



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.

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

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 Comm’n*, No. 2020AP1930-OA; *Mueller v. Jacobs*, No. 2020AP1958-OA; and *Trump v. Evers*, No. 2020AP1971-OA.

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.

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 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.

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.*

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>.

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.

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.

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. Hitt’s 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

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

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.

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 and 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:

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

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 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

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

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.

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 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.

...

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 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 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

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>.

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

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,



Michael Teter
Managing Director, The 65 Project

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