/4U8N-SMBS>.

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Many of Mr. Trump’s own senior advisors agreed with Attorney General Barr and Mr. Krebs.³ Indeed, Deputy (and later Acting) Attorney General Jeffrey Rosen and Associate (and later Acting) Deputy Attorney General Richard Donoghue regularly refuted the false information and allegations that Mr. Trump and his allies asserted about a fraudulent election.⁴ Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, he and others told Mr. Trump that the information he was receiving from his political allies was not correct.⁵ And Mr. Donoghue has testified to the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee) that on December 27, 2020, he told Mr. Trump “in very clear terms” that after “dozens of investigations, hundreds of interviews” looking at “Georgia, Pennsylvania, Michigan, and Nevada,” the Department of Justice — Mr. Trump’s own Department

3. See Deposition of Jason Miller (Feb. 3, 2022), available at <https://january6th.house.gov/sites/democrats.januarv6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>; Interview of Jeffrey Rosen (Aug. 7, 2021), United States Senate Committee on the Judiciary, 117th Cong. 30, available at <https://www.judiciary.senate.gov/rosen-transcript-final>.

4. See Interview of Jeffrey Rosen *see also* Interview of Richard Donoghue (Oct. 1, 2021), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>

5. Interview of Jeffrey Rosen.

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of Justice — had concluded that “the major allegations are not supported by the evidence developed.”⁶

Despite clear proof that no fraud occurred, and that no one stole the election from him, Mr. Trump and his lawyers sought to overturn the legitimate results by filing 65 baseless lawsuits across the country.⁷ None succeeded and, in fact, courts have imposed sanctions on the lawyers who participated in these suits and referred them for sanctions to their respective state bars.⁸

CONDUCT GIVING RISE TO THE COMPLAINT

Mr. Koons helped lead the charge on behalf of Mr. Trump in Wisconsin.

On December 2, 2020 — more than four weeks after the presidential election — Mr. Koons filed the Complaint in *Donald J. Trump for President, Inc. v. Wisconsin Election Commission, et al.* Mr. Koons initiated the matter despite the fact that the day before, on December 1, 2020, Mr. Trump filed a petition to commence an original

6. Interview with Richard Donoghue.

7. W. Cummings, J. Garrison & J. Sargent, *By the numbers: President Donald Trump’s failed efforts to overturn the election*, USA Today (Jan. 6, 2021), available at <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

8. See, e.g., *King v. Whitmer*, No. 20-13134 (U.S. Dist. Ct. E. Dist. Mich. Aug. 25, 2021), available at https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf.

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action with the Wisconsin Supreme Court.⁹ When the Wisconsin Supreme Court denied Mr. Trump’s petition, the Court held that a state-court action under Wisconsin’s statutory scheme provided Mr. Trump’s “exclusive judicial remedy.”¹⁰ At the same time, Mr. Trump filed state-court lawsuits challenging recounts in Dane and Milwaukee Counties.¹¹ Nevertheless, Mr. Koons pushed forward with the federal action he filed.

The 72-page, 302-paragraph filing challenged election processes that had *been* in place for months or longer prior to Election Day, sought through judicial fiat a reversal of the election’s outcome, and, incredibly, *did not even include a cause of action*.¹² That was not a technical failing, either. The Complaint failed to lay the factual basis that would establish the requisite elements for any cause of action. Instead, Mr. Koons, on behalf of Mr. Trump, repeatedly offered different explanations for the relief requested. All lacked merit — or even a foundational relationship with the law.

9. *Trump v. Evers*, No. No. 2020AP1971-OA, Pet. for Original Action (Wis. Dec. 1, 2020).

10. *Trump v. Evers*, No. 2020AP1971-OA (Wis. Dec. 3, 2020) (Hagedorn, J., concurring) (internal footnote omitted).

11. *Trump v. Biden*, No. 2020CV7092, Order for Consolidation and for Appointment of Judicial Officer (Milwaukee Cty. Cir. Ct. Dec. 3, 2020), No. 2020CV2514 (Dane Cty. Cir. Ct. Dec. 3, 2020).

12. *Trump v. Wisconsin Elections Commission*, et al., Case No. 2:20-cv-01785 (E.D. Wisc. 2020), Compl., available at https://storage.courtlistener.com/recao/gov.uscourts.wied.92761/gov.uscourts.wied.92761.1.0_4.pdf.

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Though lacking a cause of action, the allegations Mr. Koons raised in the Complaint matched those asserted in the concurrently filed federal and state court actions. Specifically, these federal and state actions sought to invalidate ballots submitted by those who claimed indefinitely confined status, ballots for which election officials filled in witness address information, and ballots cast in Democracy in the Park events. Mr. Koons’s federal action also sought relief based on Center for Tech and Civic Life grants to municipalities, even though the federal court had already twice denied relief when brought to the court on the same theory.¹³

Importantly, the Complaint Mr. Koons filed did not allege fraud or misdoings by any voter. Instead, the challenge centered on official policies and guidance — all of which occurred prior to Election Day. Indeed, in some instances, the litigation focused on decisions made by Wisconsin officials more than a year (and multiple elections) before the 2020 presidential election.

Nevertheless, Mr. Koons pushed to have the District Court invalidate the entire election, calling it during a hearing on the matter, “a failed election and of no legal consequence.”¹⁴ In other words, Mr. Koons claimed

13. *Wis. Voters All v. City of Racine*, No. 20-C-1487, 2020 WL 6129510, at *1-2 (E.D. Wis. Oct. 14, 2020), injunction pending appeal denied, 2020 WL 6591209 (E.D. Wis. Oct. 21, 2020).

14. *Trump v. Wisconsin Elections Commission, et al.*, Case No. 2:20-cv-01785 (E.D. Wisc. 2020) Tr. from Dec. 10, 2020 Hearing at 65:18-20.

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that every ballot cast in the 2020 presidential election was invalid —unimportant and of no effect. Instead, he argued that, “Once it is established that the election was unconstitutional and that it did not meet the standards of Article II, the election must be considered void.”¹⁵ Incredibly, Mr. Koons sought this remedy through a preliminary injunction and without a trial.

District Court judge Brett Ludwig, himself appointed to the bench by Mr. Trump, rejected Mr. Koons’s efforts.

This is an *extraordinary* case... Hoping to secure federal court help in undoing his defeat, plaintiff asserts that the defendants, a group of more than 20 Wisconsin officials, violated his rights under the “Electors Clause” in Article H, Section 1 of the Constitution... Plaintiffs requests for relief are even more *extraordinary*... Plaintiff’s ask has since continued to evolve. In his briefing, he says he wants “injunctive relief” requiring the Governor to “issue a certificate of determination consistent with, and only consistent with, the appointment of electors by the Wisconsin legislature.” In argument, counsel made plain that plaintiff wants the Court to declare the election a failure, with the results discarded, and the door thus opened for the Wisconsin Legislature to appoint Presidential Electors

15. *Id.* at 70:4-6.

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in some fashion other than by following the certified voting results. . . .

Plaintiff's Electors Clause claims fail as a matter of law and fact.

. . .

This is an *extraordinary* case. A sitting president who did not prevail in his bid for reelection has asked for federal court help in setting aside the popular vote based on disputed issues of election administration, issues he plainly could have raised before the vote occurred. This Court has allowed plaintiff the chance to make his case and he has lost on the merits. In his reply brief, plaintiff "asks that the Rule of Law be followed." It has been.¹⁶

Further, in a footnote the District Court noted that:

Plaintiff's complaint also refers to the First Amendment and the Equal Protection and Due Process Clauses of the Fourteenth Amendment. At the December 9, 2020 final pre-hearing conference, plaintiff disclaimed reliance on any First Amendment or Due Process claims. While counsel purported to reserve the Equal

16. *Trump v. Wisconsin Elections Commission, et al.*, Case No. 2:20-cv-01785 (ED. Wisc. 2020) Decision and Order, available at https://storage.courtlistener.com/recap/gov.uscourts.wied.92761/gov.uscourts.wied.92761.134.0_5.pdf.

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Protection claim, *the complaint offers no clue of a coherent Equal Protection theory* and plaintiff offered neither evidence nor argument to support such a claim at trial. It is therefore abandoned.¹⁷

Because the substance of Mr. Koons’s litigation mirrored that advanced in state court, the Wisconsin Supreme Court’s treatment of Mr. Koons’s arguments is also informative. In that case, the Wisconsin Supreme Court denied Mr. Trump’s effort to invalidate several categories of ballots it argued were unlawfully cast. Importantly, like in the federal action that Mr. Koons oversaw, Mr. Trump did not identify any particular voter who was not entitled to vote, instead seeking to disenfranchise groups of voters because they might not have complied fully with Wisconsin’s voting rules. For example, Mr. Trump asked the Wisconsin Supreme Court to invalidate all ballots cast by voters who claimed indefinitely confined status since March 25, 2020 — but only in the two most Democratic counties: Dane and Milwaukee.

The opinion, written by one of the four Republicans on the Wisconsin Supreme Court, rejected all of Mr. Trump’s arguments. In fact, with regard to the “indefinitely confined status” category, the Court called Mr. Trump’s effort “meritless on its face.”¹⁸ The Court explained:

17. *Id.* at fn. 1.

18. *Trump v. Biden*, 2020 WI 91, ¶ 3, 394 Wis. 2d 629, 633, 951 N.W.2d 568, 570, *cert. denied*, 141 S. Ct. 1387, 209 L. Ed. 2d

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The Campaign does not challenge the ballots of individual voters. Rather, the Campaign argues that all voters claiming indefinitely confined status since the date of the erroneous Facebook advice should have their votes invalidated, whether they are actually indefinitely confined or not. Although the number of individuals claiming indefinitely confined status has increased throughout the state, the Campaign asks us to apply this blanket invalidation of indefinitely confined voters only to ballots cast in Dane and Milwaukee Counties, a total exceeding 28,000 votes. The Campaign’s request to strike indefinitely confined voters in Dane and Milwaukee Counties as a class without regard to whether any individual voter was in fact indefinitely confined has no basis in reason or law; it is wholly without merit.¹⁹

The Court further held that the laches doctrine barred the other three requests, which focused on policy decisions that had been announced and implemented as far as 2010.²⁰ The Court held, “Voters reasonably conformed their conduct to the voting policies communicated by their election officials. Rather than raise its challenges in the weeks, months, or even years prior, the Campaign waited

128 (2021).

19. *Id.* at ¶ 8.

20. *Id.* at ¶ 10.

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until after the votes were cast. Such delay in light of these specific challenges is unreasonable.”²¹

In sum, the Court stated:

The claims here are not of improper electoral activity. Rather, they are technical issues that arise in the administration of every election. In each category of ballots challenged, voters followed every procedure and policy communicated to them, and election officials in Dane and Milwaukee Counties followed the advice of WEC where given. Striking these votes now—after the election, and in only two of Wisconsin’s 72 counties when the disputed practices were followed by hundreds of thousands of absentee voters statewide—would be an extraordinary step for this court to take. We will not do so.²²

Mr. Koons pursued his matter as part of a larger scheme to corrode public confidence in the 2020 election, which itself was designed to convince state legislatures to reverse the results or to justify Mr. Pence’s disregarding several “contested” states’ electoral votes to hand the presidency to Mr. Trump. A federal court has already found that the concerted efforts amounted to a criminal conspiracy. Mr. Koons used his law license to further the cause. His actions warrant discipline.

21. *Id.* at ¶ 22.

22. *Id.* at ¶ 31.

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**A SUBSTANTIAL BASIS EXISTS FOR THE
DISCIPLINARY COMMISSION TO INVESTIGATE
MR. KOONS'S CONDUCT AND TO IMPOSE
APPROPRIATE DISCIPLINE**

The Disciplinary Commission should investigate Mr. Koons's actions on the following basis:

**1. Mr. Koons Violated Rule 3.1 By Bringing and
Defending a Matter He Knew Lacked Merit**

Rule 3.1 provides, in part, as follows: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."

Comment 2 states that: "The action is frivolous...if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law."

"Knowledge" under the Rules of Professional Conduct can be "inferred from circumstances."²³

Thus, "[i]t is unethical for an attorney to prosecute in any court a proceeding which is frivolous or has no

23. Rule 1.0(f).

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merit.”²⁴ Moreover, filing multiple matters that raise the same claims violates Rule 3.1.²⁵

The issues that Mr. Koons raised on behalf of Mr. Trump lacked any basis in law or fact. As a preliminary matter, Mr. Koons filed a complaint that did not even include any actual causes of action. Further, he asserted due process and First Amendment issues, then disclaimed them a few days later, and Mr. Koons’s arguments regarding the equal protection claim he “reserved” offered “no clue of a coherent [] theory.” Finally, the very same claims that Mr. Koons advanced the Wisconsin Supreme Court found to be “meritless on its face.” In other words, an attorney with decades of experience would also be able to tell the claim lacked merit.

In short, for the many reasons provided above, Mr. Koons’s conduct violated Rule 3.1.

2. Mr. Koons Violated Rule 4.4 Command That Lawyers Respect the Rights of Third Parties

Pursuant to Rule 4.4, “In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person.”

24. Nat’l City Bank, Indiana v. Shortridge, 689 N.E.2d I 248, 1251 (Ind. 1997), supplemented sub nom. Nat’l City Bank, Ind. v. Shortridge, 691 N.E.2d 1210 (Ind. 1998).

25. In re Oliver, 729 N.E.2d 582, 585 (Ind. 2000), reinstatement granted, 917 N.E.2d 1223 (Ind. 2009).

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Comment 1 to the Rule states, “Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons.”

In the interests of his client, Mr. Koons sought to have millions of voters lose their right to decide the 2020 presidential election. As the Third Circuit stated when deciding another matter brought by Mr. Trump:

Granting relief would harm millions of Pennsylvania voters too. The Campaign would have us set aside 1.5 million ballots without even alleging fraud. As the deadline to certify votes has already passed, granting relief would disenfranchise those voters or sidestep the expressed will of the people. Tossing out those ballots could disrupt every down-ballot race as well. There is no allegation of fraud (let alone proof) to justify harming those millions of voters as well as other candidates.²⁶

Mr. Koons disregarded the potential consequences of his proposed remedy — showing no respect for the rights of millions of third persons whose votes would be invalidated — and his actions warrant discipline.

26. *Donald J. Trump for President, Inc.*, 830 F. App’x at 390.

*Appendix B***3. Mr. Koons Engaged in Misconduct that Violates Rule 8.4**

Under Rule 8.4, “It is professional misconduct for a lawyer to... violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; [or] engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or] engage in conduct that is prejudicial to the administration of justice.”

Mr. Koons participated in a purposefully dishonest effort to undermine the 2020 election. He brought frivolous claims that the Constitution, prior court decisions, and relevant statutes barred. The bare “factual” bases he relied on were supported by false statements and wild speculation from discredited sources.

Furthermore, Mr. Koons assisted others in violating the Rules of Professional Conduct. His efforts were coordinated with a litigation team comprising Rudy Giuliani and John Eastman. Mr. Giuliani has already been found to have violated the Rules of Professional Conduct by the Supreme Court of the State of New York, Appellate Division.²⁷ Ms. Powell actively participated in the *Feehan* litigation.

27. *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf).

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Similarly, Mr. Koons’s actions must be scrutinized and disciplined.

The United States Supreme Court has long recognized in upholding disciplinary actions that “speech by an attorney is subject to greater regulation than speech by others.”²⁸ As officers of the court an attorney is “an intimate and trusted and essential part of the machinery of justice” and a “crucial source of information and opinion.”²⁹ Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech. Indeed, disciplinary boards and courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

That members of our esteemed profession would engage in such actions — conduct that contributed to substantial harm to American democracy — should cause considerable distress within the entire legal community.

False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of free society. When those

28. *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

29. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

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false statements are made by an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession's role as a crucial source of reliable information.³⁰

Mr. Koons chose to offer his professional license to an assault on our democracy. He pursued litigation that lacked any basis in law or fact. He participated in an organized effort to sow discord and doubt about the 2020 elections. He helped lead the charge in Wisconsin to disenfranchise millions of his fellow citizens because he did not like how they voted.

For the reasons set forth above, we respectfully request that the Disciplinary Commission investigate Mr. Koons's conduct and pursue appropriate discipline.

Sincerely,

/s/ Michael Tate
Managing Director
michael@the65project.com
On behalf of The 65 Project

30. *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021 at 30-31.

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THE 65 PROJECT

August 31, 2022

Attorney Grievance Committee
Supreme Court of the State of New York
Appellate Division
180 Maiden Lane
New York, NY 10038

VIA ELECTRONIC MAIL: [REDACTED]

Dear Attorney Grievance Committee:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

We write to request that the Attorney Grievance Committee investigate the actions taken by Brandon Johnson relating to his effort to overturn the 2020 presidential election. Mr. Johnson served as part of a coordinated attempt to “release the Kraken” on American democracy, alongside Sidney Powell, Rudy Giuliani, Lin Wood, and John Eastman as they abused the judicial system to promote and amplify bogus, unsupported claims of fraud to discredit an election that Mr. Trump lost.

Mr. Johnson worked on five separate matters:

- *Feehan v. Wisconsin Elections Commission*,
Case No. 20-cv-1771 (E.D. Wis. 2020)

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- *King, et al. v. Whitmer, et al.*, Case No. 20-cv-13134 (E.D. Mich. 2020)
- *Bowyer, et al. v. Ducey, et al.*, Case No. 2:20-cv-02321-DJH (D. Ariz. 2020)
- *Pearson, et al. v. Kemp, et al.*, Case No. 1:20-v-04809-TCB (N.D. Ga. 2020)
- *Gohmert v. Pence*, Case No. 6:20-cv-00660 (E.D. Tex. 2020)

These matters not only lacked any basis in law or fact, but included the Plaintiffs’ counsel manufacturing quotes from caselaw, adding a plaintiff who had not agreed to join the lawsuit, materially altering a copy of an official document and presenting the altered version to the court as evidence, and presenting patently false evidence that the lawyers did not investigate before presenting it to federal court. Incredibly, and perhaps conclusively for your investigation, Mr. Johnson’s own co-counsel has defended herself against a defamation claim based on the assertions she made regarding the 2020 election by stating that, “no reasonable person” would believe those assertions to be “statements of fact.”¹

The courts handling these matters uniformly rejected the effort. As one court contending with Mr. Johnson’s

1. See *U.S. Dominion, Inc. v. Powell*, Case No. 1:21-cv-00040 (D.D.C. 2021), Mot. to Dismiss at 27, available at https://storage.courtlistener.com/recap/gov.uscourts.dcd.225699/gov.uscourts.dcd.225699.22.2_3.pdf.

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efforts stated, “Allegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court.” Further, as you may know, the United States District Court in Michigan has referred Mr. Johnson for discipline for his conduct in that case. However, even that court’s powerful order could not account for Mr. Johnson’s misconduct across the country.

A full investigation by the Attorney Grievance Committee will demonstrate the egregious nature of Mr. Johnson’s actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior, and the serious risk that Mr. Johnson will repeat such conduct unless disciplined.

BACKGROUND

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.² Mr. Trump’s head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, announced that the “November 3rd election was the most secure in American history. . . . There is no evidence that any voting system deleted or lost votes or changed votes or was in any way compromised.” Mr. Trump fired him. William Barr, Mr. Trump’s own Attorney General, declared that the Department of Justice

2. See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

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has “not seen fraud on a scale that could have effected a different outcome in the election.” Attorney General Barr announced his resignation less than two weeks later, but not before again confirming that the 2020 elections had been free and fair.³

Many of Mr. Trump’s own senior advisors agreed with Attorney General Barr and Mr. Krebs.⁴ Indeed, Deputy (and later Acting) Attorney General Jeffrey Rosen and Associate (and later Acting) Deputy Attorney General Richard Donoghue regularly refuted the false information and allegations that Mr. Trump and his allies asserted about a fraudulent election.⁵ Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, he and others told Mr. Trump that the information he

3. M. Balsam, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://perma.cc/4U8N-SMB5>.

4. See Deposition of Jason Miller (Feb. 3, 2022), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>; Interview of Jeffrey Rosen (Aug. 7, 2021), United States Senate Committee on the Judiciary, 117th Cong. 30, available at <https://www.judiciary.senate.gov/rosen-transcript-final>.

5. See Interview of Jeffrey Rosen *see also* Interview of Richard Donoghue (Oct. 1, 2021), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>.

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was receiving from his political allies was not correct.⁶ And Mr. Donoghue has testified to the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee) that on December 27, 2020, he told Mr. Trump “in very clear terms” that after “dozens of investigations, hundreds of interviews” looking at “Georgia, Pennsylvania, Michigan, and Nevada,” the Department of Justice — Mr. Trump’s own Department of Justice — had concluded that “the major allegations are not supported by the evidence developed.”⁷

Despite clear proof that no fraud occurred, and that no one stole the election from him, Mr. Trump and his lawyers sought to overturn the legitimate results by filing 65 baseless lawsuits across the country.⁸ None succeeded and, in fact, courts have imposed sanctions on the lawyers who participated in these suits and referred them for sanctions to their respective state bars.⁹

6. Interview of Jeffrey Rosen.

7. Interview with Richard Donoghue.

8. W. Cummings, J. Garrison & J. Sargent, *By the numbers: President Donald Trump’s failed efforts to overturn the election*, USA Today (Jan. 6, 2021), available at <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

9. See, e.g., *King v. Whitmer*, No. 20-13134 (U.S. Dist. Ct. E. Dist. Mich. Aug. 25, 2021), available at https://www.michigan.gov/documents/ag/172_opinion__order_King_733786_7.pdf.

*Appendix B***CONDUCT GIVING RISE TO THE COMPLAINT**

Mr. Johnson helped lead the charge on behalf of Mr. Trump in four states that served as the focal point of the effort: Arizona, Georgia, Michigan, and Wisconsin.

On or around December 1, 2020 — four weeks after the presidential election — Mr. Johnson filed the complaints initiating the four lawsuits noted above. He was, as his co-counsel Sidney Powell stated, attempting to “release the Kraken.” Mr. Johnson sought to have the federal courts “order state officials to decertify the election results that state officials had certified the day before, order the Governor not to transmit to the Electoral College the certified results he’d transmitted the day before and order the Governor to instead transmit election results that declared Donald Trump to be ‘the winner of this election.’”

The complaints were carbon copies of each other. As just a sampling, the Complaint (and Amended Complaint) Mr. Johnson filed in *Feehan* asserted:

This civil action brings to light a massive election fraud, multiple violations of Wisconsin Statutes Chapters 5 – 12 (hereafter, “Wisconsin Election Code”), *see, e.g.*, Wis. Stat. §§ 5.03, *et. seq.*, in addition to the Election and Electors Clauses and Equal Protection Clause of the U.S. Constitution. These violations occurred during the 2020 General Election in the City of Milwaukee, southeastern Wisconsin counties,

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and throughout the State of Wisconsin, as set forth in the affidavits of dozens of eyewitnesses and the statistical anomalies and mathematical impossibilities detailed in the affidavits of expert witnesses. *See* Exh. 19, Declaration of affiant presenting statistical analysis prediction of 105,639 fraudulent ballots cast for Joe Biden in the City of Milwaukee and Exh. 17, Declaration of Russell James Ramsland, Jr. wherein he demonstrates it is statistically impossible for Joe Biden to have won Wisconsin.

...

The scheme and artifice to defraud was for the purpose of illegally and fraudulently manipulating the vote count to manufacture an election of Joe Biden as President of the United States, and also of various down ballot democrat candidates in the 2020 election cycle. The fraud was executed by many means, but the most fundamentally troubling, insidious, and egregious ploy was the systemic adaptation of old-fashioned “ballot-stuffing” techniques. *See* Exh. 16, U. S. Senator Elizabeth Warren (D. Mass.) letter of December 6, 2019 concerning the dangers of private equity control and censorship of election technology in the United States. The fraud has now been amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose.

...

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The fraud has now been amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose.

...

The multifaceted schemes and artifices implemented by Defendants and their collaborators to defraud resulted in the unlawful counting, or fabrication, of hundreds of thousands of illegal, ineligible, duplicate or purely fictitious ballots in the State of Wisconsin, that collectively add up to multiples of Biden's purported lead in the State of 20,565 votes.

...

While this Amended Complaint, and the eyewitness and expert testimony incorporated herein, identify with specificity sufficient ballots required to set aside the 2020 General Election results, the entire process is so riddled with fraud, illegality, and statistical impossibility that this Court, and Wisconsin's voters, courts, and legislators, cannot rely on, or certify, any numbers resulting from this election. Accordingly, this Court must set aside the results of the 2020 General Election and grant the declaratory and injunctive relief requested herein.

...

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The fraud begins with the election software and hardware from Dominion Voting Systems Corporation (“Dominion”) used by the Wisconsin Elections Commission. The Dominion systems derive from the software designed by Smartmatic Corporation, which became Sequoia in the United States.

...

Smartmatic and Dominion were founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election. See Exh. 1, Redacted Declaration of Dominion Venezuela Whistleblower (“Dominion Whistleblower Report”) and Exh. 8, Statement by Ana Mercedes Diaz Cardozo outlining actual examples of election manipulation by hacking and misuse of technology in Venezuelan elections. Notably, Chavez “won” every election thereafter.

...

As set forth in the Dominion Whistleblower Report, the Smartmatic software was contrived through a criminal conspiracy to manipulate Venezuelan elections in favor of dictator Hugo Chavez.

...

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In addition to the Dominion computer fraud, this Amended Complaint identifies several additional categories of “traditional” voting fraud that occurred as a direct result of Defendant Wisconsin Election Commission (“WEC”) and other Defendants directing Wisconsin clerks and other election officials to ignore or violate the express requirements of the Wisconsin Election Code. First, the WEC issued “guidance” to county and municipal clerks not to reject “indefinitely confined” absentee voters, even if the clerks possess “reliable information” that the voter is no longer indefinitely confined, in direct contravention of Wisconsin Statute § 6.86(2)(6), which states that clerks must remove such voters. Second, the WEC issued further guidance directing clerks — in violation of Wisconsin Statute § 6.87(6)(d), which states that an absentee envelope certification “is missing the address of a witness, the ballot may not be counted” — to instead fill in the missing address information.

...

In the accompanying redacted declaration of a former electronic intelligence analyst with 305th Military Intelligence with experience gathering SAM missile system electronic intelligence, the Dominion software was accessed by agents acting on behalf of China and Iran in order to monitor and manipulate

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elections, including the most recent US general election in 2020. *See* Exh. 12 (copy of redacted witness affidavit).¹⁰

Throughout the Amended Complaints in these actions, “fraud” or its variations appear 45 times, “Venezuela” or “Venezuelan” appear 16 times, and there are at least nine references to Hugo Chavez.¹¹ Indeed, Mr. Johnson and her co-counsel appeared to purposefully seek to link Smartmatic and Dominion, even though they are actually rival companies (for example, both bid for contracts in Georgia).¹² Moreover, the Amended Complaint falsely states that Dominion was “founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election.”¹³ In actuality, John Poulos founded the company in Toronto, Canada in 2002 — a publicly available fact — and in 2009, Dominion Voting Systems,

10. *Feehan v. Wisconsin Elections Commission*, Case No. 20-cv-1771 (E.D. Wis. 2020), Am. Compl. ¶¶ 1-16, available at <https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.9.0.pdf>.

11. *See generally id.*

12. Georgia Secretary of State, Elections Security Is Our Top Priority: Security-Focused Tech Company, Dominion Voting to Implement New Verified Paper Ballot System, available at <https://sos.ga.gov/news/security-focused-tech-company-dominion-voting-implement-new-verified-paper-ballot-system>.

13. *Feehan v. Wisconsin Elections Commission*, Case No. 20-cv-1771 (E.D. Wis. 2020), Am. Compl. ¶ 7.

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Inc. incorporated in Delaware and headquartered in Denver, Colorado.¹⁴

The efforts contained other concerning features, as well. For example:

- The Plaintiffs allege that the Dominion software misallocates, redistributes, or deletes votes, but prior to including those allegations in the complaints, Mr. Johnson knew that Georgia had completed two hand recounts that confirmed the accuracy of Dominion’s tabulation.¹⁵ They also knew that the Chairman of the Maricopa County Board of Supervisors in Arizona had released a statement explaining, “The Dominion tabulation equipment met mandatory requirements during logic and accuracy testing before the Presidential Preference Election, the Primary Election and the General Election. And after each of these

14. See, e.g., Neena Stija, *What You Need to Know About Dominion, the Company that Trump and His Lawyers Baselessly Claim “Stole” the Election*, Wash. Post., Nov. 20, 2020, available at <https://www.washingtonpost.com/politics/2020/11/20/dominion-voting-trump-faq/>.

15. Georgia Secretary of State, *3rd Strike Against Voter Fraud Claims Means They’re Out After Signature Audit Finds No Fraud*, <https://sos.ga.gov/news/3rd-strike-against-voter-fraud-claims-means-theyre-out-after-signature-audit-finds-no-fraud>.

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2020 elections, the hand count audit showed the machines generated an accurate count.”¹⁶

- Wisconsin conducted a post-election audit that included fifteen percent of Dominion machines and Wisconsin Election Commissioner Eastman Knudson, a former Republican state legislator, stated that the audit showed “no evidence of systemic problems” or “hacking” or of “switched votes.”¹⁷ The audit results were posted online and available prior to the Amended Complaint’s filing.
- On December 1, 2020, Attorney General Barr reiterated that no fraud occurred, specifically rebutting the claims regarding Dominion by saying, “There’s been one assertion that would be systemic fraud and that would be the claim that machines were programmed essentially to skew the election results. And the DHS and DOJ have looked into that, and so far, we haven’t seen anything to substantiate that.”¹⁸

16. Letter from Clint Hickman to Maricopa County Voters (Nov. 17, 2020), available at <https://www.maricopa.gov/DocumentCenter/View/64676/PR69-11-17-20-Letter-to-Voters#:~:text=Here%20are%20the%20facts%3A&text=The%20evidence%20overwhelmingly>.

17. Video available at <https://wiseeye.org/2020/12/01/wisconsin-elections-commission-december-2020-meeting-at-2:05:18>.

18. Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020),

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- In the Georgia action, Plaintiffs’ counsel alleged that Governor Kemp and Secretary of State Raffensperger “rushed through the purchase of Dominion voting machines” and that “[a] certificate from the Secretary of State was awarded to Dominion Voting but is undated.”¹⁹ Plaintiffs’ counsel then attached a copy of the Certification for Dominion Voting Systems from Secretary of State. However, the certification was not undated, but the August 9, 2019 date on the certificate disrupted Plaintiffs’ counsel’s narrative. And so they altered the document:²⁰

available at <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.

19. *Pearson, et al. v. Kemp, et al.*, Case No. 1:20-v-04809-TCB (N.D. Ga. 2020), Compl. ¶ 12.

20. *Compare Pearson v. Kemp*, No. 1:20- cv-04809 (N.D. Ga. Nov. 25, 2020) Compl. at Ex. 5 with Georgia Secretary of State, Dominion Certification (Aug. 9, 2019), available at, https://sos.ga.gov/admin/uploads/Dominion_Certification.pdf as well as at <https://twitter.com/bradheath/status/1333789738373767172/photo/2>.

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Doctored undated Secretary of State certificate attached to Powell's complaint in Georgia	Authentic dated Secretary of State certificate publicly available online
Case 1:20-cv-04809 TCB Document 1-4 Filed 12/20/20 Page 2 of 2  OFFICE OF SECRETARY OF STATE <i>P. Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that</i> the Dominion Voting System (BAC Certification Number DVS-Domestic-5-A), consisting of the Democracy Suite 5.3-A Election Management System Version 5.3.12.1, DMS Adaptation Version 5.3.8.1, ImageCast X Prime (RCX BMC) Ballot Marking Device Version 5.3.10.30, ImageCast Precinct (ICP) Precinct Scanning Device Version 5.3.4-001, and ImageCast Control (ICC) Control Scanning Device Version 5.3.4-002, manufactured by Dominion Voting Systems, Inc., 1201 19th Street, STE 2.00, Denver, Colorado 80202, has been thoroughly examined and found to be in compliance with the applicable provisions of the Georgia Election Code and Rules of the Secretary of State, and as a result of this examination, it is my opinion that this kind of voting system and its components can be safely used by the electors of this state in all primaries and elections as provided in Chapter 2 of Title 21 of the Official Code of Georgia, provided however, that I hereby reserve my opinion to reconsider this voting system and its components as anytime or as to ensure that it continues to be one that can be safely used by the voters of this state.	 OFFICE OF SECRETARY OF STATE <i>P. Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that</i> the Dominion Voting System (BAC Certification Number DVS-Domestic-5-A), consisting of the Democracy Suite 5.3-A Election Management System Version 5.3.12.1, DMS Adaptation Version 5.3.8.1, ImageCast X Prime (RCX BMC) Ballot Marking Device Version 5.3.10.30, ImageCast Precinct (ICP) Precinct Scanning Device Version 5.3.4-001, and ImageCast Control (ICC) Control Scanning Device Version 5.3.4-002, manufactured by Dominion Voting Systems, Inc., 1201 19th Street, STE 2.00, Denver, Colorado 80202, has been thoroughly examined and found to be in compliance with the applicable provisions of the Georgia Election Code and Rules of the Secretary of State, and as a result of this examination, it is my opinion that this kind of voting system and its components can be safely used by the electors of this state in all primaries and elections as provided in Chapter 2 of Title 21 of the Official Code of Georgia, provided however, that I hereby reserve my opinion to reconsider this voting system and its components as anytime or as to ensure that it continues to be one that can be safely used by the voters of this state. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, the 19th day of August, in the year of our Lord Two Thousand and Nineteen and of the Independence of the United States of America the Two Hundred and Ninety-Fourth. <i>Brad Raffensperger</i> Brad Raffensperger, Secretary of State

- The lawyers included a declaration of an anonymous source—a “code-named “Spyder”—who the Plaintiffs stated was a “military intelligence expert.”²¹ In fact, “Spyder” (which a mistaken filing by Ms. Powell revealed to be Josh Merritt) never actually worked in military intelligence and he himself acknowledged that the declaration that Plaintiffs’ counsel wrote for him was “misleading.”²²

21. See, e.g., *Pearson v. Kemp*, No. 1:20- cv-04809 (N.D. Ga. Nov. 25, 2020) Compl. ¶ 111.

22. Emma Brown, Aaron C. Davis & Alice Crites, *Sidney Powell's secret 'military intelligence expert,' key to fraud claims in election lawsuits, never worked in military*

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- The complaints also selectively quoted Princeton professor Andrew Appel and indicated he was speaking about Dominion in 2020, when, in fact Dr. Appel was speaking about a decades-old machine.²³ In reality, Dr. Appel had 58 other specialists in election security rebut the assertions made about his views in the complaints and stated, “no credible evidence has been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise.”²⁴
- The attorneys for Plaintiffs submitted sworn statements from individuals that contained identical explanations for speaking up:²⁵

intelligence, Wash. Post (Dec. 11, 2020), available at, https://www.washingtonpost.com/investigations/sidney-powellspider-spyder-witness/2020/12/11/0cd567e6-3b2a-11eb-98c4-25dc9f4987e8_story.html.

23. See Tony Adams, Prof. Andrew W Appel, et al., *Scientists say no credible evidence of computer fraud in the 2020 election outcome, but policymakers must work with experts to improve confidence*, Matt Blaze (Nov. 16, 2020), available at, <https://www.mattblaze.org/papers/election2020.pdf>.

24. *Id.*

25. *Compare Pearson v. Kemp*, No. 1:20-cv-04809 (N.D. Ga. Nov. 25, 2020) Declaration of an anonymous source claiming to have been selected for the “national security guard detail of the President of Venezuela” at ¶ 4 *with Pearson v. Kemp*, No. 1:20-cv-04809 (N.D. Ga. Nov. 25, 2020) Statement by Ana Mercedes Diaz Cardozo at ¶ 4.

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Declaration of Anonymous Source Claiming to be on the National Security Guard Detail of the President of Venezuela:	Declaration of Ana Mercedes Dias Cardozo:
“I want to alert the public and let the world know the truth about the corruption, manipulation, and lies being committed by a conspiracy of people and companies intent upon betraying the honest people of the United States and their legally constituted institutions and fundamental rights as citizens. This conspiracy began more than a decade ago in Venezuela and has spread to countries all over the world. It is a conspiracy to wrongfully gain and keep power and wealth. It involves political leaders, powerful companies, and other persons whose purpose is to gain and keep power by changing the free will of the people and subverting the proper course of governing.”	“I want to alert the public and let the world know the truth about the corruption, manipulation, and lies being committed by a conspiracy of people and companies intent upon betraying the honest people of the United States and their legally constituted institutions and fundamental rights as citizens. This conspiracy began more than a decade ago in Venezuela and has spread to countries all over the world. It is a conspiracy to wrongfully gain and keep power and wealth. It involves political leaders, powerful companies, and other persons whose purpose is to gain and keep power by changing the free will of the people and subverting the proper course of governing.”

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- Plaintiffs’ attorneys cited, and attached to their complaints, a declaration from Terpsichore Maras-Lindeman without ever speaking to Ms. Maras-Lindeman. Instead, Ms. Maras-Lindeman “distributed her affidavit widely to like-minded people and was unaware it had come to Powell’s attention until it appeared as an exhibit in one of her cases.”²⁶ Had Plaintiffs’ counsel actually spoken to Ms. Maras-Lindeman, or conducted even the most rudimentary investigation, they would have learned that Ms. Maras-Lindeman has an extensive history of making false claims about her career, education, and training. The North Dakota Attorney General’s Office investigated her for violating consumer fraud and charitable solicitation laws and noted that “it has been very difficult to determine the truth among Maras-Lindeman’s various claims.”²⁷ A North Dakota court entered a judgment against Ms. Maras-Lindeman finding that she engaged

26. Jon Swaine, *Sidney Powell’s Secret Intelligence Contractor Witness is a Pro-Trump Podcaster*, Wash. Post. (Dec. 24, 2020), available at https://www.washingtonpost.com/investigations/sidney-powells-secret-intelligence-contractor-witness-is-a-pro-trump-podcaster/2020/12/24/d5a1ab9e-4403-11eb-a277-49a6d1f9dff1_story.html.

27. North Dakota Attorney General, *Attorney General Details Investigation of Unlicensed Business for Alleged Fraud* (Apr. 4, 2018), available at <https://attorneygeneral.nd.gov/news/attorney-general-details-investigation-unlicensed-business-alleged-fraud-tore-maras-lindeman>.

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in fraud and deceptive behavior.²⁸ All of this information was publicly available before Mr. Johnson and her co-counsel relied on her affidavit that happened to find its way into their hands.

- Another affiant relied on by Plaintiffs' counsel was Russell Ramsland, a conspiracy theorist who has asserted that George Soros (born in 1930) helped form the "Deep State" in Nazi Germany in the 1930s, working alongside Senator Prescott Bush (President George H.W. Bush's father), the Muslim Brotherhood, and "leftists."²⁹ Mr. Ramsland made these publicly reported statements, as far back as 2018. Mr. Ramsland's analysis of voter turnout was riddled with obvious and quickly documented errors and Mr. Johnson never informed the Court of those errors.³⁰

28. Findings of Fact, Conclusions of Law, and Order for Judgment, *State v. Maras*, No. 51-2018-CV-01339 (Dist. Ct. N. Central Jud. Dist., N.D. Sept. 11, 2020), available at <https://attorneygeneral.nd.gov/sites/ag/files/documents/RecentActions/2020-09-14-MagicCityChristmas-Judgment.pdf>.

29. John Savage, *Texas Tea Partiers Are Freaking Out Over 'Deep State' Conspiracy Theories*, Vice (Sept. 20, 2018), available at, <https://www.vice.com/en/article/mbwgxx/texas-tea-partiersare-freaking-out-over-deep-state-conspiracy-theories>.

30. Clara Hendrickson, *Affidavit in Michigan lawsuit seeking to overturn election makes wildly inaccurate claims about vote*, PolitiFact (Dec. 4, 2020), available at <https://www.politifact.com/factchecks/2020/dec/04/russell-james-ramsland-jr/affidavit-michigan-lawsuit-seeking-overturn-electi/>.

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- The District Court in Wisconsin noted in its decision dismissing the case that the Plaintiffs’ counsel “seems to have made up the ‘quote’ in his brief that purports to be from [a cited case].”³¹ Indeed, the Court read the cited opinion “three times” and could not find that quote.³² In fact, we have reviewed the quoted language and run it through Westlaw, without any citations, other than the Court’s decision in *Feehan*, coming up:



- They also misrepresented well-established caselaw and standards. For example, Plaintiffs contended that *Whitford v. Nichol*, 151 F. Supp. 3d 918 (W.D. Wis. 2015), established standing “to challenge state laws that collectively reduce

31. *Feehan v. Wisconsin Election Commission, et al.*, Case No. 20-cv-1771 (E.D. Wisc. 2020), Order Granting Defendants’ Motion to Dismiss at 32, available at https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.83.0_5.pdf.

32. *Id.*

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the value of one party.”³³ However, they did not inform the Court that the Supreme Court expressly overruled that exact rationale in that exact case.³⁴ They relied on notice pleading standards that have long since been overtaken by *Twombly* and *Iqbal*.

- One of the original plaintiffs in the Complaint Mr. Johnson signed and filed was not aware he was a plaintiff in the case:



Mr. Johnson had to file an Amended Complaint, removing Mr. Van Orden as a plaintiff.

Additionally, sufficient public information about her co-counsel’s work existed to have put Mr. Johnson on notice that she needed to ensure that the claims she would

33. *Feehan v. Wisconsin Election Commission, et al.*, Case No. 20-cv-1771 (E.D. Wisc. 2020), Brief in Opposition to Motion to Dismiss at 20, available at <https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.72.0.pdf>.

34. See *Gill v. Whitford*, 138 S. Ct. 1916, 1921 (2018).

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be advancing in court had a factual basis. In a November 28, 2020 article, the *Washington Post* reported that:

Campaign lawyers Justin Clark and Matt Morgan told others they should not present the Dominion theory because there was no evidence for it, the two officials said. The campaign official who was surprised by her sudden involvement said she did not seem interested in having the evidence.

“What you saw with Sidney Powell and Rudy, it wasn’t shoot first and ask questions later. It was shoot first and don’t ask questions at all,” that official said.³⁵

Other, even presumably friendlier sources called Ms. Powell’s claims into question. Fox News’s Tucker Carlson stated on the air on November 19, 2020, that he invited Ms. Powell to appear on his show and present her evidence, but, he noted, “She never sent [] any evidence, despite a lot of requests...not a page... [Powell] never demonstrated that a single actual vote moved illegitimately by software from one candidate to another. Not one.”³⁶

35. Aaron C. Davis, Josh Dawsey, Emma Brown, and Jon Swaine, *For Trump Advocate Sidney Powell, a Playbook Steeped in Conspiracy Theories*, Wash. Post (Nov. 28, 2020), available at https://www.washingtonpost.com/investigations/sidney-powell-trump-kraken-lawsuit/2020/11/28/344d0b12-2e78-11eb-96c2-aac3f162215d_story.html.

36. MUST-SEE: Tucker Carlson ABANDONS Trump’s election fraud case on air, YouTube (Nov. 19, 2020), available at, <https://www.youtube.com/watch?v=BspHzH6RRxo>.

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Mr. Johnson either failed to conduct the requisite reasonable inquiry to ascertain whether the claims she was bringing had a factual basis or she knew that she was falsely asserting facts to the court. After all, as Ms. Powell has since argued, “no reasonable person” would believe those assertions to be “statements of fact.”³⁷

Either way, all of the United States District Courts soundly rejected the effort. In Wisconsin:

[T]he legal question at the heart of this case is simple. Federal courts have limited jurisdiction. Does the federal court have the jurisdiction and authority to grant the relief this lawsuit seeks? The answer is no.

Federal judges do not appoint the president in this country. One wonders why the plaintiffs came to federal court and asked a federal judge to do so. After a week of sometimes odd and often harried litigation, the court is no closer to answering the “why.” But this federal court has no authority or jurisdiction to grant the relief the remaining plaintiff seeks. The court will dismiss the case.³⁸

37. See *U.S. Dominion, Inc. v. Powell*, Case No. 1:21-cv-00040 (D.D.C. 2021), Mot. to Dismiss at 27, available at https://storage.courtlistener.com/recap/gov.uscourts.dcd.225699/gov.uscourts.dcd.225699.22.2_3.pdf.

38. *Feehan v. Wisconsin Election Commission, et al.*, Case No. 20-cv-1771 (E.D. Wisc. 2020), Order Granting

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The Court also noted that the Plaintiffs in “presented *no* case, statute or constitutional provision providing the court with” the authority Plaintiff sought the Court to exercise.³⁹ Further, “Plaintiffs’ alleged injury does not entitle them to seek their requested remedy because the harm of having one’s vote invalidated or diluted is not remedied by denying millions of others *their* right to vote.”⁴⁰

In Arizona, federal judge Diane Humetewa, who was on Mr. Trump’s shortlist for United States Supreme Court vacancies, held:

By any measure, the relief Plaintiffs seek is extraordinary. If granted, millions of Arizonans who exercised their individual right to vote in the 2020 General Election would be utterly disenfranchised. Such a request should then be accompanied by clear and conclusive facts to support the alleged “egregious range of conduct in Maricopa County and other Arizona counties . . . at the direction of Arizona state election officials.” Yet the Complaint’s allegations are sorely wanting of relevant or reliable evidence, and Plaintiffs’ invocation of this Court’s limited jurisdiction is severely strained . . .

Defendants’ Motion to Dismiss at 2, available at https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.83.0_5.pdf.

39. *Id.* at 22 (emphasis in original).

40. *Id.* at 23 (emphasis in original).

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The allegations they put forth to support their claims of fraud fail in their particularity and plausibility. Plaintiffs append over three hundred pages of attachments, which are only impressive for their volume. The various affidavits and expert reports are largely based on anonymous witnesses, hearsay, and irrelevant analysis of unrelated elections...

Allegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court. They most certainly cannot be the basis for upending Arizona's 2020 General Election.⁴¹

In Georgia, the Court stated:

[T]he burden is on the Plaintiffs, and the relief that they seek is extraordinary. And although they make allegations of tremendous worldwide improprieties regarding the Dominion voting machines, those allegations are supported by precious little proof.⁴²

41. *Bowyer, et al. v. Ducey, et al.*, Case No. 2:20-cv-02321-DJH (D. Ariz. 2020) Order, available at https://storage.courtlistener.com/recap/gov.uscourts.azd.1255923/gov.uscourts.azd.1255923.84.0_2.pdf.

42. *Pearson, et al. v. Kemp, et al.*, Case No. 1:20-v-04809-TCB (N.D. Ga. 2020) Tr. from Nov. 29, 2020 hearing at 15:24-16:3, available at <https://storage.courtlistener.com/recap/gov.uscourts.gand.284055/gov.uscourts.gand.284055.23.0.pdf>.

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The Court added in its order dismissing the case:

[T]he Plaintiffs essentially ask the Court for perhaps the most extraordinary relief ever sought in any Federal Court in connection with an election. They want this Court to substitute its judgment for that of two-and-a-half million Georgia voters who voted for Joe Biden, and this I am unwilling to do.⁴³

And in Michigan, the Court held:

Plaintiffs . . . [bring] forth claims of widespread voter irregularities and fraud in the processing and tabulation of votes and absentee ballots. They seek relief that is stunning in its scope and breathtaking in its reach. If granted, the relief would disenfranchise the vote of more than 5.5 million Michigan citizens who, with dignity, hope, and a promise a voice, participated in the 2020 General Election. The Court declines to grant Plaintiffs this relief.⁴⁴

43. *Pearson, et al. v. Kemp, et al.*, Case No. 1:20-v-04809-TCB (N.D. Ga. 2020) Tr. from Dec. 7, 2020 hearing.

44. *King, et al. v. Whitmer, et al.*, Case No. 20-cv-13134 (E.D. Mich. 2020) Opinion and Order 2, available at https://storage.courtlistener.com/recap/gov.uscourts.mied.350905/gov.uscourts.mied.350905.62.0_11.pdf.

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But the federal court in Michigan went further when presented with a motion for sanctions against the attorneys who brought that matter forward:

This lawsuit represents a historic and profound abuse of the judicial process. It is one thing to take on the charge of vindicating rights associated with an allegedly fraudulent election. It is another to take on the charge of deceiving a federal court and the American people into believing that rights were infringed, without regard to whether any laws or rights were in fact violated. This is what happened here.

Individuals may have a right (within certain bounds) to disseminate allegations of fraud unsupported by law or fact in the public sphere. But attorneys cannot exploit their privilege and access to the judicial process to do the same. And when an attorney has done so, sanctions are in order.

Here's why. America's civil litigation system affords individuals the privilege to file a lawsuit to allege a violation of law. Individuals, however, must litigate within the established parameters for filing a claim. Such parameters are set forth in statutes, rules of civil procedure, local court rules, and professional rules of responsibility and ethics. Every attorney who files a claim on behalf of a client is charged with the obligation to know these statutes and rules, as well as the law allegedly violated.

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Specifically, attorneys have an obligation to the judiciary, their profession, and the public (i) to conduct some degree of due diligence before presenting allegations as truth; (ii) to advance only tenable claims; and (iii) to proceed with a lawsuit in good faith and based on a proper purpose. Attorneys also have an obligation to dismiss a lawsuit when it becomes clear that the requested relief is unavailable.

...

The attorneys who filed the instant lawsuit abused the well-established rules applicable to the litigation process by proffering claims not backed by law; proffering claims not backed by evidence (but instead, speculation, conjecture, and unwarranted suspicion); proffering factual allegations and claims without engaging in the required prefiling inquiry; and dragging out these proceedings even after they acknowledged that it was too late to attain the relief sought.

*And this case was never about fraud—it was about undermining the People’s faith in our democracy and debasing the judicial process to do so.*⁴⁵

45. *King, et al. v. Whitmer, et al.*, Case No. 20-cv-13134 (E.D. Mich. 2020) Opinion and Order 13, available at https://storage.courtlistener.com/recap/gov.uscourts.mied.350905/gov.uscourts.mied.350905.172.0_8.pdf (emphasis in original).

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The Court granted the motion for attorney’s fees and sanctions and directed that a copy of that order be sent to the appropriate disciplinary authority where each attorney involved in the matter is admitted. The Plaintiffs’ counsel appealed the order to the Sixth Circuit, which denied the appeal.⁴⁶

Following the demise of the “Kraken” litigation, Mr. Johnson and several of his colleagues then filed *Gohmert v. Pence* in the Eastern District of Texas on December 27, 2020. In that matter, the attorneys presented what they called “only an issue of law” – attacking the constitutionality of the Electoral Count Act.⁴⁷

The attorneys referred to “massive multi-state electoral fraud,” even though courts had already rejected such assertions.⁴⁸ Putting those bogus claims aside, more troubling is that the Plaintiffs’ counsel made serious false statements of material facts to the court. Specifically, the Complaint alleged that “the State of Arizona (and several others) have appointed two competing slates of electors.”⁴⁹ And then stated:

Plaintiffs include the United States
Representative for Texas’ First Congressional

46. See https://storage.courtlistener.com/recap/gov.uscourts.mied.350905/gov.uscourts.mied.350905.193.0_2.pdf.

47. *Gohmert v. Pence*, Case No. 6:20-cv-660 (E.D. Tex. 2020) Compl. ¶¶ 52-53, available at https://storage.courtlistener.com/recap/gov.uscourts.txed.203073/gov.uscourts.txed.203073.1.0_2.pdf.

48. *Id.* at ¶ 5.

49. *Id.* at ¶ 4.

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District and the entire slate of Republican Presidential Electors for the State of Arizona. The Arizona Electors have cast Arizona's electoral votes for President Donald J. Trump on December 14, 2020, at the Arizona State Capitol with the permission and endorsement of the Arizona Legislature.⁵⁰

Additionally, Mr. Johnson and his co-counsel alleged:

On December 14, 2020, members of the Arizona Legislature passed a Joint Resolution in which they: (1) found that the 2020 General Election “was marred by irregularities so significant as to render it highly doubtful whether the certified result accurately represents the will of the voters;” (2) invoked the Arizona Legislature’s authority under the Electors Clause and 5 U.S.C. § 2 to declare the 2020 General Election a failed election and to directly appoint Arizona’s electors; (3) resolved that the Plaintiff Arizona Electors’ “11 electoral votes be accepted for ... Donald J. Trump or to have all electoral votes nullified completely until a full forensic audit can be conducted;” and (4) further resolved “that the United States Congress is not to consider a slate of electors from the State of Arizona until the Legislature deems

50. *Id.* at ¶ 5.

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the election to be final and all irregularities resolved.”⁵¹

The counsel then attached to the Complaint as Exhibit A what they labeled “A Joint Resolution of the 54th Legislature, State of Arizona, To The 116th Congress, Office of the President of the Senate Presiding.”⁵²

The problems abound. First, the State of Arizona did not appoint two competing slates of electors. Instead, as has been widely reported, a rogue group of individuals declared themselves to be the duly appointed electors, forged documents, and forwarded them to Congress, the United States Archivist, and the U.S. District Court. In Georgia, where this also occurred, two of the false electors are lawyers and the State Bar’s Office of Disciplinary Counsel has referred the matter to the State Disciplinary Board.⁵³ Federal law enforcement are reviewing the matter for criminal charges.⁵⁴

51. *Id.* at ¶ 25.

52. *Id.* at Ex. A.

53. David Wickert, *State Bar Investigates Two Georgia Trump Electors*, Atlanta Journal-Constitution (July 26, 2022), available at <https://www.ajc.com/politics/state-bar-investigates-two-georgia-trump-electors/AXJD6EANGZEJ3BSZM7KKAWNWDI/>.

54. Evan Perez and Tierney Sneed, *Federal Prosecutors Looking at 2020 Fake Elector Certifications, Deputy Attorney General Tells CNN*, CNN (Jan. 26, 2022), available at <https://www.cnn.com/2022/01/25/politics/fake-trump-electoral-certificates-justice-department/index.html>.

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Further, Plaintiffs’ counsel wrote that “members of the Arizona Legislature passed a joint resolution.” But as the attorneys must have known, the Arizona Legislature did nothing of the sort. In fact, the 54th Arizona Legislature adjourned *sine die* on May 26, 2020 and the 55th Legislature would not convene until January 2021. Instead, a group of Republican legislators drafted the resolution that the attorneys then presented as the work of the Arizona Legislature. Perhaps in an effort to avoid fully lying to the court, the attorneys wrote that “members of the Arizona Legislature” rather than simply the “Arizona Legislature.” That, though, just reveals their intent — to mislead the court. Further, a group of legislators cannot “pass” a resolution and so including the legislative language misrepresented the action. And, finally, the document that the attorneys attached was titled, by them, “A Joint Resolution of the 54th Legislature.”

Aside from the factual misrepresentations, the substantive arguments that Mr. Johnson and his co-counsel advanced lacked any merit. They challenged a presidential electoral system in place for over 130 years that had never been objected to by any other presidential candidate (including Mr. Trump in 2016). They claimed an “emergency” and sought expedited consideration despite the law they were challenging being in place since 1887 and despite waiting *a month after* the Arizona Secretary of State certified the election results on November 30, 2020. They premised their claims on false assertions of fraud that had been rejected by dozens of courts. And they brought the matter in Texas, which lacked jurisdiction — which they sought to get around by having Representative

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Gohmert acting as a named plaintiff despite his obvious lack of standing.

The legal system dealt with the frivolous matter in record time: the district court dismissed it on January 1, 2021,⁵⁵ the Fifth Circuit affirmed on January 2,⁵⁶ and the United States Supreme Court denied the application for interim relief on January 7, 2021.⁵⁷

**A SUBSTANTIAL BASIS EXISTS FOR THE
ATTORNEY GRIEVANCE COMMITTEE TO
INVESTIGATE MR. JOHNSON'S CONDUCT AND
TO IMPOSE APPROPRIATE DISCIPLINE**

The Attorney Grievance Committee should investigate Mr. Johnson's actions on the following basis:

**1. Mr. Johnson Violated Rule 3.1 By Bringing and
Defending a Matter He Knew Lacked Merit**

Rule 3.1 provides, in part, as follows: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous."

55. See https://storage.courtlistener.com/recap/gov.uscourts.txed.203073/gov.uscourts.txed.203073.37.0_2.pdf.

56. See <https://storage.courtlistener.com/recap/gov.uscourts.txed.203073/gov.uscourts.txed.203073.42.0.pdf>.

57. See https://www.supremecourt.gov/orders/courtorders/010721zr_08l1.pdf.

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Comment 2 states that a lawyer’s conduct is frivolous if “the lawyer knowingly advances a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.”

“Knowledge” under the Rules of Professional Conduct can be “inferred from circumstances.”⁵⁸

Ample evidence demonstrates that Mr. Johnson knew of the frivolous nature of the litigation he initiated. As the District Court in *Feehan* found, the Plaintiffs “presented *no* case, statute or constitutional provision providing the court with” the authority they sought for the Court to exercise.

Four separate federal courts reviewed the allegations — nearly identical across the board — and rejected the efforts. And the defendants in the Michigan matter successfully requested sanctions against the attorneys advancing the same claims as Mr. Johnson.

Further, the surrounding context demonstrates the frivolousness of Mr. Johnson’s conduct. Public reports available prior to Mr. Johnson’s initiating these matters showed that the Trump campaign’s attorneys did not believe Ms. Powell had any evidence to support her claims. He filed a complaint on behalf of a plaintiff who did not even know of, or give approval to, the filing. He did not

58. Rule 1.0(f).

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dismiss the matters when they became moot after the states' electoral votes were cast on December 14, 2020.

After losing the “Kraken” matters, Mr. Johnson persisted. He joined with his co-counsel to bring a claim against Vice President Pence on behalf of Representative Gohmert in the Eastern District of Texas, challenging the 1887 Electoral Count Act. Though the court system was able to

dispose of the matter quickly, that is only a testament to the frivolity of the undertaking. Further, it required significant work by others — including the House of Representatives and Mr. Pence — who had to quickly defend against the untimely and unmeritorious filing.

In short, for the many reasons provided above, Mr. Johnson's conduct violated Rule 3.1.

2. Mr. Johnson Violated Rule 3.3 By Making False Statements to the Court and Failing to Correct Those Statements

Rule 3.3 commands that an

Attorney shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the attorney;

...

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(3) offer or use evidence that the attorney knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

Additionally, the complaints and accompanying affidavits that Mr. Johnson filed included false statements regarding the background of at least two witnesses. That information was available publicly prior to Mr. Johnson's filing the complaints, but he filed the affidavits nevertheless, referred to the mistaken background throughout the filings, and failed to correct the record even after the matter was published in a national newspaper.

Further, the complaints and briefing made purposefully false statements regarding Dominion's founding, sought to connect Smartmatic and Dominion even though the two companies are competitors, and used affiant allegations about Smartmatic against Dominion in a deliberate effort to mislead the Court regarding Dominion.

Mr. Johnson continued his dishonesty in the *Gohmert* matter, where he misrepresented to the court that a resolution drafted by some Republican state legislators was "passed" by the 54th Arizona Legislature and also stated that Arizona had submitted two slates of electors. The wording of the filings strongly indicates that the attorneys were well aware that what they were presenting to the court was misleading.

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The duty under Rule 3.3 is one of candor, and Mr. Johnson violated it.

3. Mr. Johnson Violated Rule 4.4 Command That Lawyers Respect the Rights of Third Parties

Rule 4.4(a) provides that, “In representing a client, an attorney shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.”

Comment 1 to the Rule states, “Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons.”

In the interests of his clients, Mr. Johnson sought to have tens of millions of voters lose their right to decide the 2020 presidential election. Every court addressing the same complaint filed by Mr. Johnson noted the extraordinary remedy they sought and the effect it would have on millions of Americans.

Mr. Johnson disregarded the potential consequences of his proposed remedy — showing no respect for the rights of millions of third persons whose votes would be invalidated — and his actions warrant discipline.

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4. Mr. Johnson Engaged in Misconduct that Violates Rule 8.4

Rule 8.4 provides that it constitutes professional misconduct to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- ... or ...
- (h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

Mr. Johnson participated in a purposefully dishonest effort to undermine the 2020 election. He brought frivolous claims that the Constitution, prior court decisions, and relevant statutes barred. The bare "factual" bases he relied on were supported by false statements and wild

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speculation from discredited sources. He offered dishonest arguments and manufactured evidence.

Furthermore, Mr. Johnson assisted others in violating the Rules of Professional Conduct. The State Bar of Texas's Committee for Lawyer Discipline filed a petition against Ms. Powell for her conduct related to the post-election cases he filed, including *Feehan*.⁵⁹ A Texas court recently denied Ms. Powell's motion to dismiss the petition.

Similarly, Mr. Johnson's actions must be scrutinized and disciplined.

* * *

The United States Supreme Court has long recognized in upholding disciplinary actions that "speech by an attorney is subject to greater regulation than speech by others."⁶⁰ As officers of the court an attorney is "an intimate and trusted and essential part of the machinery of justice" and a "crucial source of information and opinion."⁶¹ Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech. Indeed, disciplinary boards and

59. <https://courtsportal.dallascounty.org/DALLASPROD/DocumentViewer/Embedded/ye0-5n-ZNL7oyRli6dndFnGQA9qBArya-lyUlulxeulp-m RTyMIc wd1060Q1TaElOonF8oaAApOSfE30Cw2?p=0>.

60. *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

61. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

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courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

That members of our esteemed profession would engage in such actions — conduct that contributed to substantial harm to American democracy — should cause considerable distress within the entire legal community.

False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of free society. When those false statements are made by an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession's role as a crucial source of reliable information.⁶²

Mr. Johnson chose to offer his professional license to an assault on our democracy. He pursued litigation that lacked any basis in law or fact. He participated in an organized effort to sow discord and doubt about the 2020 elections. He helped lead the charge across the country to disenfranchise millions of his fellow citizens because he did not like how they voted.

62. *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021 at 30-31.

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For the reasons set forth above, we respectfully request that the Attorney Grievance Committee investigate Mr. Johnson's conduct and pursue appropriate discipline.

Sincerely,

/s/ Michael Teter

Michael Teter

Managing Director

[REDACTED]

On behalf of The 65 Project

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**LAWYERS DEFENDING AMERICAN
DEMOCRACY**

March 6, 2023

Hamilton P. Fox, III
Office of Disciplinary Counsel
Board of Professional Responsibility
District of Columbia Court of Appeals
515 5th Street NW
Building A, Suite 117 Washington, DC 20001

Dear Mr. Fox:

The undersigned attorneys file this ethics complaint against Mr. Stefan C. Passantino, a member of the Bar of the District of Columbia and former member of President Donald J. Trump’s Office of White House Counsel. In that capacity, Mr. Passantino was charged with overseeing compliance and ethics, policing conflicts of interest, and approving and enforcing ethics requirements. In August 2018, Mr. Passantino left the White House and joined the law firm of Michael, Best & Friedrich LLP and worked from the firm’s office in Washington, D.C. While there, he represented Ms. Cassidy Hutchinson, an aide to White House Chief of Staff Mark Meadows, in connection with her testimony before and interactions with the House of Representatives Select Committee to Investigate the January 6 Attack on the United States Capitol (“the Committee”).

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We file this complaint because the testimony Ms. Hutchinson provided to the Committee, and other publicly available information, reveal numerous serious ethical breaches by Mr. Passantino. Among them, Mr. Passantino represented conflicting interests where informed consent was not requested, and no reasonable attorney could consider that the conflicting interests could be reconciled; where his advice to Ms. Hutchinson suborned perjury and placed her in jeopardy of criminal sanctions to protect other clients represented by his firm; and where his conduct also likely violated other federal criminal statutes by encouraging her to give false testimony to Congress. These breaches violated both his duties to Ms. Hutchinson and his obligations to the administration of justice. Set forth below are the facts as we understand them and an analysis of the violations of the District of Columbia Rules of Professional Conduct (the Rules) that we believe those facts reveal.

I. THE CONDUCT OF STEFAN PASSANTINO

Well established is the expectation that, when a person engages a lawyer to represent his or her interests, the lawyer's subsequent advice will not be affected by differing interests others may have in the same matter. That well-established expectation is the result of decades, if not centuries, of activity by lawyers who zealously pursued the interests of their clients in a manner that was unaffected by competing interests of others. Sometimes they did so at great personal cost. But, in the end, they produced a rule regarding fidelity to client interests that now lies at the heart of the lawyer-client relationship. That

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fidelity also is at the center of ethical rules regarding client relationships and at the core of the public's understanding of what clients should expect when they hire an attorney.

But that was not what Ms. Hutchinson discovered when she engaged, or thought she had engaged, Stefan Passantino to represent her in connection with testimony before the January 6 Committee. Instead, at every turn, Ms. Hutchinson received advice that was contrary to her best interests. In a prominent example, as they emerged from a Committee hearing, Mr. Passantino told her that she should ignore her concern that she had committed perjury moments earlier when she told the Committee under oath that she did not recall an incident she did in fact recall.

Beyond that, Mr. Passantino repeatedly suggested that financial gain in the form of employment security might follow if Ms. Hutchinson cooperated with ongoing efforts to conceal some of the activities that occurred within the White House in advance of and during the assault on the United States Capitol.

Ms. Hutchinson came to the White House in 2019, shortly after she graduated from college. While in college, she had been an intern for Sen. Ted Cruz and Representative Steve Scalise. Then, she served as an intern in the White House Office of Legislative Affairs.¹ When Mark Meadows became President Trump's Chief of Staff, he appointed her to be a Special Assistant to the

1. Washington Post, June 28, 2022.

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President and Coordinator for Legislative affairs, with an office next to his and very near the Oval Office.² As a result, she frequently interacted with other White House staffers and, on occasion, with President Trump himself.

In November 2021, Ms. Hutchinson received a subpoena from the Committee calling for her testimony at a later date.³ For a variety of reasons, she had anticipated that subpoena and had begun inquiries to see if she could find an attorney to represent her in preparation for and during her anticipated testimony. From various sources, she obtained recommendations and compiled a list of lawyers with whom she wanted to talk about representation. She used two key criteria in compiling that list. The first was her ability to afford the attorney fees – she was only 24 or 25 years old at the time,⁴ and anticipated having to make incremental payments. The second criterion was independence from what she viewed as ““Trump World.”⁵

Although she talked to several attorneys about the possibility of representation, she was unable to reach a

2. Id.

3. Transcript of the interview of Cassidy Hutchinson by the Select Committee to Investigate the January 6 Attack on the U.S. Capitol (hereinafter “Transcript”) at 6.

4. The Washington Post reported that she was 25 when she first testified before the Committee in June 2022. See “Who is Cassidy Hutchinson,” June 28, 2022, available at <https://www.washingtonpost.com/national-security/2022/06/28/jan6-meadows-trump-cassidy-hutchinson/>.

5. Transcript at 7.

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financial arrangement she could afford. As the date for her production of documents and testimony grew closer, she became increasingly concerned about her inability to find a lawyer who was both independent and affordable.⁶ She let various White House officials know of her concern and they offered to help her find someone who met those criteria.

On the afternoon of February 7, the day before she was required to produce documents for the Committee, Ms. Hutchinson received a call from Mr. Passantino, who announced that he was her attorney. Although she had heard of him, she had not talked to him at any point and he was not on her list of the attorneys to whom she might talk about representation. She told him that document production was required by the following day and that she would like to meet promptly to sign an “engagement letter.” In response, Mr. Passantino said “no, no, no. We’re not doing that. Don’t worry. We have you taken care of.”⁷

Though she was troubled about his rejection of an engagement letter – she thought that signing such a letter was an essential ingredient of hiring an attorney – she agreed to go forward without one but asked about the source of funds for his fees. She told Mr. Passantino that she wanted to thank the funders and “figure . . . out” what was behind the last-minute approach to her representation.⁸ In response, Mr. Passantino said “if you

6. Transcript at 11, 14.

7. Transcript at 21.

8. Id.

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want to know at the end, we'll let you know, but we're not telling people where funding is coming from right now. Don't worry, were taking care of you. Like, you're never going to get a bill for this . . . if that's what you're worried about."⁹ She responded that that was indeed what she was worried about, but agreed to move forward. Move forward they did, but not until Ms. Hutchinson was approaching her third Committee interview, months later, did Mr. Passantino tell her that "Trump World" was and had been paying her legal fees.¹⁰

As the date for her testimony grew closer, Ms. Hutchinson reached out to Mr. Passantino, asking if she could meet with him to prepare for her upcoming appearance. He responded that they "could meet if [she wanted]." Continuing, he said that "[w]e don't have to if you don't want to. Like, but if you just want to talk through some things – like, I don't know exactly . . . what you would want to work through, but I'm happy to meet with you in person for a couple of hours if that makes you feel better before going into the interview."¹¹ She said that it would make her feel better and so they met. No preparation of any substance occurred at the meeting, even though she told him that other attorneys with whom she had talked had said that part of their role, were she to hire them, would be to prepare her for her upcoming testimony.¹²

9. Transcript at 22.

10. Transcript at 87.

11. Transcript at 28.

12. Transcript at 30.

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What did occur at the meeting was Mr. Passantino's strong suggestion that she should **not** prepare for her testimony. For example, she asked whether they could quickly run off a copy of the calendar she had maintained on her White House computer to keep track of appointments and other White House events. In response, Mr. Passantino said: "Well, what do you need a calendar for?"¹³ When Ms. Hutchinson responded that she wanted to "make sure that I'm getting the dates right with these things"¹⁴ he said:

No, no, no. Look, we want to get you in and get you out. We're going to downplay your role. You were a secretary. You had an administrative role. Everyone's on the same page about this. It's extremely unfair that . . . the committee is putting you in this position in the first place. You have nothing to do with any of this. . . . We're completely happy to be taking care of you now. We had no idea that you weren't being taken care of last year. So we're really happy that you reached back out to us. But the less you remember, the better. I don't think that you should be filling in any calendars or anything.¹⁵

As Mr. Passantino later revealed to Ms. Hutchinson, the reason for remembering little or nothing was unrelated to advancing or protecting her interests in her upcoming

13. Transcript at 30.

14. Id.

15. Transcript at 30-31.

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interactions with the Committee. Instead, he explained, “[w]e just want to focus on protecting the President. We all know you’re loyal. Let’s just get you in and out, and this day will be easy, I promise. Like, you really have nothing to worry about.”¹⁶ Protection of the President was not the only thing on his mind, though, for he also told her that “we really want to protect Eric Hershman,” then one of the President’s senior advisors and a former client of Mr. Passantino’s.¹⁷

Later in the meeting, Mr. Passantino asked Ms. Hutchinson whether there was anything she thought that the Committee might ask her about. She responded that she had had “a lot of exposure to Members of Congress”¹⁸ and had attended meetings where she had “overheard things.” To that, Mr. Passantino responded by saying “[w]ell, if you had just overheard conversations that happened, you don’t need to testify to that.”¹⁹ She responded by saying “if I overheard it from a Member, do I have to?” To which he said “it’s circumstantial. We can talk about it.”²⁰

Then, Ms. Hutchinson volunteered about the “incident that happened in the Beast,” as the Presidential limousine was known to those in the White House. She told him

16. Transcript at 50.

17. Transcript at 44.

18. Transcript at 34.

19. Id.

20. Transcript at 34.

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that she had had “this conversation with Tony Ornato [a member of the Secret Service] . . . and [President Trump] tried to wrap his hands around [the limousine driver’s] neck and strangle him because he wouldn’t take him to the Capitol.”²¹

Mr. Passantino’s response to that was “no, no, no, no, no We don’t want to go there. We don’t want to talk about that.”²² Ms. Hutchinson persisted, asking what she should do if the Committee asked about the incident. “They have no way of knowing that,”²³ Mr. Passantino said, prompting Ms. Hutchinson to ask “Okay well, what’s the line that I draw here? Like, do I not ever say anything that I overheard, because I overheard a lot of things?”²⁴

“Look, the goal with you is to get you in and out,”²⁵ Mr. Passantino responded.

Keep your answers short, sweet, and simple, seven words or less. The less the committee thinks you know, the better, the quicker it’s going to go. It’s going to be painless. And then you’re going to be taken care of. You’re going to be done. It’s going to be off of your hands.²⁶

21. Id.

22. Id.

23. Id.

24. Transcript at 35.

25. Id.

26. Transcript at 35.

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Their discussion then continued in a slightly different direction. As Ms. Hutchinson put it, Mr. Passantino moved on to what she described as the “I don’t recall.” Mr. Passantino told her, Ms. Hutchinson said, that “[i]f you don’t 100% recall something, even if you don’t recall a date or somebody who may or may not have been in the room, that’s an entirely fine answer, and we want you to use that response as much as you deem necessary.”²⁷ Seeking clarification, Ms. Hutchinson said “[b]ut if I do recall something but not every little detail, Stefan, can I still say I don’t recall?” “Yes,”²⁸ said Mr. Passantino.

Not satisfied, Ms. Hutchinson pushed on. “But if I do remember things but not every little detail, and I say I don’t recall, wouldn’t I be perjuring myself,” she asked.²⁹ Mr. Passantino, her attorney, the one from whom she was seeking advice about how to conduct herself in order to comply with the law and avoid conduct that could produce severe repercussions, evaded a straight answer. Instead, he said:

The committee doesn’t know what you can and can’t recall, so we want to be able to use that as much as we can unless you really, really remember something very clearly. And that’s when you give a short, sweet response. You don’t want to get ahead of their questioning. Let them ask the questions. And you’ll know.³⁰

27. Transcript at 36.

28. Id.

29. Id.

30. Id.

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Mr. Passantino's "[a]nd you'll know" was prophetic. At some point during her non-public interview with the January 6 committee, questioning turned to the incident involving "the Beast." Knowing that questions on that subject troubled Mr. Passantino, and believing she had just evaded providing a truthful reponse, she began writing him notes about taking a break. Finally, when he asked the committee for a break, the two of them stepped outside the Committee room where, in her words, she "looked at Stefan, and I said, 'Stefan, I am fucked.' And he was like, 'Don't freak out. You're fine.' I said, 'No, Stefan, I am fucked. I just lied.' And he said, 'You didn't lie.'"³¹ In response to her insistence that she had lied, Mr. Passantino told her:

They don't know what you know, Cassidy. They don't know that you can recall some of these things. So you saying "I don't recall" is an entirely acceptable response to this. . . . "They're prodding. They want there to be something. They don't know that there is something. We are not going to give them anything because this is not important. You're doing great. You're doing fine. You're doing exactly what you should be doing."³²

Protection of the President, not protection of his client, nor truthfulness or cooperation with the Committee's inquiry, was a recurring theme in Mr.

31. Transcript at 55.

32. *Id.*

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Passantino's relationship with Ms. Hutchinson. While he was representing her, his law firm was also representing other Trump officials, including her former boss, Mark Meadows. Before Ms. Hutchinson's second interview with the Committee, Mr. Passantino told her that he needed to tell his partners that the interview was about to occur. After he did, Ben Williamson, a former senior White House communications advisor, telephoned her to say that "Mark [Meadows] wants me to let you know that he knows you're loyal and he knows you'll do the right thing tomorrow and that you're going to protect him and the [President]. You know, he knows that we are all on the same team and we are all a family."³³

From the outset, the "family" theme had been a recurring component of Ms. Hutchinson's relationship with Mr. Passantino. Mr. Passantino knew from the outset that she did not have a job and was actively seeking one. On the morning of her first appearance before the Committee, as they were having breakfast together, Mr. Passantino brought up, for the first time, the issue of her ongoing job search. "I want to talk to you about potential job opportunities," he said. "Let's do it at the end of today, though. Today's going to be a good day. I want to end it on a good note for you."³⁴

Later, days before her second interview with the Committee, Mr. Passantino texted her that he "had a few good job leads." When she telephoned him to learn more, he told her that "[w]e're gonna get you a really good job

33. Transcript at 70.

34. Transcript at 51.

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in “Trump World.” You don’t need to apply other places. We’re gonna get you taken care of. We want to keep you in the family.”³⁵ That was the beginning of a series of conversations in which he told her of job openings or of discussions he was having with potential employers. Most of his conversations with her on the subject of jobs were intertwined with references to her upcoming testimony before the Committee.³⁶

The last of those conversations occurred just before she was to testify before the Committee for the third time. Ms. Hutchinson remained concerned about the testimony she had given during her second Committee interview, so she contacted a friend, Alyssa Farah, with whom she had served in the White House but who had left for another position. She told Ms. Farah that she thought that she should go back to the Committee “and like elaborate on a few things.”³⁷ She asked Ms. Farah if she “could back channel to the Committee and say that there are a few things that I want to talk about.”³⁸ Explaining, she told Ms. Farah that if she went back she “could be a little more transparent and potentially then be done with it.”³⁹ She was seeking Ms. Farah’s help, she later told the Committee, “for my conscience.”⁴⁰

35. Transcript at 60.

36. Transcript at 62, 63, 72, 91, 92, 95, 105.

37. Transcript at 85.

38. *Id.*

39. Transcript at 86.

40. *Id.*

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Ms. Farah's outreach worked, and a little while later Mr. Passantino called to tell her that she had received a subpoena from the Committee for her third appearance. He talked with her about fighting the subpoena but she told him that she wanted to comply. It was in the course of that conversation that she first learned that "Trump World" had been paying her legal fees.⁴¹ Although she told Mr. Passantino that she wanted to comply with the subpoena, he began urging her to refuse or at least to let the Committee know that she was an unwilling witness.⁴²

Ms. Hutchinson declined to do either and arrangements for her testimony moved forward. Shortly before her appearance, Mr. Passantino contacted her to say that she should call two of his contacts about possible jobs with *Red Curve Solutions*, a Massachusetts political management firm that, among other things, had served as the Treasurer to President Trump's 2016 Presidential campaign.⁴³ That was the first time in many weeks that Mr. Passantino had said anything to her about jobs.⁴⁴ She called the contacts, and they told her that they were "on her team," knew that she was on their team, and "were going to get you a really good job."⁴⁵ On the morning of her testimony, Mr. Passantino raised the subject of jobs again shortly before they reached the Committee offices.

41. Transcript at 87.

42. Transcript at 90.

43. Id.

44. Id.

45. Transcript at 93.

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“I’ll connect you with my friend . . . tomorrow morning,” he said. “Let’s just see how today goes, first.”⁴⁶

It appears that, from Mr. Passantino’s perspective, “today” did not go well. Shortly thereafter, Ms. Hutchinson replaced him as her counsel so she could correct her testimony without interference from her own lawyer. Needless to say, she never again heard from Mr. Passantino, from any of his contacts or from any member of “the family” on the subject of her testimony or her employment.⁴⁷

II. ETHICAL VIOLATIONS WE ALLEGE MR. PASSANTINO COMMITTED

A. Introduction

The duty of loyalty is the most fundamental of all fiduciary duties the legal profession owes to its clients. “From the beginning of our profession, lawyers have owed an unwavering duty of loyalty to their clients, a duty that is recognized in the common law of every jurisdiction of the United States and codified in every American code of legal ethics ever promulgated. The ethics rules are designed to advance and protect the interests of the profession in the faithful adherence to this basic standard of professional responsibility owed to each client.” Fox, *The Gang of Thirty-Three: Taking the Wrecking Ball to Client Loyalty*, Yale L.J. Vol. 121, Forum (March 27, 2012).

46. Transcript at 95.

47. Id.

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Mr. Passantino violated this most essential test of the lawyer-client relationship from the inception of the relationship with Ms. Hutchinson, as he failed to provide her with “candid” and “independent advice.”⁴⁸ As the representation progressed, he breached a host of more specific ethical standards (indeed, more than a dozen separate DC Rules) designed to protect Ms. Hutchinson, the integrity of the profession, and the administration of justice. For present purposes, we assume that a thorough investigation by the Office of Disciplinary Counsel will confirm the truth of her most relevant interview statements to the Committee. Indeed, in the Executive Summary of its proceedings and findings, the Committee relied on and quoted those statements on numerous occasions.⁴⁹

B. Conflicts of Interest Between Cassidy Hutchinson and “Trump World”

Mr. Passantino had a conflict between Ms. Hutchinson’s interests and the interests of what she and Mr. Passantino both referred to as “Trump World.” The extent of these other client interests became apparent to Ms. Hutchinson through various statements by Mr. Passantino as the client relationship proceeded. At the outset, he advised her that

48. DC Rule 2.1 provides, in pertinent part, that “[i]n representing a client, a lawyer shall exercise independent professional judgment and render candid advice.”

49. Introductory Material to the Final Report of the Select Committee to Investigate the January 6 Attack on the United States Capitol.

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he could not disclose to her the source of his funding until a later time. He later revealed that she needed to protect and remain loyal to Donald Trump, Mark Meadows and Eric Herschmann, and, as explained below, that he was obliged to inform his partners and others about the details of her testimony even though she objected.

It is apparent that Mr. Passantino felt a powerful allegiance to others in the same matter in which he had agreed to represent Ms. Hutchinson. Yet, he failed to disclose or explain those conflicts to her or to comply with the other requirements of the DC rules regarding the representation of multiple interests. The first step for Mr. Passantino, before proposing the engagement with Ms. Hutchinson, was to assess the extent to which the multiple interests – hers and those of “Trump World” – created a conflict under DC Rule 1.7(b). The test was whether his “professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer’s responsibilities to or interests in a third party or the lawyer’s own financial, business, property, or personal interests.” Rule 1.7(b)(4).

Assuming the facts described by Ms. Hutchinson are confirmed, no reasonable attorney in Mr. Passantino’s situation could have concluded that the conflicting client interests could be reconciled. Here, from all that occurred, it is apparent that Mr. Passantino believed that the Trump interests could be served most effectively only by limiting the extent of any testimony by Ms. Hutchinson disclosing material facts concerning the events of January 6. Ms. Hutchinson’s interests, on the other hand, could be

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served faithfully only by testimony that fulfilled her legal obligations, and that minimized her exposure to charges of perjury or contempt of Congress. The divergence of interests between Ms. Hutchinson and “Trump World” is so vast that there is no practical means by which he could faithfully fulfill his duty of loyalty to each of them. Even assuming, however, that Mr. Passantino assessed the conflict and somehow concluded that it could be waived by informed consent at that early stage under DC Rule 1.7(c)⁵⁰ – a dubious proposition – Mr. Passantino failed each subsequent step in the client intake process dictated by the Rules.⁵¹

Ms. Hutchinson testified that Mr. Passantino did not disclose or otherwise explain the conflict to her when he first proposed to represent her (and indeed avoided doing so), in violation of the conflict Rules. Her sworn testimony is highly likely to be corroborated by the absence of a written engagement letter as required by Rule 1.5(b),⁵²

50. Rule 1.7(c) provides that “A lawyer may represent a client with respect to a matter in the circumstances described in paragraph (b) above if (1) Each potentially affected client provides informed consent to such representation after full disclosure of the existence and nature of the possible conflict and the possible adverse consequences of such representation; and (2) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client.”

51. Even if the conflict could be waived at that early stage, Mr. Passantino had a continuing obligation to determine whether the conflict became disabling at any subsequent stage of the relationship. He failed that test as well.

52. Rule 1.5(b) provides that “When the lawyer has not regularly represented the client, the basis or rate of the fee, the

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which he told her was unnecessary, and by the absence of informed written consent on third party payment of fees as required by Rule 1.8(e)⁵³. While Mr. Passantino appears prepared to assert that disclosures were made,⁵⁴ it appears highly unlikely that he can provide any evidence beyond the bare assertion that he somehow did disclose and obtain informed oral consent from Ms. Hutchinson sufficient to satisfy Rule 1.7(b)(2).

If, as appears to be the case, Mr. Passantino failed to create the objective record of compliance with his obligations that the Rules envision, a heavy burden should shift to him to demonstrate compliance in substance –

scope of the lawyer’s representation, and the expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.”

53. Rule 1.8(e) provides, in pertinent part, that “A lawyer shall not accept compensation for representing a client from one other than the client unless: (1) The client gives informed consent after consultation; [and] (2) There is no interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship”

54. Mr. Passantino reportedly has stated: “I represented Ms. Hutchinson honorably, ethically, and fully consistent with her sole interests as she communicated them to me. I believed Ms. Hutchinson was being truthful and cooperative with the Committee throughout the several interview sessions in which I represented her.” <https://www.cnn.com/2022/12/20/politics/trump-ethics-lawyer-Mr. Passantino-cassidy-Ms. Hutchinson-misleading-testimony-jan-6/index.html>

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a burden that it seems obvious he cannot meet.⁵⁵ The basic requirements of the Rules governing conflicts of interest are intended to be charitably or flexibly applied in a manner that favors *the client's* right to unconflicted representation. See *In re Klayman*, 991 F.3d 1289, 1294 (D.C. Cir. 2021) (absent informed consent from his existing client, Mr. Klayman may not “represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of” the existing client).

At this point, there is no suggestion other than Mr. Passantino’s own say-so that he informed Ms. Hutchinson of the myriad competing interests he was simultaneously representing and obtained Ms. Hutchison’s consent to do so.⁵⁶ On the contrary, the available information strongly supports the conclusion that, in fact, Mr. Passantino gave precedence to his service to “Trump World” over his duty of loyalty to Ms. Hutchinson’s interests.

55. The conflicts also require an assessment of the imputation principles of DC Rule 1.10 for Mr. Passantino and his partners at Michael, Best and Friedrich. This will require ODC to inquire into their compliance with Rules 1.7 and 1.8 in connection with the client relationships between other partners of Mr. Passantino’s firm and “Trump World.”

56. A thorough investigation by ODC should determine whether the conflicts system at Michael, Best & Friedrich includes Ms. Hutchinson as a client at all. The reported facts support an inference that Mr. Passantino understood that a formal engagement letter approved by the firm likely would require extensive disclosures, including the identity of other clients, the source of funding, and the nature of the conflicts presented by the representation of multiple clients in this matter.

*Appendix B***C. Disregard of Client's Decisions and Breach of Confidentiality**

Indeed, Mr. Passantino's cavalier disregard of his obligation to advance the interests of Ms. Hutchinson was sometimes breathtaking. For example, Maggie Haberman, a New York Times reporter, called Mr. Passantino on his cell phone to ask whether Ms. Hutchinson had just finished her third appearance before the Committee. Ms. Hutchinson, standing next to Mr. Passantino as he answered the call, told him that she did not want him to give Ms. Haberman any information about her appearance. Completely ignoring her clear instructions, he told Ms. Haberman all about it.⁵⁷

A short time later, when Mr. Passantino told her that he was going to call two of his law-firm partners who were representing Mark Meadows and tell them about the testimony she had given, she specifically, repeatedly and forcefully told him that she did not want him to do that. Despite those repeated and forceful instructions, he told her that he was going to do so and he did.⁵⁸

In making those disclosures over her objections, and without her written consent, Mr. Passantino violated the specific prohibition on disclosure of confidential information in Rule 1.6(a)(1),⁵⁹ as well as the general

57. Transcript at 98-99.

58. Transcript at 99-100.

59. DC Rule 1.6 (a) provides, in pertinent part, that "a lawyer

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requirement of Rule 1.2(a)⁶⁰ that a lawyer must abide by his client’s wishes. The unauthorized disclosures by Mr. Passantino ran contrary to foundational features of the attorney-client relationship reflected in the Rules. Indeed, the disclosures led Ms. Hutchinson to conclude that she could not be fully honest with Mr. Passantino – itself a damning reflection on a client relationship infected with ethical impropriety.⁶¹

D. Mr. Passantino’s Efforts to Procure Ms. Hutchinson’s False Testimony to Congress

As noted, the only legitimate objective of the client relationship between Mr. Passantino and Ms. Hutchinson was protecting her interests in responding to inquiries from the Committee. Instead, Mr. Passantino strove to shape Ms. Hutchinson’s testimony to protect “Trump World” from any compromising content that might emerge from that testimony. In the process, Mr. Passantino

shall not knowingly: (1) reveal a confidence or secret of the lawyer’s client; (2) use a confidence or secret of the lawyer’s client to the disadvantage of the client; [or] (3) use a confidence or secret of the lawyer’s client for the advantage of the lawyer or of a third person.”

60. DC Rule 1.2(a) provides, in pertinent part, that “A lawyer shall abide by a client’s decisions concerning the objectives of representation . . . and shall consult with the client as to the means by which they are to be pursued.”

61. Of course, the fact that Mr. Passantino believed that communications with his partners about the representation of Ms. Hutchinson was necessary or appropriate by itself corroborates the existence of a conflict, and Rule 1.7 is clear that this circumstance alone required its own disclosure and informed consent by Ms. Hutchinson.

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seriously compromised Ms. Hutchinson's interests and placed her in legal jeopardy, thus violating the prohibitions against "intentionally (i) [f]ail[ing] to seek the lawful objectives of a client" (Rule 1.3(b)(1)) and (ii) "prejudic[ing] or damag[ing] a client during the course of the professional relationship" (Rule 1.3(b)(2)).

In meetings with Ms. Hutchinson in advance of her testimony, Mr. Passantino repeatedly assured her that it was permissible to respond "I do not recall" to any question seeking information on conversations or situations to which she was only an observer, or as to which she lacked a complete memory. This advice was flatly incorrect. It is bedrock law that, where an examiner asks a competent question seeking information about relevant facts and circumstances within the knowledge of the witness, including conversations that she witnessed, her obligation is to testify truthfully to the best of her memory. Mr. Passantino – indeed any competent attorney – understands this basic obligation.

While the boundaries on lawyer "coaching" may be uncertain in some circumstances, they are not uncertain here, for it is crystal clear that "[a]n attorney must respect the important ethical distinction between discussing testimony and seeking improperly to influence it." *Geders v. United States*, 425 U.S. 80, 90 n.3 (1976). Thus, when Mr. Passantino counseled Ms. Hutchinson to "respond in a way that avoid[ed] providing information, as, for example, by denying memory of the events under inquiry," he led her into "testimonial obduracy" that was plainly

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improper. *In re Weiss*, 703 F.2d 653, 662 (2d Cir. 1983).⁶² That Mr. Passantino also advised Ms. Hutchinson that she should testify truthfully highlights that he knew it, too. Nevertheless, in an attempt to end run this elemental standard, he sought to stretch her understanding of the boundaries of the truth. The outcome was false testimony to the Committee that she did not recall events that she plainly remembered in detail – testimony that she immediately told Mr. Passantino she regretted.

This effort by Mr. Passantino to shape Ms. Hutchinson’s testimony violated at least three related provisions of Rule 3.3 that require “candor to a tribunal” – an obligation made applicable in Rule 3.9 to representation of clients before Congress.⁶³

First, because Mr. Passantino knowingly counseled or assisted Ms. Hutchinson in presenting false testimony to the Committee, he violated DC Rule 3.4(b), which provides that “a lawyer shall not knowingly . . . counsel or assist a witness to testify falsely.” In her initial interviews with the Committee, Ms. Hutchinson followed his advice, and testified repeatedly that she had no recollection of matters

62. *See generally*, D.C. Bar Op. No. 79 (Dec. 18, 1979), reprinted in District of Columbia Bar, Code of Professional Responsibility and Opinions of the District of Columbia Bar Legal Ethics Committee 138, 139 (1991), stating: “[A] lawyer may not prepare, or assist in preparing, testimony that he or she knows, or ought to know, is false or misleading.”

63. Rule 3.9 provides that “A lawyer representing a client before a legislative . . . body in a nonadjudicative proceeding shall . . . conform to the provisions of Rules 3.3, 3.4(a) through (c), and 3.5.”

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as to which she actually had detailed knowledge – and Mr. Passantino knew it. Likewise, Mr. Passantino was responsible for offering false testimony through her in violation of DC Rule 3.3 (a)(4), prohibiting a lawyer from “knowingly . . . offer[ing] evidence that the lawyer knows to be false”

Second, Ms. Hutchinson’s false testimony put her at risk of charges of perjury and contempt of Congress under 18 U.S.C. §§ 1001 and 1621 – legal jeopardy which Mr. Passantino should be presumed to have understood. This triggered a violation by Mr. Passantino of DC Rule 3.3(a) (2), which provides that “[a] lawyer shall not knowingly . . . counsel or assist a client to engage in fraudulent or criminal conduct.” *See also* Rule 1.2(e)(containing the same prohibition, without an express knowledge element).

Third, when Ms. Hutchinson expressly advised Mr. Passantino that she had testified falsely (“I lied . . . I lied, I lied, I lied”), he assured her that her testimony was perfectly acceptable – again violating these very same ethical principles and prohibitions. Instead of questioning her to determine whether she was legally correct, he simply denied that she had done so. What’s more, he failed to advise her to correct the testimony, and thus violated his obligations of candor to the tribunal under Rule 3.3(d), which states: “A lawyer who receives information clearly establishing that a fraud has been perpetrated upon the tribunal shall promptly take reasonable remedial measures, including disclosure to the tribunal” While Rule 3.3(d) leaves some room for judgment on the timing of any remediation, there is no question here that Mr. Passantino, by attempting to shut the door on remediation

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by assuring her that “you’re doing the right thing,” failed to meet his obligation.

Instead, Ms. Hutchinson, after searching her own conscience, undertook to signal to the Committee, confidentially through an intermediary, that she wished to correct and expand upon her testimony. When the Committee requested further testimony in response to her confidential signal, Mr. Passantino once again attempted to interfere in truthful testimony. In an obvious effort to limit the damage to “Trump World’s” interests, he counseled her that she should resist a subpoena for further testimony and risk prosecution for contempt of Congress. This path, of course, would have placed her in further legal jeopardy. Ms. Hutchinson recognized that this advice served the interests of others, not her own, so she declined to challenge the subpoena and went forward with her testimony. She also hired new counsel so she could testify without interference from her own lawyer.

E. Misconduct Involving Dishonesty, Serious Interference with the Administration of Justice, and Potential Criminal Conduct.

Mr. Passantino’s Rule violations discussed above constituted professional misconduct under Rule 8.4(a).⁶⁴ But Mr. Passantino’s misconduct also falls squarely within

64. Rule 8.4(a) provides: “It is professional misconduct for a lawyer to . . . violate or attempt to violate the Rules of Professional Conduct”

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the general provisions of D.C. Rules 8.4(b), (c) and (d).⁶⁵ Mr. Passantino sought to convince Ms. Hutchinson that she was a minor player who possessed scant information of interest to the Committee, to assure her that she would be “taken care of” as a “loyal” supporter, and that little preparation was necessary to breeze through the interviews with the Committee. Through this manipulative and deceitful counsel, Mr. Passantino initially achieved the objective of the engagement for “Trump World”, and consequently Congress was hindered in its efforts to establish the facts relating to the siege of the Capitol on January 6.

1. Rule 8.4(d)

Mr. Passantino’s failure to properly advise Ms. Hutchinson violated Rule 8.4(d), which prohibits misconduct that seriously interferes in the administration of justice. Rule 8.4(d) is interpreted broadly to “uphold the integrity and competence of the legal profession.” *See In re Hopkins*, 677 A.2d 55, 59 (DC 1996). This rule “encompass[es] derelictions of attorney conduct considered reprehensible to the practice of law.” *In re Alexander*, 496 A.2d 244, 255 (D.C. 1985). There are strong reasons to apply the rule here since Congress was acting, through the Committee, in a quasi-judicial

65. DC Rule 8.4 provides, in pertinent part, that “[i]t is professional misconduct for a lawyer to . . . (b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; [or] (d) engage in conduct that seriously interferes with the administration of justice.”

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capacity – investigating facts, assessing credibility, and making judgments in the course of pursuing legitimate legislative objectives.⁶⁶ One of those objectives was to determine whether to make recommendations to the Department of Justice regarding criminal prosecution (as indeed the Committee did), and the Department also has independently sought information from the Committee to inform the Department’s prosecutorial decisionmaking. Thus, interference with the Committee’s work also interferes with the federal criminal process.

Ms. Hutchinson’s initial, false testimony interfered with the progress of the Committee’s investigation. Had the testimony not been corrected through her courageous and extraordinary efforts, it likely would have seriously undermined the search for truth about some of the most consequential events in our Nation’s history. The Committee was endeavoring to develop an accurate record of the effort to interfere with the peaceful transfer of Presidential power following the 2020 election. As even a cursory reading of the Committee’s report reveals, Ms. Hutchinson became a pivotal witness whose testimony enabled the Committee to unravel many of the details

66. The reach of Rule 8.4(d) is broad, for there are no precise boundaries to the concept of “the administration of justice” as that term is used in the Rule. As the D.C. Circuit has observed, “we have found quasi-judicial proceedings where a proceeding has “all of the trappings of an adjudicatory tribunal.” . . . [T]here is no fixed standard for quasi-judicial, nor is there a telltale sign for one . . .” *Park v. Brahmhatt*, 234 A.3d 1212, 1217 (D.C. 2020) (footnotes omitted). See also *In re Hutchinson*, 534 A.2d 919 (D.C. 1987) (*en banc*).

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of what occurred. *See* January 6 Committee Report, Executive Summary⁶⁷ (containing 185 citations to the testimony of Ms. Hutchinson in that portion of the report alone).

In assessing the seriousness of Mr. Passantino’s interference with the administration of justice, it is important to consider the full nature of his effort to preclude the Committee’s discovery of what had occurred. Mr. Passantino was the point person for an elaborate, sinister, and probably unlawful, effort to influence Ms. Hutchinson with offers of employment, each of which evaporated as soon as another appearance before the Committee was complete. It was an effort to exploit a client that Mr. Passantino and his collaborators apparently viewed – wrongly, as it turns out – as young, naïve, economically vulnerable, and an easy target of manipulation. In effect, this elaborate scheme was part of the “cover up” effort that wrongdoers use when their misconduct is under investigation. The attempt to influence Ms. Hutchinson’s was just one step toward the ultimate goal.

2. Rule 8.4(c)

Mr. Passantino’s manipulative and deceitful misconduct likewise violated Rule 8.4(c), which “encompasses fraudulent, deceitful, or misrepresentative behavior.” In addition to these characterizations of misconduct, however, the Rule generally encompasses “a lack of probity . . .

⁶⁷*See* n.49, *supra*.

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integrity . . . fairness and straightforwardness.” *Matter of Shorter*, 570 A.2d 760, 768 (D.C. 1990). Statements that are “technically true,” but fail to state the whole truth, qualify as “conduct . . . of a dishonest character.” *Id.*

3. Rule 8.4(b)

Rule 8.4(b) declares it professional misconduct for a lawyer to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.” Disbarment under Rule 8.4(b) is especially appropriate where the conduct could be charged as a crime involving moral turpitude *per se* – offenses that require mandatory disbarment upon conviction under D.C. Code § 11-2503(a). A lawyer need not actually be convicted of a crime of moral turpitude in order to be sanctioned on the basis of the underlying conduct. *See In re Slattery*, 767 A.2d 203, 207 (D.C. 2001).

Mr. Passantino appears to have violated at least four federal criminal prohibitions, each of which the court has held to involve moral turpitude *per se*:

1. *Subornation of perjury* - 8.U.S.C § 1622. It is painfully apparent that the overarching goal of Mr. Passantino’s misconduct was to get Ms. Hutchinson to lie before a committee of Congress, under oath, so as to minimize the collateral consequences of that testimony for “Trump World.” In that respect it is strikingly similar to the misconduct involved in *In re Corizzi*, 803 A.2d 438 (D.C. 2002), in which the respondent

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instructed his clients to lie under oath at their depositions. “If convicted for this instruction,” the court noted, “the conviction would surely be for a perjury-related offense involving moral turpitude, such as subornation of perjury” 803 A.2d at 442.

2. *Obstruction of justice - 18 U.S.C. §§ 1505 & 1512(c)(2)*. “[I]t is well settled that obstruction of justice is inherently a crime of moral turpitude.” *In re Savafian*, 29 A.3d 470, 471 (D.C. 2011); *see also In re Donziger*, 278 A.3d 695 (D.C. 2022) (per curiam); *In re Libby*, 945 A.3d 1169 (D.C. 2008). Mr. Passantino did not just try to get Ms. Hutchinson to make false statements and misleading omissions; he also tried to get her to resist a third subpoena or to state that she would be an unwilling witness, and discouraged her from preparing for her testimony by reviewing her calendar or other documents. The statute applies to attempts to obstruct justice, *Arthur Anderson LLP v. United States*, 544 U.S. 696 (2005), and Mr. Passantino’s pattern of conduct has all of the earmarks of an “endeavor[] to influence, obstruct, or impede . . . the due and proper exercise of the [Committee’s] power of inquiry,” and hence constitutes obstruction of justice under 18 U.S.C. §§ 1505 and 1512(c)(2).
3. *Witness tampering - 18 U.S.C. § 1512(b)*. Mr. Passantino’s efforts to manipulate Ms. Hutchinson’s testimony before the Committee

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amounted to “attempting to induce an individual to withhold evidence,” *In re Manafort*, 207 A.3d 593, 594 (D.C. 2019), and thus constituted violations of that criminal prohibition which explicitly applies to proceedings before Congress. *See* 18 U.S.C. § 1515(a)(1)(B) (defining “official proceeding”). Multiple disbarment decisions of the court have held that the various forms of witness tampering enumerated in 18 U.S.C. § 1512(b) involve moral turpitude. *Id.*; *see also In re Donziger, supra*. Mr. Passantino regularly dangled the prospect of remunerative employment before Ms. Hutchinson in the runup to her appearances before the Committee, prospects that then evaporated after each appearance.

4. *Bribery of public officials and witnesses* - 18 U.S.C. § 201. Mr. Passantino’s offers of future employment may also have violated 18 U.S.C. § 201(b)(3) and (c)(2), which prohibit holding out the prospect of employment “for or because of” or “to influence” testimony before Congressional committees. Bribery is an offense that the Court has viewed with particular seriousness. *See In re Tucker*, 766 A.2d 510, 512 (D.C. 2000); *In re Donziger, supra*; *In re Bankston*, 749 A.2d 739, 740 (D.C. 2020).

It is not accidental that many of the cases cited above are familiar names involved in high-profile national political scandals: Paul Manafort (Trump Special Counsel investigation), Scooter Libby (outing of Valerie Plame

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Wilson), and David Safavian (Jack Abramoff scandal). *See also In re Abrams*, 689 A.2d 6 (D.C. 1997) (Iran-Contra). Stefan Passantino's conduct involves an even more grave matter of national importance, an attempt to undo a Presidential election by force, and the ongoing effort of "Trump World" to suppress and distort the truth behind that insurrection.

III. Disbarment Is the Appropriate Sanction for Mr. Passantino's Conduct

The D.C. Code authorizes the D.C. Court of Appeals to disbar a lawyer "for crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or conduct prejudicial to the administration of justice." D.C. Code § 11-2505. In determining the appropriate sanction, the court considers the nature of the violation, prior disciplinary sanctions, mitigating and aggravating circumstances, protection of the public, courts and the legal profession, and, to the extent it can be determined, the moral fitness of the attorney. *See In re Corizzi*, 803 A.2d at 441-442.

The facts that have been outlined in this document reveal an array of violations of the District of Columbia Rules of Professional Responsibility that is breath-taking in its range. We recognize that disbarment is an extreme sanction, that it is not the typical remedy for simple conflict of interest violations, and that it is often applied only after other sanctions have not deterred misconduct. On the other hand, the court has not shrunk from disbarring lawyers where warranted by the gravity and extent of the misconduct, the risks to the public from that misconduct,

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and related aggravating circumstances. As noted earlier, disbarment is mandatory for conduct that could be charged as a crime involving moral turpitude *per se* – four of which crimes potentially occurred here. Disbarment is also especially common in cases that involve violations of Rules 8.4(b), (c) or (d) along with multiple other rules. As noted earlier, those violations took place on a very public stage and in the context of efforts to discover the cause and origin of an unprecedented assault on the Nation’s Government. Under those circumstances, disbarment is, we submit, the appropriate sanction.

A. Mr. Passantino Violated Multiple Disciplinary Rules

Example abound of disbarments for conduct of the type in which Mr. Passantino engaged. Many of these precedents have turned on the centrality of honesty to law practice, and the gravity of dishonesty. For example, in a case involving violations of ten different Rules, the court recently held that the lawyer’s “dishonesty is an independent reason why he cannot remain a member of the D.C. Bar. . . . To allow him to remain a member of our bar in light of his demonstrated indifference to truth-telling would demean bar membership.” *In re O’Neill*, 276 A.3d 492, 496 (D.C. 2022). *See also re Mazingo-Mayonne*, 276 A.3d 19, 21 (D.C. 2022) (“honesty is basic to the practice of law”); *In re Abrams*, 689 A.2d at 7 (“No moral character qualification for Bar membership is more important than truthfulness and candor.”) Mr. Passantino’s representation of Ms. Hutchinson included numerous false statements to her and multiple efforts to get her to testify falsely – all

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on a topic of unparalleled importance to our democracy. These precedents support disbarment in his case as well.

More generally, the court regularly disbars lawyers for a combination of violations that include conduct that seriously interferes with the administration of justice along with many of the same constellation of Rules as are implicated in Mr. Passantino's case. For example, in *In re Barber*, 128 A.3d 637 (D.C. 2015), a lawyer was disbarred for violating a total of sixteen different ethical rules arising from three different matters, generally involving false statements and groundless litigation. Mr. Passantino's case rivals Barber's. Indeed, the range and diversity of ethics rules violated by Mr. Passantino's representation of Ms. Hutchinson⁶⁸ would make it an excellent law school ethics exam question – except that, on the basis of Ms. Hutchinson's sworn testimony to the Committee, the violations are so open and shut. Another comparable example is *In re Merritt-Bagwell*, 122 A.3d 874 (D.C. 2015), in which a lawyer was disbarred (stayed for three years) for violating seven Rules in the course of acting as guardian for the estate of a minor. The rules included Rules 1.3(b), 8.4(c) and 8.4(d), all involved here as well. *In re Schneider*, 951 A.2d 798 (D.C. 2008), disbarred a lawyer for violations of eight Rules, including 1.3, 1.7(a)(2), 8.4(b), 8.4(c) and 8.4(d). The same result is appropriate here.

68. This complaint has identified violations of fifteen Rules: 1.2(a), 1.3(b)(1), 1.3(b)(2), 1.6(a)(1), 1.5(b), 1.7(b)(4), 1.8(e), 2.1, 3.3(a)(2), 3.3(a)(4), 3.3(d), 3.4(b), 8.4(b), 8.4(c), and 8.4(d).

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As a final example, in *In re Tucker*, the Court disbarred a lawyer for paying a Bureau of Traffic Adjudication (BTA) clerk bribes in amounts of about \$70-80 on six to eight occasions to “fix” parking tickets. *See* 766 A.2d at 511 n.1. *See also In re Sims*, 844 A.2d 353 (D.C. 2004) (same). If the moral opprobrium evinced by these cases can attach to something as pedestrian as fixing parking tickets, surely Mr. Passantino’s efforts to conceal an attempt to “fix” the peaceful transfer of Presidential power is about as offensive to morality as anything a lawyer can do.

B. Other Aggravating Circumstances

As noted earlier, aggravating circumstances are among the factors that sanction decisions must consider. *See In re Corizzi*, 803 A.2d at 442-443. Two significant aggravating circumstances are present in Mr. Passantino’s case.

The first is the considerable imbalance of power between Mr. Passantino and his client. During that time, though obviously intelligent and of strong fiber and moral character, Ms. Hutchinson was 24 or 25 years old, not quite three years out of college, unemployed, and facing a public grilling by a committee of Congress. She was gravely concerned about exposing herself to criminal liability for perjury. Mr. Passantino was more than twice her age, a law firm partner and former Deputy Counsel to the President who had called her out of the blue to inform her that he was her lawyer. Most important, while he would not tell her who was paying his bills, it quickly became clear that he was an emissary of the former President of

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the United States and the amorphous universe of powerful and wealthy individuals and entities surrounding him.

Mr. Passantino exploited this power imbalance throughout their relationship, telling Ms. Hutchinson what “we” were and were not going to do, and what she should do if she wanted to continue to be “taken care of.” To her significant credit, she managed to break out of this abusive relationship and secure new counsel. But that does not diminish the impropriety of Mr. Passantino’s behavior. The Office of Disciplinary Counsel would perform a service to the Bar if it identified this conduct as an aggravating circumstance in determining the appropriate sanction.

The second aggravating circumstance is that Mr. Passantino was “the top ethics attorney in the Trump White House,”⁶⁹ and was “in charge of ensuring that White House officials complied with government ethics rules.”⁷⁰ This is more than just an irony. Mr. Passantino’s ethical derelictions took place on a national stage at a time when the country was struggling to understand the cause and origin of an unprecedented assault on the peaceful

69. *See* “Exclusive: Trump’s former White House ethics lawyer told Cassidy Hutchinson to give misleading testimony to January 6 committee, sources say,” CNN Politics, Dec. 21, 2022, available at <https://www.cnn.com/2022/12/20/politics/trump-ethics-lawyer-passantino-cassidy-hutchinson-misleading-testimony-jan-6/index.html>.

70. “When the jokes write themselves: Trump’s ‘ethics czar’ steps down,” MSNBC (Aug. 30, 2018), available at <https://www.msnbc.com/rachel-maddow-show/when-the-jokes-write-themselves-trumps-ethics-czar-steps-down-msna1139211>.

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transfer of power that has occurred for more than two centuries. Had they succeeded, the cover-ups in which Mr. Passantino sought to have Ms. Hutchinson participate would have severely interfered with the search for that understanding, the search for truth and the formation of remedial measures to prevent a recurrence. For these reasons, it is difficult to imagine a more profoundly aggravating factor.

IV. Conclusion

Ms. Hutchinson's initial, false testimony interfered with the progress of the Committee's investigation. Had she not corrected that testimony through her courageous and extraordinary efforts, it likely would have seriously undermined the search for truth about some of the most consequential events in our Nation's history. The Committee was endeavoring to develop an accurate record of the effort to interfere with the peaceful transfer of Presidential power following the 2020 election. As even a cursory reading of the Committee's report reveals, Ms. Hutchinson became a pivotal witness whose testimony enabled the Committee to unravel many of the details of what occurred. *See* January 6 Committee Report, Executive Summary (185 citations to the testimony of Ms. Hutchinson in that portion of the report alone).

It is a testament to Ms. Hutchinson's character that she overcame Mr. Passantino's pervasive misconduct and testified truthfully, becoming perhaps *the* key witness before the Committee. Her service to the interests of American democracy and the rule of law cannot be

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overstated. At the same time, Mr. Passantino's efforts to obstruct and interfere with her contribution to the legislative and historical record cannot be rationalized, dismissed, or ignored if our professional code of ethics is to serve its critical purposes. The Office of Disciplinary Counsel should promptly initiate an investigation of Mr. Passantino's conduct and, if the facts described above are confirmed, seek his disbarment.

Respectfully submitted,

LAWYERS DEFENDING AMERICAN DEMOCRACY,
INC.,

By: _____/s/_____

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Marna S. Tucker

Former President, D.C. Bar

*Former Member, D.C. Board on Professional
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2016)*

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Additional Prominent Signers

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*President, Women Lawyers on Guard Action Network,
Inc.*

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Former Assistant U.S. Attorney, District of Columbia*

Daniel B. Edelman

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Founder and President Emerita, The Constitution Project

Other LDAD Board Members

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*LDAD Co-Founder and Board Member;
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*Founder and retired Executive Director, Insure the
Uninsured Project;
LDAD Board Member*

**** The signatories have signed solely in their individual capacities and do not do so on behalf of any organization or other affiliation**

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THE 65 PROJECT

October 20, 2022

[REDACTED]

State Bar of Nevada, Office of Bar Counsel
3100 West Charleston Blvd., Suite 100
Las Vegas, NV 89102

Dear [REDACTED],

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

We write to request that the Office of Bar Counsel investigate the actions taken by Jesse R. Binnall related to his representation of candidates for presidential electors on behalf of Donald J. Trump in his efforts to overturn the November 2020 election. Mr. Binnall chose to lend his law license to the assault on democracy by joining as Contestants' counsel in *Law v. Whitmer*, No. 82178 (Nev. Sup. Ct.), a case in which candidates for electors on behalf of Mr. Trump sought to have the court disenfranchise over one-and-a-half million voters.

The District Court of Nevada, which the Nevada Supreme Court affirmed, explained when denying the Contest that overturning an election has the "serious effect of disenfranchising voters." *Law v. Whitmer*, 477 P.3d 1124, *17 (Nev. 2020). The court found that none

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of the Contestants' purported grounds for overturning the election under Nevada Statute § 293.410 were substantiated under "any standard of proof."¹ Rather, Contestants failed to provide "*any* relevant and credible evidence" to substantiate any legal basis for overturning the election. *Id.* at *21. As a group of conservative judges and politicians later reported, "the court's finding was that Trump and his supporters failed *even to offer* sufficient *evidence*" to support their claims.²

Nevada's attorney disciplinary system serves to "inquire into the moral fitness of an officer of the court to continue in that capacity and to afford protection to the public, the courts and the legal profession." *State B. of Nevada v. Claiborne*, 756 P.2d 464, 527-28 (Nev. 1988). Where an attorney has committed particularly egregious violations such as filing a frivolous claim, engaging in misconduct involving dishonesty, deceit, fraud, or misrepresentation, and acting with "blatant disregard . . .

1. Those grounds include: that there was a "malfunction of any voting device or electronic tabulator, counting device or computer in a manner sufficient to raise reasonable doubt as to the outcome of the election, that "illegal or improper votes were cast and counted" or Illegal and proper votes were not counted," that "the election board or any member thereof was guilty of malfeasance," and that "the defendant or any person acting, either directly or indirectly, on behalf of the defendant has given, or offered to give, to any person anything of value for the purpose of manipulating or altering the outcome of the election."

2. Lost, Not Stolen: The Conservative Case that Trump Lost and Biden Won the 2020 Presidential Election (July 2022), <https://lostnotstolen.org/>.

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for the rights of others,” “disbarment is the only sanction that will adequately serve the purposes of attorney discipline: to protect the public and the integrity of the bar.” *In re Disc. of Schaefer*, 25 P.3d 191, 206 (Nev. 2001).

By filing and continuing to litigate a frivolous lawsuit untethered to either law or fact, and in seeking an extreme remedy of overturning the election — which would have the effect of curtailing the voting rights of all Nevadans — Mr. Binnall crossed the ethical standards to which he is bound and has demonstrated potential unfitness to continue in the profession. His conduct violated Rules of Professional Conduct 3.1 (Meritorious Claims and Contentions), 4.4 (Respect for Rights of Third Persons), and 8.4 (Misconduct). This office should consider all appropriate remedies to protect the public and the integrity of the bar, to include Mr. Binnall’s disbarment.

As evidence of Mr. Binnall’s violations of the Rules of Professional Conduct your office should consider the following (discussed in more detail in Sections I and II):

- That the Statement of Contest Mr. Binnall signed was full of inaccurate information, sweeping generalizations and mischaracterizations, and rather than reflecting facts, they reflected misinformation that Donald Trump’s lawyers were spreading in lawsuits across the country;
- That, even after Mr. Binnall had the opportunity to engage in discovery and present facts to the district court showing any merit to his claims,

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the district court rejected not only his legal conclusions but also every fact Contestants alleged;

- That in total, the court found that at least *twenty-nine* factual allegations Contestants made were not substantiated under “any standard of proof”;
- That Mr. Binnall offered a declaration from Donald Hartle claiming that someone had voted on behalf of his deceased wife as evidence of voter irregularities, when Mr. Hartle *later pled guilty to fraudulently casting that ballot himself*, creating a substantial question for this office to consider as to whether Mr. Binnall played a role in preparing or encouraging a fraudulent declaration;³
- That even though the district court made factual determinations subject to a “clearly erroneous” standard of review on appeal, and Mr. Binnall had no proof to support his allegations, he nevertheless pursued a frivolous appeal of the ruling to the Nevada Supreme Court.

In addition, *Law v. Whitmer* was not the only effort Mr. Binnall worked on to undermine the results of the November 2020 election. Mr. Binnall also wrote a letter

3. Eduardo Medina, *Nevada Man is Charged With Voting Using His Dead Wife’s Ballot*, N.Y. Times (Oct. 23, 2021), <https://www.nytimes.com/2021/10/23/us/voter-fraud-nevada.html>.

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to the Department of Justice requesting an investigation into “3,062 individuals who appear to have improperly cast ballots in the election.”⁴ In making this allegation, Mr. Binnall cited his analysis of a United States Postal Service database. However, users may not consult that database for purposes unrelated to mail services, such as evaluating voting claims, as commentators have noted.⁵ This additional work performed by Mr. Binnall on behalf of Donald Trump gives this office insight into his overall willingness to flout his ethical and legal responsibilities to further efforts to overturn the election.⁶

4. Letter from Shana Weir & Jesse Binnall to Attorney General William Barr, November 5, 2020, <https://s.wsj.net/public/resources/documents/Barr%20110520.pdf>.

5. Roger Sollenberger, *How Trump Lawyers May Have Violated Privacy Act and USPS Rules In Nevada Voter Fraud Lawsuit*, Alternet (Nov. 8, 2020), <https://www.alternet.org/2020/11/how-trump-campaign-lawyers-may-have-violated-privacy-act-and-usps-rules-in-nevada-voter-fraud-lawsuit/> (explaining that “anyone who accesses the data is required by law to sign a [form] promising the U.S. government that they will use the data exclusively for mailing purposes”).

6. Mr. Binnall also owes the U.S. government over \$100,000 in unpaid taxes, further demonstrating his willingness to flout the law. Roger Sollenberger, *Top Trump Lawyer is a Longtime Tax Deadbeat*, The Daily Beast (May 6, 2022), <https://www.thedailybeast.com/top-trump-lawyer-jesse-binnall-is-a-longtime-tax-deadbeat>. He also allegedly committed malpractice by failing to inform a Virginia client about a potential plea bargain, demonstrating his willingness to violate ethical standards. *Id.*

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A full investigation by the Office of Bar Counsel will demonstrate the disturbing nature of Mr. Binnall's actions, especially considering his objectives and the direct and likely consequences of his behavior.

Further, we respectfully request that you expedite your investigation into this matter, as at least one prominent candidate for high office in the state has already made known his intent to claim fraud if the voters of Nevada elect his opponent.

BACKGROUND

Donald J. Trump lost the 2020 presidential election.⁷ Anticipating his loss, Mr. Trump and his allies began questioning the election's legitimacy months before even one voter had cast a ballot.⁸ In fact, this fit a pattern of Mr. Trump declaring fraud or a rigged election any time he lost or anticipated a loss.

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.⁹ Mr. Trump's head of the

7. See United States National Archives, Electoral College Results — 2020, available at <https://www.archives.gov/electoral-college/2020>.

8. Kevin Liptak, *A List of the Times Trump Has Said He Won't Accept the Election Results or Leave Office if He Loses*, CNN (Sept. 24, 2020), <https://www.cnn.com/2020/09/24/politics/trump-election-warnings-leaving-office/index.html>.

9. See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

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U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, announced that the “November 3rd election was the most secure in American history . . . There is no evidence that any voting system deleted or lost votes or changed votes or was in any way compromised.”¹⁰ Mr. Trump fired him.¹¹ William Barr, Mr. Trump’s own Attorney General, declared that the Department of Justice had “not seen fraud on a scale that could have effected a different outcome in the election.”¹² Attorney General Barr announced his resignation less than two weeks later, but not before again confirming that the 2020 elections had been free and fair.¹³

10. Maria Henriquez, *Director of CISA Chris Krebs Says there’s No Evidence of Foreign Interference into 2020 Election*, Security Magazine (Nov. 5, 2020), <https://www.securitymagazine.com/articles/93846-director-of-cisa-chris-krebs-says-theres-no-evidence-of-foreign-interference-in-the-2020-election>.

11. Alana Wise, *Trump Fires Election Security Director Who Corrected Voter Fraud Disinformation*, NPR (Nov. 17, 2020), <https://www.npr.org/2020/11/17/936003057/cisa-director-chris-krebs-fired-after-trying-to-correct-voter-fraud-disinformati>.

12. Matt Zapatowsky et al., *Barr Says He Hasn’t Seen Fraud That Could Affect the Election Outcome*, Wash. Post (Dec. 1, 2020), https://www.washingtonpost.com/national-security/barr-no-evidence-election-fraud/2020/12/01/5f4dcaa8-340a-11eb-8d38-6aea1adb3839_story.html.

13. M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://perma.cc/4U8N-SMBS>.

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Many of Mr. Trump's own senior advisors agreed with Attorney General Barr and Mr. Krebs.¹⁴ Indeed, Deputy (and later Acting) Attorney General Jeffrey Rosen and Associate (and later Acting) Deputy Attorney General Richard Donoghue regularly refuted the false information and allegations that Mr. Trump and his allies asserted about a fraudulent election.¹⁵ Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, that he and others told Mr. Trump that the information he was receiving from his political allies was not correct.¹⁶ And Mr. Donoghue has testified to the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee) that on December 27, 2020, he told Mr. Trump "in very clear terms" that after "dozens of investigations, hundreds of interviews" looking at "Georgia, Pennsylvania, Michigan, and Nevada," the Department of Justice — Mr. Trump's own Department

14. See Deposition of Jason Miller (Feb. 3, 2022), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>; Interview of Jeffrey Rosen (Aug. 7, 2021), United States Senate Committee on the Judiciary, 117th Cong. 30, available at <https://www.judiciary.senate.gov/rosen-transcript-final>.

15. See Interview of Jeffrey Rosen *see also* Interview of Richard Donoghue (Oct. 1, 2021), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>

16. Interview of Jeffrey Rosen.

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of Justice — had concluded that “the major allegations are not supported by the evidence developed.”¹⁷

Despite clear proof that no fraud occurred, and that no one stole the election from him, Mr. Trump and his lawyers sought to overturn the legitimate results by filing 65 baseless lawsuits across the country.¹⁸ None succeeded and, in fact, courts have imposed sanctions on the lawyers who participated in these suits and referred them for sanctions to their respective state bars.¹⁹

CONDUCT GIVING RISE TO THE COMPLAINT

Mr. Binnall, and other lawyers filing similar lawsuits in the battleground states that Mr. Biden won, knew that they would not prevail on the merits. Instead, they were using the courts to further political propaganda. These lawyers for Mr. Trump littered their complaints with allegations of fraud and malfeasance. Then, Mr. Trump and his supporters publicly sought to bolster those false assertions by pointing to their legal filings.

17. Interview with Richard Donoghue.

18. W. Cummings, J. Garrison & J. Sargent, *By the numbers: President Donald Trump’s failed efforts to overturn the election*, USA Today (Jan. 6, 2021), available at <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

19. See, e.g., *King v. Whitmer*, No. 20-13134 (U.S. Dist. Ct. E. Dist. Mich. Aug. 25, 2021), available at https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf.

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Mr. Binnall's lawsuit in Nevada was a particularly egregious example of the practice of alleging misinformation in court and then later citing it to perpetuate those false claims about the election. Upon filing the *Law v. Whitmer* case, Mr. Binnall engaged in multiple media appearances reiterating the false claims he made in court.²⁰ Mr. Binnall even made the same false statements under oath in Senate testimony—after the court had already rejected them as false.²¹ Citing the allegations made in the *Law v. Whitmer* lawsuit, Mr. Trump perpetuated the false notion that the Nevada election had severe irregularities over Facebook:²²

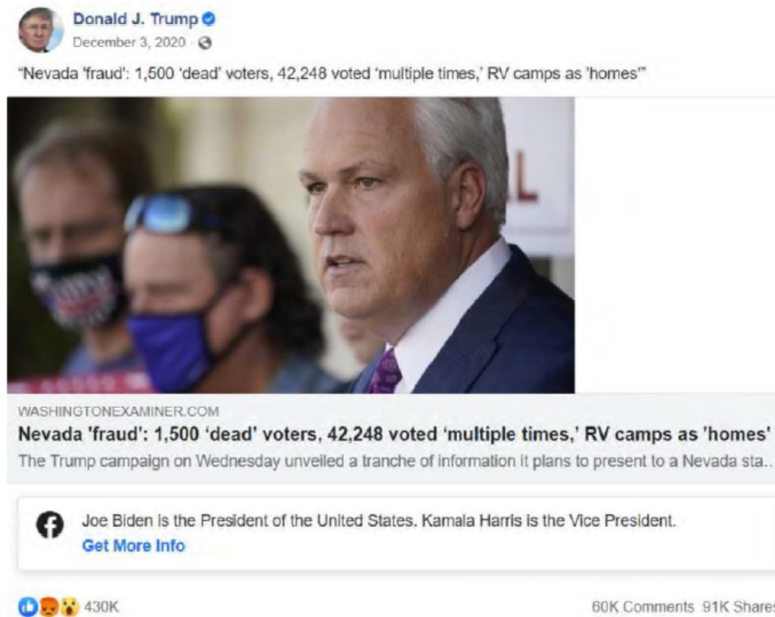
20. See, e.g., *Jesse Binnall on Nevada Lawsuit: We are presenting to the court over 40,000 people who voted twice* (Dec. 2, 2020), Fox News, <https://www.youtube.com/watch?v=2u13vcZ-v8Q>.

21. Senate Homeland Security and Governmental Affairs Committee, Witness Statement of Jesse Binnall (Dec. 16, 2020), <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Binnall-2020-12-16.pdf>.

22. Post from Donald. J. Trump's Facebook, <https://www.facebook.com/DonaldTrump/posts/10165913951510725>.

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Then, though the claims of widespread voter fraud were rejected by both a district court in Nevada and the Nevada Supreme Court, and evaluated and disclaimed by independent scholars, public officials, and news sources,²³ supporters of Mr. Trump continued to express their lies in the public. For example, Senator Ron Johnson tweeted, and Mr. Trump retweeted, Mr. Birman's claims about the election in late December. He claimed these voter fraud allegations were true even though he had failed to offer

23. See, e.g., *McKenzie Sadeghi, Fact Check: Voter Fraud Claims In Nevada Based On Failed Lawsuit*, USA Today (Feb. 5, 2021), <https://www.usatoday.com/story/news/factcheck/2021/02/05/fact-check-viral-post-makes-false-claims-nevadas-election/4392902001/>.

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any evidence supporting them in court, and despite the fact that both the District Court and the Nevada Supreme Court had rejected them as false:



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Mr. Trump and his supporters have repeated these allegations at rallies and continued to press forward baseless complaints before Nevada state officials.²⁴ This disinformation effort — which Mr. Binnall’s legal work laid the groundwork for — has sowed distrust in democracy in Nevada. And public officials in Nevada have had to expend considerable time and resources to repeatedly debunking the claims. For example, Secretary of State Barbara K. Cegayske’s office issued a report in 2021 again disavowing the repeated claims of voter fraud in Nevada, an effort which “consumed over 125 hours of staff time.”²⁵

Concerningly, Mr. Binnall may have even used his law license to promote insurrection, as a direct line exists between Mr. Binnall’s abuse of the court system and the January 6, 2021 attack on the United States Capitol. At least two named Contestants in the lawsuit Mr. Binnall signed and filed — Michael McDonald and James DeGraffenreid — received subpoenas from the House Select Committee investigating the January 6 attack on the U.S. Capitol for their role in the attacks and their December 2020 signing of fake electoral certificates purporting to cast Electoral College votes for Donald

24. Jessica Hill, *2020 Elections: Conservatives Debunk Fraud Claims in Nevada, Elsewhere*, Las Vegas Sun (July 28, 2022), <https://lasvegassun.com/news/2022/jul/28/2020-election-lost-not-stolen-political-conservati/>.

25. Election Integrity Violation Reports, Nevada Secretary of State Barbara Cegasyke (Apr. 21, 2021), <https://www.nvsos.gov/sos/home/showpublisheddocument?id=9428>.

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Trump.²⁶ Recently, FBI agents executed a search warrant on Mr. McDonald's house in relation to his efforts to overturn the election and attack the Capitol.²⁷ Mr. Binnall was providing legal representation to Mr. McDonald and Mr. DeGraffenreid in a matter directly related to these efforts, which casts further doubt on his integrity and suitability to continue to practice law in Nevada. Indeed, Mr. Binnall continued to spread his false allegations of voter fraud in Nevada even after the January 6 attack.²⁸

Thus, by filing the Contest, Mr. Binnall lent his law license and the legal professional's integrity and power to an orchestrated effort to undermine our nation's elections so that the person who lost the 2020 presidential election could remain in power. Indeed, other lawyers in Mr. Binnall's position recognized they were part of a baseless effort to undermine American democracy and withdrew

26. Hugh Jackson and April Corbin Girnus, *January 6 Panel Subpoenas Nevada Fake Electors McDonald, DeGraffenreid*, Nevada Current (Jan. 28, 2022), <https://www.nevadacurrent.com/2022/01/28/january-6-panel-subpoenas-nevada-fake-electors-mcdonald-degraffenreid/>.

27. David Charns, I-Team Sources: FBI Seizes Nevada GOP Chairman's Phone As Part Of Fake Elector Investigation, 8 News Now (June 22, 2022), https://www.8newsnow.com/i-team/i-team-sources-fbi-seizes-nevada-gop-chairmans-phone-as-part-of-fake-elector-investigation/?utm_medium=referral&utm_source=t.co&utm_campaign=socialflow.

28. Jesse Binnall Twitter page @jbinnall, (Jan. 7, 2021), <https://twitter.com/jbinnall/status/1347344777788981249>.

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from these lawsuits and renounced their efforts.²⁹ Mr. Binnall did not, choosing instead to continually spread false information and seek to disenfranchise Nevada’s voters.

**A SUBSTANTIAL BASIS EXISTS FOR THE
OFFICE OF BAR COUNSEL TO INVESTIGATE
MR. BINNALL’S CONDUCT AND TO IMPOSE
APPROPRIATE DISCIPLINE**

The Office of Bar Counsel should investigate Mr. Binnall’s actions on the following bases:

1. Mr. Binnall Violated Rule 3.1 By Bringing and Defending a Matter Which He Knew or Should Have Known Lacked Merit

Rule 3.1 provides in part, as follows: “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”

Comment 2 of the ABA Rules of Professional Conduct³⁰ states that: “The action is frivolous . . . if the lawyer is

29. Rachel Abrams, et al., *Once Loyal to Trump, Law Firms Pull Back from His Election Fight*, N.Y. Times, Nov. 13, 2020, available at <https://www.nytimes.com/2020/11/13/business/porter-wright-trump-pennsylvania.html>.

30. The State of Nevada has not adopted the official comments to the ABA Model Rules; however, the comments “may be

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unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.”

As the District Court and the Nevada Supreme Court’s treatment of the matter indicate, the Complaint that Mr. Binnall signed and filed lacked any basis in law or fact.

First, all evidence indicates that Mr. Binnall knowingly propagated false allegations of voter fraud. Regarding the Contestants’ central claim that “fraud occurred at multiple points in the voting process in Nevada in rates that exceed the margin of victory in the presidential race,” the court found that these allegations “strain credulity.” *Law v. Whitmer*, 477 P.3d 1124, *9 (Nev. 2020). On the issue of voter fraud, the court found that “none of the grounds [in the Contest] contains persuasive evidence . . . that there were fraudulent activities associated with [the 2020 election]” that produced fraudulent votes affecting vote margins. *Id.* at *10.

Further, the court rejected, citing a lack of any credible evidence, claims that:

- There were irregularities with the provisional balloting process, *id.*,

consulted for guidance in interpreting and applying the Nevada Rules of Professional Conduct, unless there is a conflict between the Nevada Rules and the . . . comments.” *In re Seare*, 493 B.R. 158, 183 (Bankr. D. Nev. 2013), *as corrected* (Apr. 10, 2013), *affd.*, 515 B.R. 599 (Bankr. App. 9th Cir. 2014).

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- Voting machines malfunctioned and accepted invalid signatures, *id.* at *11,
- 1,000 illegal or improper votes were counted, and 1,000 legal votes were not counted, *id.*, - Voters cast multiple ballots unlawfully, *id.*,
- Election workers were pressured to count invalid votes, *id.* at * 12, - Votes from deceased voters were improperly cast and counted, *id.*,
- Voters were impersonated by others who cast ballots in their names, *id.*, - Election officials counted untimely ballots, *id.*,
- Election officials marked choices for unfilled questions, *id.* at * 14,
- Counties prevented individuals from observing the counting of ballots, *id.*

Rather than reflecting any on-the-ground truth of events which occurred in Nevada, these allegations echoed baseless allegations that Mr. Trump's attorneys made—and courts squarely rejected—in other lawsuits around the country at the same time.³¹

When given the chance to develop and offer actual evidence, Mr. Binnall could not do so. Rather, he failed

31. See, e.g., *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.).

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to comply with evidentiary rules and flouted deposition deadlines. *Whitmer*, 477 P.3d at *9. Then, he provided mainly hearsay evidence in the form of declarations to substantiate the Contestants' claims, even though the election contest statute requires evidence from depositions.³² The court found that these "declarations were self-serving statements of little or no evidentiary value." *Whitmer*, 477 P.3d at *9.

Mr. Binnall also failed to offer any credible experts. Representing the Contestants, he put forth three experts all of whom the court found had "questionable" or "unsound" methods and who could not offer data sources, verification, or evidence supporting their methods or conclusions. *Id.* The court found that it "could have excluded" consideration of these experts altogether based on the "failure of these experts to verify the data they were relying on." *Id.* at * 15-16.

What's more, Mr. Binnall submitted a false declaration from a declarant *who later admitted that he committed fraud in its preparation*. Mr. Binnall presented a declaration from Donald Kirk Hartle, a Clark County man who alleged, as evidence of election irregularities, that a ballot was cast in his late wife's name. However, subsequent investigation showed that it was in fact Mr. Hartle who voted in his wife's name, and Mr. Hartle

32. An election contest "matter shall be tried and submitted so far as may be possible upon depositions and written or oral argument as the court may order." Nev. Rev. Stat. Ann. § 293.415.

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has pled guilty to a voting violation.³³ Attorney General Aaron Ford noted in a later statement that Mr. Hartle’s allegations were part of an effort to spread “inaccurate information” about the election and Clark County District Court Judge Carli Kierney called his allegations a “political stunt.”³⁴

Moreover, Mr. Binnall advocated for the overturning of the November 2020 election results even though he either “knew or should have known” that Contestants had no “reasonable or nonfrivolous basis” warranting this extraordinary remedy. *In re Martinez*, 393 B.R. 27, 36 (Bankr. D. Nev. 2008). “Knowledge” under the Rules of Professional Conduct can be “inferred from circumstances.”³⁵ There is ample indication that Mr. Binnall knew that his claims were frivolous. As explained previously, as Mr. Binnall continued to press false claims

33. Michael Lyle, *Man Used by GOP to Push Unfounded Voter Fraud Claims Pleads Guilty to Casting Ballot Under Late Wife’s Name*, Nevada Current (Nov. 16, 2021), <https://www.nevadacurrent.com/blog/man-used-by-gop-to-push-unfounded-voter-fraud-claims-pleads-guilty-to-casting-ballot-under-late-wifes-name/>; *Attorney General Ford Announces Voter Fraud Charges*, Nevada Attorney General Aaron Ford (Oct. 21, 2021), [https://ag.nv.gov/News/PR/2021/Attorney General Ford Announces Voter Fraud Charges/](https://ag.nv.gov/News/PR/2021/Attorney%20General%20Ford%20Announces%20Voter%20Fraud%20Charges/).

34. Associated Press, ‘Cheap Political Stunt’: Las Vegas Man Pleads Guilty to Voting Twice in 2020, *Reno Gazette Journal* (Nov. 17, 2021), <https://www.rgj.com/story/news/2021/11/17/judge-las-vegas-mans-donald-kirk-hartle-vote-fraud-claim-cheap-political-stunt/8656616002/>.

35. Rule 1.0(f).

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of fraud, members of Trump’s own cabinet publicly disclaimed the allegations about widespread fraud and irregularities, including in Nevada. As the District Court’s ruling made clear, when given the chance to substantiate his baseless claims on the merits, Mr. Binnall could not do so. Nevertheless, he continued to litigate these frivolous claims — including by pursuing an appeal. Moreover, any attorney seeking to make a redressable claim in good faith would have realized that no evidence supported these claims (or at the very least, ceased to litigate them when it became apparent that they could produce no evidence).

Even in the unlikely event that Mr. Binnall did not know the claims were frivolous and part of an effort to overturn the election, Mr. Binnall had an independent duty to inquire into the claims in order to avoid filing a baseless lawsuit; his own failure to do so is no defense. Under Nevada law, “[a] lawyer may not” do “whatever the client requested, regardless of whether it was reasonable or justified by the *facts*.” *Martinez*, 393 B.R. at 36. Rule 3.1 demands more — it requires that “a lawyer to exercise independent judgment with respect to claims a client wishes to bring and to decline to pursue claims that are frivolous.” “Simply following client’s orders” is not a defense; rather, “[t]he smooth functioning of the courts and the interests of justice always trump a client’s unreasonable demands.” *Id.* at 37.

*Appendix B***2. Mr. Binnall Violated Rule 4.4's Command That Lawyers Respect the Rights of Third Parties**

Pursuant to Rule 4.4, "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person."

ABA Comment 1 to the Rule states, "Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons."³⁶

In the interests of his clients, Mr. Binnall sought to remove the voting rights of more than one-and-a-half million Nevadans by overturning the results of a fair and free election. Further, his lawsuit can be seen only as a part of a widespread effort to delay and burden the process of tallying the votes of Nevada residents in the November 2020 election and to discredit the results of their votes in the eyes of the public. The District Court and the Nevada Supreme Court recognized that Mr. Binnall's requested remedy of overturning the election would harm others when it noted that an "election contest, if successful, has the serious effect of disenfranchisement of the voters." *Whitmer*, 477 P.3d 1124 at *17.

36. *Seare*, 493 B.R. at 183 (explaining that the ABA Comments may be used to interpret the Nevada Rules of Professional Conduct).

*Appendix B***3. Mr. Binnall Engaged in Misconduct that Violates Rule 8.4**

Under Rule 8.4, “It is professional misconduct for a lawyer to . . . violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; [or] engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or] engage in conduct that is prejudicial to the administration of justice.”

Mr. Binnall participated in a purposefully dishonest effort to undermine the 2020 election. He brought frivolous claims that the Constitution, prior court decisions, and relevant statutes barred. The bare “factual” bases he relied on were supported by false statements and wild speculation.

As both the District Court and the Nevada Supreme Court found, no evidence supported the claims Mr. Binnall advanced.

Mr. Binnall also may have engaged in conduct involving fraud, deceit, or misrepresentation by filing the Hartle Declaration, a document which, as explained previously, Mr. Hartle later admitted was untrue. An attorney has acted in violation of Rule 8.4 when they “acting in bad faith, file[] documents” that they “knew, or should have known” to be false. *In re Pagaduan*, 429 B.R. 752, 761 (Bankr. D. Nev. 2010), *order ea’ in part, vacated in part*, 447 B.R. 614 (D. Nev. 2011). Further investigation into

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Mr. Binnall's conduct in preparing and filing the Hartle Declaration by this office is warranted.

* * *

The United States Supreme Court has long recognized in upholding disciplinary actions that “speech by an attorney is subject to greater regulation than speech by others.”³⁷ As officers of the court an attorney is “an intimate and trusted and essential part of the machinery of justice” and a “crucial source of information and opinion.”³⁸ Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech.³⁹ Indeed, disciplinary boards and courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

37. *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

38. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

39. Even in the context of a lawyer running for office, which Mr. Binnall was not, the Nevada Supreme Court has held that “the guarantee of freedom of speech will not protect a lawyer in the context of a political campaign from disciplinary action . . . if he is guilty of known falsehood intentionally used and published for the purpose of misleading the voters and gaining personal advantage for himself or his candidate.” *In re Disc. of Hafter*, 381 P.3d 623 (Nev. 2012) (internal quotation marks and citations omitted).

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That members of our esteemed profession would engage in such actions — conduct that contributed to substantial harm to American democracy — should cause considerable distress within the entire legal community. As the Supreme Court of New York explained when considering Rudolph Giuliani’s role in similarly filing frivolous election challenges and promoting disinformation about the November 2020 elections:

False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of free society. When those false statements are made by an attorney, it also erodes the public’s confidence in the integrity of attorneys admitted to our bar and damages the profession’s role as a crucial source of reliable information.⁴⁰

Mr. Binnall chose to offer his professional license to an assault on our democracy. He pursued litigation that lacked any basis in law or fact. He participated in an organized effort to sow discord and doubt about the 2020 elections. He helped lead the charge in Nevada to disenfranchise millions of his fellow citizens because he did not like how they voted.

40. *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021 at 30-31.

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For the reasons set forth above, we respectfully request that the Office of Bar Counsel investigate Mr. Binnall's conduct and pursue appropriate discipline.

Sincerely,

/s/ Michael Teter
Michael Teter
Managing Director
[REDACTED]
On behalf of The 65 Project

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APPENDIX B

STATES
UNITED
DEMOCRACY
CENTER

LAWYERS
DEFENDING
AMERICAN
DEMOCRACY

VIA EMAIL

Seana Willing
Chief Disciplinary Counsel
State Bar of Texas
1414 Colorado Street
Austin, Texas 78701
swilling@texasbar.com

November 8, 2023

Re: Request for Disciplinary Action against
Sidney Powell Pursuant to Texas Rule of
Disciplinary Procedure 8.01

Dear Ms. Willing,

The States United Democracy Center is a nonpartisan organization advancing free, fair, and secure elections. Helping to ensure that democracy violators are held accountable, including those in the legal profession who

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betray their professional responsibilities to uphold the rule of law, is a critical component of our mission.

Lawyers Defending American Democracy (LDAD) is a nonpartisan organization, the purpose of which is to foster adherence to the rule of law. LDAD is devoted to ensuring that individual lawyers are held accountable for participating in assaults on fundamental principles of our American democracy.

We, together with the additional signatories below, write to urge the Office of Chief Disciplinary Counsel to initiate a disciplinary action seeking compulsory discipline against attorney Sidney Powell and to place the matter on the Board of Disciplinary Appeals' January 2024 docket. Attorneys licensed in Texas must "maintain the highest standards of ethical conduct." *See Duncan v. Bd. of Disciplinary Appeals*, 898 S.W.2d 759, 764 (Tex. 1995) (Cornyn, J., concurring); *see also* Tex. Disc. R. Prof. Cond., Pmble., 1. As set forth below, through acts undertaken in the aftermath of the 2020 presidential election, Ms. Powell fell far short of those standards.

I. Brief Background

On August 14, 2023, attorney Sidney Powell and 18 others were charged in Fulton County, Georgia with a conspiracy to overturn the 2020 presidential election.¹

1. *See* Indictment, State of Georgia v. Donald J. Trump, et al, 23SC188947 (Aug. 14, 2023), available at <https://int.nyt.com/data/documenttools/georgia-indictment-trump/daed97d37562a76f/full.pdf>.

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On October 19, 2023, Ms. Powell pled guilty to six misdemeanor counts of conspiracy to commit intentional interference with performance of election duties (O.C.G.A. 16-4-8- and 21-2- 597) arising out of a plot to unlawfully obtain access to voting machines in Coffee County, Georgia.² Per the Indictment, Ms. Powell was a key figure in that conspiracy, engaging in illegal efforts to access voting equipment, in Georgia and elsewhere. Ms. Powell hired and directed the technology firm SullivanStrickler to unlawfully access Coffee County, Georgia's sensitive voting equipment and confidential voting technology.³ At Ms. Powell's direction, SullivanStrickler and others involved in the conspiracy "stole data, including ballot images, voting equipment software, and personal voter information. The stolen data was then distributed to other members of the enterprise, including members in other states."⁴

Under the terms of the plea agreement, Powell is subject to six years of probation (12 months for each count), a fine of \$6,000, and restitution of \$2,700. She is further required to write a letter of apology for her actions and to testify truthfully against her co-defendants.⁵

2. A true and correct copy of the filed Accusation is attached hereto as Attachment 1. A true and correct copy of the filed Plea Statement is attached hereto as Attachment 2. *See also* Video of plea hearing. *State of Georgia v. Sidney Katherine Powell*, 23SC188947 (Oct.19, 2023), available at <https://www.youtube.com/watch?v=bHTz QGYVo>.

3. *See* Indictment, Acts 33, 91, and 144-149.

4. *See id.* at p. 18 (Unlawful Breach of Election Equipment in Georgia and Elsewhere).

5. *See* Attachment 2.

*Appendix B***II. Standard for Compulsory Discipline**

The Texas Rules of Disciplinary Procedure provide that “when an attorney licensed to practice law in Texas has been placed on probation for an Intentional Crime with or without an adjudication of guilt, the Chief Disciplinary Counsel shall initiate a Disciplinary Action seeking compulsory discipline[.]” Tex. R. Disc. Pro. 8.01 (emphasis added). An Intentional Crime includes “any Serious Crime that requires proof of knowledge or intent as an essential element[.]” Tex. R. Disc. Pro. 1.06V(l). In relevant part, a Serious Crime includes “any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.”⁶ Tex. R. Disc. Pro. 1.06GG. Rule 8.05 provides that such attorneys subject to Rule 8.01 “shall be disbarred unless the Board of Disciplinary Appeals, under Rule 8.06, suspends his or her license to practice law.” Tex. R. Disc. Pro. 8.05. The Board of Disciplinary Appeals has the discretion to determine whether to suspend or disbar an attorney who receives a fully probated sentence. *See In re Caballero*, 272 S.W.3d 595, 597 (Tex. 2008) (holding the Board did not abuse its discretion in disbaring attorney who received a fully probated sentence and affirming disbarment).

6. That Ms. Powell’s plea agreement includes a statement that her crimes did not involve “moral turpitude” has no bearing on the Office of Chief Disciplinary Counsel’s duty to seek compulsory discipline under the applicable rules and, even if it did, that determination would rest with the Texas Bar.

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As set forth below, since Ms. Powell has pled guilty to Intentional Crimes, the Office of Chief Disciplinary Counsel's must commence an action for seeking her disbarment under the rules.⁷

III. Sidney Powell's October 19, 2023 Guilty Plea

On October 19, 2023, Ms. Powell pled guilty to six counts of Conspiracy to Commit Intentional Interference with Performance of Election Duties between December 1, 2020 and January 7, 2021.⁸ Specifically, as set forth in the attached Accusation (see Ex. 1), Ms. Powell pled guilty to unlawfully conspiring to intentionally interfere with, hinder, and delay co-defendant Misty Hampton - then the elections director for Coffee County, Georgia - in the performance of her duties under Georgia's Election Code by contracting with, paying and causing the employees of the firm SullivanStrickler LLC to travel from Fulton County, Georgia, to Coffee County, Georgia:

1. for the purpose of *willfully tampering with electronic ballot markers and tabulating machines* (Count 1);
2. for the purpose of *causing certain members of the conspiracy*, who were not officers

7. The ongoing case against Ms. Powell by the Commission for Lawyer Discipline has no bearing on the Office of Chief Disciplinary Counsel's obligation to commence an action for compulsory discipline under the rules. *See* Tex. R. Disc. Pro. 8.01 ("Proceedings under this part are not exclusive [.]")

8. *See* note 2, *supra*.

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charged by law with the care of ballots and who were not persons entrusted by any such officer with the care of ballots for purpose required by law, *to possess official ballots outside of the polling place* (Count 2);

3. for the purpose of *using computer* with knowledge that such use was without authority and *with the intention of taking and appropriating information, data, and software, the property of Dominion Voting Systems Corporation* (Count 3);
4. for the purpose of *using computer* with knowledge that such use was without authority and *with the intention of removing voter data* from said computer (Count 4);
5. for the purpose of *using computer with the intention of examining personal voter data* with knowledge that such examination was without authority (Count 5); and
6. for the purpose of *using computer* with knowledge that such use was without authority and *with the intention of removing Dominion Voting Systems Corporation data* from said computer (Count 6).

See Ex. 1 (Accusation) (Emphases added). As shown above, each count has an intentionality element and at least four (Counts 2, 3, 4, and 6) involve theft of property, thereby subjecting Ms. Powell to compulsory discipline.

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The fact that Ms. Powell entered her guilty plea under Georgia's first offender law has no impact on the compulsory discipline she must face.⁹ The Georgia Supreme Court routinely upholds attorney discipline imposed following first-offender pleas under the law. *See, e.g., In the Matter of Davis*, 292 Ga. 897 (2013); *In re Waldrop*, 283 Ga. 80 (2008); *In the Matter of Caroway*, 279 Ga. 381 (2005); *In the Matter of Lewis*, 282 Ga. 649 (2007); and *In the Matter of Calhoun*, 268 Ga. 877 (1998). Likewise, although the Texas penal code does not have a first offender law applicable under these circumstances,¹⁰ Texas does require attorneys to face compulsory discipline in similar situations. *See* Tex. R. Disc. Pro. 8.03 (providing for compulsory discipline for a probated sentence obtained through deferred adjudication). *See also In the Matter of Alfred Isassi*, BODA No. 57699 (May 8, 2017) (imposing compulsory discipline after attorney was released from all penalties and disabilities by discharge under Tex. Code Crim. Pro. Art. 42.12 § 20). Neither Rule 8.03 nor Isassi say anything about excluding first offenders.

IV. Conclusion

For the reasons set forth above, we respectfully assert that the Chief Disciplinary Counsel must initiate a compulsory disciplinary action against Ms. Powell seeking her disbarment, pursuant to Rule 8.01 of the Texas Rules of Disciplinary Procedure. We further request that the

9. Ms. Powell's plea deal was obtained under Georgia's first offender law. Ga. Code § 42-8-60.

10. Texas has a first offender program for juveniles. *See* Tex. Fam. Code § 52.031.

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matter be placed on the Board of Disciplinary Appeals' January 2024 docket.

Respectfully submitted.

STATES UNITED DEMOCRACY CENTER

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Washington, D.C. 20036
(202) 999-9305
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LAWYERS DEFENDING AMERICAN DEMOCRACY

John T. Montgomery
Lawyers Defending American
Democracy Board Member

Norman Eisen
Executive Chair, Board of Directors
Former White House Special Counsel for Ethics and
Government Reform*

Joanna Lydgate, Chief Executive Officer
Former Chief Deputy Attorney General of
Massachusetts

Governor Christine Todd Whitman, Co-Chair
Former Governor of New Jersey

Gillian Feiner, Senior Counsel
Meagan Harding, Counsel (TX Bar No. 24080179)
Christine P. Sun, Senior Vice President, Legal

Additional signatories*

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Donald Ayer
Adjunct Professor, Georgetown Law School
U.S. Attorney (E.D. Cal.) (1982-86)
Principal Deputy Solicitor General (1986-88)
Deputy Attorney General (1989-90)

Governor Steve Bullock
Former Governor of Montana
Former Attorney General of Montana

Honorable Tom Coleman
Former Missouri Congressman

Honorable John J. Farmer Jr.
Former Attorney General of New Jersey
Former Assistant U.S. Attorney, District of New Jersey

Honorable Trey Grayson
Former Secretary of State of Kentucky

Dicky Grigg
Past President of TEX-ABOTA

Honorable Jim Hood
Former Attorney General of Mississippi

Honorable Jahna Lindemuth
Former Attorney General of Alaska

Honorable Patricia A. Madrid
Former Attorney General of New Mexico

Professor Richard W. Painter
S. Walter Richey Professor of Corporate Law,
University of Minnesota Law School
Former Associate Counsel to the President

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Honorable Sarah R. Saldana
Former Director of the U.S. Immigration and Customs
Enforcement
Former U.S. Attorney, Northern District of Texas

Terry Tottenham
Past President, State Bar of Texas

* Titles and affiliations for identification purposes only

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THE 65 PROJECT

March 7, 2022

VIA ELECTRONIC MAIL: [REDACTED]

State Bar of Georgia
Office of the General Counsel
104 Marietta Street, N.W., Suite 100
Atlanta, GA 30303

Dear General Counsel's Office:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

We write to request that the State Disciplinary Board ("Disciplinary Board") investigate the actions taken by William Bradley Carver (Bar No. 115529) relating to his falsely swearing to be a duly elected Georgia elector in 2020 and transmitting that fraudulent certificate to the United States District Court for the Northern District of Georgia and to the United States Congress.

Mr. Carver's conduct appears to have violated numerous statutes, as well as the Rules of Professional Conduct 3.3 (Candor to Tribunal), 8.4(a)(1) (Violating and Assisting Others in Violating the Rules of Professional Conduct), 8.4(a)(4) (Engaging in Acts Involving Dishonest,

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Fraud, Deceit, or Misrepresentation), 8.4(a)(8) (Committing a Criminal Act Bearing on a Lawyer's Trustworthiness).

BACKGROUND

Donald Trump lost the 2020 presidential election.¹ He also lost Georgia and its 16 electoral votes.² Following the election, Mr. Trump and his allies filed at least six lawsuits in the state, seeking to prevent the Georgia from certifying Mr. Biden as the winner of the state's electoral votes.³ By December 14, 2020, Georgia's courts, including the state supreme court, had rejected all such efforts.⁴

Therefore, at noon on Monday, December 14, 2020, Georgia's presidential electors convened in the State

1. See United States National Archives, Electoral College Results — 2020, available at <https://www.archives.gov/electoral-college/2020>.

2. See Certificate of Ascertainment, State of Georgia, available at <https://www.archives.gov/files/electoral-college/2020/ascertainment-georgia.pdf>.

3. See *In re Enforcement of Election Laws and Security Ballots Cast or Received after 7:00pm on November 3, 2020*, SPCV20-00982 (Sup. Ct. of Chatham Cty.); *Brooks v. Mahoney*, 4:20-cv-00281-RSB-CLR (S.D. Ga. Nov. 11, 2020); *Wood v. Raffensperger*, 1:20-cv-04651-SD (N.D. Ga. Nov. 13, 2020); *Pearson v. Kemp*, 1:20-cv-04809-TCB (N.D. Ga. Nov. 27, 2020); *Boland v. Raffensperger*, 2020CV343018 (Sup. Ct. of Fulton Cty.); *Trump v. Raffensperger*, 2020CV343255 (Sup. Ct. of Fulton Cty.), S21Mo561 (Sup. Ct. of Ga.).

4. See *Trump v. Raffensperger*, S21M0561 (Sup. Ct. of Ga.).

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Senate Chamber in the Georgia capitol. They met under the authority of state and federal law. During an open meeting broadcast live and attended by the media, the electors conducted the business prescribed by state and federal law: they elected a chairperson, cast and counted the necessary ballots, signed the required papers, and sent valid, official documents reflecting the lawful outcome regarding Georgia's 16 electoral votes to the President of the United States Senate, the Georgia Secretary of State, the Archivist of the United States, and the Chief Judge of the United States District Court for the Northern District of Georgia.

Through these actions, the presidential electors followed the requirements of Georgia law, carried out the wishes of Georgia's voters, and vindicated American democracy through the lawful, peaceful transition of power that stands as the hallmark of our nation.

While these lawful, duly selected presidential electors convened and carried out their duties, another group of individuals met in secret elsewhere. This group executed a set of documents through which they purported to be Georgia's duly appointed presidential electors and cast their votes for Mr. Trump and Vice President Mike Pence. They then transmitted these false documents, stating:

“Pursuant to 3 U.S.C. § 11, enclosed please find duplicate originals of Georgia's electoral votes for President and Vice President, as follows: two (2) duplicate originals for the President of the Senate and the Archivist, and one (1) duplicate

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original for the Secretary of State and Chief Judge.”⁵

These false electors acted without any legal authority or mandate. Indeed, their acts contradicted federal and state statutes, as well as federal and state court rulings. The individuals who signed these documents did so knowing that they were false at the time they signed and transmitted them, nor did they ever act to correct or retract the fraudulent papers.

William Bradley Carver, an attorney licensed by the State of Georgia, participated in this effort as a false elector. Mr. Carver’s conduct raises significant concerns as to whether he violated federal and state law and the Rules of Professional Conduct.

APPLICABLE STANDARDS AND RULES OF PROFESSIONAL CONDUCT

Rule 3.3(a) of the Rules of Professional Conduct provides:

A lawyer shall not knowingly: 1) make a false statement of material fact or law to a tribunal; 2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client; 3) fail

5. American Oversight obtained the false certificates. They can be found at <https://www.americanoversight.org/g/american-oversight-obtains-seven-phony-certificates-of-pro-trump-electors>.

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to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or 4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

Subsection (b) pointedly provides that the duty continues to the proceeding's conclusion. The Rules define tribunal to include legislative bodies acting in adjudicative capacities:

“Tribunal” denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a legal judgment directly affecting a party's interests in a particular matter.

Additionally, Rule 8.4(a) provides that it constitutes professional misconduct to:

(1) violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through acts of another;

...

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(4) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;

...

(8) commit a criminal act that relates to the lawyer's fitness to practice law or reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, where the lawyer has admitted in *judicio*, the commission of such act.

Finally, the oath and Preamble to the Georgia Rules of Professional Conduct provide the appropriate framework through which Mr. Carver's potential misconduct should be viewed. The Oath that Mr. Carver took to gain admission to the State Bar of Georgia prescribes:

I do solemnly swear that I will conduct myself as an attorney or counselor of the Supreme Court of Georgia, truly and honestly, justly and uprightly, and according to law; and that I will support the Constitution of the State of Georgia and the Constitution of the United States. So help me God.

Additionally, the Preamble to the Georgia Rules of Professional Conduct states, in part:

A lawyer is a representative of clients, an officer of the legal system and a citizen having special responsibility for the quality of justice.

...

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A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

**A SUBSTANTIAL BASIS EXISTS FOR THE
DISCIPLINARY BOARD TO INVESTIGATE
MR. CARVER'S CONDUCT AND TO IMPOSE
APPROPRIATE DISCIPLINE UP TO, AND
INCLUDING, DISBARRMENT**

The Disciplinary Board should investigate Mr. Carver's conduct on the following bases:

1. Mr. Carver engaged in illegal conduct that reflects adversely on his honesty and trustworthiness

Mr. Carver violated several Georgia statutes, including:

- O.C.G.A. § 16-10-20.1, which prohibits filing, entering, or recording any document in a public record knowing that such document is false or contains a materially false, fictitious, or fraudulent statement or representation;
- O.C.G.A. § 16-10-20, which prohibits making a false, fictitious, or fraudulent statement or

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representation or using any false writing or document that contains a false, fictitious, or fraudulent statement;

- O.C.G.A. § 16-10-23, which prohibits holding oneself out as a public officer with intent to mislead; and
- O.C.G.A. § 16-10-71, which prohibits making a false statement in a that purports to be made under lawful oath or affirmation.

These statutes all relate to conduct that, if engaged in, negatively reflect someone's honesty and trustworthiness.

2. Mr. Carver violated the duty of candor to a tribunal

Mr. Carver participated in transmitting the false certificate that he signed to the U.S. District Court for the Northern District of Georgia. Under Rule 1.0, a court is tribunal, without caveat or exception. Sending the fraudulent documents to the United States District Court implicated Mr. Carver's duty of candor and he violated those standards.

Additionally, Congress, when acting pursuant to the Electoral Count Act, engages in a proceeding that implicates the Rules' definition of tribunal. As a federal court in one of the January 6 defendants has found:

[I]t is a formal process. In addition, the Vice President, as President of the Senate, serves as

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presiding officer while the votes cast by Electors are counted. As in a court of law, members of Congress may object, which in turn causes the Senate and the House of Representatives to separately consider and render their separate decision[s] on the objection. Further, after the count is finished, the certification must end with a result declared.⁶

Moreover, the Comment [1] to Rule 3.9, addressing non-adjudicative proceedings, specifically states that a legislature, “like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body should deal with the tribunal honestly and in conformity with applicable rules of procedures.” And Comment [2] goes further:

Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

Mr. Carver’s false and uncorrected assertions to the United States District Court and Congress that he was

6. *United States v. Nordean*, 2021 WL 6134595 (D.C.D.C. 2021), at *6 (citations and quotation marks omitted).

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a duly appointed elector from Georgia violated his duty of candor.

3. Mr. Carver engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation

The entire enterprise that Mr. Carver participated in involved dishonesty, fraud, deceit, and misrepresentation. Further, this ethical standard applies to conduct that occurs outside of a tribunal.

4. Mr. Carver assisted others to engage in conduct that violated the Rules of Professional Conduct

In an effort to overturn the legitimate results, Mr. Trump and his allies filed at least 65 baseless lawsuits across the country. None succeeded and, in some situations, courts have imposed sanctions on the lawyers who participated in these suits and referred them for sanctions to their respective state bars.

Failing to achieve their desired ends through the courts, Mr. Trump's supporters turned to pressuring Vice President Mike Pence to usurp Congress's power by throwing out the electoral votes of seven states that Joe Biden won and thereafter declaring Mr. Trump (and, incidentally, Mr. Pence) victorious. The basis for this strategy rested in two memoranda written by John Eastman, one of Mr. Trump's attorneys.⁷

7. The main Eastman memorandum is available at <https://www.cnn.com/2021/09/21/politics/read-eastman-full-memo-pence-overturn-election/index.html>.

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Mr. Eastman's memoranda, which has been shown to be grounded in neither law nor fact, recommended that Mr. Pence take "BOLD" action to secure Mr. Trump's victory.⁸ Mr. Pence would preside over the January 6, 2021 Joint Session of Congress, during which the electoral votes cast and certified in each state on December 14, 2020 would be opened and confirmed. Established law and precedent limited Mr. Pence's role to opening the Certificates of Votes and announcing the results of each, as well as the outcome. Mr. Eastman sought to have Mr. Pence disregard the vice president's constitutional and statutory obligations, and to instead claim unto himself the authority to invalidate seven states' electoral votes and unilaterally declare Mr. Trump the victor, without turning the matter over to Congress. The scheme required an existing controversy over which slate of electors should be viewed as valid from the seven states.⁹ In other words, for Mr. Pence to throw out the electoral votes cast and certified by the seven states, there needed to be an alternative slate of electors who claimed to be the legitimate electors.

Individuals from those seven states obliged and created false slates of electors. And thus, Mr. Eastman's scheme became a conspiracy.

Unfortunately, Mr. Carver chose to participate. To put that decision in context for assessing their professional conduct, 84 individuals across Arizona, Georgia, Michigan,

8. *Id.*

9. *Id.*

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New Mexico, Nevada, Pennsylvania, and Wisconsin agreed to engage in this effort to subvert democracy. But only five of those 84 are lawyers, with numerous lawyers deciding not to appear at the meetings despite originally being selected as electors.

With seven separate groups filing false certificates with the Archivist, a condition precedent of Mr. Eastman's plan had been satisfied. He and Mr. Trump then continued to apply significant private and public pressure on Mr. Pence to go along with the scheme.

Boris Epshteyn, another of Mr. Trump's attorneys, explained:

This was in total congruence with the overall effort to send it back to the states. With the rampant fraud across the country, the interplay of the 12th Amendment and the Electoral Count Act made it important to have alternate slates of electors be available when a challenge to states' slate of electors would be successful.¹⁰

That is why at the January 6 rally, speakers used Georgia and the false certificate that Mr. Carver signed as part of that effort. Mr. Giuliani said:

10. B. Reinhard, et al., *As Giuliani Coordinated Plan for Trump Electoral Votes in States Biden Won, Some Elections Balked*, Washington Post (Jan. 20, 2022), available at https://www.washingtonpost.com/investigations/electors-giuliani-trump-electoral-college/2022/01/20/687e3698-7587-11ec-8b0a-befab800c430_story.html.

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[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. It is perfectly appropriate given the questionable constitutionality of the Election Counting Act of 1887 [sic] that the Vice President can cast it aside and he can do what a president called Jefferson did when he was Vice President. He can decide on the validity of these crooked ballots, or he can send it back to the legislators, give them five to 10 days to finally finish the work.¹¹

Mr. Eastman, who spoke right before Mr. Trump, said:

[A]ll we are demanding of Vice President Pence is this afternoon at 1:00 he let the legislators of the state look into this so we get to the bottom of it, and the American people know whether we have control of the direction of our government, or not...And anybody that is not willing to stand up to do it, does not deserve to be in the office. It is that simple.¹²

11. The transcript of Mr. Giuliani's and Mr. Eastman's January 6, 2021 remarks is available at <https://www.rev.com/blog/transcripts/rudy-giuliani-speech-transcript-at-trumps-washington-d-c-rally-wants-trial-by-combat>.

12. *Id.*

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And Mr. Trump declared:

In Georgia, your secretary of state who, I can't believe this guy's a Republican. . . . The Georgia secretary of state and pathetic governor of Georgia. . . . Because of him and others, you have Brian Kemp . . . Make no mistake, this election was stolen from you, from me and from the country.

...

Even though Pennsylvania and other states want to redo their votes. They want to see the numbers. They already have the numbers. Go very quickly. And they want to redo their legislatures because many of these votes were taken, as I said, because it wasn't approved by their legislature.

...

But the only way that can happen is if Mike Pence agrees to send it back. Mike Pence has to agree to send it back.

...

And Mike Pence is going to have to come through for us, and if he doesn't, that will be a, a sad day for our country because you're sworn to uphold our Constitution.

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Now, it is up to Congress to confront this egregious assault on our democracy. And after this, we're going to walk down, and I'll be there with you, we're going to walk down, we're going to walk down.

Anyone you want, but I think right here, we're going to walk down to the Capitol, and we're going to cheer on our brave senators and congressmen and women, and we're probably not going to be cheering so much for some of them.

Because you'll never take back our country with weakness. You have to show strength and you have to be strong. We have come to demand that Congress do the right thing and only count the electors who have been lawfully slated, lawfully slated.¹³

It is well-documented what happened next. Members of the crowd then marched to the Capitol, breached security, vandalized the building, assaulted police officers, and sought to hunt down members of Congress and Mr. Pence. Nine people died as a result of the insurrection, including four police officers who committed suicide within seven months of responding to the attack.¹⁴ The

13. The transcript of Mr. Trump's January 6, 2021 remarks is available at <https://www.cnn.com/2021/02/08/politics/trump-january-6-speech-transcript/index.html>.

14. Wolfe, Jan, *Four Officers Who Responded to U.S. Capitol Attack Have Died by Suicide*, Reuters (Aug. 2, 2021), available

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insurrectionists injured over 138 police officers.¹⁵ To date, 769 people have been charged in connection with the January 6 insurrection, with 165 of those defendants pleading guilty, and courts have imposed sentences reaching over 60 months.¹⁶

Thus, Mr. Carver participated in a concerted effort to pressure Mr. Pence to disregard his constitutional and statutory duties so that Mr. Trump could reclaim the presidency. The Rules establish that aiding others to violate such standards constitutes its own misconduct. Mr. Eastman's conduct in furtherance of his client, Mr. Trump, violated numerous standards. The fact that Mr. Eastman is admitted elsewhere does not shield Mr. Carver, both because of the reciprocity enforcement standards and, simply, because Rule 8.4 does not require the other actor to be a lawyer at all, as the Comment to that standard makes clear.

* * *

at <https://www.reuters.com/world/us/officer-who-responded-us-capitol-attack-is-third-die-by-suicide-2021-08-02/>.

15. Schmidt, Michael S.; Broadwater, Luke, *Officers' Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. Times (Feb. 12, 2021), available at <https://www.nytimes.com/2021/02/11/us/politics/capitol-riot-police-officer-injuries.html>.

16. See <https://www.insider.com/all-the-us-capitol-pro-trump-riot-arrests-charges-names-2021-1>.

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The United States Supreme Court has long recognized in upholding disciplinary actions that “speech by an attorney is subject to greater regulation than speech by others.”¹⁷ As officers of the court an attorney is “an intimate and trusted and essential part of the machinery of justice” and a “crucial source of information and opinion.”¹⁸ Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech. Indeed, disciplinary boards and courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

By signing the certificate falsely claiming to be a Georgia elector and allowing that certificate to be transmitted to the United States District Court, the United States Senate, and the Archivist of the United States, Mr. Carver disregarded the U.S. Constitution, violated federal and state law, and ignored the judicial decisions on that very matter. Further, he failed to conform to the duties the Rules of Professional Conduct place on attorneys.

That a member of the State Bar of Georgia would engage in such actions should cause considerable distress within the entire legal community.

17. *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

18. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

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For the reasons set forth above, we respectfully request that the Disciplinary Board investigate Mr. Carver's conduct and impose appropriate discipline.

Sincerely,

/s/ Michael Teter
Michael Teter
Managing Director, The 65 Project
[REDACTED]

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THE 65 PROJECT

February 6, 2025

VIA ELECTRONIC SUBMISSION

Office of Chief Disciplinary Counsel
3327 American Avenue
Jefferson City, MO 65109

Dear Office of Chief Disciplinary Counsel:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who violate their oath as attorneys to uphold the rule of law and abide by the professional code of conduct.

We write to request that the Office of Chief Disciplinary Counsel investigate the recent actions taken by Edward R. Martin (Bar #63105) in his role as interim United States Attorney for the District of Columbia. Specifically, after representing Joseph Padilla in a criminal matter stemming from Mr. Padilla's actions on January 6, 2021, Mr. Martin then filed pleading on behalf of the United States in Mr. Padilla's case, while still *counsel of record* for Mr. Padilla. See *United States of America v. Joseph Lino Padilla*, Case No. 21-cr-214 (JDB).¹

1. Attached as Addendum 1 are the relevant filings in this matter.

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Additionally, Mr. Martin also filed pleadings in the criminal matter involving Timothy Hale-Cusanelli, another individual convicted by a jury of offenses related to storming the United States Capitol on January 6, 2021. *See United States of America v. Timothy Louis Hale-Cusanelli*, Case No. 21-cr-00037 (TNM).² Mr. Martin's organization hosted a fundraiser for Mr. Hale-Cusanelli and Mr. Martin described Mr. Hale-Cusanelli as an "extraordinary man, an extraordinary leader now of those who have survived January 6."

These facts, coupled with public statements Mr. Martin has made since assuming his role as interim U.S. Attorney, warrant a full investigation by the Office of Chief Disciplinary Counsel.

Specifically, we believe that Mr. Martin's actions violate Rule 4-1.7's mandate that lawyers not represent a client if the representation involves a concurrent conflict of interest. Mr. Martin appeared on *both sides* of the matter in Mr. Padilla's case, representing Mr. Padilla and then representing the United States. Although Mr. Martin has stated that he thought he was no longer counsel of record for Mr. Padilla, the conflict persists under Rule 4-1.9, and Mr. Martin's actions violate the clearly established rules regarding such conflicts. In addition, Rule 4-1.7 also prohibited Mr. Martin from appearing on behalf of his client, the United States, in Mr. Hale-Cusanelli's criminal

2. Attached as Addendum 2 are the relevant filings in this matter.

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matter after he held a fundraiser for Mr. Hale-Cusanelli and spoke glowingly of the convicted felon.

In addition, Mr. Martin likely violated Rule 4-1.11's requirement that a lawyer currently serving as a public official is subject to Rules 4-1.7 and 4-1.9 *and* "shall not participate in a matter in which the lawyer participated personally or substantially while in private practice or nongovernmental employment." Mr. Martin participated in Mr. Padilla's criminal action as his defense counsel. He was barred from participating in the matter on behalf of the government.

For the reasons set forth above, we respectfully request that the Office of Chief Disciplinary Counsel investigate Mr. Martin's conduct and pursue appropriate discipline.

Sincerely,

/s/ Michael Teter

Michael Teter

Managing Director

[REDACTED]

On behalf of The 65 Project

cc: Hamilton P. Fox, III, Office of Disciplinary Counsel,
Board of Professional Responsibility, District of
Columbia Court of Appeals

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UNITED STATES DISTRICT COURT
for the
District of Columbia

Case No. 1:21-cr-00214-JDB

USA.

Plaintiff,

v.

JOSEPH PADILLA,

Defendant.

APPEARANCE OF COUNSEL

To: The clerk of court and all parties of record

I am admitted or otherwise authorized to practice in
this court, and I appear in this case as counsel for:
Defendant Joseph Padilla

Date: 11/10/2021

/s/ Edward R. Martin Jr.
Attorney's signature

Edward R Martin Jr 481866
Printed name and bar number

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10017 Park Royal Drive
Great Falls, VA 22066

Address

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(314) 606-6462

Telephone number

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 21-CR-214 (JDB)

UNITED STATES OF AMERICA

v.

JOSEPH LINO PADILLA,

Defendant.

**UNITED STATES' MOTION TO DISMISS
INDICTMENT WITH PREJUDICE PURSUANT TO
FEDERAL RULE CRIMINAL PROCEDURE 48(A)**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this motion.

Pursuant to Federal Rule of Criminal Procedure 48(a), the government hereby moves to dismiss the indictment against the defendant with prejudice. The government cites to the Executive Order dated January 20, 2025, Granting Pardons and Commutation of Sentences for Certain Offenses Relating to the Events at Or Near the United States Capitol on January 6, 2021, as the reason for this dismissal. The Defendant consents to this motion.

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Respectfully submitted,

EDWARD R. MARTIN, JR.
United States Attorney
D.C. Bar No. 481866

/S/

JENNIFER LEIGH BLACKWELL
Assistant United States Attorney
D.C. Bar No. 481097
601 D Street, NW
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UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

Case No. 1:21-cr-214-JDB

UNITED STATES OF AMERICA,

v.

JOSEPH LINO PADILLA,

Defendant.

MOTION TO WITHDRAW AS COUNSEL

Undersigned counsel respectfully moves the Court to withdraw as a counsel of record in this matter.

Mr. Padilla noticed his appeal in this case in September 2023. ECF No. 108. From that point forward, he was represented by an attorney working with the Office of the Federal Public Defender in New Mexico. That defender entered her appearance in this case on November 1, 2024. ECF No. 122. Although undersigned counsel has not represented Mr. Padilla in connection with post-conviction litigation, counsel remains listed as counsel of record on the docket. Accordingly, as the case has now been dismissed, and as the undersigned does not currently represent Mr. Padilla, counsel requests that the Court grant this motion so the docket may accurately reflect this fact. This motion has been served upon the

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defendant personally. LCrR 44.5(d). Mr. Padilla has no objection to this motion.

Dated: February 4, 2025

Respectfully submitted.

/s/ Edward R. Martin, Jr. _____

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 21-CR-0037-TNM

UNITED STATES OF AMERICA

v.

TIMOTHY HALE-CUSANELLI,

Defendant.

**UNITED STATES' MOTION TO DISMISS THE
INDICTMENT WITH PREJUDICE PURSUANT TO
FEDERAL RULE OF CRIMINAL PROCEDURE 48(a)**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this motion.

Pursuant to Federal Rule of Criminal Procedure 48(a), the government hereby moves to dismiss the indictment against the defendant with prejudice. The government cites to the Executive Order dated January 20, 2025, Granting Pardons and Commutation of Sentences for Certain Offenses Relating to the Events at Or Near the United States Capitol on January 6, 2021, as the reason for this dismissal.

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Respectfully submitted,

EDWARD R. MARTIN, JR.
Acting United States Attorney
D.C. Bar No. 481866

/S/

JENNIFER LEIGH BLACKWELL
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**THE
65
PROJECT**

July 7, 2022

Ramona M. Mariani
Office of Disciplinary Counsel
1601 Market Street, Suite 3320
Philadelphia, PA 19103

VIA FACSIMILE: [REDACTED IN ORIGINAL]

Dear Ms. Mariani:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

We write to request that the Office of Disciplinary Counsel investigate the actions taken by Bruce Marks (Attorney Identification No. 41299) relating to his efforts to overturn the 2020 presidential election. Mr. Marks assisted Mr. Trump's litigation team in *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.), in which he sought to have the court disenfranchise nearly seven million voters. As the district court stated when denying the effort:

This Court has been unable to find any case in which a plaintiff has sought such a drastic

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remedy in the contest of an election, in terms of the sheer volume of votes asked to be invalidated. One might expect that when seeking such a startling outcome, a plaintiff would come formidably armed with compelling legal arguments and factual proof of rampant corruption, such that this Court would have no option but to regrettably grant the proposed injunctive relief despite the impact it would have on such a large group of citizens.

That has not happened. Instead, this Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence. In the United States of America, this cannot justify the disenfranchisement of a single voter, let alone all the voters of its sixth most populated state. Our people, laws, and institutions demand more.¹

Mr. Marks not only advised Mr. Trump's campaign, but he also attended the November 17, 2020 hearing and misled the District Court regarding the holding in a matter in which Mr. Marks had been a party.

Pennsylvania's Rules of Professional Conduct require more. "The primary purpose of our lawyer discipline

1. *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Nov. 21, 2020 Memorandum Opinion ("Memorandum Opinion") at 2.

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system in Pennsylvania is to protect the public, preserve the integrity of the courts, and deter unethical conduct.” *Off. of Disciplinary Couns. v. Czmus*, 586 Pa. 22, 32-33, 889 A.2d 1197, 1203 (2005) (citing *In re Iulo*, 564 Pa. 205, 766 A.2d 335, 339 (2001)). “Truth is the cornerstone of the judicial system; a license to practice law requires allegiance and fidelity to truth.” *Office of Disciplinary Counsel v. Surrick*, 561 Pa. 167, 749 A.2d 441, 449 (2000) (citation omitted). “Whenever an attorney is dishonest, that purpose is served by disbarment.” *Office of Disciplinary Counsel v. Grigsby*, 493 Pa. 194, 425 A.2d 730, 733 (1981).

By offering his law license to a frivolous lawsuit untethered to either law or fact and that sought an extreme remedy unheard of in any court of law, Mr. Marks ignored the ethical standards to which he is bound. His conduct violated Rules of Professional Conduct 3.1 (Meritorious Claims and Contentions), 3.3 (Candor Toward Tribunal), and 8.4 (Misconduct).

A full investigation by the Office of Disciplinary Counsel will demonstrate the egregious nature of Mr. Marks’s actions, especially when considered in light of the purposes they served.

*Appendix B***CONDUCT GIVING RISE TO THE COMPLAINT**

Donald Trump lost the 2020 presidential election.² He also lost Pennsylvania and its 20 electoral votes.³ In an effort to overturn the legitimate results, Mr. Trump and his allies filed at least 65 baseless lawsuits across the country, alleging conspiracies and fraud and claiming the election was stolen. They brought these claims despite the fact that officials across the country and at every level of government have called the 2020 election “the most secure in American history.”⁴

None of Mr. Trump’s efforts succeeded. In some instances, courts have imposed sanctions on the lawyers who participated in the lawsuits and referred them for sanctions by their respective state bars.⁵ The disciplinary

2. See United States National Archives, Electoral College Results - 2020, available at <https://www.archives.gov/electoral-college/2020>.

3. See Certificate of Ascertainment, Commonwealth of Pennsylvania, available at <https://www.archives.gov/files/electoral-college/2020/ascertainment-pennsylvania.pdf>.

4. Maria Henriquez, *Director of CISA Chris Krebs Says There’s No Evidence of Foreign Interference in the 2020 Election*, Security Magazine (Nov. 5, 2020), <https://www.securitymagazine.com/articles/93846-director-of-cisa-chris-krebs-says-theres-no-evidence-of-foreign-interference-in-the-2020-election>.

5. See, e.g., *King v. Whitmer*, Case No. 21-13134 (E.D. Mich.), Aug. 25, 2021 Opinion and Order, available at https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf; *Washington Election Integrity Coalition United v. Inslee*, Case No. 100202-0, May 17, 2022 Clerk’s Ruling Setting Amount of Attorney Fees and Expenses, available at <https://agportal->

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arms of various state bars are pursuing the matters.⁶

On November 9, 2020, lawyers representing Donald J. Trump for President, Inc. and two individuals filed a Complaint for Declaratory and Injunctive Relief, which initiated Donald J. Trump for President, Inc., et al. v. Boockvar, et al. Over the next eighteen days, the State would spend significant time and resources defending against this, and several other, matters. Although Mr. Marks did not formally enter an appearance on behalf of Plaintiffs, he attended – and spoke at – the November 17, 2020 hearing on the Defendants’ Motion to Dismiss. Mr. Marks stood with Mr. Giuliani, the Trump Campaign’s lead attorney, and stated:⁷

s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/029_Order_DeputyClerkRulingSetAttrnyFees.pdf.

6. See, e.g., *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courts/adl/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/adl/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf); *State Bar Announced John Eastman Ethics Investigation*, available at <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-announces-john-eastman-ethics-investigation>; *State Bar Sues Trump Lawyer Sidney Powell*, available at <https://www.houstonchronicle.com/politics/texas/article/Texas-State-Bar-sues-Trump-lawyer-Sidney-Powell-16989673.php>; *Two Former U.S. Officials Help Ethics Probe of Trump Ally Clark*, Source Says, available at <https://www.reuters.com/world/us/exclusive-two-former-us-officials-help-ethics-probe-trump-ally-clark-source-says-2022-03-29/>.

7. Donald J. Trump for President, Inc., et al. v. Boockvar, et al., 4:20-cv-02078 (M.D. Pa.) Nov. 17, 2020 Transcript of Oral Argument Proceedings In Re: Motion to Dismiss at 10:5-11.

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MR. MARKS: Your Honor, my name is Bruce Marks. I have not formally been engaged by the plaintiffs yet, but I have been assisting in the preparation.

THE COURT: All right. Thank you.

MR. MARKS: I'm an attorney.

THE COURT: Yes, I'm familiar with you, Mr. Marks at least by reputation. Anyone else?

During the hearing, the District Court asked whether Plaintiffs could cite any case “from this circuit expressly addressing the theory of competitive standing.”⁸ Mr. Marks then interjected and identified Marks v. Stinson as such a case – and Mr. Marks was the plaintiff in that matter.⁹ Mr. Marks proceeded to provide the facts and holding of the case and the District Court then, again, specifically asked; “And this addressed competitive standing?”¹⁰ Mr. Marks assured the Court that it did:

Mr. Marks: Yes, it was standing. They held that I, as the candidate -I wasn't incorporated. I'm not like Donald Trump.

The Court: Understood.

8. *Id.* at 130:1-3.

9. *Id.* at 130:4-16.

10. *Id.* at 130:20.

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Mr. Marks: That I, as the candidate had standing because the state actors – it was a civil rights claim just like here, it was also an equal protection claim – that I had standing because the government couldn’t put its thumb on the scale in favor of one candidate over the other. And that’s what happened in my case because they were violating the law and giving absentee ballots themselves to campaign workers who were, you know –

The Court: Understood. All right. That’s good.¹¹

Except, as it turned out, Mr. Marks misrepresented the case to the District Court. It had nothing to do with competitive standing. The words do not appear even once in the opinion Mr. Marks assured the District Court “addressed competitive standing.” And this cannot be an instance of Mr. Marks simply misremembering the holding of one case of many he was prepared to discuss. This was a case in which he was the plaintiff. This was a case that he interjected to directly flag for the District Court.

Following the hearing, the District Court granted Defendants’ motion to dismiss and rejected the request to amend the complaint for a second time. The Third Circuit Court of Appeals affirmed.

Mr. Marks identified himself as advising the Trump Campaign on this litigation and appeared at the hearing

11. *Id.* at 131:21-132:8

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and spoke on behalf of the campaign. In recent weeks, Mr. Marks has signed a declaration that affirmed his legal role in the efforts.¹² As the District Court and Court of Appeals made clear, the Trump Campaign pressed these matters without any proper basis in law or fact. They sought remedies that served a political agenda, but that lacked any legal rationale or merit.

Mr. Marks violated his obligations under the Rules of Professional Conduct. For evidence of that, your office should consider the following:

The lawsuit named Secretary of State Boockvar and Seven Democratic County Boards of Elections as Defendants. The factual basis for suing Secretary Boockvar and the seven Democratic counties rested on the two Individual Plaintiffs having had their mail-in votes canceled. Prior to election day, Secretary Boockvar had sent an email to counties encouraging them to allow mail-in voters to cure their ballots if any problems are detected during the pre-canvas period. Importantly, the two Individual Plaintiffs' ballots were canceled not by any of the Defendants, but by Lancaster and Fayette counties – neither of which Plaintiffs chose to sue. In other words, the Trump Campaign brought this matter not against the counties who caused the alleged harm, but against counties whose voters favored Joe Biden.

12. *Eastman v. Thompson, et al.*, Case No. 8:22-cv-00099 (C.D. Cal.), Plaintiffs Br. in Support of Privilege Assertions 29-30, available at <https://storage.courtlistener.com/recap/gov.uscourts.cacd.841840/gov.uscourts.cacd.841840.345.0.pdf>.

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The requested relief for the alleged harm of Lancaster and Fayette Counties canceling the two Individual Plaintiffs’ ballots was to prevent Defendants from certifying the entire election. The Individual Plaintiffs theorized that failing to count their ballots violated the Equal Protection Clause. As a remedy to the alleged violation, they sought either: (1) an order “prohibit[ing] the Defendant County Boards of Elections and Defendant Secretary Boockvar from certifying the results of the 2020 General Election in Pennsylvania on a Commonwealth-wide basis” or (2) an order “prohibit[ing] Defendants from certifying the results of the General Elections which include the tabulation of absentee and mail-in ballots which Defendants improperly permitted to be cured.¹³ Thus, Individual Plaintiffs asserted as their injury the denial of their right to vote and to redress that injury, they sought to have millions of others’ right to vote denied. As the District Court noted:

Neither of these orders would redress the injury the Individual Plaintiffs allege they have suffered. Prohibiting certification of the election results would not reinstate the Individual Plaintiffs’ right to vote. It would simply deny more than 6.8 million people their right to vote. “Standing is measured based on the theory of harm and the specific relief requested.” It is not “dispensed in gross: A plaintiffs remedy must be tailored to redress the plaintiffs particular

13. *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Am. Compl.

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injury.” Here, the answer to invalidated ballots is not to invalidate millions more.¹⁴

The District Court Found that Plaintiffs Concocted Their Theories to Avoid Controlling Precedent. Plaintiffs initially asserted seven causes of action. Four days later, the Third Circuit Court of Appeals issued an opinion in another case that directly affected Plaintiffs’ ability to assert several of their claims. As such, they amended their complaint and excised five of the seven original causes of action, leaving just one equal protection claim and one cause of action premised on the Constitution’s Electors and Elections Clause.¹⁵ The Court stated that the equal protection claim was, “like Frankenstein’s Monster... haphazardly stitched together from two distinct theories in an attempt to avoid controlling precedent.”¹⁶ The Plaintiffs sought to make a broad attack on the mail-in voting procedures, a claim that Third Circuit precedent clearly and directly prevented. So, instead, for purposes of standing, they cited as the basis for the lawsuit the canceling of Individual Plaintiffs’ ballots and then “on the merits, Plaintiffs appear to have abandoned this theory of harm and instead raise their broader argument that the

14. Memorandum Opinion at 18.

15. Even then, Plaintiffs acknowledged that under the new Third Circuit case, they lacked standing to raise the Electors and Elections Clause claim, but stated they included it to preserve the issue for appellate review. Nevertheless, when Plaintiffs later appealed the District Court’s order, they did not appeal the Electors and Elections Clause issue.

16. Memorandum Opinion at 11.

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lack of a uniform prohibition against notice-and-cure is unconstitutional.”¹⁷ It was “not lost on the Court” that such a “mix-and-match” effort improperly sought to bypass precedent contrary to the Plaintiffs’ claims.¹⁸

The Plaintiff Trump Campaign Failed to Offer a Theory of Its Injury or a Basis for its Claim. The Individual Plaintiffs at least asserted a valid theory for their harm – a denial of their vote – even if they did not sue the counties that caused the harm and even if they sought an unconstitutional, legally baseless remedy. But:

The standing inquiry as to the Trump Campaign is particularly nebulous because neither in the [First Amended Complaint] nor in its briefing does the Trump Campaign clearly assert what its alleged injury is. Instead, the Court was required to embark on an extensive project of examining almost every case cited to by Plaintiffs to piece together the theory of standing as to this Plaintiff – the Trump Campaign.¹⁹

In conducting that review, the District Court found that the Plaintiff Trump Campaign was advancing two theories: associational standing and competitive standing. With regard to associational standing. Plaintiff Trump

17. *Id.* at 12.

18. *Id.*

19. *Id.* at 18-19.

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Campaign relied on “inapposite”²⁰ cases and also failed to inform the Court of another “particularly relevant, very recent decision” in which a federal court rejected the Trump Campaign’s exact argument that it was now advancing in *Boockvar*.²¹ With regards to its competitive standing argument, the Court found the assertion “at best, misguided.”²² The Plaintiff relied on cases that had no similarity to the present matter or that actually “contradict” their arguments. “It is telling,” the Court further stated, “that the only case from the Third Circuit cited to by Plaintiffs, *Marks v. Stinson*, does not contain a discussion of competitive standing or any other theory of standing applicable in federal court.”²³ In short, the Court held that “the Trump Campaign has not pled a cognizable theory.”²⁴

Importantly, *Marks v. Stinson* is the very case that Mr. Marks assured the District Court addressed competitive standing.

The Claims Plaintiffs Asserted Lacked Even Plausibility. To survive the motion to dismiss, Plaintiffs needed only to have asserted claims that were plausible when accepting their well-pleaded facts as true. The Court dismissed Plaintiffs claims even under this deferential

20. *Id.* at 19.

21. *Id.*

22. *Id.* at 21.

23. *Id.* at 22.

24. *Id.* at 23.

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standard. With regards to the Individual Plaintiffs, the Court held that Defendants could not credibly be alleged to impose a burden on Individual Plaintiffs' right to vote by lifting the burden on their own residents' ability to vote. "Expanding the right to vote for some residents of a state does not burden the rights of others."²⁵ The Trump Campaign lacked even that level of plausibility. As the Court noted, "Plaintiffs' brief in opposition to the motions to dismiss spends only *one* paragraph discussing the merits of its equal-protection claim."²⁶ That one paragraph raised two arguments – one of which was not pleaded within the Amended Complaint and the other of which relied on *Bush v. Gore* and failed because "(1) they misapprehend the issues at play in that case; and (2) the facts of this case are distinguishable."²⁷

The Pleadings Included Allegations Recycled from a Lawsuit Dismissed a Month Earlier in a 138-page Opinion. Nearly half of the paragraphs in the complaint duplicated allegations made in *Donald J. Trump for President, Inc. v. Boockvar*, 2:20-cv-00966-NR (W.D. Pa.). The Court in that case granted summary judgment to defendants, holding that plaintiff relied on "hypotheticals, rather than actual events" and that the plaintiffs' theory "does not appear to be any law to support it."²⁸ Importantly, the plaintiffs did not even appeal that decision.

25. *Id.* at 29.

26. *Id.* at 32 (emphasis in original).

27. *Id.* at 34.

28. *Donald J. Trump for President, Inc. v. Boockvar*, 2:20-cv-00966-NR (W.D. Pa.) Oct. 10, 2020 Opinion at 82, 108.

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The Complaint and Amended Complaint Make Over Three Dozen References to “Fraud,” But Do Not Actually Assert Any Claims Premised on Fraud. In an effort to support their public propaganda, Plaintiffs littered their pleadings with allegations or references to fraud or fraudulent actions. But, importantly, none of their actual claims rested on any claims of fraud or improper conduct. Indeed, as Plaintiffs’ counsel stated at the motion to dismiss hearing, the Trump Campaign “doesn’t plead fraud. ... [T]his is not a fraud case.”²⁹

The District Court Denied Plaintiffs’ Motion for Leave to File a Second Amended Complaint and the Third Circuit Upheld That Order. Despite a favorable standard that encourages district courts to freely grant leave to file amended complaints, the District Court denied the request. The Plaintiffs appealed that decision and the Third Circuit upheld the District Court, finding that allowing an amended complaint would be inequitable and futile. The Court focused on the fact that that, like the two other complaints: (1) the Second Amended Complaint “is light on facts,”³⁰ (2) that “[t]he Campaign has already litigated and lost most of these issues”³¹ and instead was improperly seeking to “collaterally attack those prior

29. *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Nov. 17, 2020 Transcript of Oral Argument Proceedings In Re: Motion to Dismiss at 137:18.

30. *Donald J. Trump for President, Inc. v. Sec’y of Pennsylvania*, 830 F. App’x 377, 386 (3d Cir. 2020).

31. *Id.* at 387.

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rulings,”³² (3) no factual allegations actually support the causes of action,³³ and (4) “the Second Amended Complaint seeks breathtaking relief: barring the Commonwealth from certifying its results or else declaring the election results defective and ordering the Pennsylvania General Assembly, not the voters, to choose Pennsylvania’s presidential electors. It cites no authority for this drastic remedy.”³⁴

**A SUBSTANTIAL BASIS EXISTS FOR THE
OFFICE OF DISCIPLINARY COUNSEL TO
INVESTIGATE MS. KERNS’S CONDUCT AND
TO IMPOSE APPROPRIATE DISCIPLINE**

The Office of Disciplinary Counsel should investigate Mr. Marks’s actions on the following basis:

1. Mr. Marks Violated Rule 3.1 By Bringing and Defending a Matter He Knew Lacked Merit

Rule 3.1 provides, in part, as follows: “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”

32. *Id.*

33. *Id.* at 388.

34. *Id.*

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Comment 2 states that: “The action is frivolous. . .if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.”

Further, “[a] claim advanced in a proceeding is considered frivolous if it lacks any basis in law and fact.” *Adams v. Dep’t of Pub. Welfare*, 781 A.2d 217, 220 (Pa. Commw. Ct. 2001).

As the District Court’s and Third Circuit’s treatment of the matter demonstrate, the Complaint and Amended Complaint that the Trump Campaign filed lacked any basis in law or fact. As a sampling of their views of the litigation:

- “This Court has been unable to find any case in which a plaintiff has sought such a drastic remedy in the contest of an election, in terms of the sheer volume of votes asked to be invalidated.”³⁵
- “This Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence.”³⁶

35. Memorandum Opinion at 2.

36. *Id.*

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- “This claim, like Frankenstein’s Monster, has been haphazardly stitched together from two distinct theories in an attempt to avoid controlling precedent.”³⁷
- “That Plaintiffs are trying to mix-and-match claims to bypass contrary precedent is not lost on the Court. The Court will thus analyze Plaintiffs’ claims as if they had been raised properly and asserted as one whole for purposes of standing and the merits.”³⁸
- “The former finds no support in the operative pleading, and neither states an equal protection violation.”³⁹
- “That deficiency aside, to the extent this new theory is even pled. Plaintiffs fail to plausibly plead that there was ‘uneven treatment’ of Trump and Biden watchers and representatives. Paragraphs 132-143 of the [First Amended Complaint] are devoted to this alleged disparity. None of these paragraphs support Plaintiffs’ argument.”⁴⁰
- “Granting Plaintiffs’ requested relief would necessarily require invalidating the ballots

37. *Id.* at 11.

38. *Id.* at 12.

39. *Id.* at 33.

40. *Id.*

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of every person who voted in Pennsylvania. Because this Court has no authority to take away the right to vote of even a single person, let alone millions of citizens, it cannot grant Plaintiffs' requested relief."⁴¹

- “Rather than requesting that their votes be counted, they seek to discredit scores of other votes, but only for one race. This is simply not how the Constitution works.”⁴²
- Four times in the Third Circuit opinion, the Court refers to the Plaintiffs citing no authority for its propositions:
 - o “The Campaign cites no authority suggesting that an actor discriminates by treating people equally while harboring a partisan motive, and we know of none.”⁴³
 - o “[T]he Second Amended Complaint seeks breathtaking relief: barring the Commonwealth from certifying its results or else declaring the election results defective and ordering the Pennsylvania General

41. *Id.* at 32.

42. *Id.* at 31.

43. *Donald J. Trump for President, Inc.*, 830 F. App'x at 388.

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Assembly, not the voters, to choose Pennsylvania's presidential electors. It cites no authority for this drastic remedy."⁴⁴

- o "It cites no federal authority regulating poll watchers or notice and cure. It alleges no specific discrimination. And it does not contest that it lacks standing under the Elections and Electors Clauses. These claims cannot succeed."⁴⁵
- o "But nothing in the Due Process Clause requires having poll watchers or representatives, let alone watchers from outside a county or less than eighteen feet away from the nearest table. The Campaign cites no authority for those propositions, and we know of none. (Ditto for notice-and-cure procedures.) And the Campaign litigated and lost that claim under state law too."⁴⁶

44. *Id.*

45. *Id.* at 389.

46. *Id.* at 387.

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Indeed, perhaps the Third Circuit said it most clearly: “Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here...*The Campaign’s claims have no merit.*”⁴⁷

“Knowledge” under the Rules of Professional Conduct can be “inferred from circumstances.”⁴⁸

Ample evidence demonstrates that Mr. Marks knew of the frivolous nature of the litigation he supported and advised on. As the District Court noted, the Plaintiffs “haphazardly stitched together” their claims to avoid controlling precedent.⁴⁹ Further, these matters had already been litigated (and lost) as state-law claims. Additionally, the lawyers defended the Trump Campaign’s equal protection claim in a single paragraph. Moreover, the clear disconnect between the asserted injuries and requested relief would be apparent to any lawyer seeking to make a meritorious and redressable claim. Finally, both the District Court and Court of Appeals repeatedly refer to the Plaintiffs’ failure to allege relevant facts or cite any authority for their legal propositions.

As such, Mr. Marks violated Rule 3.1 and should be disciplined.

47. *Id.* at 381 (emphasis added).

48. Rule 1.0(f).

49. Memorandum Opinion at 11.

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2. Mr. Marks Violated Rule 3.3 By Making False Statements Regarding Law to the Court and Failing to Correct Those Statements

Rule 3.3(a)(1) provides that a “lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”

Comment 4 states that, “Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities.”

The District Court asked a direct and specific question to Plaintiffs’ counsel; could they provide any case “from this circuit expressly addressing the theory of competitive standing.”⁵⁰

Mr. Marks then spoke up and offered a matter in which he participated: *Marks v. Stinson*. After Mr. Marks explained that case, the District Court asked again: “And this addressed competitive standing?”

The import of the District Court’s questions was clear: it sought to know whether the case “expressly” addressed

50. *Donald J Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Nov. 17, 2020 Transcript of Oral Argument Proceedings In Re: Motion to Dismiss at 130:20.

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“competitive standing.” Mr. Marks falsely affirmed it did.⁵¹ The District Court, in its opinion, noted that the case did not address competitive standing. In fact, the term does not appear in the *Marks v. Stinson* opinion. Mr. Marks never corrected his false statement to the District Court, despite an opportunity to do so.

In addition to this directly false statement made by Mr. Marks, the District Court’s opinion also notes that Plaintiffs improperly sought to avoid controlling precedent by concocting theories and that the Trump Campaign cited cases that was, “at best, misguided.”⁵² In fact, the District Court noted that the way in which the Plaintiffs presented their arguments required the Court itself to “embark on an extensive project of examining almost every case cited to by Plaintiffs to piece together the theory of standing as to this Plaintiff- the Trump Campaign.”⁵³ In doing so, the District Court found that not a single case cited by the Plaintiffs stood for the proposition they were making about the Trump Campaign’s standing.

That is not candor, that is misrepresentation. It is one thing for an attorney to rely on a case or two that fail to ultimately support the attorney’s proposition. But, here, the entire basis for the Trump Campaign’s assertion of standing lacked merit. And as the District Court’s opinion demonstrates, the Plaintiffs’ lawyers were not forthright

51. *Id.* at 131:21-132:8.

52. Memorandum Opinion at 21.

53. *Id.* at 18-19.

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about that fact – they hid that and forced the District Court to discern it for itself. Such conduct violates the Rules of Professional Conduct.

3. Mr. Marks Violated Rule 4.4 Command That Lawyers Respect the Rights of Third Parties

Pursuant to Rule 4.4, “In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person.”

Comment 1 to the Rule states, “Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons.”

In the interests of his client, Mr. Marks sought to have between 1.5 million and 6.8 million Pennsylvanians lose their right to vote. Incredibly, while asserting that, “Every legal – not illegal – vote should be counted,”⁵⁴ Plaintiffs sought the opposite. Paradoxically, while challenging the denial of two people’s right to vote, the remedy Plaintiffs fought for was the canceling of every validly cast ballot.⁵⁵ The District Court stated as much: “Granting Plaintiffs’ requested relief would necessarily require invalidating the ballots of every person who voted in Pennsylvania. Because this Court has no authority to take away the

54. Am. Compl. ¶ 1.

55. Am. Compl. at p. 62.

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right to vote of even a single person, let alone millions of citizens, it cannot grant Plaintiffs' requested relief."⁵⁶

The Court of Appeals went further, directly calling the Plaintiffs' effort one that would harm others:

Granting relief would harm millions of Pennsylvania voters too. The Campaign would have us set aside 1.5 million ballots without even alleging fraud. As the deadline to certify votes has already passed, granting relief would disenfranchise those voters or sidestep the expressed will of the people. Tossing out those ballots could disrupt every down-ballot race as well. There is no allegation of fraud (let alone proof) to justify harming those millions of voters as well as other candidates.⁵⁷

4. Mr. Marks Engaged in Misconduct that Violates Rule 8.4

Under Rule 8.4, "It is professional misconduct for a lawyer to. . .violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; [or] engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or] engage in conduct that is prejudicial to the administration of justice."

56. Memorandum Opinion at 32.

57. *Donald J. Trump for President, Inc.*, 830 F. App'x at 390.

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Mr. Marks acknowledged in open court that he was advising and assisting Mr. Giuliani and Mr. Trump's legal team. That effort sought to dishonestly undermine the 2020 election. The legal team brought frivolous claims that the Constitution, prior court decisions, and relevant statutes barred. The bare "factual" bases Mr. Trump relied on were supported by false statements and wild speculation. As both the District Court and Court of Appeals found, no legal or factual grounds existed for the claims Mr. Marks assisted in bringing.

Moreover, although the District Court generously called some of the legal arguments Plaintiffs advanced as "at best, misguided."⁵⁸ they were actually misrepresentations of law. "When alleged attorney misconduct is misrepresentation in violation of professional conduct rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation, prima facie case is made where record establishes that misrepresentation was knowingly made, or made with reckless ignorance of truth or falsity of representation." *Office of Disciplinary Counsel v. Price*, 732 A.2d 599, 557 Pa. 166. The fact that the District Court also found a Frankensteinian effort to concoct legal arguments to evade controlling precedent demonstrates the knowing nature of the misrepresentations and dishonesty involved in this matter.

Furthermore, Mr. Marks assisted others in violating the Rules of Professional Conduct. Mr. Giuliani actively participated in the *Boockvar* litigation and Mr. Marks

58. Memorandum Opinion at 21.

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attended the November 17, 2020 hearing with Mr. Giuliani and informed the District Court that he had been advising and working with Mr. Giuliani.⁵⁹ The Appellate Division of the Supreme Court of New York has suspended Mr. Giuliani for his role in the efforts to overturn the 2020 election – and specifically cited the Boockvar litigation as a basis for his discipline.⁶⁰ Thus, Mr. Marks has assisted others in violating the Rules of Professional Conduct, thereby violating Rule 8.4.

The United States Supreme Court has long recognized in upholding disciplinary actions that “speech by an attorney is subject to greater regulation than speech by others.”⁶¹ As officers of the court an attorney is “an intimate and trusted and essential part of the machinery of justice” and a “crucial source of information and opinion.”⁶² Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far

59. *Donald J. Trump for President, Inc., et al. v. Boockvar, et al.*, 4:20-cv-02078 (M.D. Pa.) Nov. 17, 2020 Transcript of Oral Argument Proceedings In Re: Motion to Dismiss at 10:5-7.

60. *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021 at 11-14, available at [https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf).

61. *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

62. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

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beyond protected speech. Indeed, disciplinary boards and courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of free society. When those false statements are made by an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession's role as a crucial source of reliable information.⁶³

Mr. Marks chose to offer his professional license to an assault on our democracy. He assisted Mr. Trump's legal team in pursuing litigation that lacked any basis in law or fact. He participated in an organized effort to sow discord and doubt about the 2020 elections.

For the reasons set forth above, we respectfully request that the Office of Chief Disciplinary Counsel investigate Mr. Marks's conduct and pursue appropriate discipline.

63. *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021 at 30-31.

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Sincerely,

/s/ Michael Teter

Michael Teter

[REDACTED IN ORIGINAL]

On behalf of The 65 Project

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THE 65 PROJECT

October 20, 2022

Minnesota Lawyers Professional Responsibility Board
Office of Lawyers Professional Responsibility
445 Minnesota Street, Suite 2400,
St. Paul, Minnesota 55101

Dear Lawyers Professional Responsibility Board:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

We write to request that the Board investigate the actions taken by Erick G. Kaardal relating to his effort to overturn the 2020 presidential election. Mr. Kaardal served as part of a coordinated attempt to abuse the judicial system to promote and amplify bogus, unsupported claims of fraud to discredit an election that Mr. Trump lost.

Mr. Kaardal worked on four matters: *Wisconsin Voters Alliance v. Pence* in the District of Columbia, *Stevenson v. Ducey* in Arizona, *Wood v. Raffensperger II* in Georgia, and *Wisconsin Voters Alliance v. Wisconsin Elections Commission* in Wisconsin. All of these actions, in which Mr. Kaardal filed remarkably similar complaints, lacked any basis in law or fact. Indeed, lawyers sought to

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create a false narrative about voter fraud that was based on conjecture and conspiracy theories.

A full investigation by the Board will demonstrate the egregious nature of Mr. Kaardal's actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior, and the serious risk that Mr. Kaardal will repeat such conduct unless disciplined.

BACKGROUND

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.¹ Mr. Trump's head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, announced that the "November 3rd election was the most secure in American history. . . . There is no evidence that any voting system deleted or lost votes or changed votes or was in any way compromised." Mr. Trump fired him. William Barr, Mr. Trump's own Attorney General, declared that the Department of Justice has "not seen fraud on a scale that could have effected a different outcome in the election." Attorney General Barr announced his resignation less than two weeks later, but not before again confirming that the 2020 elections had been free and fair.²

1. See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

2. M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://perma.cc/4U8N-SMB5>.

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Many of Mr. Trump’s own senior advisors agreed with Attorney General Barr and Mr. Krebs.³ Indeed, Deputy (and later Acting) Attorney General Jeffrey Rosen and Associate (and later Acting) Deputy Attorney General Richard Donoghue regularly refuted the false information and allegations that Mr. Trump and his allies asserted about a fraudulent election.⁴ Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, he and others told Mr. Trump that the information he was receiving from his political allies was not correct.⁵ And Mr. Donoghue has testified to the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee) that on December 27, 2020, he told Mr. Trump “in very clear terms” that after “dozens of investigations, hundreds of interviews” looking at “Georgia, Pennsylvania, Michigan, and Nevada,” the Department of Justice — Mr. Trump’s own Department

3. See Deposition of Jason Miller (Feb. 3, 2022), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>; Interview of Jeffrey Rosen (Aug. 7, 2021), United States Senate Committee on the Judiciary, 117th Cong. 30, available at <https://www.judiciary.senate.gov/rosen-transcript-final>.

4. See Interview of Jeffrey Rosen *see also* Interview of Richard Donoghue (Oct. 1, 2021), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>

5. Interview of Jeffrey Rosen.

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of Justice — had concluded that “the major allegations are not supported by the evidence developed.”⁶

Despite clear proof that no fraud occurred, and that no one stole the election from him, Mr. Trump and his lawyers sought to overturn the legitimate results by filing 65 baseless lawsuits across the country.⁷ None succeeded and, in fact, courts have imposed sanctions on the lawyers who participated in these suits and referred them for sanctions to their respective state bars.⁸

CONDUCT GIVING RISE TO THE COMPLAINT

Mr. Kaardal helped lead the charge on behalf of Mr. Trump in Wisconsin, Arizona, Georgia, and in the District of Columbia.

On November 23, 2020, Mr. Kaardal initiated *Wisconsin Voters Alliance v. Wisconsin Elections Commission* in the Wisconsin Supreme Court. On November 25, 2020 Mr. Kaardal filed *Wood v. Raffensperger* in the Superior Court of Georgia in Fulton County. Then

6. Interview with Richard Donoghue.

7. W. Cummings, J. Garrison & J. Sargent, *By the numbers: President Donald Trump’s failed efforts to overturn the election*, USA Today (Jan. 6, 2021), available at <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/41303070011>.

8. See, e.g., *King v. Whitmer*, No. 20-13134 (U.S. Dist. Ct. E. Dist. Mich. Aug. 25, 2021), available at https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf.

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on December 4, 2020, Mr. Kaardal initiated *Stevenson v. Ducey* in the Superior Court of Arizona in Maricopa County. After these filings, Mr. Kaardal filed *Wisconsin Voters Alliance v. Pence* on December 22, 2020 in the United States District Court for the District of Columbia. The complaints Mr. Kaardal filed in these four cases were nearly identical to each other, despite the case-specific factual assertions of illegal voting.

For example, in *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, the Plaintiffs stated:

The cities of Madison, Green Bay, Racine, Kenosha and Milwaukee entered into agreements with a non-profit organization, the Center for Technology and Civic Life (“CTLC”), an organization funded with \$350,000,000 by Facebook billionaire Mark Zuckerberg, a well-known Democratic activist and partisan, to take millions of dollars from CTLC to conduct the November 3, 2020 election in violation of Wisconsin law.⁹

In *Wood v. Raffensperger* in Georgia, Mr. Kaardal asserted:

Fulton County entered into an agreement with a non-profit organization, CTCL, an

9. *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, Case No. 2020AP1930-OA (Wis.), Nov. 23, 2020, Compl. 7 20-21.

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organization created in 2012 and funded with \$350 million USD by Facebook billionaire Mark Zuckerberg, a well—known activist and partisan, to take millions of dollars from CTCL to conduct the November 3, 2020 election in violation of Georgia law.¹⁰

And in *Stevenson v. Ducey* in Arizona, Mr. Kaardal promoted a similar allegation:

Maricopa County entered into an agreement with a non-profit organization, Center for Tech and Civic Life (“CTCL”), an organization created in 2012 and funded with \$350 million USD by Facebook billionaire Mark Zuckerberg, a well-known Democratic activist and partisan, to take millions of dollars from CTCL to conduct the November 3, 2020 election in violation of Arizona law.¹¹

Finally, in *Wisconsin Voters Alliance v. Pence*, in the District of Columbia, Mr. Kaardal asserted this similarly strange allegation:

Defendant States’ voters have alleged, in 2020, a systematic effort was launched in Defendant States, using \$350,000,000 in private money

10. *Wood v. Raffensberger*, Case No. 2020CV342959 (Ga. Sup. Ct.), Nov. 25, 2020, Compl. ¶ 12.

11. *Stevenson v. Ducey*, Case No. CV2020-096490 (Ariz. Sup. Ct.), December 4, 2020, Compl. ¶ 12.

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sourced to Mark Zuckerberg, the Facebook billionaire, to illegally circumvent absentee voting laws to cast tens of thousands of illegal absentee ballots. Defendants States' votes have alleged that the Zuckerberg-funded private organization, the Center for Technology and Civic Life (CTCL), gifted millions of dollars to election officials in Democratic Party urban strongholds in Georgia, Wisconsin, Pennsylvania, Michigan and Arizona in order for those cities to facilitate the use of absentee voting: Fulton County (GA), Milwaukee (WI), Madison (WI), Philadelphia (PA), Wayne County (MI) and Maricopa County (AZ).¹²

This bizarre allegation of illegal activity by CTCL, coupled with strange statistical analyses related to alleged widespread absentee ballot fraud, was so lacking in merit, that Wisconsin Supreme Court Justice Brian Hagedorn stated in his opinion that “[o]ne might expect that this solemn request would be paired with evidence of serious errors tied to a substantial and demonstrated set of illegal votes. Instead, the evidentiary support rests almost entirely on the unsworn expert report of a former campaign employee that offers statistical estimates based on call center samples and social media research.”¹³

12. *Wisconsin Voters Alliance v. Pence*, Case No. 1:20-cv-03791 (Dist. D.C.), Dec. 22, 2020, Compl. 1135.

13. *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, No. 2020AP1930-OA, at 2 (Wis. December 4, 2020).

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Including these types of allegations to support any lawsuit would be problematic. More troubling, though, is that Mr. Kaardal sought to disqualify *every vote* in Wisconsin, by preventing the certification of a free and fair election, so that Mr. Trump would prevail. As Justice Hagedorn put it:

But the real stunner here is the sought-after remedy. We are invited to invalidate the entire presidential election in Wisconsin by declaring it ‘null’—yes, the whole thing. And there’s more. We should, we are told, enjoin the Wisconsin Elections Commission from certifying the election so that Wisconsin’s presidential electors can be chosen by the legislature instead, and then compel the Governor to certify those electors. At least no one can accuse the petitioners of timidity.¹⁴

After a judicial opinion on the case in Wisconsin, Mr. Kaardal voluntarily dismissed the matter in Arizona just three days after filing, and just three days after the Wisconsin opinion.

However, three weeks after the Wisconsin Supreme Court completely rejected his arguments, and Justice Hagedorn found the filing to be severely deficient and frivolous, Mr. Kaardal filed *Wisconsin Voters Alliance v. Pence*. Three weeks after having these claims rejected, Mr. Kaardal peddled these same frivolous and dangerous

14. *Id.*

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legal claims, with similar plaintiffs, similar defendants, and relying on the same factually dubious statistical analysis by the same person, Matt Braynard — a former Trump campaign aide without a scientific background.¹⁵ This was all done to cast doubt on our elections, and to undermine our democracy.

The over 100-page complaint in *Wisconsin Voters Alliance v. Pence* argues three main theories for overturning a free and fair election, all of which lack any legal or factual credibility. First, several states, all of which voted for President Biden, should void their entire election results because they received money from CTCL to help run them. During the 2020 election season, CTCL gave grants to several localities across the country to help them prepare for an election during a pandemic, an endeavor that would naturally raise election administration expenses. Not only, in Mr. Kaardal’s eyes, should this system of providing money automatically invalidate whole elections, but this money also allegedly created fraud.¹⁶ For example, Mr. Kaardal argues that CTCL paid workers “failed to ensure transparency and integrity as it did not allow the public to see election officials during key points of absentee ballot processing”

15. Ellie Silverman and Rachel Weiner, *Matt Braynard, Former Trump Campaign Aide, Nabs Spotlight with Capitol Crusade*, WASH. POST, Sept. 17, 2021, <https://www.washingtonpost.com/dc-md-vb/2021/09/17/matt-braynard-justice-j6-rally/>.

16. *Wisconsin Voters Alliance v. Pence*, Case No. 1:20-cv-03791 (Dist. D.C.), Dec. 22, 2020, Compl. ¶ 211.

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in Detroit.¹⁷ However, this is false. Numerous sources, including the source used in Mr. Kaardal’s own complaint reject the claim that any laws were broken, or that the public was not allowed access to the ballots.¹⁸ This part of the complaint is rife with innuendo and allegations of fraud, all of which crumble when scrutinized.

Second, Mr. Kaardal argues that Article II of the United States Constitution voids several state laws in all the challenged states, as well as a few federal laws, because these states chose to have people who are not a part of the state legislature certify the vote.¹⁹ Article II gives states the power to choose how they pick electors, and in its most pertinent part, states that “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors.”²⁰ Mr. Kaardal erroneously argued that this passage meant that only the state legislature could certify an election, a claim that both lacks merit and completely ignores the plain language of the text. As Judge James E. Boasberg of the United States District Court for the District of Columbia opined about Article II, “[p]laintiffs somehow interpret this straightforward

17. *Id.*

18. *There’s a Simple Reason Workers Covered Windows at a Detroit Vote-Counting Site*, NEW YORK TIMES (Nov. 5, 2020) (<https://www.nytimes.com/2020/11/05/technology/michigan-election-ballot-counting.html>).

19. *Wisconsin Voters Alliance v. Pence*, Case No. 1:20-cv-03791 (Dist. D.C.), Dec. 22, 2020, Compl. ¶¶ 54-58.

20. U.S. CONST. art. II, § 1.

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passage to mean that state legislatures alone must certify Presidential votes and Presidential electors after each election, and that Governors or other entities have no constitutionally permitted role. As a result, state statutes that delegate the certification to the Secretary of State or the Governor or anyone else are invalid. That, however, is not at all what Article II says.”²¹ Judge Boasberg then concluded that these absurd legal claims forced him to believe that “[i]t is not a stretch to find a serious lack of good faith here.”²²

Third, Mr. Kaardal promoted almost every false claim related to mail-in voting, in the hopes that courts would disenfranchise millions of voters across several states simply for voting in a manner they thought was safe during the COVID-19 pandemic. While offering no real evidence of fraud, Mr. Kaardal argued that mail-in voter fraud was ubiquitous because allegedly Pennsylvania ballots were mailed from New York²³ (ignoring the fact that it is legal to vote absentee from another state or country), or that disenfranchised felons in Michigan must have voted illegally because “109 people voted absentee from the Center for Forensic Psychiatry.”²⁴

21. *Wisconsin Voters Alliance v. Pence*, Case No. 1:20-cv-03791 (Dist. D.C.), Jan. 4, 2021, Mem. Opinion 5.

22. *Id.* at 6.

23. *Wisconsin Voters Alliance v. Pence*, Case No. 1:20-cv-03791 (Dist. D.C.), Dec. 22, 2020, Compl.¶¶ 126.

24. *Id.* at 344.

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Mr. Kaardal's actions related to *Wisconsin Voters Alliance v. Pence* were so egregious that the court has already referred Mr. Kaardal to its Committee on Grievances to potentially discipline Mr. Kaardal for his involvement in such a frivolous lawsuit.

Judge Boasberg reached the devastating conclusion that “[i]n addition to being filed on behalf of Plaintiffs with no standing and (at least as to the state defendants) in the wrong court and with no effort to even serve their adversaries, the suit rests on a fundamental and obvious misreading of the Constitution.”²⁵

Mr. Kaardal's actions warrant discipline.

**A SUBSTANTIAL BASIS EXISTS FOR THE
BOARD TO INVESTIGATE MR. KAARDAL'S
CONDUCT AND TO IMPOSE APPROPRIATE
DISCIPLINE**

The Board should investigate Mr. Kaardal's actions on the following basis:

**1. Mr. Kaardal Violated Rule 3.1 By Bringing and
Defending a Matter He Knew Lacked Merit**

Rule 3.1 provides, in part, as follows: “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact

25. *Wisconsin Voters Alliance v. Pence*, Case No. 1:20-cv-03791 (Dist. D.C.), Jan. 4, 2021, Mem. Opinion 1-2.

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for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”

Comment 2 states that: “The action is frivolous . . . if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.”

“Knowledge” under the Rules of Professional Conduct can be “inferred from circumstances.”²⁶

Ample evidence demonstrates that Mr. Kaardal knew of the frivolous nature of the litigation he initiated. In *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, Justice Hagedorn found the factual basis of the case to rest “on so flimsy a foundation,” that ruling in the Plaintiffs favor would do “indelible damage.” In addition, the legal basis was so insufficient that there were several “glaring flaws” that rendered the petition “woefully deficient.” Mr. Kaardal did not even justify the Wisconsin Supreme Court’s original jurisdiction. Further, no reasonable person would consider the cited evidence a sufficient basis for throwing out millions of votes, and disenfranchising entire states. Three weeks after the Wisconsin Supreme Court threw out Mr. Kaardal’s lawsuit because it was “woefully deficient,” Mr. Kaardal filed *Wisconsin Voters Alliance v. Pence*, which shares similar claims and legal challenges. Therefore, Mr. Kaardal was

26. Rule 1.0(f).

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on notice that his lawsuits were lacking in merit, and yet he filed them anyway.

In *Wisconsin Voters Alliance v. Pence*, Judge Boasberg concluded that Mr. Kaardal truly “wished only to file a sweeping Complaint filed with baseless fraud allegations and tenuous legal claims” to undermine an election and engage in “political grandstanding.” This lawsuit is the epitome of an unmeritorious case — a lawsuit without subject-matter jurisdiction, without personal jurisdiction, and relied on a contention the court found to be “flat-out wrong” and “lies somewhere between a willful misreading of the Constitution and fantasy.”

Finally, the fact that Mr. Kaardal and his co-counsel filed complaints containing nearly identical allegations in a total of four states that Mr. Biden won helps confirm that the efforts were part of a larger effort to undermine the legitimacy of the entire 2020 presidential election.

Mr. Kaardal knew the claims he was advancing in *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, *Wood, Stevenson*, and *Wisconsin Voters Alliance v. Pence* lacked any basis in law or fact.

In short, for the many reasons provided above, Mr. Kaardal’s conduct violated Rule 3.1.

*Appendix B***2. Mr. Kaardal Violated Rule 4.4's Command That Lawyers Respect the Rights of Third Parties**

Pursuant to Rule 4.4, "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person."

Comment 1 to the Rule states, "Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons."

In the interests of his clients, Mr. Kaardal sought to have millions of voters lose their right to decide the 2020 presidential election. Every court addressing the same complaint filed by Mr. Kaardal and his co-counsel noted the extraordinary remedy they sought and the effect it would have on millions of Americans.

Mr. Kaardal disregarded the potential consequences of his proposed remedy — showing no respect for the rights of millions of third persons whose votes would be invalidated — and his actions warrant discipline.

3. Mr. Kaardal Engaged in Misconduct that Violates Rule 8.4

Under Rule 8.4, "It is professional misconduct for a lawyer to . . . violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce

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another to do so, or do so through the acts of another; [or] engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or] engage in conduct that is prejudicial to the administration of justice.”

Mr. Kaardal participated in a purposefully dishonest effort to undermine the 2020 election. He brought frivolous claims that the Constitution, prior court decisions, and relevant statutes barred. The bare “factual” bases he relied on were supported by false statements and wild speculation from discredited sources.

Finally, that Mr. Kaardal and his co-counsel brought nearly identical claims in four separate states, all challenging the results in counties Mr. Biden won demonstrates a deceitful purpose. It all amounted to a dishonest attempt to undermine the public confidence in the 2020 election. It is easy — indeed, necessary — to also recognize the direct link between the use of the courts to sow these seeds of doubt and confusion and the events of January 6, 2021, when people believing that the 2020 was stolen stormed the Capitol in a violent insurrection.

His actions must be scrutinized and disciplined.

* * *

The United States Supreme Court has long recognized in upholding disciplinary actions that “speech by an attorney is subject to greater regulation than speech

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by others.”²⁷ As officers of the court an attorney is “an intimate and trusted and essential part of the machinery of justice” and a “crucial source of information and opinion.”²⁸ Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech. Indeed, disciplinary boards and courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

That members of our esteemed profession would engage in such actions — conduct that contributed to substantial harm to American democracy — should cause considerable distress within the entire legal community.

False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of free society. When those false statements are made by an attorney, it also erodes the public’s confidence in the integrity of attorneys admitted to our bar and damages the profession’s role as a crucial source of reliable information.²⁹

27. *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

28. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

29. *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021 at 30-31.

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Mr. Kaardal chose to offer his professional license to an assault on our democracy. He pursued litigation that lacked any basis in law or fact. He participated in an organized effort to sow discord and doubt about the 2020 elections. He helped lead the charge to disenfranchise millions of his fellow citizens because he did not like how they voted.

For the reasons set forth above, we respectfully request that the Board investigate Mr. Kaardal's conduct and pursue appropriate discipline.

Sincerely,

/s/ Michael Teter
Michael Teter
Managing Director
[REDACTED]
On behalf of The 65 Project

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THE 65 PROJECT

August 31, 2022

Keith Sellen, Director
Wisconsin Office of Lawyer Regulation
P.O. Box 1648
Madison, WI 53701

Dear Mr. Sellen:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

We write to request that the Office of Lawyer Regulation investigate the actions taken by Daniel J. Eastman (State Bar No.1011433) relating to his effort to overturn the 2020 presidential election. Mr. Eastman served as part of a coordinated attempt to “release the Kraken” on American democracy, alongside Sidney Powell, Rudy Giuliani, Lin Wood, and John Eastman as they abused the judicial system to promote and amplify bogus, unsupported claims of fraud to discredit an election that Mr. Trump lost.

Mr. Eastman worked on *Feehan v. Wisconsin Elections Commission* from the litigation’s inception. That action not only lacked any basis in law or fact, but included the Plaintiffs’ counsel manufacturing quotes from caselaw, adding a plaintiff who had not agreed to join the lawsuit,

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and presenting patently false evidence that the lawyers did not investigate before presenting it to federal court. Indeed, *Feehan* was nearly a carbon copy of litigation filed in several other states, as national lawyers sought to create a false narrative about voter fraud that was based on conjecture and conspiracy theories. Incredibly, and perhaps conclusively for your investigation, Mr. Eastman's own co-counsel has defended herself against a defamation claim based on the assertions she made regarding the 2020 election by stating that, "no reasonable person" would believe those assertions to be "statements of fact."¹

Mr. Eastman lent his Wisconsin law license to the effort. Wisconsin's Rules of Professional Conduct demand more. By filing a frivolous lawsuit untethered to either law or fact and in seeking an extreme remedy unheard of in any court of law, Mr. Eastman not only crossed, but blew past, the ethical standards to which he is bound.

A full investigation by the Office of Lawyer Regulation will demonstrate the egregious nature of Mr. Eastman's actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior, and the serious risk that Mr. Eastman will repeat such conduct unless disciplined.

1. See *U.S. Dominion, Inc. v. Powell*, Case No. 1:21-cv-00040 (D.D.C. 2021), Mot. to Dismiss at 27, available at https://storage.courtlistener.com/recap/gov.uscourts.dcd.225699/gov.uscourts.dcd.225699.22.23_.pdf.

*Appendix B***BACKGROUND**

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.² Mr. Trump’s head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, announced that the “November 3rd election was the most secure in American history. . . . There is no evidence that any voting system deleted or lost votes or changed votes or was in any way compromised.” Mr. Trump fired him. William Barr, Mr. Trump’s own Attorney General, declared that the Department of Justice has “not seen fraud on a scale that could have effected a different outcome in the election.” Attorney General Barr announced his resignation less than two weeks later, but not before again confirming that the 2020 elections had been free and fair.³

Many of Mr. Trump’s own senior advisors agreed with Attorney General Barr and Mr. Krebs.⁴ Indeed,

2. See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

3. M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://perma.cc/4U8N-SMB5>.

4. See Deposition of Jason Miller (Feb. 3, 2022), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>; <https://www.judiciary.senate.gov/rosen-transcript-final>; Interview of Jeffrey Rosen (Aug. 7, 2021), United

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Deputy (and later Acting) Attorney General Jeffrey Rosen and Associate (and later Acting) Deputy Attorney General Richard Donoghue regularly refuted the false information and allegations that Mr. Trump and his allies asserted about a fraudulent election.⁵ Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, he and others told Mr. Trump that the information he was receiving from his political allies was not correct.⁶ And Mr. Donoghue has testified to the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee) that on December 27, 2020, he told Mr. Trump “in very clear terms” that after “dozens of investigations, hundreds of interviews” looking at “Georgia, Pennsylvania, Michigan, and Nevada,” the Department of Justice — Mr. Trump’s own Department of Justice — had concluded that “the major allegations are not supported by the evidence developed.”⁷

Despite clear proof that no fraud occurred, and that no one stole the election from him, Mr. Trump and his

States Senate Committee on the Judiciary, 117th Cong. 30, available at <https://www.judiciary.senate.gov/rosen-transcript-final>.

5. See Interview of Jeffrey Rosen *see also* Interview of Richard Donoghue (Oct. 1, 2021), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>

6. Interview of Jeffrey Rosen.

7. Interview with Richard Donoghue.

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lawyers sought to overturn the legitimate results by filing 65 baseless lawsuits across the country.⁸ None succeeded and, in fact, courts have imposed sanctions on the lawyers who participated in these suits and referred them for sanctions to their respective state bars.⁹

CONDUCT GIVING RISE TO THE COMPLAINT

Mr. Eastman helped lead the charge on behalf of Mr. Trump in Wisconsin.

On December 1, 2020 — four weeks after the presidential election — Mr. Eastman filed a Complaint for Declaratory and Injunctive Relief, which initiated *Feehan v. Wisconsin Election Commission*. In that lawsuit, Mr. Eastman sought to have the federal court “order state officials to decertify the election results that state officials had certified the day before, order the Governor not to transmit to the Electoral College the certified results he’d transmitted the day before and order the Governor to instead transmit election results that declared Donald Trump to be ‘the winner of this election.’”

8. W. Cummings, J. Garrison & J. Sergeant, *By the numbers: President Donald Trump’s failed efforts to overturn the election*, USA Today (Jan. 6, 2021), available at <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

9. See, e.g., *King v. Whitmer*, No. 20-13134 (U.S. Dist. Ct. E. Dist. Mich. Aug. 25, 2021), available at https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf.

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As noted above, *Feehan* was a carbon copy of complaints filed in other states — an effort that Mr. Eastman’s co-counsel Sidney Powell called “releasing the Kraken”:

- *King, et al. v. Whitmer, et al.*, Case No. 20-cv-13134 (E.D. Mich. 2020)
- *Bowyer, et al. v. Ducey, et al.*, Case No. 2:20-cv-02321-DJH (D. Ariz. 2020)
- *Pearson, et al. v. Kemp, et al.*, Case No. 1:20-v-04809-TCB (N.D. Ga. 2020)

As just a sampling, the Complaint (and Amended Complaint) Mr. Eastman filed asserted:

This civil action brings to light a massive election fraud, multiple violations of Wisconsin Statutes Chapters 5 – 12 (hereafter, “Wisconsin Election Code”), *see, e.g.*, Wis. Stat. §§ 5.03, *et. seq.*, in addition to the Election and Electors Clauses and Equal Protection Clause of the U.S. Constitution. These violations occurred during the 2020 General Election in the City of Milwaukee, southeastern Wisconsin counties, and throughout the State of Wisconsin, as set forth in the affidavits of dozens of eyewitnesses and the statistical anomalies and mathematical impossibilities detailed in the affidavits of expert witnesses. *See* Exh. 19, Declaration of affiant presenting statistical analysis prediction

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of 105,639 fraudulent ballots cast for Joe Biden in the City of Milwaukee and Exh. 17, Declaration of Russell James Ramsland, Jr. wherein he demonstrates it is statistically impossible for Joe Biden to have won Wisconsin.

...

The scheme and artifice to defraud was for the purpose of illegally and fraudulently manipulating the vote count to manufacture an election of Joe Biden as President of the United States, and also of various down ballot democrat candidates in the 2020 election cycle. The fraud was executed by many means, but the most fundamentally troubling, insidious, and egregious ploy was the systemic adaptation of old-fashioned “ballot-stuffing” techniques. *See* Exh. 16, U. S. Senator Elizabeth Warren (D. Mass.) letter of December 6, 2019 concerning the dangers of private equity control and censorship of election technology in the United States. The fraud has now been amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose.

...

The multifaceted schemes and artifices implemented by Defendants and their collaborators to defraud resulted in the

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unlawful counting, or fabrication, of hundreds of thousands of illegal, ineligible, duplicate or purely fictitious ballots in the State of Wisconsin, that collectively add up to multiples of Biden’s purported lead in the State of 20,565 votes.

...

While this Amended Complaint, and the eyewitness and expert testimony incorporated herein, identify with specificity sufficient ballots required to set aside the 2020 General Election results, the entire process is so riddled with fraud, illegality, and statistical impossibility that this Court, and Wisconsin’s voters, courts, and legislators, cannot rely on, or certify, any numbers resulting from this election. Accordingly, this Court must set aside the results of the 2020 General Election and grant the declaratory and injunctive relief requested herein.

...

The fraud begins with the election software and hardware from Dominion Voting Systems Corporation (“Dominion”) used by the Wisconsin Elections Commission. The Dominion systems derive from the software designed by Smartmatic Corporation, which became Sequoia in the United States.

...

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Smartmatic and Dominion were founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election. See Exh. 1, Redacted Declaration of Dominion Venezuela Whistleblower (“Dominion Whistleblower Report”) and Exh. 8, Statement by Ana Mercedes Diaz Cardozo outlining actual examples of election manipulation by hacking and misuse of technology in Venezuelan elections. Notably, Chavez “won” every election thereafter.

...

As set forth in the Dominion Whistleblower Report, the Smartmatic software was contrived through a criminal conspiracy to manipulate Venezuelan elections in favor of dictator Hugo Chavez.

...

In addition to the Dominion computer fraud, this Amended Complaint identifies several additional categories of “traditional” voting fraud that occurred as a direct result of Defendant Wisconsin Election Commission (“WEC”) and other Defendants directing Wisconsin clerks and other election officials to ignore or violate the express requirements of

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the Wisconsin Election Code. First, the WEC issued “guidance” to county and municipal clerks not to reject “indefinitely confined” absentee voters, even if the clerks possess “reliable information” that the voter is no longer indefinitely confined, in direct contravention of Wisconsin Statute § 6.86(2)(6), which states that clerks must remove such voters. Second, the WEC issued further guidance directing clerks — in violation of Wisconsin Statute § 6.87(6)(d), which states that an absentee envelope certification “is missing the address of a witness, the ballot may not be counted” — to instead fill in the missing address information.

...

In the accompanying redacted declaration of a former electronic intelligence analyst with 305th Military Intelligence with experience gathering SAM missile system electronic intelligence, the Dominion software was accessed by agents acting on behalf of China and Iran in order to monitor and manipulate elections, including the most recent US general election in 2020. *See* Exh. 12 (copy of redacted witness affidavit).¹⁰

Throughout the Amended Complaint in these actions, “fraud” or its variations appear 45 times, “Venezuela”

10. *Feehan v. Wisconsin Elections Commission*, Case No. 20-cv-1771 (E.D. Wis. 2020), Am. Compl. 7 1-16, available at <https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.9.0.pdf>.

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or “Venezuelan” appear 16 times, and there are at least nine references to Hugo Chavez.¹¹ Indeed, Mr. Eastman and his co-counsel appeared to purposefully seek to link Smartmatic and Dominion, even though they are actually rival companies (for example, both bid for contracts in Georgia).¹² Moreover, the Amended Complaint falsely states that Dominion was “founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election.”¹³ In actuality, John Poulos founded the company in Toronto, Canada in 2002 — a publicly available fact — and in 2009, Dominion Voting Systems, Inc. incorporated in Delaware and headquartered in Denver, Colorado.¹⁴

The efforts contained other concerning features, as well. For example:

11. *See generally id.*

12. Georgia Secretary of State, Elections Security Is Our Top Priority: Security-Focused Tech Company, Dominion Voting to Implement New Verified Paper Ballot System, available at <https://sos.ga.gov/news/security-focused-tech-company-dominion-voting-implement-new-verified-paper-ballot-system>.

13. *Feehan v. Wisconsin Elections Commission*, Case No. 20-cv-1771 (E.D. Wis. 2020), Am. Compl. ¶ 17.

14. *See, e.g.,* Neena Stija, *What You Need to Know About Dominion, the Company that Trump and His Lawyers Baselessly Claim “Stole” the Election*, Wash. Post., Nov. 20, 2020, available at <https://www.washingtonpost.com/politics/2020/11/20/dominion-voting-trump-faq/>.

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- The Plaintiffs allege that the Dominion software misallocates, redistributes, or deletes votes, but prior to including those allegations in the complaints, Mr. Eastman knew that Georgia had completed two hand recounts that confirmed the accuracy of Dominion’s tabulation.¹⁵ He also knew that the Chairman of the Maricopa County Board of Supervisors in Arizona had released a statement explaining, “The Dominion tabulation equipment met mandatory requirements during logic and accuracy testing before the Presidential Preference Election, the Primary Election and the General Election. And after each of these 2020 elections, the hand count audit showed the machines generated an accurate count.”¹⁶
- Wisconsin conducted a post-election audit that included fifteen percent of Dominion machines and Wisconsin Election Commissioner Eastman Knudson, a former Republican state legislator, stated that the audit showed “no evidence of systemic problems” or “hacking” or of “switched

15. Georgia Secretary of State, *3rd Strike Against Voter Fraud Claims Means They’re Out After Signature Audit Finds No Fraud*, <https://sos.ga.gov/news/3rd-strike-against-voter-fraud-claims-means-theyre-out-after-signature-audit-finds-no-fraud>.

16. Letter from Clint Hickman to Maricopa County Voters (Nov. 17, 2020), available at <https://www.maricopa.gov/DocumentCenter/View/64676/PR69-11-17-20-Letter-to-Voters#:~:text=Here%20are%20the%20facts%3A&text=The%20evidence%20overwhelmingly>.

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votes.”¹⁷ The audit results were posted online and available prior to the Amended Complaint’s filing.

- On December 1, 2020, Attorney General Barr reiterated that no fraud occurred, specifically rebutting the claims regarding Dominion by saying, “There’s been one assertion that would be systemic fraud and that would be the claim that machines were programmed essentially to skew the election results. And the DHS and DOJ have looked into that, and so far, we haven’t seen anything to substantiate that.”¹⁸
- The lawyers included a declaration of an anonymous source — a “code-named “Spyder” — who the Plaintiffs stated was a “military intelligence expert.”¹⁹ In fact, “Spyder” (which a mistaken filing by Ms. Powell revealed to be Josh Merritt) never actually worked in military intelligence and he himself acknowledged that the declaration that Plaintiffs’ counsel wrote for him was “misleading.”²⁰

17. Video available at <https://wiseeye.org/2020/12/01/wisconsin-elections-commission-december-2020-meeting-at-2:05:18>.

18. Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), available at <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.

19. *See, e.g., Pearson v. Kemp*, No. 1:20- cv-04809 (N.D. Ga. Nov. 25, 2020) Compl. ¶ 111.

20. Emma Brown, Aaron C. Davis & Alice Crites, *Sidney Powell’s secret ‘military intelligence expert,’ key to*

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- The complaints also selectively quoted Princeton professor Andrew Appel and indicated he was speaking about Dominion in 2020, when, in fact Dr. Appel was speaking about a decades-old machine.²¹ In reality, Dr. Appel had 58 other specialists in election security rebut the assertions made about his views in the complaints and stated, “no credible evidence has been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise.”²²
- The attorneys for Plaintiffs submitted sworn statements from individuals that contained identical explanations for speaking up:²³

fraud claims in election lawsuits, never worked in military intelligence, Wash. Post (Dec. 11, 2020), available at, https://www.washingtonpost.com/investigations/sidney-powellspider-spyder-witness/2020/12/11/0cd567e6-3b2a-11eb-98c4-25dc9f4987e8_story.html.

21. See Tony Adams, Prof. Andrew W Appel, et al., *Scientists say no credible evidence of computer fraud in the 2020 election outcome, but policymakers must work with experts to improve confidence*, Matt Blaze (Nov. 16, 2020), available at, <https://www.mattblaze.org/papers/election2020.pdf>

22. *Id.*

23. *Compare* Declaration of an anonymous source claiming to have been selected for the “national security guard detail of the President of Venezuela” at ¶ 4 *with* Statement by Ana Mercedes Diaz Cardozo at ¶ 4.

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Declaration of Anonymous Source Claiming to be on the National Security Guard Detail of the President of Venezuela:	Declaration of Ana Mercedes Dias Cardozo:
“I want to alert the public and let the world know the truth about the corruption, manipulation, and lies being committed by a conspiracy of people and companies intent upon betraying the honest people of the United States and their legally constituted institutions and fundamental rights as citizens. This conspiracy began more than a decade ago in Venezuela and has spread to countries all over the world. It is a conspiracy to wrongfully gain and keep power and wealth. It involves political leaders, powerful companies, and other persons whose purpose is to gain and keep power by changing the free will of the people and subverting the proper course of governing.”	“I want to alert the public and let the world know the truth about the corruption, manipulation, and lies being committed by a conspiracy of people and companies intent upon betraying the honest people of the United States and their legally constituted institutions and fundamental rights as citizens. This conspiracy began more than a decade ago in Venezuela and has spread to countries all over the world. It is a conspiracy to wrongfully gain and keep power and wealth. It involves political leaders, powerful companies, and other persons whose purpose is to gain and keep power by changing the free will of the people and subverting the proper course of governing.”

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- Plaintiffs’ attorneys cited, and attached to their complaints, a declaration from Terpsichore Maras-Lindeman without ever speaking to Ms. Maras-Lindeman. Instead, Ms. Maras-Lindeman “distributed her affidavit widely to like-minded people and was unaware it had come to Powell’s attention until it appeared as an exhibit in one of her cases.”²⁴ Had Plaintiffs’ counsel actually spoken to Ms. Maras-Lindeman, or conducted even the most rudimentary investigation, they would have learned that Ms. Maras-Lindeman has an extensive history of making false claims about her career, education, and training. The North Dakota Attorney General’s Office investigated her for violating consumer fraud and charitable solicitation laws and noted that “it has been very difficult to determine the truth among Maras-Lindeman’s various claims.”²⁵ A North Dakota court entered a judgment against Ms. Maras-Lindeman finding that she engaged in fraud and

24. Jon Swaine, *Sidney Powell’s Secret Intelligence Contractor Witness is a Pro-Trump Podcaster*, Wash. Post. (Dec. 24, 2020), available at https://www.washingtonpost.com/investigations/sidney-powells-secret-intelligence-contractor-witness-is-a-pro-trump-podcaster/2020/12/24/d5a1ab9e-4403-11eb-a277-49a6d1f9dfff_story.html.

25. ²⁵ North Dakota Attorney General, *Attorney General Details Investigation of Unlicensed Business for Alleged Fraud* (Apr. 4, 2018), available at <https://attorneygeneral.nd.gov/news/attorney-general-details-investigation-unlicensed-business-alleged-fraud-tore-maras-lindeman>.

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deceptive behavior.²⁶ All of this information was publicly available before Ms. Newman and her co-counsel relied on her affidavit that happened to find its way into their hands.

- Another affiant relied on by Plaintiffs’ counsel was Russell Ramsland, a conspiracy theorist who has asserted that George Soros (born in 1930) helped form the “Deep State” in Nazi Germany in the 1930s, working alongside Senator Prescott Bush (President George H.W. Bush’s father), the Muslim Brotherhood, and “leftists.”²⁷ Mr. Ramsland made these publicly reported statements, as far back as 2018. Mr. Ramsland’s analysis of voter turnout was riddled with obvious and quickly documented errors and Ms. Newman never informed the Court of those errors.²⁸

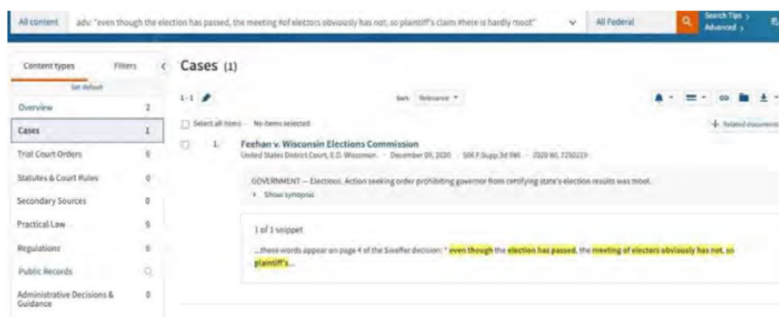
26. Findings of Fact, Conclusions of Law, and Order for Judgment, *State v. Maras*, No. 51-2018-CV-01339 (Dist. Ct. N. Central Jud. Dist., N.D. Sept. 11, 2020), available at <https://attorneygeneral.nd.gov/sites/ag/files/documents/RecentActions/2020-09-14-MagicCityChristmas-Judgment.pdf>.

27. John Savage, *Texas Tea Partiers Are Freaking Out Over ‘Deep State’ Conspiracy Theories*, *Vice* (Sept. 20, 2018), available at, <https://www.vice.com/en/article/mbwgxx/texas-tea-partiersare-freaking-out-over-deep-state-conspiracy-theories>.

28. Clara Hendrickson, *Affidavit in Michigan lawsuit seeking to overturn election makes wildly inaccurate claims about vote*, *PolitiFact* (Dec. 4, 2020), available at <https://www.politifact.com/factchecks/2020/dec/04/russell-james-ramsland-jr/affidavit-michigan-lawsuit-seeking-overturn-electi/>.

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- The District Court in Wisconsin noted in its decision dismissing the case that the Plaintiffs' counsel "seems to have made up the 'quote' in his brief that purports to be from [a cited case]."²⁹ Indeed, the Court read the cited opinion "three times" and could not find that quote.³⁰ In fact, we have reviewed the quoted language and run it through Westlaw, without any citations, other than the Court's decision in *Feehan*, coming up:



- They also misrepresented well-established caselaw and standards. For example, Plaintiffs contended that *Whitford v. Nichol*, 151 F. Supp. 3d 918 (W.D. Wis. 2015), established standing "to challenge state laws that collectively reduce

29. *Feehan v. Wisconsin Election Commission, et al.*, Case No. 20-cv-1771 (E.D. Wisc. 2020), Order Granting Defendants' Motion to Dismiss at 32, available at https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.83.0_5.pdf.

30. *Id.*

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the value of one party.”³¹ However, they did not inform the Court that the Supreme Court expressly overruled that exact rationale in that exact case.³² They relied on notice pleading standards that have long since been overtaken by *Twombly* and *Iqbal*.

- One of the original plaintiffs in the Complaint Mr. Eastman signed and filed was not aware he was a plaintiff in the case:



Additionally, sufficient public information about her co-counsel’s work existed to have put Mr. Eastman on notice that he needed to ensure that the claims he would be advancing in court had a factual basis. In a November 28, 2020 article, the *Washington Post* reported that:

31. ³¹ *Feehan v. Wisconsin Election Commission, et al.*, Case No. 20-cv-1771 (E.D. Wisc. 2020), Brief in Opposition to Motion to Dismiss at 20, available at <https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.72.0.pdf>.

32. See *Gill v. Whitford*, 138 S. Ct. 1916, 1921 (2018).

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Campaign lawyers Justin Clark and Matt Morgan told others they should not present the Dominion theory because there was no evidence for it, the two officials said. The campaign official who was surprised by her sudden involvement said she did not seem interested in having the evidence.

“What you saw with Sidney Powell and Rudy, it wasn’t shoot first and ask questions later. It was shoot first and don’t ask questions at all,” that official said.³³

Other, even presumably friendlier sources called Ms. Powell’s claims into question. Fox News’s Tucker Carlson stated on the air on November 19, 2020, that he invited Ms. Powell to appear on his show and present her evidence, but, he noted, “She never sent any evidence, despite a lot of requests...not a page... [Powell] never demonstrated that a single actual vote moved illegitimately by software from one candidate to another. Not one.”³⁴

33. Aaron C. Davis, Josh Dawsey, Emma Brown, and Jon Swaine, *For Trump Advocate Sidney Powell, a Playbook Steeped in Conspiracy Theories*, Wash. Post (Nov. 28, 2020), available at https://www.washingtonpost.com/investigations/sidney-powell-trump-kraken-lawsuit/2020/11/28/344d0b12-2e78-11eb-96c2-aac3f162215d_story.html.

34. MUST-SEE: Tucker Carlson ABANDONS Trump’s election fraud case on air, YouTube (Nov. 19, 2020), available at, <https://www.youtube.com/watch?v=BspHzH6RRxo>.

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Mr. Eastman either failed to conduct the requisite reasonable inquiry to ascertain whether the claims he was bringing had a factual basis or he knew that he was falsely asserting facts to the court. After all, as Ms. Powell has since argued, “no reasonable person” would believe those assertions to be “statements of fact.”³⁵ Either way, all of the United States District Courts soundly rejected the effort. In Wisconsin:

[T]he legal question at the heart of this case is simple. Federal courts have limited jurisdiction. Does the federal court have the jurisdiction and authority to grant the relief this lawsuit seeks? The answer is no.

Federal judges do not appoint the president in this country. One wonders why the plaintiffs came to federal court and asked a federal judge to do so. After a week of sometimes odd and often harried litigation, the court is no closer to answering the “why.” But this federal court has no authority or jurisdiction to grant the relief the remaining plaintiff seeks. The court will dismiss the case.³⁶

35. See *US. Dominion, Inc. v. Powell*, Case No. 1:21-cv-00040 (D.D.C. 2021), Mot. to Dismiss at 27, available at https://storage.courtlistener.com/recap/gov.uscourts.dcd.225699/gov.uscourts.dcd.225699.22.2_3.pdf.

36. *Feehan v. Wisconsin Election Commission, et al.*, Case No. 20-cv-1771 (E.D. Wisc. 2020), Order Granting Defendants’ Motion to Dismiss at 2, available at https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.83.0_5.pdf.

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The Court also noted that the Plaintiffs in “presented *no* case, statute or constitutional provision providing the court with” the authority Plaintiff sought the Court to exercise.³⁷ Further, “Plaintiffs’ alleged injury does not entitle them to seek their requested remedy because the harm of having one’s vote invalidated or diluted is not remedied by denying millions of others *their* right to vote.”³⁸

Because the Amended Complaint was nearly identical to others filed in Arizona, Georgia, and Michigan, it’s also instructive to know how those courts dealt with the claims and allegations.

In Arizona, federal judge Diane Humetewa, who was on Mr. Trump’s shortlist for United States Supreme Court vacancies, held:

By any measure, the relief Plaintiffs seek is extraordinary. If granted, millions of Arizonans who exercised their individual right to vote in the 2020 General Election would be utterly disenfranchised. Such a request should then be accompanied by clear and conclusive facts to support the alleged “egregious range of conduct in Maricopa County and other Arizona counties . . . at the direction of Arizona state election officials.” Yet the Complaint’s allegations are sorely wanting of relevant or reliable evidence,

37. *Id.* at 22 (emphasis in original).

38. *Id.* at 23 (emphasis in original).

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and Plaintiffs' invocation of this Court's limited jurisdiction is severely strained. . .

The allegations they put forth to support their claims of fraud fail in their particularity and plausibility. Plaintiffs append over three hundred pages of attachments, which are only impressive for their volume. The various affidavits and expert reports are largely based on anonymous witnesses, hearsay, and irrelevant analysis of unrelated elections . . .

Allegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court. They most certainly cannot be the basis for upending Arizona's 2020 General Election.³⁹

In Georgia, the Court stated:

[T]he burden is on the Plaintiffs, and the relief that they seek is extraordinary. And although they make allegations of tremendous worldwide improprieties regarding the Dominion voting machines, those allegations are supported by precious little proof.⁴⁰

39. *Bowyer, et al. v. Ducey, et al.*, Case No. 2:20-cv-02321-DJH (D. Ariz. 2020) Order, available at https://storage.courtlistener.com/recap/gov.uscourts.azd.1255923/gov.uscourts.azd.1255923.84.0_2.pdf.

40. *Pearson, et al. v. Kemp, et al.*, Case No. 1:20-v-04809-TCB (N.D. Ga. 2020) Tr. from Nov. 29, 2020 hearing at 15:24-16:3,

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The Court added in its order dismissing the case:

[T]he Plaintiffs essentially ask the Court for perhaps the most extraordinary relief ever sought in any Federal Court in connection with an election. They want this Court to substitute its judgment for that of two-and-a-half million Georgia voters who voted for Joe Biden, and this I am unwilling to do.⁴¹

And in Michigan, the Court held:

Plaintiffs . . . [bring] forth claims of widespread voter irregularities and fraud in the processing and tabulation of votes and absentee ballots. They seek relief that is stunning in its scope and breathtaking in its reach. If granted, the relief would disenfranchise the vote of more than 5.5 million Michigan citizens who, with dignity, hope, and a promise a voice, participated in the 2020 General Election. The Court declines to grant Plaintiffs this relief.⁴²

available at <https://storage.courtlistener.com/recap/gov.uscourts.gand.284055/gov.uscourts.gand.284055.23.0.pdf>.

41. *Pearson, et al. v. Kemp, et al.*, Case No. 1:20-v-04809-TCB (N.D. Ga. 2020) Tr. from Dec. 7, 2020 hearing.

42. *King, et al. v. Whitmer, et al.*, Case No. 20-cv-13134 (E.D. Mich. 2020) Opinion and Order 2, available at https://storage.courtlistener.com/recap/gov.uscourts.mied.350905/gov.uscourts.mied.350905.62.0_11.pdf.

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But the federal court in Michigan went further when presented with a motion for sanctions against the attorneys who brought that matter forward:

This lawsuit represents a historic and profound abuse of the judicial process. It is one thing to take on the charge of vindicating rights associated with an allegedly fraudulent election. It is another to take on the charge of deceiving a federal court and the American people into believing that rights were infringed, without regard to whether any laws or rights were in fact violated. This is what happened here.

Individuals may have a right (within certain bounds) to disseminate allegations of fraud unsupported by law or fact in the public sphere. But attorneys cannot exploit their privilege and access to the judicial process to do the same. And when an attorney has done so, sanctions are in order.

Here's why. America's civil litigation system affords individuals the privilege to file a lawsuit to allege a violation of law. Individuals, however, must litigate within the established parameters for filing a claim. Such parameters are set forth in statutes, rules of civil procedure, local court rules, and professional rules of responsibility and ethics. Every attorney who files a claim on behalf of a client is charged with the obligation

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to know these statutes and rules, as well as the law allegedly violated.

Specifically, attorneys have an obligation to the judiciary, their profession, and the public (i) to conduct some degree of due diligence before presenting allegations as truth; (ii) to advance only tenable claims; and (iii) to proceed with a lawsuit in good faith and based on a proper purpose. Attorneys also have an obligation to dismiss a lawsuit when it becomes clear that the requested relief is unavailable.

...

The attorneys who filed the instant lawsuit abused the well-established rules applicable to the litigation process by proffering claims not backed by law; proffering claims not backed by evidence (but instead, speculation, conjecture, and unwarranted suspicion); proffering factual allegations and claims without engaging in the required prefiling inquiry; and dragging out these proceedings even after they acknowledged that it was too late to attain the relief sought.

*And this case was never about fraud—it was about undermining the People’s faith in our democracy and debasing the judicial process to do so.*⁴³

43. *King, et al. v. Whitmer, et al.*, Case No. 20-cv-13134 (E.D. Mich. 2020) Opinion and Order 1-3, available at <https://storage>.

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The Court granted the motion for attorney's fees and sanctions and directed that a copy of that order be sent to the appropriate disciplinary authority where each attorney involved in the matter is admitted. The Plaintiffs' counsel appealed the order to the Sixth Circuit, which denied the appeal.⁴⁴

Mr. Eastman advanced the same claims, the same allegations, and the same assertions as those put forward in *King v. Whitmer*. He did so without any more evidence; he did so despite public information that would have called into question the reasonableness of the efforts; and he did so without regard to their consequence.

His actions warrant discipline.

**A SUBSTANTIAL BASIS EXISTS FOR THE
OFFICE OF LAWYER REGULATION TO
INVESTIGATE MR. EASTMAN'S CONDUCT AND
TO IMPOSE APPROPRIATE DISCIPLINE**

The Office of Lawyer Regulation should investigate Mr. Eastman's actions on the following basis:

courtlistener.com/recap/gov.uscourts.mied.350905/gov.uscourts.mied.350905.172.0_8.pdf (emphasis in original).

44. See https://storage.courtlistener.com/recap/gov.uscourts.mied.350905/gov.uscourts.mied.350905.193.0_2.pdf.

*Appendix B***1. Mr. Eastman Violated Rule 3.1 By Bringing and Defending a Matter He Knew Lacked Merit**

Rule 3.1 provides, in part, as follows: “In representing a client, a lawyer shall not . . . knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law.”

Comment 2 states that: “The action is frivolous . . . if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.”

“Knowledge” under the Rules of Professional Conduct can be “inferred from circumstances.”⁴⁵

Ample evidence demonstrates that Mr. Eastman knew of the frivolous nature of the litigation he initiated. As the District Court in *Feehan* found, the Plaintiffs “presented *no* case, statute or constitutional provision providing the court with” the authority they sought for the Court to exercise.

Four separate federal courts reviewed the allegations — nearly identical across the board — and rejected the efforts. And the defendants in the Michigan matter

45. Rule 1.0(f).

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successfully requested sanctions against the attorneys advancing the same claims as Mr. Eastman.

Further, the surrounding context demonstrates the frivolousness of Mr. Eastman's conduct. Public reports available prior to Mr. Eastman's initiating *Feehan* showed that the Trump campaign's attorneys did not believe Ms. Powell had any evidence to support her claims. Mr. Eastman did not speak to, or apparently ascertain whether anyone of the legal team had spoken to, the witnesses whose declarations he submitted to the Court. He filed a complaint on behalf of a plaintiff who did not even know of, or give approval to, the filing.

In short, for the many reasons provided above, Mr. Eastman's conduct violated Rule 3.1.

2. Mr. Eastman Violated Rule 3.3 By Making False Statements to the Court and Failing to Correct Those Statements

Rule 3.3(a)(1) of the Rules of Professional Conduct provides that: "A lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

The District Court's opinion notes that Plaintiffs' counsel made up an entire quote from a case that does not exist, neither in the cited case nor in any federal court decision. Mr. Eastman signed that filing.

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Additionally, the Amended Complaint and accompanying affidavits that Mr. Eastman filed included false statements regarding the background of at least two witnesses. That information was available publicly prior to Mr. Eastman's filing the Amended Complaint, but he filed the affidavits nevertheless, referred to the mistaken background throughout the Amended Complaint and filings, and failed to correct the record even after the matter was published in a national newspaper.

Further, the Amended Complaint and briefing made purposefully false statements regarding Dominion's founding, sought to connect Smartmatic and Dominion even though the two companies are competitors, and used affiant allegations about Smartmatic against Dominion in a deliberate effort to mislead the Court regarding Dominion.

Mr. Eastman's conduct violated Rule 3.3.

3. Mr. Eastman Violated Rule 4.4 Command That Lawyers Respect the Rights of Third Parties

Pursuant to Rule 4.4(a), "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person."

Comment 1 to the Rule states, "Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does

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not imply that a lawyer may disregard the rights of third persons.”

In the interests of his clients, Mr. Eastman sought to have millions of voters lose their right to decide the 2020 presidential election. Every court addressing the same complaint filed by Mr. Eastman and his co-counsel noted the extraordinary remedy they sought and the effect it would have on millions of Americans.

Mr. Eastman disregarded the potential consequences of his proposed remedy — showing no respect for the rights of millions of third persons whose votes would be invalidated — and his actions warrant discipline.

4. Mr. Eastman Engaged in Misconduct that Violates Rule 8.4

Under Rule 8.4, “It is professional misconduct for a lawyer to . . . violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; [or] engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or] violate the attorney’s oath.”

The oath that Mr. Eastman took to gain admission to the State Bar of Wisconsin states, in part:

I will support the constitution of the United States and the constitution of the state of Wisconsin . . . I will employ, for the purpose of maintaining the causes confided in me, such

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means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law . . . So help me God.

Mr. Eastman participated in a purposefully dishonest effort to undermine the 2020 election. He brought frivolous claims that the Constitution, prior court decisions, and relevant statutes barred. The bare “factual” bases he relied on were supported by false statements and wild speculation from discredited sources.

Furthermore, Mr. Eastman assisted others in violating the Rules of Professional Conduct. Ms. Powell actively participated in the *Feehan* litigation. The State Bar of Texas’s Committee for Lawyer Discipline filed a petition against Ms. Powell for her conduct related to the post-election cases she filed, including *Feehan*.⁴⁶ A Texas court recently denied Ms. Powell’s motion to dismiss the petition.

Without Mr. Eastman’s assistance as local counsel, Ms. Powell could not have proceeded in Wisconsin. He assisted her efforts to violate the rules.

46. https://courtportal.dallascounty.org/DALLASPROD/DocumentViewer/Embedded/ye0-5n-ZNL7oyR1i6dndFnGQjA9qBJlrva-IvUlu1xeulp-m_RTymkwd106ghQITaElOonF8oaAAPOSfE3OCw2?p=0.

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He also ignored his oath, which required him to act consistent with honor and truth. His actions must be scrutinized and disciplined.

* * *

The United States Supreme Court has long recognized in upholding disciplinary actions that “speech by an attorney is subject to greater regulation than speech by others.”⁴⁷ As officers of the court an attorney is “an intimate and trusted and essential part of the machinery of justice” and a “crucial source of information and opinion.”⁴⁸ Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech. Indeed, disciplinary boards and courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

That members of our esteemed profession would engage in such actions — conduct that contributed to substantial harm to American democracy — should cause considerable distress within the entire legal community.

False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the

47. *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

48. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

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proper functioning of free society. When those false statements are made by an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession's role as a crucial source of reliable information.⁴⁹

Mr. Eastman chose to offer his professional license to an assault on our democracy. He pursued litigation that lacked any basis in law or fact. He participated in an organized effort to sow discord and doubt about the 2020 elections. He helped lead the charge in Wisconsin to disenfranchise millions of his fellow citizens because he did not like how they voted.

For the reasons set forth above, we respectfully request that the Office of Lawyer Regulation investigate Mr. Eastman's conduct and pursue appropriate discipline.

Sincerely,

/s/ Michael Teter

Managing Director

[REDACTED]

On behalf of The 65 Project

49. *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021 at 30-31.

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**STATES
UNITED
DEMOCRACY
CENTER**

**LAWYERS
DEFENDING
AMERICAN
DEMOCRACY**

VIA EMAIL

December 15, 2023

Ms. Jessica E. Yates
Attorney Regulation Counsel
Ralph L. Carr Judicial Center
Colorado Supreme Court
1300 Broadway, Suite 500
Denver, CO 80203
j.yates@csc.state.co.us

**Re: Request for Commencement of Disciplinary
Proceeding Against Jenna L. Ellis (also known
as Jenna Lynn Rives), Colorado Registration
Number 44026**

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Dear Ms. Yates:

The States United Democracy Center is a nonpartisan organization advancing free, fair, and secure elections. We focus on connecting state and local officials, public-safety leaders, and pro-democracy partners across America with the tools and expertise they need to safeguard our democracy. Our work centers on making sure every election is safe, every vote is counted, and every voice is heard. Critical to our mission is helping to ensure that democracy violators are held accountable, including those in the legal profession who betray their professional responsibilities to uphold the rule of law.

Lawyers Defending American Democracy (LDAD) is a nonpartisan organization, the purpose of which is to foster adherence to the rule of law. LDAD is devoted to ensuring that individual lawyers are held accountable for participating in unethical conduct that assaults fundamental principles of our American democracy.

We, together with the additional signatories below, write to urge the Office of Attorney Regulation Counsel (OARC) to promptly commence a formal disciplinary proceeding against Jenna Ellis seeking her disbarment in light of her recent guilty plea to a felony in Georgia and to initiate an interim suspension proceeding under Colo. R. Civ. P. 242.22.

The Supreme Court of Colorado has stated: “Lawyers serve our system of justice, and if lawyers are dishonest, then there is a perception that the system, too, must be dishonest. Certainly, the reality of such behavior must

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be abjured so that the perception of it may diminish.” *In re Pautler*, 47 P.3d 1175, 1179 (Colo. 2002). Attorneys barred in Colorado take an oath to “employ such means as are consistent with truth and honor.”¹ As set forth below, through acts undertaken in late 2020, Ms. Ellis violated that oath.

I. Brief Background About Ms. Ellis’s Felony Guilty Plea

On August 14, 2023, Ms. Ellis and 18 others were charged in Fulton County, Georgia with a conspiracy to overturn the 2020 presidential election.² Ms. Ellis was also charged with a second felony count arising from her participation in a December 3, 2020 meeting with certain members of the Georgia Senate, during which she and two of her co-defendants – Rudolph Giuliani and Ray Smith III, also Trump campaign attorneys – were alleged to have solicited the Senate members to unlawfully appoint presidential electors from the State of Georgia, in violation of the Senators’ oaths of office.

On October 24, 2023, Jenna Ellis pled guilty to a felony charge arising from her conduct as counsel to the Trump campaign in that December 3 meeting. Specifically, she

1. *Colorado Oath of Admission*, Office of Attorney Regulation Counsel, available at: <https://coloradosupremecourt.com/Current%20Lawyers/Oath.asp> (Last visited Nov. 20, 2023).

2. See Indictment, *State of Georgia v. Donald J. Trump, et al.*, 23SC188947 (Aug. 14, 2023), available at <https://int.nyt.com/data/documenttools/georgia-indictment-trump/daed97d37562a76f/full.pdf>.

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pled guilty to intentionally aiding and abetting Giuliani and Smith in knowingly, willfully, and unlawfully making certain false statements (enumerated in section II, *infra*) to members of the Georgia Senate.³ These false statements attempted to cast doubt on the legitimate results of the 2020 presidential election, in violation of Official Code of Georgia Annotated (O.G.C.A.) § 16-10-20.⁴

O.G.C.A. § 16-10-20 reads, in pertinent part: “A person who knowingly and willfully...makes a false, fictitious, or fraudulent statement or representation...in any matter within the jurisdiction of any department or agency of state government or of the government of any county, city, or other political subdivision of this state shall, upon conviction thereof, be punished by a fine of not more than \$1,000.00 or by imprisonment for not less than one nor more than five years, or both.” In Ms. Ellis’s case, the false statements at issue (*i.e.*, about the integrity of the outcome of the 2020 presidential election) were within the jurisdiction of, *inter alia*, the Office of the Georgia Secretary of State and the Georgia Bureau of Investigation.

Under the terms of her plea agreement, Ms. Ellis will serve five years on probation, pay \$5,000 in restitution, serve 100 hours of community service, must write an

3. An aider and abettor is someone who has knowledge of the intended crime and shared in the criminal intent of the principal actor. *See Denson v. State*, 353 Ga. App. 450, 452 (2020).

4. A true and correct copy of the filed Accusation is attached hereto as Attachment 1.

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apology letter to the citizens of Georgia, testify truthfully against her co-defendants, and fully cooperate with the prosecution of the remaining alleged co-conspirators.⁵

II. The False Statements Provide a Strong Basis for Further Discipline

The false statements at issue in Ms. Ellis's plea are distinct from the misrepresentations underlying Ms. Ellis's previous censure and provide a strong basis for further discipline. *Compare People v. Ellis*, 526 P.3d 958, 959-960 (Colo. O.P.D.J. March 8, 2023) (Opinion Approving Stipulation to Discipline Under Colo. R. Civ. P. 242.19(c)) *with* Criminal Accusation (Attachment 1). The falsehoods for which Ms. Ellis was previously censured related mainly to her claims on Twitter and in media appearances that the 2020 election was stolen. The falsehoods involved in her Georgia felony guilty plea were allegations of fraud and misconduct by Georgia voters, election officials and workers. These allegations fueled the spread of disinformation about Georgia's election process and election workers, undermine trust in American elections, discourage public participation in the electoral process, pose a threat to the safety and well-being of election workers and, accordingly, threaten democracy as a whole.

The false statements at issue in Ms. Ellis's plea are that: Georgia election officials illegally permitted: (1) "at

5. See Video of plea hearing, *State of Georgia v. Jenna Ellis*, 23SC188947 (Oct. 24, 2023), available at <https://www.youtube.com/watch?v=Eu7uzRFDpTY>.

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least 96,000 mail-in ballots [to be] counted...despite there being no record of those ballots having been returned”; (2) 2,506 Georgia felons to vote; (3) 66,248 underage people to register to vote; (4) “at least 2,423” people to vote who were not listed as registered; (5) “10,315 or more” dead people to vote; (6) 1,043 people to vote who had illegally registered using a post office box; and, further, (7) that “Fulton County election workers at State Farm Arena ordered poll watchers and members of the media to leave the tabulation area on the night of November 3, 2020, and continued to operate after ordering everyone to leave[]” thus dishonestly implying that election workers were engaged in nefarious conduct. *See* Att. 1 ¶¶ 1-7.

There was no reasonable basis for these explosive and false statements to the Georgia state senators. In fact, investigation of these allegations showed that: (1) the 96,600 number represented the number of ballots that were *cancelled, not* counted;⁶ (2) a maximum of seventy-four potential felons voted, *not* 2,506; (3) zero individuals voted who were not listed in the State’s records as having been registered to vote, *not* “at least 2,423”; (4) two potentially deceased individuals were given credit for voting, *not* “10,315 or more”; (5) four voters requested a ballot prior to turning 18, the minimum age for voter eligibility, *not* 66,248, and all four turned 18 prior to the election; and (6) that the addresses alleged to be post

6. *See* Report of Kenneth R. Mayer, Ph.D., filed in *Pearson v. Kemp*, 1:20-cv-04809-TCB at pp. 1, 4-5 (Dec. 5, 2020). A true and correct copy of Dr. Mayer’s Report is attached as Attachment 2.

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office boxes appeared to be apartments.⁷ Investigation also showed that “observers and media were not asked to leave” but rather, that they “simply left on their own when they saw one group of workers, whose job was only to open envelopes and who had completed that task, also leave.”⁸

Once the false statements were made to the Georgia state senators, they were then repeated and amplified by other Trump allies and media outlets and incorporated into various reports and lawsuits, thereby perpetuating deceptive and incendiary conspiracy theories. For example, on Dec. 17, 2020, Georgia state senator William Ligon, the Chairman of the Georgia Senate’s Judiciary Committee, issued a report based on the December 3, 2020 hearing, which regurgitated these same falsehoods.⁹

7. See Jan. 4 Press Conference of Gabriel Sterling, Chief Operating Officer of the Georgia Secretary of State’s Office, available at <https://www.c-span.org/video/?507710-1/georgia-election-security>; and Jan. 6, 2021 Letter to Congress from Georgia Secretary of State Brad Raffensperger at pp. 8-9. A true and correct copy of the Raffensperger letter is attached as Attachment 3.

8. See Declaration of Frances Watson, Chief Investigator in the Office of the Georgia Secretary of State, at ¶ 6. A true and correct copy of the Watson Declaration is attached as Attachment 4. See also Att. 3 at p. 7 (Jan. 6 Raffensperger letter) (noting that partisan poll watchers and other monitors remained at the election warehouse where results were being tabulated and were aware that absentee ballot scanning was continuing at State Farm Arena).

9. See Hon. William T. Ligon, *The Chairman’s Report of the Election Law Study Subcommittee of the Standing Senate*

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A couple of weeks later, on December 31, 2020, the Trump campaign filed *Trump v. Kemp*, a frivolous lawsuit against Georgia’s Governor and Secretary of State in the Northern District of Georgia. *See Trump v. Kemp*, 1:20-CV-5310-MHC, 2020 WL 7872546 at ¶¶ 9, 17 (N.D. Ga., Dec. 31, 2020, Complaint).¹⁰ The lawsuit cited the same falsehoods as a basis for its claim that “illegal votes have been counted which Plaintiff contend [sic] are sufficient to change the outcome of the election or place the election in doubt, and, therefore, the vote tabulations in Georgia cannot be accurately certified.” *Id.* at ¶ 42. The District Court denied the requested relief on January 5, 2021. *See Trump v. Kemp*, 511 F. Supp. 3d 1325 (N.D. Ga. 2021).

The December 3 falsehoods also exposed election workers in Georgia to harassment and threats of violence.¹¹

Judiciary Committee (Dec. 17, 2020) at pp. 9-10. A true and correct copy of the Ligon Report is attached as Attachment 5.

10. Paragraph 9 of the *Trump v. Kemp* Verified Complaint incorporates by reference the allegations in a state court complaint the Trump campaign filed on December 4, 2020, styled as *Trump v. Raffensperger*, which it attaches as exhibit 1. A true and correct copy of exhibit 1 is attached hereto as Attachment 6. The false statements at issue are at ¶¶ 60-68, 87-88, 101-102, 187-191.

11. *See* Dec. 1, 2020 Press Conference of Gabriel Sterling, Chief Operating Officer of the Georgia Secretary of State’s Office (reporting that false statements like the ones at issue were leading to harassment and death threats against officials overseeing the Georgia’s recount), available at <https://tinyurl.com/2f6dhrtu>. *See also* Jason Szep & Linda So, *Trump Campaign Demonized Two Georgia Election Workers – and Death Threats Followed*, Reuters (Dec. 1, 2021), <https://www.reuters.com/investigates/>

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A defamation complaint filed by Fulton County election workers Ruby Freeman and Shaye Moss describes in detail the instant and devastating impact on their lives of the December 3 hearing. *See Freeman v. Giuliani et al.*, No. 1:21-CV-03354, 2021 WL 6102228 at ¶¶ 12-16, 59-64 (D.D.C., Dec. 23, 2021, Complaint).¹² The *Freeman* Complaint alleges how, “[o]n December 3, 2020, Donald Trump’s legal team—including Defendant Giuliani—testified before the Georgia Senate, alleging that fraud and misconduct had occurred during Georgia’s November 2020 election.” *Id.* ¶ 59 & n. 54.¹³ *Id.* at ¶¶ 59-60. It explains how Giuliani and the media then amplified the Dec. 3 false statements, including their statements about how Fulton County election workers at State Farm Arena ordered poll watchers and members of the media to leave the tabulation

special-report/usa-election-threats-georgia/; Lindsay Whitehurst, Christina A. Cassidy, *Election workers are being bombarded with death threats, the U.S. government says* (Aug. 31, 2023), available at <https://tinyurl.com/3ra572mt>.

12. On Oct. 31, 2022, the District Court denied Giuliani’s motion to dismiss. *Freeman v. Giuliani*, 2022 WL 16551323 (D.D.C., Oct. 31, 2022). On Aug. 30, 2023, the District Court entered a default judgment against Giuliani. *Freeman v. Giuliani*, 2023 WL 5600316 (D.D.C., Aug. 30, 2023). On Dec. 3, 2023, the District Court denied Giuliani’s motion seeking to convert the scheduled jury trial on damages to a bench trial. *Freeman v. Giuliani*, 2023 WL 8360664, at *1 (D.D.C. Dec. 3, 2023).

13. Citing Beau Evans, *Georgia Senate Panel Hosts Trump Attorney Giuliani As Election Officials Dispute Fraud Claims*, Augusta Chron. (Dec. 3, 2020), available at <https://www.augustachronicle.com/story/news/2020/12/03/georgia-senate-panel-probingelection-hosts-trump-attorney-giuliani/3818365001/>.

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area. *Id.* ¶¶ 61-64. The *Freeman* Complaint further alleges those “lies had instant and profound consequences. Both Ms. Freeman and Ms. Moss received an immediate onslaught of violent and racist threats and harassment. Their personal and professional reputations have been destroyed. To this day, Ms. Freeman and Ms. Moss fear for their physical safety and have suffered a devastating emotional toll.” *Id.* at ¶ 12. *See also* ¶ 13 (explaining how, “[a]t the height of Defendants’ campaign of disinformation, Ms. Freeman, at the recommendation of the FBI, fled her home and did not return for two months.”)

III. OARC Should Initiate a Formal Disciplinary Proceeding Against Ms. Ellis

By engaging in the criminal conduct to which she pled guilty, Ms. Ellis violated, at least, rules 8.4(a), (b), (c) and 4.1(b) of the Colorado Rules of Professional Conduct (“Colo. RPC”). Colo. RPC 8.4 states, in relevant part, that it is professional misconduct for a lawyer to: “(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects; [or] (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]” Colo. RPC 4.1(b) prohibits lawyers, in the course of representing a client, from “knowingly fail[ing] to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client[.]”

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As a New York court observed when suspending the bar license of Trump attorney Rudolph Giuliani, including for the false statements at issue in Ms. Ellis's plea:

statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of a free society. When those false statements are made by an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession's role as a crucial source of reliable information. It tarnishes the reputation of the entire legal profession and its mandate to act as a trusted and essential part of the machinery of justice.

Matter of Giuliani, 146 N.Y.S.3d 266, 277-279, 283 (2021) (internal citations omitted) (concluding Giuliani's false statements to members of the Georgia Senate on Dec. 3, 2020 violated NY RPC 4.1 and 8.4(c)). The same observation applies to Ms. Ellis under the applicable Colorado analogs to those rules.¹⁴

The fact that Ms. Ellis entered her guilty plea under Georgia's first offender law has no bearing on whether

14. New York's Rule 8.4(a)-(c) is materially identical to Colorado's. Unlike in the Colorado Rules, New York's Rule 4.1 does not have a subsection (b).

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she should face discipline.¹⁵ The Georgia Supreme Court routinely upholds attorney discipline imposed following first-offender pleas, even though a guilty plea does not constitute a “conviction” under Georgia law. *See, e.g., In the Matter of Davis*, 292 Ga. 897 (2013); *In re Waldrop*, 283 Ga. 80 (2008); *In the Matter of Caroway*, 279 Ga. 381 (2005); *In the Matter of Lewis*, 282 Ga. 649 (2007); and *In the Matter of Calhoun*, 268 Ga. 877 (1998). While Colorado does not have an analogous first-offender statute, Colorado courts have imposed attorney discipline for crimes, like Ellis’s, involving dishonesty, based on the attorney’s having pled guilty to a felony. *See In re DeRose*, 55 P.3d 126, 128 (Colo. 2002) (upholding disbarment of an attorney who pled guilty to a felony for purchasing money orders to assist a client in evading reporting requirements and who had received prior discipline by the Bar); *see also* Colo. R. Civ. P. § 241 (defining “conviction” to include a “plea of guilty...irrespective of: (1) whether entry of judgment or imposition of the sentence is suspended or deferred[.]”)

Likewise, the fact that Ms. Ellis negotiated into her plea deal a statement that her crime did not involve

15. Under Georgia’s first offender law, O.C.G.A § 42-8-60, “[a] first offender’s guilty plea does not constitute a ‘conviction’ as that term is defined in the Criminal Code, but rather, under the First Offender Act, until an adjudication of guilt is entered, there is no conviction; the case has, in effect, been suspended during the period of probation until eventually the probation is either revoked or it is discharged, and unless it is revoked, there is no conviction.” *Collins v. State*, 338 Ga.App. 886, 889 (2016).

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moral turpitude is of no moment.¹⁶ The crime to which she pled guilty – one involving false statements in the context of her representation of former President Trump – unquestionably reflects adversely on her fitness to practice law. *See* Colo. RPC 8.4 cmt. 2. Indeed, as the Presiding Disciplinary Judge of the Supreme Court of Colorado noted in approving her prior discipline, and as Ms. Ellis previously stipulated, her misrepresentations as Trump’s personal counsel “undermined the American public’s confidence in the presidential election, violating her duty of candor to the public.” *People v. Ellis*, 526 P.3d 958, 962 (Colo. O.P.D.J. 2023).

IV. OARC Should Seek Ms. Ellis’s Disbarment and Interim Suspension

Colorado courts apply the American Bar Association *Standards for Imposing Sanctions* (“ABA Standards”) and Colorado Supreme Court case law to determine when disbarment is appropriate. *People v. Borzillo*, 464 P.3d 281, 283 (Colo. O.P.D.J. 2016). ABA Standard 5.11 provides that “disbarment is generally appropriate when: (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation,

16. At her plea hearing, Ms. Ellis’s counsel explained the inclusion of the moral turpitude language was intended “to assist her in other venues.” *See* Video of plea hearing at 15:56, *State of Georgia v. Jenna Ellis*, 23SC188947 (Oct. 24, 2023), available at <https://www.youtube.com/watch?v=Eu7uzRFDpTY>.

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or theft;” or (b) “a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyers fitness to practice.” *See, e.g., People v. Borzillo*, 464 P.3d 281, 283 (Colo. O.P.D.J. 2016) (disbarring attorney who pled guilty to bank fraud); *People v. Hilgendorf*, 895 P.2d 544, 544 (Colo. 1995) (upholding disbarment of an attorney convicted of making false statements to federal banks).

The crime to which Ms. Ellis pled guilty – intentionally aiding and abetting her co-counsel in knowingly, willfully, and unlawfully making false statements that were clearly intended to undermine public confidence in the 2020 presidential election – undoubtedly runs afoul of both prongs of ABA Standard 5.11.¹⁷ Indeed, it is difficult to imagine conduct more antithetical to the rule of law that attorneys take an oath to uphold. *See People v. Zimmerman*, 470 P.3d 827, 836 (Colo. O.P.D.J. 2016) (disbarring attorney whose “acts, taken together, amount to a renunciation of the oath Respondent swore when he gained admission to the Colorado bar: to maintain respect due to courts; to uphold the rule of law; to employ only such means that are consistent with truth and honor; and to treat all persons with honesty.) Accordingly, disbarment is appropriate.

Further, Colo. R. Civ. P. 242.22 provides, in pertinent part: “the supreme court may suspend a respondent’s

17. An aider and abettor is someone who has knowledge of the intended crime and shared in the criminal intent of the principal actor. *See Denson*, 353 Ga. App. at 452.

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license on an interim basis if there is reasonable cause to believe that: (1) The respondent is causing or has caused substantial public or private harm; and (2) The respondent has: (A) Been convicted of a serious crime[.]” In Colorado, the term “serious crime” includes “any felony” or “any lesser crime a necessary element of which... involves... misrepresentation[.]” Colo. R. Civ. P. § 241. The term “conviction” refers to “any determination in a criminal matter, including at a federal, state, municipal, or other level, that a person is guilty, whether the determination rests on a verdict of guilty, a judicial finding of guilt, a *plea of guilty*, an Alford plea, or a plea of *nolo contendere*, *irrespective of (1) whether entry of judgment or imposition of the sentence is suspended or deferred by the court*, (2) whether the person is appealing the determination, and (3) *whether sentencing has occurred*.” *Id.* (Emphasis added). As shown above, the crime to which Ms. Ellis pled guilty caused substantial public harm and it is a felony. Thus, it is a “serious crime”. Were Ms. Ellis to argue that aiding and abetting somehow constitutes a “lesser crime,” the fact that it involves misrepresentation still brings it within the definition of “serious crime.” *See* Colo. R. Civ. P. § 241. Thus, the Supreme Court may suspend her license on an interim basis. *See* Colo. R. Civ. P. 242.22.

While Ms. Ellis will likely claim that her March 2023 stipulation to discipline and her October 2023 guilty plea reflect acceptance of responsibility thereby warranting departure from the presumptive sanction of disbarment, a departure is unwarranted here. First, her public statements after her censure by OARC and, even at her October 24 allocution, reflect an effort to shift

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blame to others and minimize her responsibility. In a tweet in the wake of her censure in Colorado, instead of showing remorse for her actions to undermine American democracy, Ms. Ellis attacked the process, writing to her followers that: “This is and always was political lawfare to intimidate lawyers from representing Trump or Republicans candidates, especially in election challenges and try to destroy our livelihood and reputation.”¹⁸ At her allocution in Georgia, she attempted to cast her criminal conduct as a mere failure to conduct due diligence “to make sure that the facts the other lawyers alleged to be true, were in fact true.” Instead of accepting responsibility, she stated, “I relied on others, including lawyers with many more years of experience than I to provide me with true and reliable information, especially since my role involved speaking to the media and legislators in various states.” These statements elide her more than a decade of experience as a barred attorney and fall far short of demonstrating the type of contrition that would warrant lesser discipline.¹⁹

Conclusion

In light of the foregoing, we urge OARC to promptly initiate a formal disciplinary proceeding against Ms. Ellis seeking her disbarment and to initiate an interim suspension proceeding under Colo. R. Civ. P. 242.22.

18. Jenna Ellis (@jennaellisesq), Twitter (Mar. 9, 2023, 7:03 AM), available at <https://x.com/JennaEllisEsq/status/1633815849676021760?s=20>.

19. Ms. Ellis has been barred in Colorado for more than a decade.

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Sincerely,

STATES UNITED DEMOCRACY CENTER

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Meagan Harding, Counsel
Christine P. Sun, Senior Vice President, Legal

LAWYERS DEFENDING AMERICAN DEMOCRACY

John T. Montgomery
Lawyers Defending American Democracy
Board Member

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Additional signatories*

Governor Steve Bullock
Former Governor of Montana
Former Attorney General of Montana

Dean Erwin Chemerinsky
Dean and Jesse H. Choper Distinguished Professor
of Law
University of California, Berkeley, School of Law

Honorable Frankie Sue Del Papa
Former Attorney General of Nevada

Honorable John J. Farmer Jr.
Former Attorney General of New Jersey
Former Assistant U.S. Attorney, District of New Jersey

Honorable Trey Grayson
Former Secretary of State of Kentucky

Honorable Jim Hood
Former Attorney General of Mississippi

Honorable Jahna Lindemuth
Former Attorney General of Alaska

Honorable Patricia A. Madrid
Former Attorney General of New Mexico

Professor Richard W. Painter
S. Walter Richey Professor of Corporate Law,
University of Minnesota Law School
Former Associate Counsel to the President

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Honorable Sarah R Saldaña
Former Director of the U.S. Immigration and
Customs Enforcement
Former U.S. Attorney, Northern District of Texas

Honorable Bill Weld
Former Governor of Massachusetts

Honorable Kim Wyman
Former Secretary of State of Washington

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THE 65 PROJECT

August 31, 2022

Keith Sellen, Director
Wisconsin Office of Lawyer Regulation
P.O. Box 1648
Madison, WI 53701

Dear Mr. Sellen:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

We write to request that the Office of Lawyer Regulation investigate the actions taken by Michael D. Dean (State Bar No. 01019171) relating to his effort to overturn the 2020 presidential election. Mr. Dean served as part of a coordinated attempt to “release the Kraken” on American democracy, alongside Sidney Powell, Rudy Giuliani, Lin Wood, and John Eastman as they abused the judicial system to promote and amplify bogus, unsupported claims of fraud to discredit an election that Mr. Trump lost.

Mr. Dean worked on two matters in Wisconsin: *Langenhorst v. Pecore* and *Feehan v. Wisconsin Elections Commission*. Both of these actions lacked any basis in law or fact. Indeed, they were nearly carbon copies of litigation filed in several other states, as national lawyers sought to

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create a false narrative about voter fraud that was based on conjecture and conspiracy theories. Incredibly, and perhaps conclusively for your investigation, Mr. Dean's own co-counsel has defended herself against a defamation claim based on the assertions she made regarding the 2020 election by stating that, "no reasonable person" would believe those assertions to be "statements of fact."¹

Mr. Dean lent his Wisconsin law license to the effort. But Wisconsin's Rules of Professional Conduct demand more. By filing a frivolous lawsuit untethered to either law or fact and in seeking an extreme remedy unheard of in any court of law, Mr. Dean not only crossed, but blew past, the ethical standards to which he is bound.

A full investigation by the Office of Lawyer Regulation will demonstrate the egregious nature of Mr. Dean's actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior, and the serious risk that Mr. Dean will repeat such conduct unless disciplined.

BACKGROUND

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes

1. See *U.S. Dominion, Inc. v. Powell*, Case No. 1:21-cv-00040 (D.D.C. 2021), Mot. to Dismiss at 27, available at https://storage.courtlistener.com/recap/gov.uscourts.dcd.225699/gov.uscourts.dcd.225699.22.2_3.pdf.

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and over four percentage points.² Mr. Trump’s head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, announced that the “November 3rd election was the most secure in American history. . . . There is no evidence that any voting system deleted or lost votes or changed votes or was in any way compromised.” Mr. Trump fired him. William Barr, Mr. Trump’s own Attorney General, declared that the Department of Justice has “not seen fraud on a scale that could have effected a different outcome in the election.” Attorney General Barr announced his resignation less than two weeks later, but not before again confirming that the 2020 elections had been free and fair.³

Many of Mr. Trump’s own senior advisors agreed with Attorney General Barr and Mr. Krebs.⁴ Indeed, Deputy (and later Acting) Attorney General Jeffrey Rosen and Associate (and later Acting) Deputy Attorney

2. See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

3. M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://perma.cc/4U8N-SMB5>.

4. See Deposition of Jason Miller (Feb. 3, 2022), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>; Interview of Jeffrey Rosen (Aug. 7, 2021), United States Senate Committee on the Judiciary, 117th Cong. 30, available at <https://www.judiciary.senate.gov/rosen-transcript-final>.

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General Richard Donoghue regularly refuted the false information and allegations that Mr. Trump and his allies asserted about a fraudulent election.⁵ Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, he and others told Mr. Trump that the information he was receiving from his political allies was not correct.⁶ And Mr. Donoghue has testified to the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee) that on December 27, 2020, he told Mr. Trump “in very clear terms” that after “dozens of investigations, hundreds of interviews” looking at “Georgia, Pennsylvania, Michigan, and Nevada,” the Department of Justice — Mr. Trump’s own Department of Justice — had concluded that “the major allegations are not supported by the evidence developed.”⁷

Despite clear proof that no fraud occurred, and that no one stole the election from him, Mr. Trump and his lawyers sought to overturn the legitimate results by filing 65 baseless lawsuits across the country.⁸ None succeeded

5. See Interview of Jeffrey Rosen *see also* Interview of Richard Donoghue (Oct. 1, 2021), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>.

6. Interview of Jeffrey Rosen.

7. Interview with Richard Donoghue.

8. W. Cummings, J. Garrison & J. Sergeant, *By the numbers: President Donald Trump’s failed efforts to overturn the election*, USA Today (Jan. 6, 2021), available at <https://www.usatoday.com/>

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and, in fact, courts have imposed sanctions on the lawyers who participated in these suits and referred them for sanctions to their respective state bars.⁹

CONDUCT GIVING RISE TO THE COMPLAINT

Mr. Dean helped lead the charge on behalf of Mr. Trump in Wisconsin.

On November 12, 2020, Mr. Dean initiated *Langenhorst v. Pecore* in United States District Court for the Eastern District of Wisconsin. He was the only Wisconsin-based and licensed attorney on the matter, working with four out-of-state lawyers. The complaint Mr. Dean filed was nearly identical to three others filed by Mr. Dean's co-counsel in Pennsylvania, Georgia, and Michigan around the same time — despite the case-specific factual assertions of illegal voting.

For example, in *Langenhorst*, the Plaintiffs stated:

In addition to the foregoing evidence, Voters will provide evidence, upon information and belief, that sufficient illegal ballots were included in the results to change or place in doubt the November 3 presidential-election results. This

in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/.

9. See, e.g., *King v. Whitmer*, No. 20-13134 (U.S. Dist. Ct. E. Dist. Mich. Aug. 25, 2021), available at https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf.

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will be in the form of expert reports based on data analysis comparing state mail-in/absentee, provisional, and poll-book records with state voter-registration databases, United States Postal Service (“USPS”) records, Social Security records, criminal-justice records, department-of-motor-vehicle records, and other governmental and commercial sources by using sophisticated and groundbreaking programs to determine the extent of illegal voters and illegal votes, including double votes, votes by ineligible voters, votes by phantom (fictitious) voters, felon votes (where illegal), non-citizen votes, illegal ballot harvesting, and pattern recognition to identify broader underlying subversion of the election results. Plaintiffs have persons with such expertise and data-analysis software already in place who have begun preliminary analysis of available data to which final data, such as the official poll list, will be added and reports generated.

Upon information and belief, the expert report will identify persons who cast votes illegally by casting multiple ballots, were deceased, had moved, or were otherwise not qualified to vote in the November 3 presidential election, along with evidence of illegal ballot stuffing, ballot harvesting, and other illegal voting. This evidence will be shortly forthcoming when the relevant official documents are final and available, for which discovery may be required,

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and the result of the analysis and expert reports based thereon will show that sufficient illegal ballots were included in the results to change or place in doubt the November 3 presidential-election results.¹⁰

They repeated those same lines in Pennsylvania¹¹ and Georgia.¹²

And the “foregoing evidence” referred to in the above paragraph were allegations that:

- Two non-election inspectors gave advice to poll workers at a Brown County counting facility;¹³
- Fourteen people allege to have received absentee ballots without requesting them, with twelve of these examples coming entirely through word of mouth and rumor;
- A volunteer who was knocking on doors for a conservative organization before the election

10. *Langenhorst, et al. v. Pecore, et al.*, Case No. 1:20-cv-1701 (E.D. Wis.), Nov. 12, 2020, Am. Compl. ¶¶ 44-45.

11. *Pirkle v. Wolf*, Case No. 4:20-cv-2088 (M.D. Pa.), Nov. 10, 2020, Compl. ¶¶ 26-27.

12. *Brooks, et al. v. Mahoney, et al.*, Case No. 4:20-cv-00281 (S.D. Ga.), Nov. 11, 2020, Compl. ¶¶ 45-46.

13. *Langenhorst, et al. v. Pecore, et al.*, Case No. 1:20-cv-1701 (E.D. Wis.), Nov. 12, 2020, Am. Compl. ¶ 36.

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was told by one person that he had received ten ballots from the Wisconsin Elections Commission and so had his neighbor; and

- Three people died after they mailed their completed absentee ballots.

“This evidence,” the Amended Complaint, “suffices to place in doubt the November 3 presidential-election results in identified counties and/or the state as a whole.”

But, of course, that was hardly true. First, the Plaintiffs were not even suing Brown County —probably because that county’s total vote favored President Trump. Second, voters’ statements that they did not recall requesting absentee ballots or that they heard other people say they did not request absentee ballots is not evidence of fraud. Third, relying on the statement from a conservative volunteer who reported that a like-minded voter alleged to have received ten ballots from the Wisconsin Election Commission is an absurd basis for bringing an action seeking to invalidate 3.3 million votes, especially when the Wisconsin Election Commission does not even send out ballots. And finally, the fact that three people requested absentee ballots, completed and returned those ballots, and then later died reveals nothing nefarious and fraudulent.

Including these types of allegations to support any lawsuit would be problematic. More troubling, though, is that Mr. Dean sought to disqualify *every vote* in Dane and Milwaukee counties so that Mr. Trump would prevail. In

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addressing the idea of invalidating hundreds of thousands of legally cast votes, Mr. Dean’s co-counsel said that they wanted the court to throw out, “Every fucking one of them.”¹⁴

Further, Mr. Dean’s co-counsel acknowledged that they lacked a proper factual basis for bringing the matter. He said, “There’s sufficient suspicion that [the election’s] been stolen. Our case does not end there. Our case begins there. We want the poll lists so that we can analyze the poll list to see if in fact it was stolen.”¹⁵ In other words, suspicion and conjecture — not facts — underlie their effort.

After a flurry of activity on the case — including the court issuing over a dozen requested summonses, a Plaintiffs’ motion for expedited scheduling and discovery, and several motions to intervene — Mr. Dean voluntarily dismissed the matter four days after filing. Mr. Dean’s co-counsel dismissed the similar lawsuits brought in other states the same day.

14. Tony Cook & Johnny Magdalene, *Top Indiana Election Attorney Rushes to Defend Trump’s Fraud Claims, Then Quietly Retreats*, Indianapolis Star (Nov. 17, 2020), <https://www.indystar.com/story/news/politics/2020/11/17/top-indiana-election-drops-lawsuits-challenging-trump-loss-4-states/6258104002/>.

15. Tony Cook & Johnny Magdalene, *Top Indiana Election Attorney Rushes to Defend Trump’s Fraud Claims, Then Quietly Retreats*, Indianapolis Star (Nov. 17, 2020).

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Mr. Dean did not stop there. On December 1, 2020 — four weeks after the presidential election — Mr. Dean filed a Complaint for Declaratory and Injunctive Relief, which initiated *Feehan v. Wisconsin Election Commission*. In that lawsuit, Mr. Dean sought to have the federal court “order state officials to decertify the election results that state officials had certified the day before, order the Governor not to transmit to the Electoral College the certified results he’d transmitted the day before and order the Governor to instead transmit election results that declared Donald Trump to be ‘the winner of this election.’”

Feehan, like *Langenhorst*, was a carbon copy of other complaints filed in other states — an effort that Mr. Dean’s co-counsel Sidney Powell called “releasing the Kraken”:

- *King, et al. v. Whitmer, et al.*, Case No. 20-cv-13134 (E.D. Mich. 2020)
- *Bowyer, et al. v. Ducey, et al.*, Case No. 2:20-cv-02321-DJH (D. Ariz. 2020)
- *Pearson, et al. v. Kemp, et al.*, Case No. 1:20-v-04809-TCB (N.D. Ga. 2020)

As just a sampling, the Complaint (and Amended Complaint) Mr. Dean filed asserted:

This civil action brings to light a massive election fraud, multiple violations of Wisconsin Statutes Chapters 5 — 12 (hereafter, “Wisconsin Election Code”), *see, e.g.*, Wis. Stat. §§ 5.03, *et.*

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seq., in addition to the Election and Electors Clauses and Equal Protection Clause of the U.S. Constitution. These violations occurred during the 2020 General Election in the City of Milwaukee, southeastern Wisconsin counties, and throughout the State of Wisconsin, as set forth in the affidavits of dozens of eyewitnesses and the statistical anomalies and mathematical impossibilities detailed in the affidavits of expert witnesses. *See* Exh. 19, Declaration of affiant presenting statistical analysis prediction of 105,639 fraudulent ballots cast for Joe Biden in the City of Milwaukee and Exh. 17, Declaration of Russell James Ramsland, Jr. wherein he demonstrates it is statistically impossible for Joe Biden to have won Wisconsin.

...

The scheme and artifice to defraud was for the purpose of illegally and fraudulently manipulating the vote count to manufacture an election of Joe Biden as President of the United States, and also of various down ballot democrat candidates in the 2020 election cycle. The fraud was executed by many means, but the most fundamentally troubling, insidious, and egregious ploy was the systemic adaptation of old-fashioned “ballot-stuffing” techniques. *See* Exh. 16, U. S. Senator Elizabeth Warren (D. Mass.) letter of December 6, 2019 concerning the dangers of private equity control and

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censorship of election technology in the United States.

...

The fraud has now been amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose.

...

The multifaceted schemes and artifices implemented by Defendants and their collaborators to defraud resulted in the unlawful counting, or fabrication, of hundreds of thousands of illegal, ineligible, duplicate or purely fictitious ballots in the State of Wisconsin, that collectively add up to multiples of Biden's purported lead in the State of 20,565 votes.

...

While this Amended Complaint, and the eyewitness and expert testimony incorporated herein, identify with specificity sufficient ballots required to set aside the 2020 General Election results, the entire process is so riddled with fraud, illegality, and statistical impossibility that this Court, and Wisconsin's voters, courts, and legislators, cannot rely on, or certify,

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any numbers resulting from this election. Accordingly, this Court must set aside the results of the 2020 General Election and grant the declaratory and injunctive relief requested herein.

...

The fraud begins with the election software and hardware from Dominion Voting Systems Corporation (“Dominion”) used by the Wisconsin Elections Commission. The Dominion systems derive from the software designed by Smartmatic Corporation, which became Sequoia in the United States.

...

Smartmatic and Dominion were founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election. See Exh. 1, Redacted Declaration of Dominion Venezuela Whistleblower (“Dominion Whistleblower Report”) and Exh. 8, Statement by Ana Mercedes Diaz Cardozo outlining actual examples of election manipulation by hacking and misuse of technology in Venezuelan elections. Notably, Chavez “won” every election thereafter.

...

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As set forth in the Dominion Whistleblower Report, the Smartmatic software was contrived through a criminal conspiracy to manipulate Venezuelan elections in favor of dictator Hugo Chavez.

...

In addition to the Dominion computer fraud, this Amended Complaint identifies several additional categories of “traditional” voting fraud that occurred as a direct result of Defendant Wisconsin Election Commission (“WEC”) and other Defendants directing Wisconsin clerks and other election officials to ignore or violate the express requirements of the Wisconsin Election Code. First, the WEC issued “guidance” to county and municipal clerks not to reject “indefinitely confined” absentee voters, even if the clerks possess “reliable information” that the voter is no longer indefinitely confined, in direct contravention of Wisconsin Statute § 6.86(2)(6), which states that clerks must remove such voters. Second, the WEC issued further guidance directing clerks — in violation of Wisconsin Statute § 6.87(6)(d), which states that an absentee envelope certification “is missing the address of a witness, the ballot may not be counted” — to instead fill in the missing address information.

...

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In the accompanying redacted declaration of a former electronic intelligence analyst with 305th Military Intelligence with experience gathering SAM missile system electronic intelligence, the Dominion software was accessed by agents acting on behalf of China and Iran in order to monitor and manipulate elections, including the most recent US general election in 2020. *See* Exh. 12 (copy of redacted witness affidavit).¹⁶

Throughout the Amended Complaint in these actions, “fraud” or its variations appear 45 times, “Venezuela” or “Venezuelan” appear 16 times, and there are at least nine references to Hugo Chavez.¹⁷ Indeed, Mr. Dean and his co-counsel appeared to purposefully seek to link Smartmatic and Dominion, even though they are actually rival companies (for example, both bid for contracts in Georgia).¹⁸ Moreover, the Amended Complaint falsely states that Dominion was “founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing

16. *Feehan v. Wisconsin Elections Commission*, Case No. 20-cv-1771 (E.D. Wis. 2020), Am. Compl. ¶¶ 1-16, available at <https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.9.0.pdf>.

17. *See generally id.*

18. Georgia Secretary of State, Elections Security Is Our Top Priority: Security-Focused Tech Company, Dominion Voting to Implement New Verified Paper Ballot System, available at <https://sos.ga.gov/news/security-focused-tech-company-dominion-voting-implement-new-verified-paper-ballot-system>.

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and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election.”¹⁹ In actuality, John Poulos founded the company in Toronto, Canada in 2002 — a publicly available fact — and in 2009, Dominion Voting Systems, Inc. incorporated in Delaware and headquartered in Denver, Colorado.²⁰

The efforts contained other concerning features, as well. For example:

- The Plaintiffs allege that the Dominion software misallocates, redistributes, or deletes votes, but prior to including those allegations in the complaints, Mr. Dean knew that Georgia had completed two hand recounts that confirmed the accuracy of Dominion’s tabulation.²¹ He also knew that the Chairman of the Maricopa County Board of Supervisors in Arizona had released a

19. *Feehan v. Wisconsin Elections Commission*, Case No. 20-cv-1771 (E.D. Wis. 2020), Am. Compl. ¶ 7.

20. See, e.g., Neena Stij a, *What You Need to Know About Dominion, the Company that Trump and His Lawyers Baselessly Claim “Stole” the Election*, Wash. Post., Nov. 20, 2020, available at <https://www.washingtonpost.com/politics/2020/11/20/dominion-voting-trump-faq/>.

21. Georgia Secretary of State, *3rd Strike Against Voter Fraud Claims Means They’re Out After Signature Audit Finds No Fraud*, <https://sos.ga.gov/news/3rd-strike-against-voter-fraud-claims-means-theyre-out-after-signature-audit-finds-no-fraud>.

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statement explaining, “The Dominion tabulation equipment met mandatory requirements during logic and accuracy testing before the Presidential Preference Election, the Primary Election and the General Election. And after each of these 2020 elections, the hand count audit showed the machines generated an accurate count.”²²

- Wisconsin conducted a post-election audit that included fifteen percent of Dominion machines and Wisconsin Election Commissioner Eastman Knudson, a former Republican state legislator, stated that the audit showed “no evidence of systemic problems” or “hacking” or of “switched votes.”²³ The audit results were posted online and available prior to the Amended Complaint’s filing.
- On December 1, 2020, Attorney General Barr reiterated that no fraud occurred, specifically rebutting the claims regarding Dominion by saying, “There’s been one assertion that would be systemic fraud and that would be the claim that machines were programmed essentially to skew the election results. And the DHS and DOJ

22. Letter from Clint Hickman to Maricopa County Voters (Nov. 17, 2020), available at <https://www.maricopa.gov/DocumentCenter/View/64676/PR69-11-17-20-Letter-to-Voters#:~:text=Here%20are%20the%20facts%3A&text=The%20evidence%20overwhelmingly>.

23. Video available at <https://wiseeye.org/2020/12/01/wisconsin-elections-commission-december-2020-meeting>.

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have looked into that, and so far, we haven't seen anything to substantiate that.”²⁴

- The lawyers included a declaration of an anonymous source — a “code-named “Spyder” — who the Plaintiffs stated was a “military intelligence expert.”²⁵ In fact, “Spyder” (which a mistaken filing by Ms. Powell revealed to be Josh Merritt) never actually worked in military intelligence and he himself acknowledged that the declaration that Plaintiffs’ counsel wrote for him was “misleading.”²⁶
- The complaints also selectively quoted Princeton professor Andrew Appel and indicated he was speaking about Dominion in 2020, when, in fact Dr. Appel was speaking about a decades-

24. Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), available at <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.

25. *See, e.g., Pearson v. Kemp*, No. 1:20- cv-04809 (N.D. Ga. Nov. 25, 2020) Compl. ¶ 111.

26. Emma Brown, Aaron C. Davis & Alice Crites, *Sidney Powell’s secret ‘military intelligence expert,’ key to fraud claims in election lawsuits, never worked in military intelligence*, Wash. Post (Dec. 11, 2020), available at, https://www.washingtonpost.com/investigations/sidney-powellspider-spyder-witness/2020/12/11/0cd567e6-3b2a-11eb-98c4-25dc9f4987e8_story.html.

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old machine.²⁷ In reality, Dr. Appel had 58 other specialists in election security rebut the assertions made about his views in the complaints and stated, “no credible evidence has been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise.”²⁸

- The attorneys for Plaintiffs submitted sworn statements from individuals that contained identical explanations for speaking up.²⁹

27. See Tony Adams, Prof. Andrew W Appel, et al., *Scientists say no credible evidence of computer fraud in the 2020 election outcome, but policymakers must work with experts to improve confidence*, Matt Blaze (Nov. 16, 2020), available at, <https://www.mattblaze.org/papers/election2020.pdf>.

28. *Id.*

29. Compare Declaration of an anonymous source claiming to have been selected for the “national security guard detail of the President of Venezuela” at ¶ 4 with Statement by Ana Mercedes Diaz Cardozo at ¶ 4.

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Declaration of Anonymous Source Claiming to be on the National Security Guard Detail of the President of Venezuela:	Declaration of Ana Mercedes Dias Cardozo:
“I want to alert the public and let the world know the truth about the corruption, manipulation, and lies being committed by a conspiracy of people and companies intent upon betraying the honest people of the United States and their legally constituted institutions and fundamental rights as citizens. This conspiracy began more than a decade ago in Venezuela and has spread to countries all over the world. It is a conspiracy to wrongfully gain and keep power and wealth. It involves political leaders, powerful companies, and other persons whose purpose is to gain and keep power by changing the free will of the people and subverting the proper course of governing.”	“I want to alert the public and let the world know the truth about the corruption, manipulation, and lies being committed by a conspiracy of people and companies intent upon betraying the honest people of the United States and their legally constituted institutions and fundamental rights as citizens. This conspiracy began more than a decade ago in Venezuela and has spread to countries all over the world. It is a conspiracy to wrongfully gain and keep power and wealth. It involves political leaders, powerful companies, and other persons whose purpose is to gain and keep power by changing the free will of the people and subverting the proper course of governing.”

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- Plaintiffs’ attorneys cited, and attached to their complaints, a declaration from Terpsichore Maras-Lindeman without ever speaking to Ms. Maras-Lindeman. Instead, Ms. Maras-Lindeman “distributed her affidavit widely to like-minded people and was unaware it had come to Powell’s attention until it appeared as an exhibit in one of her cases.”³⁰ Had Plaintiffs’ counsel actually spoken to Ms. Maras-Lindeman, or conducted even the most rudimentary investigation, they would have learned that Ms. Maras-Lindeman has an extensive history of making false claims about her career, education, and training. The North Dakota Attorney General’s Office investigated her for violating consumer fraud and charitable solicitation laws and noted that “it has been very difficult to determine the truth among Maras-Lindeman’s various claims.”³¹ A North Dakota court entered a judgment against Ms. Maras-Lindeman finding that she engaged in fraud and

30. Jon Swaine, *Sidney Powell’s Secret Intelligence Contractor Witness is a Pro-Trump Podcaster*, Wash. Post. (Dec. 24, 2020), available at https://www.washingtonpost.com/investigations/sidney-powells-secret-intelligence-contractor-witness-is-a-pro-trump-podcaster/2020/12/24/d5a1ab9e-4403-11eb-a277-49a6d1f9dff1_story.html.

31. North Dakota Attorney General, *Attorney General Details Investigation of Unlicensed Business for Alleged Fraud* (Apr. 4, 2018), available at <https://attorneygeneral.nd.gov/news/attorney-general-details-investigation-unlicensed-business-alleged-fraud-tore-maras-lindeman>.

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deceptive behavior.³² All of this information was publicly available before Ms. Newman and her co-counsel relied on her affidavit that happened to find its way into their hands.

- Another affiant relied on by Plaintiffs’ counsel was Russell Ramsland, a conspiracy theorist who has asserted that George Soros (born in 1930) helped form the “Deep State” in Nazi Germany in the 1930s, working alongside Senator Prescott Bush (President George H.W. Bush’s father), the Muslim Brotherhood, and “leftists.”³³ Mr. Ramsland made these publicly reported statements, as far back as 2018. Mr. Ramsland’s analysis of voter turnout was riddled with obvious and quickly documented errors and Ms. Newman never informed the Court of those errors.³⁴

32. Findings of Fact, Conclusions of Law, and Order for Judgment, *State v. Maras*, No. 51-2018-CV-01339 (Dist. Ct. N. Central Jud. Dist., N.D. Sept. 11, 2020), available at <https://attorneygeneral.nd.gov/sites/ag/files/documents/RecentActions/2020-09-14-MagicCityChristmas-Judgment.pdf>.

33. John Savage, *Texas Tea Partiers Are Freaking Out Over ‘Deep State’ Conspiracy Theories*, *Vice* (Sept. 20, 2018), available at, <https://www.vice.com/en/article/mbwgxx/texas-tea-partiersare-freaking-out-over-deep-state-conspiracy-theories>.

34. Clara Hendrickson, *Affidavit in Michigan lawsuit seeking to overturn election makes wildly inaccurate claims about vote*, *PolitiFact* (Dec. 4, 2020), available at <https://www.politifact.com/factchecks/2020/dec/04/russell-james-ramsland-jr/affidavit-michigan-lawsuit-seeking-overturn-electi/>.

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- The District Court in Wisconsin noted in its decision dismissing the case that the Plaintiffs' counsel "seems to have made up the 'quote' in his brief that purports to be from [a cited case]."³⁵ Indeed, the Court read the cited opinion "three times" and could not find that quote.³⁶ In fact, we have reviewed the quoted language and run it through Westlaw, without any citations, other than the Court's decision in *Feehan*, coming up:



- They also misrepresented well-established caselaw and standards. For example, Plaintiffs contended that *Whitford v. Nichol*, 151 F. Supp. 3d 918 (W.D. Wis. 2015), established standing "to challenge state laws that collectively reduce

35. *Feehan v. Wisconsin Election Commission, et al.*, Case No. 20-cv-1771 (E.D. Wisc. 2020), Order Granting Defendants' Motion to Dismiss at 32, available at https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.83.0_5.pdf.

36. *Id.*

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the value of one party.”³⁷ However, they did not inform the Court that the Supreme Court expressly overruled that exact rationale in that exact case.³⁸ They relied on notice pleading standards that have long since been overtaken by *Twombly* and *Iqbal*.

- One of the original plaintiffs in the Complaint Mr. Dean signed and filed was not aware he was a plaintiff in the case:



Additionally, sufficient public information about her co-counsel’s work existed to have put Mr. Dean on notice that he needed to ensure that the claims he would be advancing in court had a factual basis. In a November 28, 2020 article, the *Washington Post* reported that:

37. *Feehan v. Wisconsin Election Commission, et al.*, Case No. 20-cv-1771 (E.D. Wisc. 2020), Brief in Opposition to Motion to Dismiss at 20, available at <https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.72.0.pdf>.

38. See *Gill v. Whitford*, 138 S. Ct. 1916, 1921 (2018).

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Campaign lawyers Justin Clark and Matt Morgan told others they should not present the Dominion theory because there was no evidence for it, the two officials said. The campaign official who was surprised by her sudden involvement said she did not seem interested in having the evidence.

“What you saw with Sidney Powell and Rudy, it wasn’t shoot first and ask questions later. It was shoot first and don’t ask questions at all,” that official said.³⁹

Other, even presumably friendlier sources called Ms. Powell’s claims into question. Fox News’s Tucker Carlson stated on the air on November 19, 2020, that he invited Ms. Powell to appear on his show and present her evidence, but, he noted, “She never sent [] any evidence, despite a lot of requests...not a page... [Powell] never demonstrated that a single actual vote moved illegitimately by software from one candidate to another. Not one.”⁴⁰

39. Aaron C. Davis, Josh Dawsey, Emma Brown, and Jon Swaine, *For Trump Advocate Sidney Powell, a Playbook Steeped in Conspiracy Theories*, Wash. Post (Nov. 28, 2020), available at https://www.washingtonpost.com/investigations/sidney-powell-trump-kraken-lawsuit/2020/11/28/344d0b12-2e78-11eb-96c2-aac3f162215d_story.html.

40. MUST-SEE: Tucker Carlson ABANDONS Trump’s election fraud case on air, YouTube (Nov. 19, 2020), available at, <https://www.youtube.com/watch?v=BspHzH6RRxo>.

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Mr. Dean either failed to conduct the requisite reasonable inquiry to ascertain whether the claims he was bringing had a factual basis or he knew that he was falsely asserting facts to the court. After all, as Ms. Powell has since argued, “no reasonable person” would believe those assertions to be “statements of fact.”⁴¹ Either way, all of the United States District Courts soundly rejected the effort. In Wisconsin:

[T]he legal question at the heart of this case is simple. Federal courts have limited jurisdiction. Does the federal court have the jurisdiction and authority to grant the relief this lawsuit seeks? The answer is no.

Federal judges do not appoint the president in this country. One wonders why the plaintiffs came to federal court and asked a federal judge to do so. After a week of sometimes odd and often harried litigation, the court is no closer to answering the “why.” But this federal court has no authority or jurisdiction to grant the relief the remaining plaintiff seeks. The court will dismiss the case.⁴²

41. See *US. Dominion, Inc. v. Powell*, Case No. 1:21-cv-00040 (D.D.C. 2021), Mot. to Dismiss at 27, available at https://storage.courtlistener.com/recap/gov.uscourts.dcd.225699/gov.uscourts.dcd.225699.22.2_3.pdf.

42. *Feehan v. Wisconsin Election Commission, et al.*, Case No. 20-cv-1771 (E.D. Wisc. 2020), Order Granting Defendants’ Motion to Dismiss at 2, available at https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.83.0_5.pdf.

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The Court also noted that the Plaintiffs in “presented *no* case, statute or constitutional provision providing the court with” the authority Plaintiff sought the Court to exercise.⁴³ Further, “Plaintiffs’ alleged injury does not entitle them to seek their requested remedy because the harm of having one’s vote invalidated or diluted is not remedied by denying millions of others *their* right to vote.”⁴⁴

Because the Amended Complaint was nearly identical to others filed in Arizona, Georgia, and Michigan, it’s also instructive to know how those courts dealt with the claims and allegations.

In Arizona, federal judge Diane Humetewa, who was on Mr. Trump’s shortlist for United States Supreme Court vacancies, held:

By any measure, the relief Plaintiffs seek is extraordinary. If granted, millions of Arizonans who exercised their individual right to vote in the 2020 General Election would be utterly disenfranchised. Such a request should then be accompanied by clear and conclusive facts to support the alleged “egregious range of conduct in Maricopa County and other Arizona counties . . . at the direction of Arizona state election officials.” Yet the Complaint’s allegations are sorely wanting of relevant or reliable evidence,

43. *Id.* at 22 (emphasis in original).

44. *Id.* at 23 (emphasis in original).

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and Plaintiffs' invocation of this Court's limited jurisdiction is severely strained...

The allegations they put forth to support their claims of fraud fail in their particularity and plausibility. Plaintiffs append over three hundred pages of attachments, which are only impressive for their volume. The various affidavits and expert reports are largely based on anonymous witnesses, hearsay, and irrelevant analysis of unrelated elections...

Allegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court. They most certainly cannot be the basis for upending Arizona's 2020 General Election.⁴⁵

In Georgia, the Court stated:

[T]he burden is on the Plaintiffs, and the relief that they seek is extraordinary. And although they make allegations of tremendous worldwide improprieties regarding the Dominion voting machines, those allegations are supported by precious little proof.⁴⁶

45. *Bowyer, et al. v. Ducey, et al.*, Case No. 2:20-cv-02321-DJH (D. Ariz. 2020) Order, available at https://storage.courtlistener.com/recap/gov.uscourts.azd.1255923/gov.uscourts.azd.1255923.84.0_2.pdf.

46. *Pearson, et al. v. Kemp, et al.*, Case No. 1:20-v-04809-TCB (N.D. Ga. 2020) Tr. from Nov. 29, 2020 hearing at 15:24-16:3,

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The Court added in its order dismissing the case:

[T]he Plaintiffs essentially ask the Court for perhaps the most extraordinary relief ever sought in any Federal Court in connection with an election. They want this Court to substitute its judgment for that of two-and-a-half million Georgia voters who voted for Joe Biden, and this I am unwilling to do.⁴⁷

And in Michigan, the Court held:

Plaintiffs . . . [bring] forth claims of widespread voter irregularities and fraud in the processing and tabulation of votes and absentee ballots. They seek relief that is stunning in its scope and breathtaking in its reach. If granted, the relief would disenfranchise the vote of more than 5.5 million Michigan citizens who, with dignity, hope, and a promise a voice, participated in the 2020 General Election. The Court declines to grant Plaintiffs this relief.⁴⁸

available at <https://storage.courtlistener.com/recap/gov.uscourts.gand.284055/gov.uscourts.gand.284055.23.0.pdf>.

47. *Pearson, et al. v. Kemp, et al.*, Case No. 1:20-v-04809-TCB (N.D. Ga. 2020) Tr. from Dec. 7, 2020 hearing.

48. *King, et al. v. Whitmer, et al.*, Case No. 20-cv-13134 (E.D. Mich. 2020) Opinion and Order 2, available at https://storage.courtlistener.com/recap/gov.uscourts.mied.350905/gov.uscourts.mied.350905.62.0_11.pdf.

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But the federal court in Michigan went further when presented with a motion for sanctions against the attorneys who brought that matter forward:

This lawsuit represents a historic and profound abuse of the judicial process. It is one thing to take on the charge of vindicating rights associated with an allegedly fraudulent election. It is another to take on the charge of deceiving a federal court and the American people into believing that rights were infringed, without regard to whether any laws or rights were in fact violated. This is what happened here.

Individuals may have a right (within certain bounds) to disseminate allegations of fraud unsupported by law or fact in the public sphere. But attorneys cannot exploit their privilege and access to the judicial process to do the same. And when an attorney has done so, sanctions are in order.

Here's why. America's civil litigation system affords individuals the privilege to file a lawsuit to allege a violation of law. Individuals, however, must litigate within the established parameters for filing a claim. Such parameters are set forth in statutes, rules of civil procedure, local court rules, and professional rules of responsibility and ethics. Every attorney who files a claim on behalf of a client is charged with the obligation

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to know these statutes and rules, as well as the law allegedly violated.

Specifically, attorneys have an obligation to the judiciary, their profession, and the public (i) to conduct some degree of due diligence before presenting allegations as truth; (ii) to advance only tenable claims; and (iii) to proceed with a lawsuit in good faith and based on a proper purpose. Attorneys also have an obligation to dismiss a lawsuit when it becomes clear that the requested relief is unavailable.

...

The attorneys who filed the instant lawsuit abused the well-established rules applicable to the litigation process by proffering claims not backed by law; proffering claims not backed by evidence (but instead, speculation, conjecture, and unwarranted suspicion); proffering factual allegations and claims without engaging in the required prefiling inquiry; and dragging out these proceedings even after they acknowledged that it was too late to attain the relief sought.

*And this case was never about fraud—it was about undermining the People’s faith in our democracy and debasing the judicial process to do so.*⁴⁹

49. *King, et al. v. Whitmer, et al.*, Case No. 20-cv-13134 (E.D.

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The Court granted the motion for attorney's fees and sanctions and directed that a copy of that order be sent to the appropriate disciplinary authority where each attorney involved in the matter is admitted. The Plaintiffs' counsel appealed the order to the Sixth Circuit, which denied the appeal.⁵⁰

Mr. Dean advanced the same claims, the same allegations, and the same assertions as those put forward in *King v. Whitmer*. He did so without any more evidence; he did so despite public information that would have called into question the reasonableness of the efforts; and he did so without regard to their consequence.

His actions warrant discipline.

**A SUBSTANTIAL BASIS EXISTS FOR THE
OFFICE OF LAWYER REGULATION TO
INVESTIGATE MR. DEAN'S CONDUCT AND TO
IMPOSE APPROPRIATE DISCIPLINE**

The Office of Lawyer Regulation should investigate Mr. Dean's actions on the following basis:

Mich. 2020) Opinion and Order 1-3, available at https://storage.courtlistener.com/recap/gov.uscourts.mied.350905/gov.uscourts.mied.350905.172.0_8.pdf (emphasis in original).

50. See https://storage.courtlistener.com/recap/gov.uscourts.mied.350905/gov.uscourts.mied.350905.193.0_2.pdf.

*Appendix B***1. Mr. Dean Violated Rule 3.1 By Bringing and Defending a Matter He Knew Lacked Merit**

Rule 3.1 provides, in part, as follows: “In representing a client, a lawyer shall not...knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law.”

Comment 2 states that: “The action is frivolous ...if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.”

“Knowledge” under the Rules of Professional Conduct can be “inferred from circumstances.”⁵¹

Ample evidence demonstrates that Mr. Dean knew of the frivolous nature of the litigation he initiated. In *Langenhorst*, the Amended Complaint specifically acknowledged that counsel had not had ample opportunity to investigate the matter. Further, no reasonable person would consider the cited evidence a sufficient basis for throwing out nearly a million votes in two counties.

In fact, the pleadings themselves make clear that when filing the claims, Mr. Dean did not have a proper basis for bringing them because the Plaintiffs did not

51. Rule 1.0(f).

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have even a shred of the evidence they claimed they would produce. As Mr. Dean’s co-counsel said, there was “suspicion” that the election was stolen and “our case begins there.”⁵² The Complaint repeatedly states, “upon information and belief,” but as the Third Circuit said in rejecting a Trump Campaign lawsuit, ‘Upon information and Belief’ is a lawyerly way of saying that the Campaign does not know that something is a fact but just suspects it or has heard it.”⁵³

Finally, the fact that Mr. Dean’s co-counsel filed complaints containing nearly identical allegations in three other states that Mr. Biden won helps confirm that the efforts were part of a larger effort to undermine the legitimacy of the entire 2020 presidential election.

Mr. Dean knew the claims he was advancing in *Langenhorst* lacked any basis in law or fact.

And as the District Court in *Feehan* found, the Plaintiffs “presented *no* case, statute or constitutional provision providing the court with” the authority they sought for the Court to exercise.

Four separate federal courts reviewed the allegations — nearly identical across the board — and rejected the efforts. And the defendants in the Michigan matter

52. Tony Cook & Johnny Magdalen, *Top Indiana Election Attorney Rushes to Defend Trump’s Fraud Claims, Then Quietly Retreats*, Indianapolis Star (Nov. 17, 2020).

53. *Donald J. Trump for President, Inc.*, 830 F. App’x at 387.

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successfully requested sanctions against the attorneys advancing the same claims as Mr. Dean.

Further, the surrounding context demonstrates the frivolousness of Mr. Dean's conduct. Public reports available prior to Mr. Dean's initiating *Feehan* showed that the Trump campaign's attorneys did not believe Ms. Powell had any evidence to support her claims. Mr. Dean did not speak to, or apparently ascertain whether anyone of the legal team had spoken to, the witnesses whose declarations he submitted to the Court. He filed a complaint on behalf of a plaintiff who did not even know of, or give approval to, the filing.

In short, for the many reasons provided above, Mr. Dean's conduct violated Rule 3.1.

2. Mr. Dean Violated Rule 3.3 By Making False Statements to the Court and Failing to Correct Those Statements

Rule 3.3(a)(1) of the Rules of Professional Conduct provides that: "A lawyer shall not knowingly...make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

The District Court's opinion notes that Plaintiffs' counsel made up an entire quote from a case that does not exist, neither in the cited case nor in any federal court decision. Mr. Dean signed that filing.

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Additionally, the Amended Complaint and accompanying affidavits that Mr. Dean filed included false statements regarding the background of at least two witnesses. That information was available publicly prior to Mr. Dean's filing the Amended Complaint, but he filed the affidavits nevertheless, referred to the mistaken background throughout the Amended Complaint and filings, and failed to correct the record even after the matter was published in a national newspaper.

Further, the Amended Complaint and briefing made purposefully false statements regarding Dominion's founding, sought to connect Smartmatic and Dominion even though the two companies are competitors, and used affiant allegations about Smartmatic against Dominion in a deliberate effort to mislead the Court regarding Dominion.

Mr. Dean's conduct violated Rule 3.3.

3. Mr. Dean Violated Rule 4.4 Command That Lawyers Respect the Rights of Third Parties

Pursuant to Rule 4.4(a), "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person."

Comment 1 to the Rule states, "Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does

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not imply that a lawyer may disregard the rights of third persons.”

In the interests of his clients, Mr. Dean sought to have millions of voters lose their right to decide the 2020 presidential election. As his co-counsel said, “Every fucking one of them.”⁵⁴ Every court addressing the same complaint filed by Mr. Dean and his co-counsel noted the extraordinary remedy they sought and the effect it would have on millions of Americans.

Mr. Dean disregarded the potential consequences of his proposed remedy — showing no respect for the rights of millions of third persons whose votes would be invalidated — and his actions warrant discipline.

4. Mr. Dean Engaged in Misconduct that Violates Rule 8.4

Under Rule 8.4, “It is professional misconduct for a lawyer to...violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; [or] engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or] violate the attorney’s oath.”

The oath that Mr. Dean took to gain admission to the State Bar of Wisconsin states, in part:

54. Tony Cook & Johnny Magdalene, *Top Indiana Election Attorney Rushes to Defend Trump’s Fraud Claims, Then Quietly Retreats*, Indianapolis Star (Nov. 17, 2020).

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I will support the constitution of the United States and the constitution of the state of Wisconsin...I will employ, for the purpose of maintaining the causes confided in me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law...So help me God.

Mr. Dean participated in a purposefully dishonest effort to undermine the 2020 election. He brought frivolous claims that the Constitution, prior court decisions, and relevant statutes barred. The bare “factual” bases he relied on were supported by false statements and wild speculation from discredited sources.

Furthermore, Mr. Dean assisted others in violating the Rules of Professional Conduct. Ms. Powell actively participated in the *Feehan* litigation. The State Bar of Texas’s Committee for Lawyer Discipline filed a petition against Ms. Powell for her conduct related to the post-election cases she filed, including *Feehan*.⁵⁵ A Texas court recently denied Ms. Powell’s motion to dismiss the petition.

Without Mr. Dean’s assistance as local counsel, Ms. Powell could not have proceeded in Wisconsin. He assisted her efforts to violate the rules.

55. https://courtsportal.dallascounty.org/DALLASPROD/DocumentViewer/Embedded/ye0-5n-ZNL7oyR1i6dndFnGQjA9qBJlrva-IvUlu1xeulp-m_RTyMkwd106ghQITaElOonF8oaAAp0SfE3OCw2?p=0

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He also ignored his oath, which required him to act consistent with honor and truth.

His actions must be scrutinized and disciplined.

* * *

The United States Supreme Court has long recognized in upholding disciplinary actions that “speech by an attorney is subject to greater regulation than speech by others.”⁵⁶ As officers of the court an attorney is “an intimate and trusted and essential part of the machinery of justice” and a “crucial source of information and opinion.”⁵⁷ Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech. Indeed, disciplinary boards and courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

That members of our esteemed profession would engage in such actions — conduct that contributed to substantial harm to American democracy — should cause considerable distress within the entire legal community.

False statements intended to foment a loss of confidence in our elections and resulting loss of confidence

56. *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

57. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

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in government generally damage the proper functioning of free society. When those false statements are made by an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession's role as a crucial source of reliable information.⁵⁸

Mr. Dean chose to offer his professional license to an assault on our democracy. He pursued litigation that lacked any basis in law or fact. He participated in an organized effort to sow discord and doubt about the 2020 elections. He helped lead the charge in Wisconsin to disenfranchise millions of his fellow citizens because he did not like how they voted.

For the reasons set forth above, we respectfully request that the Office of Lawyer Regulation investigate Mr. Dean's conduct and pursue appropriate discipline.

Sincerely,

/s/ Michael Teter
Michael Teter
Managing Director
[REDACTED]
On behalf of The 65 Project

58. *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021 at 30-31.

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**APPENDIX C — EMAIL FROM CHERYL
NIRO, LAWYERS DEFENDING AMERICAN
DEMOCRACY, TO TIMOTHY CALDWELL,
INVESTIGATOR II, OFFICE OF CHIEF TRIAL
COUNSEL, STATE BAR OF CALIFORNIA
(MAR. 29, 2022, 9:00 AM)**

From: Cheryl Niro
To: Caldwell, Timothy
Cc: John Montgomery; James McHugh;
Dennis Aftergut; Lauren Rikleen
Subject: Re: Research Information
Date: Tuesday, March 29, 2022 9:00:02 AM
Attachments: Timeline niro with legend.docx

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Tim,

Attached please find the timeline we created while working on the Eastman Complaint. I have added a legend approved by LDAD's Steering Committee explaining the terms upon which we are sharing the document.

We hope it is helpful.

Cheryl

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CHERYL NIRO
Attorney and Counselor at Law
55 W. Delaware Place, Unit 1107
Chicago, IL 60610
cheryl.niro@mac.com

On Mar 28, 2022, at 3:34 PM, Caldwell, Timothy
<Timothy.Caldwell@calbar.ca.gov> wrote:

Thank you so much for your assistance.

Tim Caldwell
Investigator II | Office of Chief Trial Counsel
The State Bar of California | 845 S. Figueroa Street
| Los Angeles, CA 90017 Tel: 213-765-1323 |
Timothy.Caldwell@calbar.ca.gov

***Working to protect the public in support of the
mission of the State Bar of California.***

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Timeline
November 10, 2021

This document represents LDAD's effort to condense and summarize certain publicly available information on events, individuals, statements and activities during the months leading up to and following the 2020 election. LDAD is providing this information for the exclusive use of the California State Bar Eastman investigation staff and assumes no liability for the content of the linked documents, videos, transcriptions or other materials.

DATE	PARTY	COMMENT / ACTIVITY
May 12, 2019	Trump	Tweets praise of Eastman in connection with his appearance on Fox's Mark Levin Show, where Eastman said Mueller should never have been appointed in the first place. [https://americanmind.org/video/dr-johneastman-joins-life-liberty-levin-5-12-19/]
August 12, 2020	Jenna Ellis	Brings Eastman to Trump's attention during the campaign after Eastman wrote an article questioning Kamala Harris' constitutional qualification to be vice president [https://www.newsweek.com/some-questionskamala-harris-about-eligibility-opinion-1524483]

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November 2020	Trump, Eastman	Eastman is invited to the White House after the election, caught COVID there, recovered in December, and was brought back (NYTimes 10/31/21)
Before election	Trump, Eastman	Public comments that if Trump were to lose the election it could only be due to fraud, stealing [complaint. SUDC]
November 3	Election	
Throughout Nov/Dec		Extensive efforts to audit/explore possible evidence of fraud---resulting in no widespread finding [complaint]
November 12	Joint statement, 16 US Attorneys tasked with monitoring the election	Election not compromised. No evidence of manipulation First hand count confirms original results
	Georgia election officials	
November 23	Barr	Tells Trump the DOJ finds no evidence of fraud in elections, tells NBC news
December 7	Raffensperger (Georgia SOS)	Confirms Georgia second hand recount confirms original results
Early December	Trump lawyers	Having filed 50 post-election lawsuits, none successful
December 9	Eastman	Appears as Counsel of Record in Texas case

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December 11	Texas Case Intervention US Supreme Court	Denies Texas Motion to File a Bill of Complaint, lack of standing (no judicially cognizable interest in the manner of how other states conduct their elections
December 12	Liz Cheney	Began work on 21-page memo detailing why Congress had no constitutional right to block Biden victory
December 13	Georgia Supreme Court	Dismisses suit alleging fraud in the conduct of the election
December 14	Electoral College AG Barr	Meets to file votes confirming Biden win 306-232 Barr announces his retirement from AG for 12/23
December 15	Mitch McConnell	Announces Biden won the election
November through December	Trump	Relentless campaign urging Pence to step up to refuse to certify the election
December 18	Flynn	Meeting in Oval Office in which participants discussed seizing voting machines, declaring a national emergency, invoking certain national security emergency power and continuing to spread the false message that the 2020 election was tainted by widespread fraud . . . https://www.nytimes.com/2021/11/08/us/politics/jan-6-subpoenas-eastman-flynntrump.html?referringSource=articleShare

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Mid-December	Clark	Prepares template letter to be sent to various state officials (Georgia/Kemp) on how to begin obtaining alternative electors; alleges DOJ investigation of widespread fraud
Couple of days before Christmas	Eastman	Lobbies Pence, with other pro-Trump lawyers (WaPo)
December 26	Rosen, Clark	Rosen calls Clark and learned that shortly before the December 24 Trump-Rosen call, Clark had met with Trump in the Oval Office. (Sen. Jud. Rept) “Rosen recalled asking Clark whether there was ‘something going on that I don’t know about’ and being ‘flabbergasted’ when Clark admitted that he had met with the President. . . According to Rosen, Clark described having talked to Congressman Perry, getting caught up in a meeting that Perry asked him to join, and not initially realizing that it would be a meeting with Trump in the Oval Office. Rosen did not recall Clark telling him who else participated in the meeting or how Clark had met Perry, who later acknowledged that he discussed election fraud claims with Clark and that ‘when President Trump asked if I would make an introduction [to Clark], I obliged.’

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		Rosen also did not recall Clark's description, if any, of what transpired during the Oval Office meeting. Rosen recalled Clark indicating that the Oval Office meeting took place a day or two before Christmas, meaning either Dec. 23 or 24. If accurate, this means the meeting took place two or three days after Trump, Perry, Congressman Jordan, and other House Republicans met at the White House on Dec. 21 to strategize about the January 6 Joint Session." (Sen. Jud.Rept)
December 27	Rosen, Trump, Donoghue	Writes DOJ will not change the outcome of election; Trump calls Rosen several times. "At some point during the discussion Trump referenced Clark, indicating that people were telling him good things about Clark, that Trump should 'put him in' to a leadership position, and that Trump should replace DOJ's leadership. This was the first time Donoghue heard Clark's name mentioned in connection with the election, and the reference surprised him because Clark 'didn't have anything to do with the Department's election responsibilities.' (Sen.Jud. Rept)

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December 28	Eastman	Produces two memos outlining scenarios under which the outcome of the election may be overturned
December 28	Clark	Emails Rosen and Donoghue Kemp letter, suggesting replicating it in “each relevant state.” (Senate Judiciary Committee Report) The letter would have informed state officials that DOJ had taken notice of election irregularities in their state and recommended calling a special legislative session to evaluate these irregularities, determine who “won the most legal votes,” and consider appointing a new slate of Electors. Clark’s proposal to wield DOJ’s power to override the already-certified popular vote reflected a stunning distortion of DOJ’s authority: DOJ protects ballot access and ballot integrity, but has no role in determining which candidate won a particular election. Clark potentially with the assistance of lower-level allies within DOJ continued to press his “Proof of Concept” for the next several days. (Sen.Jud.rept)
December 28 (continued) 4:40 pm	Clark	Second “Urgent Item.” Clark emails Rosen and Donoghue with the subject “Two Urgent Action Items.” First item requested a briefing from the Office of the Director of National Intelligence (ODNI):

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		“I would like to have your authorization to get a classified briefing tomorrow from ODNI led by DNI Radcliffe on foreign election interference issues. I can the assess how that relates to activating the IEEPA and 2018 EO powers on such matters (now twice renewed by the President). IEEPA refers to the International Emergency Economic Powers Act, which authorized the president to declare a national emergency due to ‘unusual and extraordinary threats’ to the US and to block any transactions and freeze any assets within the jurisdiction of the US to deal with the threat. The 2018 EO Clark mentions is Executive Order 13848, which operationalizes IEEPA sanctions in the event of foreign interference in a US election. As the basis for his ‘urgent’ request, Clark cited evidence, supposedly in the public domain, from ‘white hat hackers’ indicating that a ‘Dominion machine accessed the Internet through a smart thermostat with a net connecting trail leading back to China. Clark did not produce or quote any of this purported evidence, but he wrote that he believed the ODNI may have additional classified intelligence on this matter. (Senate)
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Late December	Rosen, Donoghue	Rebuke Clark for meeting with Trump without their knowledge and authorization
Early January	Clark, Rosen	Clark informs Rosen about meeting with Trump. Meeting includes Clark's replacement of Rosen at top of DOJ. "Clark eventually informed Rosen and Donoghue that Trump had offered to install him in Rosen's place and told Rosen he would turn down Trump's offer if Rosen would agree to sign the "Proof of Concept" letter." (SenJud. Rept)
January 2	Eastman	On Stephen Bannon's radio show on January 2nd "Mike Pence had the power to throw the 2020 presidential election to the House of Representatives, saying it depended on whether Pence had 'courage and the spine.' Those comments are more direct than how Eastman has recently described his conversation with Pence, when he has said he told the vice president it was an 'open question' whether he could throw out seven states' Electoral College votes and that it'd be a 'foolish' option to pursue. https://www.cnn.com/2021/10/30/politics/kfilejohn-eastman-said-pence-could-throw-election-tohouse/index.html

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January 2	Clark, Rosen, Donoghue	Meeting. Rosen says purpose was two-fold: first, to reinforce that Clark should stop m meeting with Trump. And second, to determine where he stood after conducting the ‘due diligence’ Rosen and Clark had discussed two days earlier about Pak’s report that interference was found unfounded.’ Clark confirms that he had been briefed by the DNI, who confirmed that there was no evidence of ballot or data tampering. He continued to press debunked allegations of election fraud in Georgia, however, insisting that DOJ should send his proposed letter. He also admitted he hadn’t called Pak. Donoghue tells Clark his conduct is unacceptable. (SenJudRept)
January 2	Eastman, Giuliani, Peter Navarro, John Lott	300 state lawmakers and others participated in zoom call briefing. “This information should serve as an important resource for state legislators as they make calls for state legislatures to meet to investigate the election and consider decertifying their state election results” . . .

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January 3	Clark, Trump, Rosen, Cipollone, Engel, Philbin, Eric Herschmann, Senior Advisor to Trump	Meeting with Trump; Clark could be named Acting AG; Rosen could stay as Deputy; possible mass resignations if that happened Eastman checks into Willard Hotel, stayed from Jan. 3 through Jan 8, according to records showing that the hotel charged \$1,407 for his lodging and meals during that time. He arrived at the Willard on the same day when Trump organized an Oval Office meeting to discuss replacing the-acting attorney general Jeffrey Rosen with Jeffrey B. Clark. (WaPo. Nov. 8, 2021)
January 4	Giuliani, Bannon, Eastman, Kerik	Huddled in a makeshift war room at Willard Hotel, conferring about how to put Eastman's plan into motion. "Yet, even the professor himself did not think the gambit was likely to work. When Cipollone pressed Eastman after one meeting on whether he truly believed his legal theory would clear a path for Pence to overturn the election results, Eastman admitted that he thought it probably wouldn't work. Furious, Cipollone exploded, berating the lawyer." (WaPO) Pence quizzed Eastman on his plan to disrupt the electoral college count. Eastman said that it was an "open question" whether Pence had the ability to unilaterally decide which votes to count. (WaPO)

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		“At the command center, Eastman huddled with Trump advisers including Giuliani, former White House chief strategist Stephen K. Bannon, and Bernard Kerik to develop plans to pressure Pence to take actions on Jan. 6 that Eastman suggested were within the vice president’s powers. Those actions included blocking or delaying the counting of electoral votes from battleground states where results were in dispute.”
January 6		Capitol Invasion
	Eastman	Eastman emails Pence’s lawyer to argue that the vice president should still reject electors from Arizona and other states. Earlier in the day, Eastman emails Pence’s lawyer to blame the violence on Pence’s refusal to block certification of Biden’s victory. (WaPost 10/31/21) Eastman speaks at the rally on the Elipse. “We no longer live in a self-governing republic if we can’t get the answer to this question. This is bigger than President Trump. It is the very essence of our republican form of our government and it has to be done,” Eastman said with reference to stopping the certification of Joe Biden as victor. “And anybody that is not willing to stand up to do it does not deserve in the office. It is that simple.”

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While Insurrection is going on	Eastman	Accuses the vice president of causing the violence by refusing to block certification of Biden's victory. "Eastman, who had been working out of a 'command center' of rooms in the Willard hotel with R. Giuliani and other Trump lawyers and advisers, wrote to Jacob, who was hiding from the mob with the Pences and other senior aides: The siege is because YOU and your boss did not do what was necessary to allow this to be aired in a public way so that the American people can see for themselves what happened." (WaPO) Eastman said his message was a response to an email in which Jacob told him that his "bull-- legal advice was why Pence's team was "under siege."
January 6, 9:00 pm	Eastman	Emails Pence lawyer Jacob to try to convince the vice president to move to not certify the election results. (WaPO) Jacob does not reply telling others he was amazed at the email and disregarded it. (WAPO)
January 6 (3:24 am)	Pence	Formally declares Biden next president of the United States.

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Resources/Links

Washington Post: Before, During, After Investigative Report

<https://www.washingtonpost.com/politics/interactive/2021/jan-6-insurrection-capitol/>

The Guardian

House 6 January panel to issue new round of subpoenas for Trump allies:

<https://www.theguardian.com/us-news/2021/nov/06/house-6-january-committee-subpoenas-john-eastman>

The Guardian

“A roadmap for a coup’: Inside Trump’s plot to steal the presidency

<https://www.theguardian.com/us-new/2021/oct/30/trump-2020-election-steal-presidency-coup-inside-story>

The Guardian

The Lawyer Behind the Memo on How Trump Could Stay in Office

<https://www.nytimes.com/2021/10/02/us/politics/john-eastman-trump-memo.html/>

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Washington Post Opinion piece on Eastman's 2nd memo:

<https://www.washingtonpost.com/outlook/2021/09/23/eastman-memo-jan-6-trump/>

Washington Post: Nov. 8, 2021:

House Jan. 6 committee issues subpoenas to 6 top Trump advisers, including pair involved in Willard hotel 'command center.'

https://www.washingtonpost.com/politics/house-jan-6-committee-issues-subpoenas-to-6-top-trump-advisers-including-pair-involved-in-willard-hotel-command-center/2021/11/08/6e91b0f2-40a6-11ec-a88e-2aa4632af69b_story.html

Election integrity group meets with legislators from contested states: National leaders discussed overwhelming evidence of vote, ballot, and election irregularities and lawlessness in the presidential election of November 3, 2020

<https://www.prnewswire.com/news-releases/election-integrity-group-meets-with-legislators-from-contested-states-301199902.html>

Now-Retired Law Professor John Eastman Says His Words at Trump's 'Save America' Rally Did Not Incite U.S. Capitol Siege

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<https://lawandcrime.com/u-s-capitol-siege/now-retired-law-professor-john-eastman-says-his-words-at-trumps-save-america-rally-did-not-incite-u-s-capitol-siege/>

Staff Interim Report, Senate Judiciary Committee

Subverting Justice

[https://www.judiciary.senate.gov/imo/media/doc/Interim Staff Report FINAL.pdf](https://www.judiciary.senate.gov/imo/media/doc/Interim%20Staff%20Report%20FINAL.pdf)

Claremont Institute

<https://americanmind.org/video/dr-john-eastman-joins-life-liberty-levin-5-12-19/>

Newsweek

<https://www.newsweek.com/some-questions-kamala-harris-about-eligibility-opinion-1524483>

MSNBC

Trump ‘coup lawyer’ caught on video boasting about quasi-legal memo; trashing Pence

<https://www.msnbc.com/rachel-maddow/watch/trump-coup-lawyer-caught-on-video-boasting-about-quasi-legal-memo-trashing-pence-124694085949>

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**APPENDIX D — LETTER FROM CHRISTINE
P. SUN, SVP, LEGAL, STATES UNITED
DEMOCRACY CTR., TO DAN BARR, CHIEF OF
STAFF, ARIZ. ATT'Y GEN.'S OFF. (MAY 4, 2023)**

**States United
DEMOCRACY CENTER**

May 4, 2023

VIA EMAIL

Dan Barr, Chief of Staff
daniel.barr@azag.gov

Re: Retainer for Arizona Attorney General's Office

Dear Dan,

This letter explains and confirms the terms and conditions under which States United Democracy Center ("States United") will undertake to advise the Arizona Attorney General's Office ("you", "your") in connection with developing legal strategies to ensure the integrity and security of elections.

The enclosed General Terms explain the terms that govern our engagement and other critical aspects of our representation. By signing this letter, you agree to the General Terms. Our work will be provided pro bono. You will not make expenditures or incur indebtedness in connection with this representation and the services provided by States United.

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Although [REDACTED] will be the ones principally responsible for the engagement, other States United lawyers and non-lawyers may handle various portions of this matter pro bono or otherwise as set forth in the General Terms.

If the foregoing meets with your approval, we would appreciate it if you would sign and return a copy of this engagement letter.

We are pleased to have this opportunity to be of service and to work with you.

Sincerely,

Christine P. Sun
SVP, Legal
States United Democracy
Center

AGREED TO AND ACCEPTED

By: /s/ Dan Barr
Dan Barr, ~~Chief of Staff~~ Deputy Attorney General

Dated: May 15, 2023

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GENERAL TERMS

Except as modified by the accompanying engagement letter, the following apply to the relationship between States United and our clients:

1. *Consulting Independent Counsel.* Under rules in certain jurisdictions where we practice, we must advise you that you may consult independent counsel to advise you regarding these documents governing our relationship, and we encourage you to do so if you like. Also, you retain the right to consult with independent counsel at any time while we represent you. However, we are not responsible for any advice an independent counsel may give you, and such consultation will be entirely at your expense.
2. *Paralegals and Other States United Personnel.* Where appropriate, we may utilize paralegal personnel or other States United personnel. Their time will be pro bono. In some situations, we may use personnel who are not States United employees, such as contract lawyers or experts.
3. *Waiver of Conflicts.* States United may represent other clients (“clients”), consistent with its internal policies. During the time we are representing you we may be asked to represent:
 - a. other present or future clients in litigation, regulatory matters or other disputes directly

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adverse to you that are not the same or substantially related to our representation of you; and/or

- b. parties who are considered directly adverse parties in matters we handle for you. Our work for these directly adverse parties would be in matters that are not the same or substantially related to our work for you; and/or
- c. you in future litigation or other disputes directly adverse to other clients in matters not substantially related to our work for the other clients.

By signing this engagement letter, you agree that States United can undertake such future representations without the need to obtain any further or separate approval from you, as long as those representations described in (a) and (b) above are not the same or substantially related to work States United has done, or is doing, for you. Your signature below constitutes your consent to such representation(s). We agree not to use any proprietary or other confidential nonpublic information concerning you acquired by us as a result of our representation of you in connection with any litigation or other matter in which we represent a party directly adverse to you. States United may need to consult with or secure consent from its other current or prospective

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clients who are or may become adverse to you in order to clear or address actual or potential conflicts of interest. You agree and consent that to the extent it is reasonably necessary in such communications, States United may disclose to each such current or prospective client the fact that States United has or has had an attorney-client relationship with you.

Moreover, States United will notify you of any potential or actual conflict that may emerge during the course of this representation. If so, we will discuss with you what actions, if any, ought to be taken in response to such a conflict. States United has reviewed its records and established that it does not currently represent any client who is adverse to you.

4. *Rules of Professional Conduct.* During our representation of you, there may be issues that raise questions about our duties under the rules of professional conduct that apply to lawyers. These might include, e.g., conflict of interest issues, and could even include issues raised because of a dispute between us and you over the handling of this matter. Normally when such issues arise we would seek the advice of our counsel who are experts in such matters. Consistent with the rulings of courts in many jurisdictions, we consider such consultations to be attorney-client privileged conversations between States United personnel and States United counsel.

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However, there have been judicial decisions indicating that under some circumstances such conversations involve a conflict of interest between the client and States United and that our consultation with States United counsel may not be privileged, unless we either withdraw from the representation of the client or obtain the client's consent to consult on a privileged basis with States United counsel. We believe that it is in our clients' interests, as well as ours, that in the event legal ethics or professional responsibility issues arise during a representation, we receive expert analysis. Accordingly, as part of our agreement concerning our representation of you, you agree that if we determine in our own discretion during the representation that it is appropriate to consult with States United counsel, we have your consent to do so on a privileged basis despite any alleged conflict of interest. You further agree that our continuing to represent you at the time of such consultation shall not thereby waive or otherwise limit any attorney-client privilege that States United has regarding the confidentiality of our communications with our counsel.

5. *Cooperation/Reliance on Accurate Information.* To enable us to represent you effectively, you will cooperate fully with us in your matter(s). You and your agents will fully and accurately disclose to us all facts and documents that may be relevant to a matter we undertake or which we may otherwise request. This information will form the basis of our legal advice.

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6. *Legal Service Provider.* We provide strictly legal services to you in connection with this agreement. You are not relying on us for any services other than legal services.
7. *Cloud Storage of Documents.* As is industry practice, States United may store some or all of your files on a variety of platforms, including third-party cloud-based servers. Although we take significant precautions to make sure these are secure, there still is a possibility that your confidential or privileged information may be disclosed. By signing below, you consent to our use of such storage services.
8. *Termination.* You have the right at any time to terminate our services and representation by notice to States United.
9. *Withdrawal.* We reserve the right to withdraw from our representation for any reason permitted by the Rules of Professional Conduct including if, among other things, you fail to honor the terms of the engagement letter, or any fact or circumstance would or could, in our view, render our continuing representation unlawful or unethical. If we elect to withdraw, you will take all steps necessary to free us of any obligation to perform further services, including the execution of any documents necessary to complete our withdrawal.

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10. *Conclusion of Representation.* You agree that the attorney-client relationship is terminated upon completion of any services that we have been retained to perform, regardless of whether we have been paid for our services. If you later retain us to perform further or additional services, after verifying that we have no conflict which would prevent us from taking on the new matter, our attorney-client relationship will be revived subject to these terms of agreement, as they may be supplemented or changed at that time.
11. *Production of Client File:* At the close of our representation of you, in the event that you ask for a copy of your client file, you agree that you will be given a single electronic copy, free of charge, of these items only: communications with you or opposing counsel, pleadings that were filed on your behalf, and documents received from you. If there are original documents that we have received from you, we will return those to you. By this agreement, you expressly acknowledge that you will not be provided any additional materials beyond those described above and you waive any right to receive any such materials. For example, you agree you will not receive internal States United communications about your matter, research, notes, communications other than those with you or opposing counsel, or internal documents related to billing or staffing; nor will you receive drafts of any documents not otherwise sent to you.

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12. *Retention of Client File:* When our representation of you concludes, we expect, in most cases, to retain only those materials which we would otherwise produce to you, as described above: communications with you or opposing counsel, pleadings that were filed on your behalf, and original documents received from you. Internal States United communications about your matter, internal administrative material related to your matter, research notes, and/or communications other than those with you or opposing counsel may be destroyed in our sole discretion and consistent with our document preservation policies. By executing this agreement, you agree to give up any right that may obligate us to retain materials beyond those set out above.
13. *Interaction with Public Records Laws:* You understand and agree that States United has not and is not providing you with advice about the interpretation of any applicable laws relating to what records may be required to be maintained as a result of applicable state or local law and that it is your responsibility to ensure that the provisions of this agreement comply with any obligations you may have under any such law or laws.
14. *Governing Law:* This engagement will be governed by and construed in accordance with the laws of Washington D.C. without regard to conflict of law provisions that might provide for

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the application of the law of any other jurisdiction. However, with respect to our conduct during the representation, you understand and agree that we will comply with the Rules of Professional Conduct that govern the representation.

15. *Arbitration:* You agree that any controversy or claim arising out of or relating to this agreement, or States United's representation of you, shall be settled by binding arbitration administered by the American Arbitration Association under the Expedited Procedures of its Commercial Arbitration Rules. The arbitration shall take place in Washington, D.C. and the costs of the arbitration shall be borne by both parties equally, unless the arbitrator determines that a different allocation of costs would be equitable at the conclusion of the arbitration. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. In any such arbitration, the prevailing party shall be entitled to an award of its attorney's fees and costs by the other party. By agreeing to arbitration, you agree that you are waiving your right to a jury trial of any dispute covered by this agreement, you are waiving your right to take discovery as a part of an arbitration, and you are waiving any right to appeal an adverse award.

**APPENDIX E — EMAIL FROM KIMBERLY J.
HUNLEY, SENIOR LITIG. COUNS., ARIZ. ATT’Y
GEN.’S OFF., TO DEFENSE COUNSEL
(DEC. 12, 2024, 5:52 PM)**

From: Hunley, Kimberly
To: “Lacy A. N. Cooper”; Anne M. Chapman
Cc: Wood, Krista; Ashley Adams; Dennis
Wilenchik; Thomas F. Jacobs; Klingerman,
Nicholas
Subject: RE: Motion to Extend Time re: Motion to
Compel
Date: Thursday, December 12, 2024 5:52:07 PM
Attachments: image001.png

Counsel,

Good Afternoon. Thank you all for taking the time to meet
and confer on December 5, 2024.

As discussed, States United is the pro bono attorney for
the office.

The July 25, 2023 States United Memorandum was
submitted as an attachment to several search warrants.
Because of this, the memorandum was provided as
discovery. As discussed, the State did not intend to
provide the July 25, 2023 memorandum, instead, the State
intended to provide a publicly-available memorandum
from States United. However, because it was submitted
and relied upon by the Court, it was properly disclosed
under Rule 15 as part of discovery.

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However, the State maintains that this was not a waiver of the attorney-client privilege. The State will not provide additional information from States United because of the attorney-client privilege, with one exception. Pursuant to your requests, the State will provide the engagement letter in our next supplemental disclosure. This engagement agreement was recently provided as part of a public records request. Accordingly, the names of the identified attorneys have been redacted. As discussed in our meet and confer, some of you believed that the specific names must be provided as well. We don't believe that is required. However, if you have any additional information to support that request, we will review it.

Based on our conversation, we are working to address your request to identify what specific memorandum was intended to be attached to the search warrants. We are also working to determine whether the "ATTORNEY CLIENT PRIVILEGE, ATTORNEY WORK PRODUCT" header was included in the Memo by States United initially, or whether it was added later.

With respect to our other discussions about disclosure obligations, the State recognizes its duties under *Brady*. The State has, and will continue, to abide by those obligations.

Finally, we discussed that there was an error in the Bates numbers in our clawback letter of November 19, 2024. The letter referenced "a 23-page Memorandum labeled "PRIVILEGED AND CONFIDENTIAL DRAFT" ("the Memorandum"), identified by Bates Nos. 006464-64861,"

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which was a summary of a defendant's prior testimony.
The correct Bates Nos. are 006464-006486.

Lacy, thank you for filing the notice regarding our meet
and confer and requesting the extension of our response
deadline to December 20, 2024.

Again, thank you all for taking the time to attempt to
resolve as many issues as possible.

Kind Regards,

Kimberly J. Hunley
Senior Litigation Counsel

Arizona Attorney General Kris Mayes
Criminal Division
Southern Arizona White Collar and Criminal Enterprise
Section
Desk: (520) 209-4323
Kimberly.Hunley@azag.gov
<http://www.azag.gov>

From: Lacy A. N. Cooper <Lacy@azbarristers.com>
Sent: Friday, December 06, 2024 12:44 PM
To: Anne M. Chapman <anne@mscclaw.com>
Cc: Wood, Krista <Krista.Wood@azag.gov>; Hunley,
Kimberly <Kimberly.Hunley@azag.gov>;
Ashley Adams <aadams@azwhitecollarcrime.
com>; Dennis Wilenchik <diw@wb-law.com>;
Thomas F. Jacobs <tjacobs@jacobsazlaw.com>
Subject: Re: Motion to Extend Time re: Motion to Compel

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Thank you all.

And Kim, thanks for catching that typo. I'll make the correction and we'll get this filed today.

Lacy

SCHMITT SCHNECK
EVEN & WILLIAMS, P.C.
Lacy Cooper | Director
1221 East Osborn Road, Suite 105 | Phoenix, AZ 85014-5540
Office: (602) 277-7000 | Cell: (480) 980-6413
Email: lacy@azbarristers.com | Website: www.azbarristers.com

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On Dec 6, 2024, at 10:46 AM, Anne M. Chapman <anne@mscclaw.com> wrote:

Approved on behalf of Mr. Meadows. Thank you.

<image001.png>

From: Lacy A. N. Cooper <Lacy@azbarristers.com>
Sent: Friday, December 6, 2024 7:45 AM
To: Wood, Krista <Krista.Wood@azag.gov>; Hunley, Kimberly <Kimberly.Hunley@azag.gov>; Ashley Adams <aadams@azwhitecollarcrime.com>; Dennis Wilenchik <diw@wb-law.com>; Thomas F. Jacobs <tjacobs@jacobsazlaw.com>; Anne M. Chapman <anne@mscclaw.com>
Subject: Motion to Extend Time re: Motion to Compel

All,

Per our discussion yesterday, please see the attached draft motion and proposed order to extend the time for the State to respond to our Motion to Compel to December 20, 2024. Please let me know ASAP if you approve so we can get it filed today.

Kim and Krista, below are a couple of cases that discuss the limits of attorney-client privilege when it comes to the existence of an attorney-client relationship and the scope of the representation. We would renew our request for you to provide a copy of the engagement letter between the Attorney General's Office and States United.

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“The privilege extends only to confidential Communications between the client and his attorney. Thus, the fact that the client has consulted an attorney, the dates and places of his visits, the Identity of the client, and similar matters are outside the coverage of the privilege.” *State v. Alexander*, 108 Ariz. 556, 568, 503 P.2d 777, 789 (1972) (internal quotations omitted).

“Not all communications between attorney and client are privileged. Our decisions have recognized that the identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege.” *Clarke v. Am. Com. Nat. Bank*, 974 F.2d 127, 129 (9th Cir. 1992) (citing cases).

As discussed on our call, we are also seeking a copy of the States United document that was originally intended to be attached to the search warrant affidavits.

Thank you,

Lacy

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**APPENDIX F — LETTER FROM CHARLIE
HUMMELL, INVESTIGATOR, OFF. OF CHIEF
TRIAL COUNS., STATE BAR OF CAL., TO PAUL J.
PFINGST, ESQ., *RE: CHRISTINA G. BOBB*,
CASE NO. 22-O-12246 (NOV. 22, 2023)**

The State Bar of California

OFFICE OF CHIEF TRIAL COUNSEL

845 S. Figueroa Street, Los Angeles, CA 90017
213-765-1244 charlie.hummell@calbar.ca.gov

November 22, 2023

PERSONAL AND CONFIDENTIAL

Sent via email only at: pfingst@higgslaw.com

Paul J. Pfingst, Esq.
Higgs Fletcher Mack
401 West A Street, Suite 2600
San Diego, CA 92101

Re: Respondent: Christina G. Bobb, Esq.
Case Number: 22-O-12246 A State Bar Investigation

Dear Mr. Pfingst:

This letter is sent to you based upon information that you currently represent the respondent in this matter. If this is incorrect, please advise me within **five** days so that future communications may be directed to the respondent personally.

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The State Bar has completed the investigation of the allegations of professional misconduct related to the above-referenced matter and determined that this matter does not warrant further action. Therefore, the matter is closed.

The decision to close this matter is without prejudice to further proceedings as appropriate pursuant to rule 2603 of the Rules of Procedure of the State Bar of California. Thank you for your cooperation in this matter.

Respectfully,

/s/ Charlie Hummell
Charlie Hummell
Investigator

**APPENDIX G — EXCERPTS FROM TRANSCRIPT
OF MOTION PROCEEDINGS, *TRUMP V. KEMP*,
NO. 1:20-CV-5310-MHC (N.D. GA. JAN. 5, 2021)**

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DOCKET NO. 1:20-CV-5310-MHC

DONALD J. TRUMP, IN HIS CAPACITY
AS A CANDIDATE FOR PRESIDENT OF
THE UNITED STATES,

Plaintiff,

-vs-

BRIAN P. KEMP, IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF THE STATE OF GEORGIA; BRAD
RAFFENSPERGER, IN HIS OFFICIAL CAPACITY
AS GEORGIA SECRETARY OF STATE,

Defendant.

January 5, 2021

**TRANSCRIPT OF MOTION PROCEEDINGS
BEFORE THE HONORABLE MARK H. COHEN
UNITED STATES DISTRICT JUDGE**

Appendix G

APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

KURT ROBERT HILBERT, ESQ.
THE HILBERT LAW FIRM, LLC

JOHN EASTMAN, ESQ.

ON BEHALF OF THE DEFENDANTS:

RUSSELL D. WILLARD, ESQ.

-and-

CHARLENE S. MCGOWAN, ESQ.
Office of the Attorney General

CHRISTOPHER S. ANULEWICZ, ESQ.

-and-

JAMES L. HOLLIS, ESQ.
BALCH & BINGHAM LLP

* * *

[51] me just ask the court reporter one more time. I don't think we're going to go much longer, but do you need a break?

(Whereupon a discussion is held off the record.)

THE COURT: Okay. Good. Thank you. Mr. Hilbert, you can sum up.

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MR. HILBERT: Thank you, Your Honor. I appreciate the arguments of my colleagues here in Georgia. But to begin with, Mr. Willard, like his briefing, is based on a lot of hyperbole but no facts. Our facts are un rebutted in this case. His affidavits that he submitted are basically legal conclusions, they're not actual evidence. We have affidavits from actual irregularities, misconduct or fraud, which is the legal standard sufficient to change the outcome. To use his own analogy if the quarterback is alone, the referees in this case never even took the field. That's what we're talking about here. The Secretary of State and the governor are violators under the Georgia Election Code. Balance of the equities here, Your Honor, the imprimatur of—

THE COURT: I want to use that analogy. I think actually what's happening here is I'm at a cross sports. It's kind of like plaintiff is—is on a football field and there are—there are referees, there are officials that decide how the law gets violated or how the rules get violated and what the—what the plaintiff wants to do is go into the baseball stadium and get with the umpires and basically say, hey, go ahead and change what those referees have done in the football field. I mean, the [52] football field is the state where the election contest was filed, the baseball field is where I am. So I think, you know, that's—that's the problem you've got. And—and—let me just finish.

And Mr. Hilbert, you do a very good argument on behalf of your client. I hope he's paying you well, but you can tell him on my account he needs to pay you even more.

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But anyway, I think the problem you've got is that once again, there are choices that you make in contesting elections that you have to live with. And I think the bottom line of your argument here is no, Judge, we don't have to live with any of our choices because at the end of the day we always have the ability to bop on over to federal court and have a federal judge throw the whole thing out. And that is just not the way the law operates. The law doesn't operate that way. The law gives you options in which to challenge an election, it's done at the state level. There are other things you could have done which would have delayed the certification of the presidential electors here. You didn't take that option. And you have to live with the consequences. And it's not an answer to basically say, Judge, you've got all encompassing power here, you can—you can do this whenever we show up. And that's actually not the case.

MR. HILBERT: I appreciate that, Your Honor. I want to highlight one last code section under the state code which I think was also violated by the lower court here. O.C.G.A. 21-2-525

* * *

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**APPENDIX H — LETTER FROM CHRISTIAN
J. STEINMETZ, III, CHAIR, GA. STATE
DISCIPLINARY BD., TO DOUGLAS VINCENT
CHANDLER (AUG. 21, 2024)**

State Bar of Georgia

Christian J. Steinmetz, III
State Disciplinary Board

Reply to:
P.O. Box 10085
Savannah, GA 31412

August 21, 2024

CONFIDENTIAL
Douglas Vincent Chandler
4080 McGinnis Ferry Road
Suite 502
Alpharetta, GA 30005

**Re: Grievance against Attorney Kurt Robert Hilbert,
Bar #352877
Office of the General Counsel File #: 230140**

Dear Mr. Chandler:

The State Disciplinary Board has completed its investigation into the grievance filed against your client, the above-referenced attorney Mr. Hilbert.

The grievance was assigned to a member of the Board for thorough investigation to determine whether

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to recommend further proceedings against the lawyer. After completing the investigation, the Board member presented their findings to the State Disciplinary Board at a recent meeting.

After careful consideration, the Board concluded that the investigation did not disclose sufficient evidence to justify formal proceedings against the lawyer. For this reason, the Board has directed that the grievance be dismissed.

Sincerely,

/s/ Christian J. Steinmetz
Christian J. Steinmetz, III
Chair, State Disciplinary Board

c:
Michael Teter
Taylor Haley, SDB Member